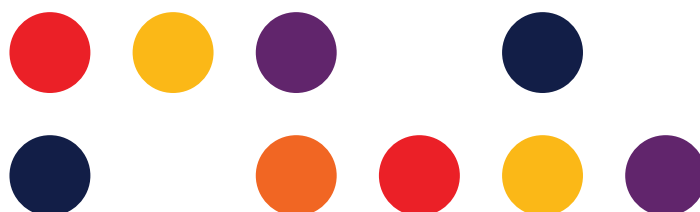


# Superfast Broadband Access Service – draft instrument

ACCC

April 2023

Public version



## Submission

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TPG Telecom welcomes the opportunity to respond to the exposure draft of the ACCC's superfast broadband access service (**SBAS**) determination instrument (**Draft Instrument**).

We understand the Draft Instrument reflects the positions reached in the ACCC's draft decision, published in October 2022, and the ACCC will take into account the submissions made to its consultation on the Draft Instrument and the ACCC's draft decision in making its final decision.

Accordingly, for brevity, TPG Telecom does not repeat the submissions it has made to the ACCC's consultation on its draft decision. However, we wish to re-emphasise the need for the ACCC to give due consideration to a regulated outcome that will not in any way diminish the ability of non-NBN providers to compete in the wholesale broadband market, particularly given the near-ubiquitous coverage and scale of NBN Co, along with the privileges and protections afforded to it as a Government-mandated monopoly provider.

Noting the ACCC's email dated 14 April 2023 regarding the potential obligation to develop additional configurations that are not currently offered, we urge the ACCC to take into consideration the time requirements for an access provider to build and implement a new product, if the ACCC decided to implement its draft SBAS determination.

[c-i-c]

Therefore, the ACCC should provide SBAS access providers at least six months of lead time to implement any new configuration requirements under a new FAD.

Our other detailed comments on the Draft Instrument are set out in **Annexure A**.

## Annexure A: TPG Telecom detailed comments

Proposed drafting changes <sup>1</sup>	TPG Telecom comments
<p><i>Cl 4.3</i></p> <p>(b) in all other cases, the SBAS with the following characteristics: ...</p> <p>(ii) 25 Mbps download and <u>5</u>-10 Mbps upload data transfer rates (peak information rate)</p> <p>(iii) <u>25</u>-50 Mbps download and <u>5</u>-20 Mbps upload data transfer rates (peak information rate)</p>	<p>For certain technologies, NBN Co expresses the bandwidth as a range. NBN Co states the peak information rate can fall anywhere in the range for the relevant bandwidth profile in respect of a particular AVC TC-4 used to service a premises (i.e. they are not minimum-maximum PIR ranges).<sup>2</sup></p> <p>We strongly recommend additions are made to the Draft Instrument to reflect the approach adopted by NBN Co. This is a simple change that will ensure SBAS providers do not unintentionally commit a technical breach of the regulation by virtue of the underlying network technology, whereas NBN Co is not subject to the same requirements.</p>
<p><i>Schedule 1 – Interpretation and definitions</i></p> <p><b>Labour rate</b> means the cost associated for the total number of staff-hours of labour required to perform the relevant activity (rounded up to the next full hour).</p> <p><u>For the avoidance of doubt, nothing in this FAD restricts the amount of the Labour rate charged by a Carrier or Carriage Service Provider.</u></p>	<p>The proposed additions are intended to clarify that SBAS providers are not prevented from charging a ‘Labour rate’ above the amount currently charged by NBN Co. The current drafting and, in particular, the reference to ‘<i>[t]he price for the NBN Co initial non-standard installation as set out in the applicable NBN price list</i>’ (page 13, Draft Instrument) suggests SBAS providers cannot charge more than NBN Co’s current rate of \$75 per hour.<sup>3</sup></p> <p>If SBAS providers are prevented from recovering an amount above \$75 per hour, this could mean they are prevented from being able to fully recover their efficient costs. <b>[c-i-c]</b></p>

<sup>1</sup> Proposed deletions are marked with a strikethrough and additions are underlined.

<sup>2</sup> See section 3.2 and footnote 2 (page 11) of Product Description of Wholesale Broadband Agreement NBN Ethernet Product, available at <https://www.nbnco.com.au/rsps/supply-agreements/wba>.

<sup>3</sup> See section 8 (page 18) of Price List of Wholesale Broadband Agreement NBN Ethernet Product, available at <https://www.nbnco.com.au/rsps/supply-agreements/wba>.

	<p>NBN Co benefits from its sheer size and scale, which presumably enables it to reduce the average per hour cost of labour. Capping the labour rate to the amount NBN Co charges would disadvantage SBAS providers and reduces their ability to compete against NBN Co.</p> <p>This principle also extends to the First Missed Appointment and Subsequent Missed Appointment charges (see page 14, Draft Instrument), which sets a price relative to NBN Co’s labour charge.</p> <p>Further, the amount charged by NBN Co would not simply reflect the underlying cost of the technicians/subcontractors engaged by NBN Co. We assume NBN Co’s labour rate includes a margin/return. The ACCC should also enable SBAS providers to include a return in their labour charges. A simple passthrough approach prevents providers from having the opportunity to recover their reasonable and efficient costs.</p>
<p><i>Schedule 2 – Prices; clause 2.3</i></p> <p><i>Column titled ‘Subsequent prices’</i></p> <p>Effective price per month: The price for the NBN Co Bundled AVC TC-4 and CVC TC-4 product components, as amended from time to time <del>(including discounts)</del></p> <p>CVC Overage per Mbps: The price for the NBN Co Overage Amount as amended from time to time <del>(including discounts)</del></p> <p><i>Notes following table of charges</i></p> <p>The Overage amount applies if, across a billing period, <del>the national CVC ordered</del> <u>utilised by an access seeker is greater than the national</u></p>	<p>We assume the ACCC will update the initial prices and CVC inclusion to reflect any accepted variation to NBN Co’s Special Access Undertaking (<b>SAU</b>), noting this is subject to a separate ACCC process.</p> <p>Subject to the ACCC’s views on NBN Co’s proposed SAU variation, the following changes may need to be made for consistency with the proposed SAU (which would flow into the Wholesale Broadband Agreement):</p> <ul style="list-style-type: none"> <li>• NBN Co is proposing to shift away from its current use of discounted AVC/CVC offers and will instead include these bundled offers in its price list. The reference to ‘including discounts’ should therefore be deleted where applicable.</li> </ul>

<p><del>CVC Inclusion</del> the daily peak utilisation is more than the bundled inclusions in each CSA.</p> <p>The subsequent pricing, <del>including discounts</del> and CVC Inclusions, will apply to carriers and carriage service providers <del>three</del> <u>six</u> calendar months from the date of publication of the subsequent pricing on the NBN Co website, or on the date that the published subsequent pricing takes effect, whichever is the later date.</p>	<ul style="list-style-type: none"> <li>NBN Co is proposing to implement utilisation-based CVC billing. The reference to the Overage Amount should therefore be changed to reflect this.</li> </ul> <p>As noted in TPG Telecom’s previous submissions, we strongly recommend the ACCC allow SBAS providers at least 6 months from the date of publication of the subsequent pricing to take effect. Without this additional time, Vision Networks will not be able to undertake relevant consultation (including to comply with its non-discrimination obligations) and provide sufficient notice to its customers in accordance with its wholesale broadband agreement. The same change should also be made in relation to the effect date for non-recurring charges.</p>
<p>Clause 2.4 <i>Non-recurring charges</i></p> <p>For the purposes of 2.4(a):</p> <p><u>(iv) The charge for Service transfer and Transfer reversal does not apply where an in-premises appointment is required for a technician to install or uninstall the connecting equipment (for example, installation of a jumpering cable, lead-in cable or network termination device).</u></p>	<p>If the ACCC considers there is a basis to regulate non-recurring charges, an additional note should be included to enable SBAS providers to recover reasonable and efficient costs involved in undertaking a Service transfer or Transfer reversal where this cannot be completed without a technician appointment. We refer to TPG Telecom’s previous submissions in relation to these matters.</p>
<p><i>Schedule 13 – Network performance reporting</i></p> <p>Clause 13.7</p> <p>This Schedule 13 commences from 1 January 2024 and remains in force for the duration of this FAD.</p> <p>Note: For the avoidance of doubt, the first Reporting Period for which the above information is to be made available to Access Seekers is the 31 March 2024 Reporting Period.</p>	<p>At this time, we believe the proposed timing would be appropriate. However we may find we require additional time to implement changes once we begin relevant IT projects to implement changes.</p>