



---

## **TELSTRA CORPORATION LIMITED**

### **Superfast Broadband Access Service – Access Determination Inquiry: Discussion Paper**

**Non- confidential version**

**15 December 2021**

**[CIC begins]** = information not to be released without a confidentiality undertaking



---

## CONTENTS

<b>INTRODUCTION</b>	<b>3</b>
Pricing Methodology	3
Anchor products	4
Exemptions from the Standard Access Obligations	4
Obligations to provide information on service standards	4
<b>ATTACHMENT A: Responses to ACCC Questions</b>	<b>5</b>



---

## INTRODUCTION

Telstra welcomes this opportunity to respond to the Australian Competition and Consumer Commission's (ACCC's) Discussion Paper regarding the Final Access Determination (FAD) for the declared Superfast Broadband Access Service (SBAS). The ACCC's SBAS declaration covers non-NBN fixed line superfast broadband services until 28 July 2026. During this period, Telstra expects to have a dual interest in the terms set under the FAD:

- Telstra sold its Telstra Velocity and South Brisbane Fibre to the Premises (FTTP) networks to Uniti Group Limited (Uniti) in December 2020. Telstra will continue to offer our Fibre Access Broadband (FAB) service to wholesale and retail customers until transition to Uniti is complete, which is currently expected to occur in mid 2023. Thus, Telstra is expected to be an access provider of the "second variant" of SBAS (referred to herein as "the FAB service") in the short term.
- Telstra has entered into arrangements with Uniti to become a retail service provider (RSP) on Uniti's national FTTP network. Accordingly, we expect to have an interest in the terms set under the FAD as an access seeker of the "first variant" of SBAS (the wholesale Layer 2 broadband access service that is similar to that provided by NBN Co, referred to herein as "the SBAS") from on or about mid-2022.

Our response to the questions asked by the ACCC in its Discussion Paper is set out in Attachment A. It covers, as relevant for each question, matters concerning both our supply of the FAB service and our potential acquisition of the SBAS. Below is a summary of our response to the key issues highlighted in the ACCC's Discussion Paper.

### Pricing Methodology

Telstra supports continuation of the current pricing methodology set out in the Interim Access Determination (IAD). Telstra believes the current approach of setting an anchor price benchmarked to NBN services for the SBAS and benchmarked for the FAB service to Telstra's Wholesale Asymmetric Digital Subscriber Line (WADSL) service to be the best way to promote competition in downstream markets in the long-term interests of end-users (LTIE). We also believe this approach is the best way to promote efficient investment in SBAS networks and protect the legitimate interests of SBAS network providers. Retention of this established approach will minimise the regulatory burden for all parties and avoids introducing a risk of regulatory uncertainty or error.

In relation to the FAB service, there has been no change to the service since the last SBAS FAD terms were set. As was the case when the SBAS was first declared, Telstra complies with the declaration without having a Layer 2 access service in place. Accordingly, setting the access price for our FAB service based on the annual service-specific costs of Telstra's WADSL service continues to be a better proxy than NBN pricing for the direct costs of the FAB service. The current approach to charging also avoids causing the material costs and time for implementation that would need to be incurred to accommodate an AGVC price differential between Telstra's WADSL and FAB products.<sup>1</sup>

Extending the current treatment for the FAB service also provides valuable regulatory certainty and stability for Telstra and for our FAB wholesale customers, while the transition of services to Uniti is being progressed. The transition is a major program of work, and changes to the current regulatory settings would potentially distract the parties from their focus on implementing the transition arrangements expeditiously and optimally for end-users. Post-transition, it is expected that a greater choice of broadband services will be available to end-users connected to the upgraded Uniti network.

---

<sup>1</sup> See details in our submission to the 2017 FAD inquiry <https://www.accc.gov.au/system/files/Telstra%20-%20Public%20Submission%20to%20SBAS%20LBAS%20FAD.pdf>



---

The transition is currently expected to be completed by mid 2023, when the Uniti network will become subject to the FAD requirements for the “first variant” of the SBAS. Given the limited period of time for which Telstra will continue to supply our FAB service, we believe that, even if a change to the current charging approach were possible within this timeframe, it would simply add cost and complexity for existing access seekers and for Telstra. This is unlikely to result in any material uplift in the volume of access seekers for the service and therefore little (if any) benefit for end-users.

### Anchor products

We consider it remains appropriate to regulate only the 25/5 Mbps SBAS speed tier and the 30/1 Mbps FAB speed tier as the anchor products for setting the regulated price points under the FAD. As has historically been the case, we believe price regulation of only these speed tiers provides important safeguards for consumers, while also benefiting competition and investment by providing access providers with flexibility as to how they may price lower or higher quality access products.

In the event of any change in the ACCC’s approach to regulate Telstra’s 100/5 Mbps FAB speed tier under the FAD, then the current methodology used for the 30/1 Mbps speed tier of benchmarking the price to the cost of Telstra’s wholesale ADSL service should also be used for this speed tier. In the event there was instead a complete change in the ACCC’s approach to regulate the FAB 100/5 speed tier *and* to benchmark the regulated price to an equivalent NBN product, we strongly believe the benchmarked NBN product must be the NBN 100/20 Mbps speed tier – i.e. the closest equivalent residential grade product. Currently the charge for NBN Co’s 100/20 Mbps bundle is \$58 per month, which is more than 50% higher than the \$37 per month charge for its 25/5 Mbps bundle. It would be unfair and unjustified to require Telstra to offer our 100/5 Mbps FAB service for the same price as NBN Co’s four times slower 25/5 Mbps product.

### Exemptions from the Standard Access Obligations

Telstra supports maintaining the current small network exemption, and applying it equally to SBAS and former Local Broadband Access Service (**LBAS**) providers. This approach will ensure a proportionate approach to regulation and is likely to help promote investment in such smaller scale SBAS networks.

Telstra does not support the introduction of a competition-based exemption from the SBAS access obligations. Regulatory certainty is key to network investment decisions by current and potential SBAS providers. It is also important to decisions made by access seekers as to whether to make the required investments to onboard with an SBAS provider as a retail or wholesale broadband service provider, to develop the relevant products for its customers and to market those products. We are concerned the potential harm to investment and competition in downstream markets caused by this additional regulatory complexity and uncertainty would outweigh the limited potential benefits.

### Obligations to provide information on service standards

The quality of broadband services is an important issue for end-users and for retail service providers (**RSPs**). However, we consider it would be premature to impose additional regulatory obligations on SBAS providers relating to service standards during the current declaration period. It may transpire that during this period obligations of this nature are imposed on NBN Co, and/or on all Statutory Infrastructure Providers (**SIPs**) under the SIP legislation. It would therefore make sense to conduct a more informed regulatory impact assessment of whether it is necessary and appropriate to impose similar obligations on SBAS providers in the next SBAS FAD.

Certainly, we believe it would be inappropriate and distortive to infrastructure competition between superfast network providers for SBAS providers to be subject to more stringent regulatory obligations to report on service standards metrics than NBN Co.

---

## ATTACHMENT A: Responses to ACCC Questions

- 1. Should regulated SBAS prices be set in line with NBN wholesale access prices and, if not, what alternative price approaches should we consider? For example, should we consider using the retail minus methodology?**

Telstra supports the ACCC's continued approach of subjecting the SBAS to price regulation in the form of anchor prices benchmarked to NBN pricing for similar wholesale access services (with an exception for Telstra's FAB service).

The ACCC's rationale for adopting this approach in 2017 continues to apply. It is still more straightforward to implement than any of the potential alternative approaches. It continues to provide for reasonable consistency of regulation of all superfast broadband services (on NBN and non-NBN networks and between SBAS services). It also continues to help ensure SBAS retailers are not paying more than for equivalent NBN services, benefiting consumers. [c-i-c] [c-i-c].

For Telstra's FAB service, we support continuation of the 2017 approach of benchmarking the price to the price of ADSL, for the reasons set out below in response to Questions 4 and 5.

- 2. If SBAS prices continue to be set directly in line with NBN wholesale access prices, should the regulated price continue to inclusive of NBN Co's intertemporal bundling/discount offers, or based on prices published in NBN Co's Price List excluding such offers?**

We support the continued approach of setting the SBAS price (other than for Telstra's legacy FAB service) directly in line with NBN wholesale access prices, inclusive of NBN Co's intertemporal bundling/discount offers. We consider this approach continues to be the best way to ensure prices encourage RSPs to use the wholesale services of current and future SBAS networks, thereby promoting competition in the supply of retail services to end users through improved price and quality of service, as well as providing incentives for RSPs to innovate and provide a wider array of retail products. For example, this approach readily facilitates the opportunity for access seekers to offer uniform retail broadband offerings to consumers across both the NBN and other SBAS networks.

- 3. Should the Regional Broadband Scheme (RBS) levy continue to be able to be passed through to RSPs and users or absorbed by SBAS providers?**

We note the ACCC's request for information about how SBAS providers have dealt with the RBS levy to date. In Telstra's 2017 response to the ACCC on this matter, we advised that we considered it appropriate for there to be provision in the FAD for an amount up to the levy amount to be added to our FAB charges.<sup>2</sup> However, although the levy came into effect from 1 January 2021, we have not to date added any additional amounts to our standard charges for our FAB customers.

Telstra agrees with the ACCC's 2017 reasoning that SBAS providers should not be required to charge prices below their costs. However, it is unclear if absorption of the RBS levy would result in such an outcome. For example, carriers with less than 2,000 potentially chargeable premises are exempt from the charge; and for the first five years there is a concession for up to 55,000 recently connected greenfield premises per month and for the first 25,000 small business and residential premises connected by carriers that are not entitled to the concession for recently connected greenfield premises.<sup>3</sup> These variables could make it complex to determine how much of the RBS levy payments made by the SBAS provider in a given year would need to be recovered to ensure it was not being required to charge prices for its SBAS service that was below its cost of supply.

---

<sup>2</sup> See <https://www.accc.gov.au/system/files/Telstra%20-%20Public%20Submission%20to%20SBAS%20LBAS%20FAD.pdf>

<sup>3</sup> See <https://www.acma.gov.au/about-regional-broadband-scheme#charge>



We also note there has been no increase to NBN Co's wholesale charges for NBN services since the RBS levy came into effect, as NBN Co's wholesale customers are already contributing to the financial losses of fixed wireless and satellite services through an internal NBN Co cross-subsidy from its fixed line services.<sup>4</sup> The addition of a contribution to cover RBS payments to wholesale charges for the SBAS which are aligned to NBN Co's wholesale charges for equivalent NBN services could result in wholesale (and consequently retail) charges for broadband services supplied over these alternative superfast networks being higher than those for customers served by the NBN. Such an outcome could potentially run counter to the ACCC's rationale for setting SBAS prices anchored to NBN's prices – namely to ensure SBAS retailers are not paying more than for equivalent NBN services, benefiting consumers.

**4. How should we approach regulated wholesale access pricing for the FAB service for the period while the service is still operating and regulated under the 2022 SBAS FAD**

Telstra considers the approach to wholesale access pricing for the FAB service for the period while the service is still operating and regulated under the 2022 SBAS FAD should remain as it is currently.

There has been no change in our FAB service since the last SBAS FAD terms were set. In particular, as was the case when the SBAS was first declared, Telstra complies with the declaration without having a Layer 2 access service in place for the South Brisbane and Velocity Estates networks. Accordingly, setting the access price for our FAB service based on the annual service-specific costs of Telstra's WADSL service continues to be a better proxy than NBN pricing for the direct costs of the FAB service. The current approach to charging also avoids causing the material costs and time for implementation that would need to be incurred to accommodate an AGVC price differential between Telstra's WADSL and FAB products.<sup>5</sup> These costs would likely substantially outweigh any benefit of an alternate pricing approach in the limited time before the networks are transitioned to Uniti.

An extension to the previous treatment of the FAB services supplied over Telstra's South Brisbane and Velocity Estates networks is also important to provide regulatory certainty and stability for Telstra and for our FAB wholesale customers while the transition of services to Uniti as the new network owner is being progressed. This is important during the major program of work being undertaken by Telstra and Uniti to effect the network upgrade and transition. During this transition period, the focus of all parties is on implementing the transition arrangements efficiently and expeditiously to provide the optimal possible experience to end-users. Post-transition, it is expected that a greater choice of broadband services will be available to end-users connected to the upgraded Uniti network.

**5. Do you support the regulated access price for the FAB service being set at the same level as the equivalent regulated SBAS and NBN services? Please explain why in detail, including the appropriate speed tier at which to set the regulated access price for the FAB service.**

Telstra does not support this change in approach to the regulation of charges for our FAB service.

In the Discussion Paper, the ACCC has stated it considers a review of current wholesale access pricing for the FAB service may be warranted, given the concerns about price and competition on Telstra's South Brisbane and Velocity networks that have been raised. However:

- In relation to the retail prices for services on these networks, the ACCC has acknowledged the claims of "excessive" pricing that have been made are incorrect, and

<sup>4</sup> See

<https://www.accc.gov.au/system/files/Report%20on%20modelling%20of%20the%20Regional%20Broadband%20Scheme%20Levy%20initial%20base%20component%20-%20October%202020.pdf> p 3.

<sup>5</sup> See details in our submission to the 2017 FAD inquiry <https://www.accc.gov.au/system/files/Telstra%20-%20Public%20Submission%20to%20SBAS%20LBAS%20FAD.pdf>



that Telstra's retail prices are the same as for the Standard Speed and Premium Speed services we offer on the NBN.

- The ACCC has also acknowledged the uncertain and limited period over which our FAB service is expected to continue to operate and be regulated under the 2022 SBAS FAD. Specifically, this period is subject to the timeframe for Uniti's upgrade of the South Brisbane and Velocity networks and the transition of end-users to the upgraded networks – which is planned to commence as from July 2022 and to complete within approximately 12 months after this date. Telstra will of course continue to offer our FAB service to existing and new access seekers during this 6 - 18 month period until the transition to Uniti is complete. However, as a matter of practicality, we consider it unlikely for there to be any material uplift in the number of access seekers for our FAB service during this period, even if the regulated wholesale price for FAB was to be set to match that for the SBAS. Firstly, the time and resources involved to onboard as a wholesale customer of the FAB service may not be warranted, given the short remaining period for which the service will be available. Further, all existing end-customers will need to have their services disconnected and physically transitioned onto the upgraded Uniti network. This is a process all RSPs on our legacy network will need to be involved in to support their end-customers, as well as needing to onboard as an RSP with Uniti to ensure service continuity for their end-customers post transition. [c-i-c] [c-i-c]

Furthermore, Telstra has in our previous 2017 submission explained in detail why it is not feasible (i.e. disproportionately costly, and time-consuming to implement) to set the charges for our regulated FAB service in a manner that diverges from the way in which we charge for AGCVs for our WADSL service – which would be the case if the charge were to be based on NBN Co's charges.<sup>6</sup> Those submissions continue to hold true, and we do not repeat them here.

It is important to highlight, however, that in our previous submission we observed that although our FAB service pre-dates the specification of the NBN and was therefore not designed to be an equivalent service, when averaged over port and aggregation charges, the regulated WADSL price benchmark is close to NBN Co's access prices for its 25/5 Mbps product.

Benchmarking a regulated price for Telstra's 100/5 Mbps FAB service to NBN Co's 25/5 Mbps layer 2 TC-4 service, as suggested in the Discussion Paper, would cause a material misalignment between what Telstra could charge for this speed tier, compared to what NBN Co charges for its equivalent speed product. Currently the charge for NBN Co's 100/20 Mbps bundle is \$58 per month, which is more than 50% higher than the \$37 per month charge for its 25/5 Mbps bundle. It would be unfair and unjustified to require Telstra to offer our 100/5 Mbps FAB service for the same price as NBN Co's four times slower 25/5 Mbps product. Notwithstanding the fact that Telstra is required to offer our 100/5 Mbps FAB product as SIP due to the limitations on the upload speed of our 30/1 Mbps speed tier, if the price of this product is to be regulated and benchmarked to an equivalent NBN speed tier then the benchmark product must be NBN Co's 100/20 Mbps speed tier – i.e. the closest equivalent residential grade product.

For completeness, we confirm Telstra also does not support a change in the current approach to adopt a retail minus pricing methodology. We can see no need for or benefit of the complexity, uncertainty and risk of regulatory error that would be generated by such a change in approach during the very limited time for which Telstra will continue to offer our FAB service prior to completion of the transition of services to Uniti, [c-i-c] [c-i-c]

## 6. Should we take a different approach to the product components that are price regulated and or to the structure of regulated charges in the 2022 SBAS FAD?

We consider the current approach to regulated prices for the SBAS adopted under the IAD (i.e. reflecting NBN Co's current discounted bundled pricing structure and mapped to future prices for the NBN Co AVC TC-4 25/5 Mbps and CVC TC-4 product components, as amended from time

<sup>6</sup> See: <https://www.accc.gov.au/system/files/Telstra%20-%20Public%20Submission%20to%20SBAS%20LBAS%20FAD.pdf> (Section 2 - Implementing the Draft Decision FAB prices would lead to an unintended outcome not in the LTIE).



(including discounts)), is the best way to promote competition in downstream markets in the LTIE of consumers, while protecting the legitimate business interests of SBAS access providers.

This approach ensures there is a regulated price for the SBAS aligned with NBN Co's price structure, which helps promote downstream competition by enabling RSPs to offer a uniform retail offering across the NBN and other SBAS networks. At the same time, it leaves SBAS providers free to offer commercial wholesale pricing using alternative price structures – such as a single fixed access charge including unlimited data usage – which enables them to protect their legitimate business interests and may help to promote competition between SBAS providers and the NBN if these alternatives prove popular with access seekers.

**7. Should only the current anchor price points be regulated, or should prices be set for a range of additional speed tiers above and / or below (e.g., at 12 Mbps) the current anchor points?**

We consider it remains appropriate to regulate only the price of the 25/5 Mbps speed tier for the SBAS. As has historically been the case, price regulation of only this speed tier as an “anchor product” provides important safeguards for consumers and competition, while also benefiting competition and investment by providing the access provider with flexibility as to how it may price lower or higher quality access products.

**8. If prices continue to be regulated at a single anchor point for the SBAS, is 25/5 Mbps still an appropriate anchor point for (non-FAB) prices?**

Yes, this speed tier remains the appropriate speed to price regulate as the SBAS anchor point for non-FAB prices. This reflects the minimum download speed required to be supported by SIPs, including NBN Co. For the FAB service, we consider that the 30/1 speed tier remains the appropriate equivalent regulated speed tier to the 25/5 Mbps speed tier for the SBAS, i.e. with the closest equivalent download speed and with a similar upload speed.<sup>7</sup>

[c-i-c] [c-i-c].

**9. Should any non-recurring charges be regulated under the SBAS FAD? If so, please explain why and how the regulated charges should be set.**

Telstra supports a proportionate and evidence-based approach to regulation of SBAS prices and non-price terms and conditions. The ACCC's Discussion Paper does not contain any evidence that current SBAS non-recurring charges are unreasonably high or that they fail to reflect the costs of the service or function provided. In the absence of such evidence, Telstra does not believe that it is justified to impose additional regulation of these charges in order to promote the LTIE.

**10. Should all the non-price terms for the SBAS continue in the same form? If not, how should they be changed and why?**

Telstra supports the continuation of the current non-price terms for the SBAS in their current form. As and when there is any change to the regulated non-price terms for the broadband services supplied by NBN Co – for example under the in-train ACCC review process of the terms of NBN Co's Special Access Undertaking – then it may be appropriate to revisit this matter, in the next SBAS declaration period. This will allow a reasonable period of time for any such changes to come into effect and to be understood by industry and the ACCC, so as to be able to determine whether they should also apply for SBAS services.

**11. Should SBAS and FAB service network providers be required to disclose key network service quality and reliability indicators to current or potential RSPs? If so, which**

<sup>7</sup> While this service does not support the minimum 5 Mbps upload speed required to be supported by SIPs, we note that the ACCC's recent Measuring Broadband Australia report found that services on the NBN on average only supported 84.9% of the maximum upload speed – which would equate to less than 5 Mbps for a 25/5 Mbps service - <https://www.accc.gov.au/media-release/nbn-download-speeds-steady-but-upload-speeds-not-hitting-maximum>






---

**indicators would promote competition and improve quality and reliability of service outcomes for RSPs and end-users?**

The quality of broadband services is an important issue for end-users and for RSPs. However we consider that it would be premature to impose additional regulatory obligations on SBAS providers relating to service standards during the current declaration period. It may transpire that during this period obligations of this nature are imposed on NBN Co, and/or on all SIP providers under the SIP legislation.<sup>8</sup> It would therefore make sense to conduct a more informed regulatory impact assessment of whether it is necessary and appropriate to impose similar obligations on SBAS providers in the next SBAS FAD.

Certainly, we believe it would be inappropriate and distortive to infrastructure competition between superfast network providers for SBAS providers to be subject to more stringent regulatory obligations to report on service standards metrics than NBN Co.

**12. Should the small network exemption remain, be changed, or removed and why?**

We support the continuation of the current SBAS small network exemption. This ensures a proportionate approach to regulation and is likely to help promote investment in such smaller scale SBAS networks.

**13. Have changes in the costs or number of small network operators changed since 2017 in a way that should impact the future of such an exemption?**

We have no comments in response to this question.

**14. Do you support a framework to provide an exemption from the Standard Access Obligations where there is effective competition with or between fixed line networks?**

No. At the present point in time and without further information about how this framework may work, we are concerned that the potential harm to investment and competition in downstream markets by adding this complexity and uncertainty into the regulatory framework for the SBAS would outweigh any potential benefits. Any such benefits are likely to be limited, given the ACCC's overall view that *"for the period of the 2021 SBAS access declaration, the threat of entry by new fixed line networks to areas served by incumbent networks would probably remain low."*<sup>9</sup> By contrast, the detrimental impact to downstream competition and infrastructure investment could be material, depending on the degree of regulatory uncertainty and risk of unintended outcomes created by this change in approach.

**15. Would a framework that included localised network areas or developments being eligible for exemption once it meets a competition threshold be workable?**

Telstra agrees with the ACCC that a competition-based exemption framework may not be straightforward to apply in practice. Both for access seekers and access providers, regulatory certainty is critical to investment and operational decision making. At present, we find it difficult to see how the proposed competition-based exemption framework could be made workable and implemented without raising the risk of unintended consequences detrimental to competition in downstream wholesale and retail broadband markets.

**16. If a competition threshold is introduced, what number and type (i.e., NBN and non-NBN) of competing networks would be appropriate to give rise to an exemption?**

It is difficult to answer this question in the abstract, for all SBAS networks. Whether or not the level of competition may be sufficient to result in the absence of significant market power by the SBAS provider would in our view need to factor in considerations going beyond the number of competing networks and whether or not they were the NBN or another SBAS

---

<sup>8</sup> See <https://www.infrastructure.gov.au/have-your-say/public-consultation-draft-standards-rules-and-benchmarks-statutory-infrastructure-providers-sips>

<sup>9</sup> FAD Inquiry Discussion Paper, November 2021, p 24.



network, such as the extent of geographic overlap, and the nature of competing services and customers supplied over the competing network.

**17. Would defined geographic areas (e.g., by postcode, local government area or another type of geographic boundary) be appropriate for an ex-ante exemption and, if so, in which areas are you aware of a sufficient degree of competition now or in the foreseeable future?**

As explained above, we do not support a competition-based form of ex-ante exemption.

**18. Would you prefer a threshold-based exemption or a geographic area-based ex ante exemption?**

We do not support any form of competition based ex-ante exemption. However, if this is to be introduced, we prefer a clear geographic area based exemption. An exemption extending to any area/development where the competition threshold is or will be met would create extreme uncertainty as to how the SBAS regulations might apply over the course of the declaration period.

**19. Are there likely to be practical issues from implementing a competition-based exemption that would arise once an area becomes exempt from SBAS? If so, please explain why.**

Telstra agrees with the ACCC's assessment that the introduction of a competition-based exemption from SBAS regulation is likely to create practical complexities for access providers and access seekers. This includes complexities in the relationships between these parties, and operational and compliance-related complexities for the access provider arising from the potential for differential regulation of different parts of its network business.

**20. Would the application of SBAS to some areas of a providers' network and not others be costly for the infrastructure owner to implement or manage?**

Potentially, yes. The ACCC has suggested a likely precondition for an exemption from the Standard Access Obligations for an SBAS network would be the presence of the NBN as an alternative access network for RSPs and end-users. Currently, the NBN overlaps certain areas covered by Telstra's FTTP networks in Velocity and South Brisbane. It would add a material additional level of complexity for Telstra to determine whether the FAB service supplied to our wholesale customers falls within or outside of these areas, in order to determine what regulatory obligations applied to the relevant services. Such a "swiss cheese" approach to regulation would also add additional complexity to the arrangements for access seekers of our FAB service, which may deter uptake by RSPs.

**21. If we implement a competition-based exemption framework, should we only do it during the more standard inquiries prior to the expiry of a declaration or FAD; or rely on an ad hoc variation inquiry process for exemptions during a FAD period?**

For the reasons explained above, Telstra does not support the introduction of a competition-based exemption framework. We agree with the ACCC's view that in considering what form of regulatory and exemption framework is in the LTIE, it is important to consider the impact of that framework on investment decisions. Regulatory certainty is key to network investment decisions by current and potential SBAS providers. It is also very important to decisions made by access seekers as to whether to make the required investments to onboard with an SBAS provider as a retail or wholesale broadband service provider, to develop the relevant products for its customers and to market those products.

As the ACCC acknowledges in its Discussion Paper, the more often a regulatory framework changes, the less certainty it provides for regulated parties. In the event that any competition-based exemption framework is introduced for the SBAS, it would be essential for the purposes of regulatory certainty that the application of the exemption could be determined upfront, following an inquiry prior to expiry of an existing declaration or FAD. This would be similar, for



---

example, to the compilation of the list of exempt routes the ACCC publishes under the Domestic Transmission Capacity Service FAD.<sup>10</sup>

**22. Do you support the term for the 2022 SBAS FAD aligning with the expiry of the SBAS declaration (28 July 2026)?**

Yes, we consider this is the appropriate approach.

---

<sup>10</sup> See <https://www.accc.gov.au/regulated-infrastructure/communications/transmission-services-facilities-access/domestic-transmission-capacity-service-declaration-inquiry-2018-2019/final-report>