14 March 2024

To: ACCC
Submitted via email to superfastbroadbandinquiry@accc.gov.au
RE: Public inquiry into whether to vary the superfast access service access determination Discussion Paper.

Introduction

Leaptel thanks the ACCC for its ongoing commitment to ensuring fair and efficient regulation of Superfast Broadband Access Service (SBAS) access.

We welcome the opportunity to provide a submission to the Discussion Paper published on 26 February 2025.

Leaptel overwhelmingly supports greater intervention by the ACCC in relation to interconnection arrangements as put forward by the Discussion Paper. However, we continue to urge the ACCC to go further and extend its regulatory intent to encompass all commonly used consumer speed tiers.

Only with greater ACCC involvement can SBAS providers be restrained from their continued abuse of the power imbalance between them and access seekers.

We have responded to each of the questions below.

1. **Should additional regulated access terms be included in the SBAS access determination regarding the locations and characteristics of the points of interconnect? If so, what additional access terms do you consider should be included?**

A standard set of interconnection arrangements should be in place for SBAS networks. These requirements should be similar to the requirements established under the binding rules of conduct (BROC) for Uniti Group entities published on 19 December 2024 and as outlined in the Discussion Paper.

The interconnection rules outlined in the BROC clearly addressed Uniti Groups attempt to circumvent the clearly established requirements of the SBAS Final Access Determination (FAD) published in March 2024.

Exemptions could be established for two reasons, those networks with genuine historical reasons for having different interconnection arrangements, such as the Vision

network, and those networks who are not monopoly statutory infrastructure providers (SIP) and must compete with other SIPs across their entire footprint.

In the above cases, it would not be in the LTIE to enforce network design changes as it would not deliver increased competition, and would not promote economically efficient investment in infrastructure.

However, these exemptions should be few and far between, given that the ACCC has previously accepted that the costs of backhaul traffic from an SBAS providers local network to the point of interconnect are part of its base of costs.

While SBAS providers may object to being required to adhere to an interconnection standard, the reality is that even the biggest SBAS networks do not deliver access to the same number of premises under this model as a National Broadband Network (NBN) Point of Intersection (POI) would on average. Therefore, retail service providers accessing SBAS networks have access to less premises than they would on an NBN POI.

This undermines the economics of providing services on SBAS networks. Requiring RSPs to connect to a dispersed collection of individual sites, many of which have <1000 customers at them does not encourage an economically efficient use of, and investment in, infrastructure. Anything that further dilutes this, such as more distributed interconnection, serves as a barrier to RSPs, and therefore means less end user choice. This is not in the long-term interest of end users (LTIE).

The current 121 NBN POI structure was established from advice to the government by the ACCC in 2010. This advice was formulated following significant engagement and discussion with stakeholders and at its core was the need to meet the LTIE. SBAS providers should not be allowed to just determine independently their own POI/interconnection arrangements. The need to introduce BROC for Uniti Group demonstrates that SBAS providers cannot be relied upon to act in good faith in this regard.

We are also increasingly concerned that there are some SBAS networks that are not genuinely interested in facilitating open access and rely on a distributed interconnection model to discourage RSPs from utilizing their network. Instead, they will have their own RSP that will sell their product and become a de-facto retail monopoly. This is particularly prevalent in the Build-To-Rent sector (BTR) where SBAS providers wish to capture the entire value chain, at the expense of retail competition, which explicitly undermines the interests of LTIE.

To support efficient compliance with interconnection requirements, SBAS providers should report on their interconnection requirements on their website in a clear and transparent manner.

2. **Should the SBAS access determination include measures to safeguard against the imposition of unreasonable access terms should access seekers request supply on the regulated terms? If so, what additional measures do you consider should be implemented?**

Leaptel is very concerned that unreasonable access terms might be imposed in a discriminatory fashion if we seek supply on regulated terms. There is a significant imbalance in the relationship between access seekers and SBAS providers.

As it presently stands, while the FAD exists as a fallback, the power imbalance means it is often not effective in real-world negotiations. Access seekers are concerned about losing access or not obtaining access if they should seek to negotiate separate pricing. This harms the LTIE as it diminishes retail competition.

To address this, SBAS providers should be required to publish a "regulated" price list on their website, and when amending this price list, they should be required to provide both access seekers and the ACCC with 90 days' notice before the pricing takes effect. As part of this process, they need to provide a detailed rationale that demonstrates how any increase in costs align with direct service delivery.

This change would mean individual seekers could access regulated price terms without having to negotiate. If they then want to use these price terms to negotiate further, then that option still exists, however any such arrangement would need to be transparently reported. It would also facilitate easier compliance monitoring for the ACCC as they could easily audit compliance with the SBAS FAD.

3. **Who should be required to comply with any such regulated access terms? Should they be limited to particular providers or by way of criteria?**

Leaptel believes that the criteria should apply to any SBAS provider that holds a fixed-line monopoly in an area, irrespective of size. In our response to question 1 we've put forward our arguments as to why this is in the LTIE, promoting effective retail competition and economically efficient investment in infrastructure.

As previously articulated, an exemption could be provided for networks that have genuine historical reasons for their network relying on a distributed access model where there is sufficient scale to encourage economically efficient investment by RSPs in infrastructure to connect to the SBAS network.

We envisage that only the Vison network would be of sufficient scale to justify such an exemption. In such a scenario it would remain in the LTIE to permit the continuation of this long-established network design.

4. **Are there any issues that are not covered in the discussion paper that you consider relevant to our consideration of potential additional regulated access terms in the SBAS access determination?**

While it may be outside the limited scope of this Discussion Paper, we strongly urge the ACCC to re-evaluate the limited scope of the speed tiers it regulates. During the SABAS FAD process we argued that speed tiers beyond 50/20Mbps should be regulated. We think this is more important than ever.

While SBAS providers often claim their pricing aligns with NBN equivalence, the absence of strict regulation has enabled them to increase revenue beyond the NBN construct. This is especially pertinent with the removal of CVC charges and the rising demand for higher speeds among consumers. Recent data from the latest market indicators report demonstrates a significant consumer shift from 50/20 to 100/20 Mbps services, emphasizing the growing importance of higher-speed tiers.

The power imbalance between Access Seekers and SBAS providers means that access seekers are worried that they might be penalized on non-regulated speed tiers if they ask for regulated pricing on the regulated speed tiers.

Therefore, SBAS providers must comply with strict NBN-equivalent pricing for the main NBN TC-4 speed tiers (12/1Mbps, 25/5Mbps, 25/10Mbps, 50/20Mbps, 100/20Mbps, 100/40Mbps, 250/25Mbps, 1000/50Mbps). Furthermore, SBAS pricing should be updated in line with NBN's changes implemented on 14 September, including the shift of 100/20Mbps to 500/50Mbps, 250/25Mbps to 750/50Mbps, and 1000/50Mbps to 1000/100Mbps.

At present, because only 25/5Mbps and 50/20Mbps are regulated, SBAS providers can use constructs like state data aggregation (SDA) to increase their pricing on non-regulated tiers above the price NBN charges. This presents the artifice of equivalency with NBN but in reality, SBAS providers are extracting additional revenue at the expense of access seekers and therefore end-users who might otherwise pay less.

This additional revenue is not being collected to offset a direct cost that SBAS providers pay which NBN does not. As established in the SBAS FAD, NBN itself does pay for significant amounts of backhauling, particularly in rural and regional areas. Therefore, the ACCC determined that backhaul to the local interconnect was a part of its base of costs and should be covered under the retail-minus methodology.

Instead, the lack of a broad set of regulated price tiers has encouraged an abuse of market power by SBAS providers, leading to greater revenue extraction from access seekers and end users and lessened competition.

Stricter, clearer regulation is the only way to ensure that the power imbalance between access seekers and SBAS providers is moderated. A hands-off regulatory approach has

consistently allowed SBAS providers to side-step the intentions of the SBAS FAD, to the detriment of access seekers and ultimately end users. Ultimately the ACCC needs to take a more direct interventionist role if it is serious about promoting competition, encouraging efficient investment and protecting the LTIE on SBAS networks.

Conclusion

Leaptel continues to advocate for a more robust regulatory framework that ensures SBAS providers operate within clearly defined and enforceable terms. The mere fact that the ACCC had to resort to the BROC, only the second time it has been required, illustrates the limitations of the current SBAS FAD.

Without standardized interconnection arrangements, greater transparency around pricing and regulation of higher speed tiers, access seekers on SBAS networks, and through them, end-users, will continue to be taken advantage of. There remains stark contrasts between the transparency and level-playing field that the NBN SAU has driven and the one-sided nature of the SBAS / access seeker relationship.

The current power imbalance between SBAS providers and access seekers risks undermining the LTIE. Only through stronger and more direct regulatory oversight can the ACCC ensures fairness, promote efficient infrastructure investment and ensures consumers are not disadvantaged in monopoly markets.

If the ACCC is unable or unwilling to consider broader regulation as part of this variation, we encourage it to incorporate this feedback into the next SBAS FAD.

Leaptel welcomes further engagement with the ACCC to refine the SBAS regulatory framework and ensure they best serve Australian consumers.

Warm Regards,

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