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15 July 2021

Jason Lange  
Executive Director  
Office of Best Practice Regulation  
Department of the Prime Minister and Cabinet  
1 National Circuit  
BARTON ACT 2600

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Dear Mr Lange

### **Certification of independent review: Superfast Broadband Access Service declaration 2021**

I am writing to certify that the ACCC has undertaken an independent review and conducted an assessment equivalent to a Regulatory Impact Statement. This is detailed in the attached *Superfast Broadband Access Service and Local Bitstream Access Service declaration inquiry - Final Decision report*.

As set out in the report, the ACCC has undertaken a public inquiry to determine whether to declare a Superfast Broadband Access Service (SBAS) under Part XIC of the *Competition and Consumer Act 2010* (CCA). The current SBAS declaration is due to expire on 28 July 2021.

Extending declaration of SBAS on non-NBN, fixed line networks for five years will mean that a network owner must continue to provide access to the service upon request and, where commercial agreement cannot be reached, the regulated price and non-price terms will apply.

I certify that the final decision adequately addresses all seven RIS questions, as required by the Australian Government guidelines and is submitted to the Office of Best Practice Regulation for the purposes of satisfying the regulatory impact analysis requirements ahead of the ACCC's final decision.

The ACCC declared the SBAS in 2016 for five years because without declaration, network owners have the ability and incentive to restrict access and/or set unreasonable terms of access in the form of high access prices with anti-competitive implications for downstream retail broadband services. The CCA requires the ACCC to conduct a public inquiry into declaration of services before a declaration expires.

The ACCC consulted on this inquiry in 2020-21 and received broad stakeholder support to maintain the declaration of the SBAS. The public inquiry provided access providers and access seekers, as well as other interested stakeholders, the opportunity to comment on the proposal. The ACCC commenced its public inquiry with the release of a discussion paper in July 2020. Following consideration of the submissions to a discussion paper the ACCC

released a draft decision in December 2020. Following further consultation the ACCC intends to release a final decision in July 2021.

The draft and final decision reports provide detailed reasons as to why continuing the declaration is the best option, with respect to the statutory criteria. As the only options are to declare or not to declare, there is no scope to vary the implementation of the decision.

The regulatory burden to business, community organisations or individuals has been quantified, where possible, using the Australian Government's *Regulatory Burden Measurement* framework and is provided below.

At the time of the original SBAS declaration in July 2016, the ACCC estimated a net increase in the regulatory burden to businesses of \$1.225 million per annum (with no burden for community organisations or individuals). This was accompanied by a regulatory offset from within the then Department of Infrastructure, Transport, Regional Development and Communications portfolio.

We note that the original increase in regulatory burden was predominately one-off costs to industry to develop the systems and software to be able to provide the declared service. In 2016 we estimated that the annual compliance costs were \$0.047 million, and through the 2020-21 consultation process the affected businesses did not provide an updated estimate of the regulatory burden.

The Final Decision proposes to make one relatively small change to the SBAS that is declared; removing the minimum 25Mbps download rate requirement of regulated access. This will not require industry to develop new systems or products to provide a lower speed service. As such, extending the declaration for five years will not result in any material change in the regulatory burden.

<b>Average annual regulatory costs (from business as usual over 5 years)</b>				
Change in costs (\$ million)	Business	Community organisations	Individuals	Total change in costs
Total, by sector	\$0.047	\$0	\$0	\$0.047

Accordingly, I am satisfied that the attached decision is consistent with the *Australian Government Guide to Regulatory Impact Analysis*.

Yours sincerely



Scott Gregson  
Chief Operating Officer

Attachment: *Superfast Broadband Access Service and Local Bitstream Access Service declaration inquiry - Final Decision* (under embargo until public release)