



Superfast Broadband Access Service and Local Bitstream Access Service declaration inquiry

Final Decision

July 2021



Australian Competition and Consumer Commission

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List of abbreviations and acronyms

ACCC	Australian Competition and Consumer Commission
ACMA	Australian Communications and Media Authority
ADSL	Asymmetric Digital Subscriber Line
CBD	Central Business District
CCA	<i>Competition and Consumer Act 2010</i>
C-I-C	Commercial in Confidence
CLC	Carrier Licence Conditions
DSLAM	Digital Subscriber Line Access Multiplexer
FAB	Fibre Access Broadband
FAD	Final Access Determination
FTTB	Fibre to the Basement
FTTN	Fibre to the Node
FTTP	Fibre to the Premises
HFC	Hybrid Fibre-Coaxial
IAD	Interim Access Determination
LBAS	Local Bitstream Access Service
LTIE	Long-term Interests of End-users
Mbps	Megabits Per Second
MUB	Multi-unit Building
NBN	National Broadband Network
POI	Point of Interconnection
RSP	Retail Service Provider
SAO	Standard Access Obligation
SBAS	Superfast Broadband Access Service
SIO	Services in Operation
TC-4	A standard, best effort traffic class used for delivering residential and non-critical business broadband services.
VDSL	Very-high-bit-rate Digital Subscriber Line
WLR	Wholesale Line Rental
3G / 4G / 5G	Third/fourth/fifth generation mobile communications

Executive summary

The ACCC has decided to vary and extend the Superfast Broadband Access Service (SBAS) declaration of non-NBN fixed line superfast networks until 28 July 2026.

Continued declaration of the SBAS will enable a retailer of broadband services to gain access to a wholesale superfast broadband service at regulated price and non-price terms and conditions where the retailer cannot reach a commercial agreement with a SBAS provider.

The ACCC considers that it is vital for retailers to be able to acquire access to wholesale superfast broadband services at reasonable price and non-price terms in order to effectively compete in downstream markets and service the growing demand for broadband services.

The ACCC is satisfied that continued declaration of the SBAS is likely to promote the long term interests of end users (LTIE) because it will promote:

- competition in the downstream retail market for superfast broadband services. Where the SBAS is available it will allow providers to enter retail markets and compete, which will benefit end-users because it enables competition and choice.
- the efficient use of, and investment in, infrastructure. In the absence of declaration, monopoly network operators have incentives to set prices to maximise their profits at the expense of meeting end-user demand. Further, declaration is unlikely to negatively impact investment incentives as regulated price terms in an access determination are set at a level that recovers the costs of supplying the wholesale access services including an appropriate commercial return.

This decision varies the current SBAS declaration and combines the current SBAS and related Local Bitstream Access Service (LBAS) declarations under a single SBAS declaration instrument. The varied SBAS declaration applies to networks built, upgraded or altered both before and after 1 January 2011. This will simplify the access regulations that apply to wholesale superfast broadband networks. The ACCC has also decided to revoke the current LBAS declaration concurrently to the varied SBAS declaration taking effect.

Wholesale Layer 2 fixed line broadband services supplied over non-NBN superfast networks (a network capable of download data rates of normally 25 Mbps or more) are subject to the SBAS declaration. There are no minimum or maximum speeds nominated in the declaration that would limit the range of access products that an access seeker could request from an access provider.

The ACCC has varied the SBAS service description to make clear that the SBAS declaration applies to all Layer 2 superfast carriage services used to supply end-users occupying multi-unit buildings. This includes instances where the SBAS is used to provide services to end-users in a multi-unit building (such as an apartment complex) by fixed lines that run most of the way to the building but are connected over a short distance using customer cabling or wireless technology. The declaration also applies where, for example, the SBAS is used in conjunction with wireless backhaul links connected to fixed lines to provide services to end-users within a building.

The SBAS declaration does not apply to services provided only over fixed wireless, satellite or mobile networks, or to services:

- supplied by NBN Co or by way of HFC networks that will be transferred to NBN Co, and services already subject to the domestic transmission capacity service declaration. These services are subject to other access regulation under Part XIC
- that exclusively supply business, charity and public body end-users in Central Business District areas of major capital cities. Competition in the supply of these services is considered to be effective.

The ACCC recognises that in some areas it may be commercially viable for multiple superfast broadband networks to co-exist and compete, such that access regulation under the SBAS may not be necessary. The ACCC will therefore consult on the development of a competition-based exemption framework to the standard access obligations through the SBAS final access determination (FAD) inquiry.

The varied SBAS declaration will come into force on 27 July 2021.

As a result of this decision, the ACCC has commenced a FAD inquiry to determine the terms and conditions of access to the SBAS, including price. The current SBAS and LBAS FADs expire on 28 July 2021, and the ACCC has made an interim access determination to ensure the current price and non-price terms are retained until we are able to make a new FAD.

1. Introduction

In July 2020 the ACCC commenced a public inquiry in accordance with section 152ALA of the *Competition and Consumer Act 2010* (CCA) and Part 25 of the *Telecommunications Act 1997* (Telecommunications Act) into whether the SBAS and LBAS should continue to be declared. The ACCC publishes this report on the findings of the public inquiry pursuant to paragraph 152ALA(7)(c) of the CCA.¹

The current SBAS declaration is due to expire on 28 July 2021. The current LBAS declaration does not expire; however it is open to the ACCC to vary, revoke, make a new declaration or allow the current declaration to remain in force.

The ACCC has decided to:

- extend the SBAS declaration for five years, expiring on 28 July 2026
- declare all wholesale Layer 2 broadband services supplied over non-NBN fixed line 'superfast' networks. (i.e. a fixed network with a 25Mbps capability, which could also supply a lower speed service such as 12Mbps). This expands the scope of the previous declarations, which specified a minimum 25Mbps downstream data rate
- regulate both the SBAS and LBAS under a single SBAS declaration instrument, which will apply to networks built, upgraded or altered before and after 1 January 2011
- revoke the current LBAS declaration concurrently to the varied SBAS declaration taking effect.

These changes take effect from 27 July 2021. This report explains the reasons for the ACCC's Final Decision in this inquiry.

1.1. The ACCC's approach to declaring services

Under Part XIC of the CCA, the ACCC can declare a specified eligible service² if, among other requirements, it is satisfied that this will promote the long-term interests of end-users (LTIE) of carriage services or of services provided by means of carriage services.³

When determining whether declaration of the service promotes the LTIE, the ACCC must have regard to the extent to which declaration is likely to result in the achievement of the following three objectives:

- promoting competition in markets for listed services (which includes carriage services and services supplied by means of carriage services)
- achieving any-to-any connectivity (the ability of end-users on a particular network to communicate with end-users on any other network)
- encouraging the economically efficient use of, and the economically efficient investment in, the infrastructure by which telecommunications services are supplied, and any other infrastructure by which such services are, or are likely to become, capable of being supplied.⁴

¹ ACCC, LBAS and SBAS declarations inquiry, Discussion Paper, July 2020.

² An 'eligible service' is (a) a listed carriage service (as defined by the Telecommunications Act); or (b) a service that facilitates the supply of a listed carriage services (as defined by the Telecommunications Act), where the service is supplied, or is capable of being supplied, by a carrier or a carriage service provider (whether to itself or to other persons): CCA, subsection 152AL(1).

³ CCA, paragraph 152AL(3)(d).

⁴ CCA, subsection 152AB(2).

Once declared, the ACCC must hold a public inquiry about a proposal to make an access determination for that service. An access determination may include a broad range of matters, but if it includes terms and conditions relating to access to the service it must specify price or a method of ascertaining price.⁵ Parties can rely on the terms and conditions set out in an access determination, or they can negotiate commercial terms and conditions. An access determination usually serves as a fall back that parties can rely on if they are unable to otherwise reach agreement about the terms of access.⁶

Our approach to declaration inquiries is set out in further detail, including the legislative background, in the ACCC's *Guideline on Declaration Inquiries* (published on the [ACCC website](#)).

1.2. Consultation process

On 9 July 2020 the ACCC released a Discussion Paper commencing a declaration inquiry under Part 25 of the Telecommunications Act into whether the SBAS and LBAS should continue to be declared. The ACCC received submissions from eight stakeholders in response to the Discussion Paper, which are available on the [ACCC's website](#).

On 18 December 2020 the ACCC released a Draft Decision that set out our view on whether the SBAS and LBAS should continue to be declared and the scope of any service description. This Draft Decision proposed the continued declaration under a single instrument for the SBAS and LBAS supplied by way of fixed-line networks (except in specific cases noted in Chapter 2.3). The Draft Decision defined the SBAS as a Layer 2 broadband access service supplied over a fixed line network that is capable of supplying a 25Mbps service (i.e. a fixed line network with a 25Mbps capability, which could also supply a lower speed service such as 12Mbps). This proposed to expand the scope of the current declarations, which specified a minimum 25Mbps downstream data rate.

The ACCC received submissions from six stakeholders in response to the Draft Decision, which are available on the [ACCC's website](#).

The ACCC has taken into account all submissions and information available in reaching its Final Decision and thanks all stakeholders for their input into this inquiry.

1.3. Next steps

Once a declaration is varied and extended, the ACCC is required to commence a final access determination (FAD) inquiry⁷ before the current FAD expires. As a result of this decision, the ACCC has commenced a FAD inquiry to determine the terms and conditions of access to the SBAS, including price.

The current SBAS and LBAS FADs expire on 28 July 2021, and the ACCC has made an interim access determination to maintain the current price and non-price terms until we make a new FAD. The interim access determination applies from 27 July 2021 to the earlier of: a) 31 Dec 2022, or b) the day on which the new FAD comes into force.

⁵ CCA, subsections 152BC(3) and 152BC(8).

⁶ CCA, section 152AY.

⁷ CCA, paragraphs 152BC(6)(d) and (e).

2. Background

2.1. Overview of the current declared services

The SBAS and LBAS are declared fixed line broadband services able to be used by access seekers (i.e. retail service providers (RSPs)) to supply downstream superfast broadband services to end-users. Both services are Layer 2 bitstream services with a download data rate of normally 25Mbps or more. The SBAS and LBAS declarations do not apply to services provided by the National Broadband Network Corporation (NBN Co), Hybrid-fibre Coaxial (HFC) networks to be transferred to NBN Co and in other specific cases noted below.

Fixed wireless, satellite and mobile technologies are also capable of supplying superfast broadband services (defined as services capable of download data rates of normally 25Mbps or more) but are not covered by the SBAS and LBAS declarations.

The SBAS and LBAS generally have the same service characteristics and can be considered as counterpart services provided over networks built *before* 1 January 2011 (i.e. SBAS) and *after* 1 January 2011 (i.e. LBAS).

The SBAS also applies to networks built after 1 January 2011 covered by ministerial exemptions to Part 8 of the Telecommunications Act.

LBAS networks are subject to legislative structural or functional separation requirements. Further information about these requirements is available [on the ACCC's website](#). The SBAS networks for the most part are not subject to separation requirements.⁸

Under this Final Decision, the varied SBAS service description, set out in [Appendix A](#), expands the scope of declaration to capture all Layer 2 broadband access services that are supplied over a fixed line non-NBN network that is capable of supplying a 25Mbps service. This means a relevant fixed network with a 25Mbps capability could also supply a lower speed service such as 12Mbps and that lower speed service is also subject to the declaration.

The scope of the varied SBAS declaration will also encompass networks currently captured by the counterpart LBAS – that is, we will no longer maintain two separately declared services in which the primary difference is the date when the superfast broadband networks were built. To prevent duplication of regulation, the LBAS declaration is revoked.

These changes will come into force on 27 July 2021.

2.2. LBAS declaration

The LBAS is a declared wholesale Layer 2 fixed line broadband service provided on a network built after 1 January 2011, able to be used by access seekers to supply downstream superfast broadband retail services to end-users.

The LBAS declaration requires operators of fixed line superfast broadband networks used, or proposed to be used, to supply residential or small business customers to provide access to a Layer 2 bitstream service with a download data rate of normally 25Mbps or more on request.

The LBAS applies to all networks, local access lines and carriers that supply a Layer 2 service unless they have received a Ministerial exemption under the Telecommunications Act.⁹

⁸ Except for networks which are captured by the [Superfast Carrier Licence Conditions](#), which are required to operate on a functionally-separated basis.

⁹ As a result of the passage of the *Telecommunications Legislation Amendment (Competition and Consumer) Act 2020* the power to grant such exemptions no longer exists.

The LBAS currently applies to services supplied on networks that supply superfast carriage services that were built, altered or extended after 1 January 2011. This includes, for example, networks owned and operated by Uniti Group (Uniti).

The ACCC was required to declare an LBAS under amendments to the CCA in 2011, associated with the introduction of the NBN and the level playing field rules.¹⁰ These amendments set out a regime to regulate the provision of Layer 2 bitstream services to ensure that access to these services is offered on an open and equivalent basis, regardless of provider.¹¹

This declaration commenced on 13 April 2012. The current LBAS declaration does not expire; however, it is open to the ACCC to vary, revoke, make a new declaration or allow the current declaration to remain in force.

2.3. SBAS declaration

The SBAS is a declared wholesale Layer 2 fixed line broadband service provided over remaining eligible networks (that is, on a network built before 1 January 2011 or alternatively that is subject to a statutory exemption from the LBAS), able to be used by access seekers to supply downstream superfast broadband retail services to end-users.

The SBAS is a point-to-point service that is either:

- a Layer 2 bitstream service and a superfast carriage service (that is, with a download data rate of normally 25 Mbps or more), or
- Telstra's Fibre Access Broadband (FAB) service.

The SBAS declaration applies to services supplied on the following networks:

- Telstra's Fibre-to-the-premises (FTTP) networks in South Brisbane and Velocity Estates
- TPG Telecom's (TPG) Very-high-bit-rate Digital Subscriber Line (VDSL2) network in the ACT and HFC networks in regional Victoria
- TPG's Fibre-to-the-basement (FTTB) networks in capital cities
- other networks that supply superfast carriage services, including superfast broadband networks that existed before 1 January 2011 (which are not subject to the level playing field rules).

The SBAS declaration does not apply to services:

- supplied by NBN Co,¹² HFC networks that will be transferred to NBN Co, and services already subject to the LBAS or domestic transmission capacity service declarations. These services are subject to other access regulation under Part XIC
- that exclusively supply business, charity and public body end-users in central business district (CBD) areas of major capital cities, on the basis that competition in the supply of these services is deemed to be effective.

The ACCC declared the SBAS on 29 July 2016. In deciding to declare the SBAS, the ACCC considered that:

¹⁰ CCA, subsection 152AL(3C) (subsequently repealed). The level playing field rules broadly required non-NBN network owners to operate on a wholesale-only and open access basis.

¹¹ The amendments requiring provision of a Layer 2 service have since been repealed. See Chapter 3 of the ACCC's Draft Decision for further discussion on the Government's legislative changes to the regulation of superfast broadband services.

¹² The ACCC does not need to specifically exclude services provided by NBN Co as a declaration by default does not apply to services supplied, or eligible to be supplied, by an NBN Corporation (CCA, subsection 152AL (3A)).

- superfast broadband services, irrespective of their geographic footprint and subscriber base, display characteristics of natural monopolies, due to both technical and economic barriers to entry
- in most areas where these services are supplied, there is limited, if any, infrastructure competition.

The ACCC also considered that superfast broadband services were likely to be highly valued and sought after by end-users in the future, and declaration of the SBAS would promote competition:

- in retail markets for the supply of superfast broadband services
- to a lesser extent, in wholesale markets for the supply of superfast broadband services.

The ACCC also considered that declaration of the SBAS would promote efficient investment in, and use of, the infrastructure used to supply telecommunications services. The ACCC's decision concluded that productive efficiency would be improved as services would be supplied at the lowest possible cost, and allocative efficiency improved as price signals would enable decisions to be based on underlying cost. The ACCC did not consider network investment incentives would be inefficiently affected by the decision to declare the SBAS.

Any-to-any connectivity was not considered substantially relevant to the declaration of the SBAS and was not discussed in detail in the ACCC's 2016 Final Declaration Decision.¹³

The ACCC did not consider declaration of the SBAS would promote the LTIE in circumstances where there are a number of different networks supplying superfast broadband services in an area, i.e. where there is infrastructure competition. This was identified as generally occurring in high density areas serving high revenue end-users (typically business end-users). Specifically, the declaration did not apply to superfast broadband services supplied in CBD areas of major capital cities that exclusively supplies business customers, public bodies or charity customers.¹⁴

2.4. Final access determinations for SBAS and LBAS

Following the previous declaration of the SBAS, the ACCC released a Final Decision in May 2017 to make a FAD for the LBAS and SBAS, incorporating price and non-price terms and conditions of access until July 2021 (i.e. in the absence of commercial agreement between access providers and access seekers).

Under the 2017 FAD, SBAS (but not LBAS) providers supplying up to 12,000 end-users are not required to offer regulated wholesale access to their networks.¹⁵ This is because the compliance costs for these operators were expected to be high relative to expected wholesale revenues and the aggregate benefits to end-users from retail competition on these smaller networks were not considered to outweigh the compliance costs.

¹³ ACCC, *SBAS declaration inquiry – Final Decision*, July 2016.

¹⁴ While public bodies and charity customers were not necessarily considered high-revenue customers for the purposes of assessing infrastructure competition, many of these customers are serviced from the same DSLAM or other access multiplexer device as business customers. The ACCC considered it was in the public interest to extend the competition exemption to public bodies and charity customers so as to not adversely impact incentives to supply services to these customers.

¹⁵ ACCC, *SBAS and LBAS FAD inquiry – Final Decision*, May 2017, p. 8.

3. Should superfast broadband services continue to be declared?

The ACCC considers that broadband services supplied over a fixed line superfast network, irrespective of their geographic footprint or subscriber base, should continue to be a declared service.

Competition at the wholesale level of superfast broadband services is unlikely to be effective in many areas of Australia in the foreseeable future. Economic and technical barriers to entry may prevent multiple network providers from operating in the same service area and competing at a wholesale level, particularly outside of densely populated metro areas. Generally, there is insufficient customer demand to sustain two or more rival networks. The basis for the Regional Broadband Scheme highlights that delivery of broadband services by one network operator is not commercially viable in many regional and rural areas. Where customer spending is not large enough to support more than one network, this results in areas with localised monopolies with the opportunity for the network provider to extract monopoly rents from end-users.

In the period since the ACCC's 2012 LBAS declaration and the 2016 SBAS declaration, superfast broadband services have become more highly valued and sought after by end-users. Consumer demand for data has increased exponentially as a result of content streaming services such as video-on-demand and gaming, increased usage of cloud computing, and the simultaneous use of multiple devices at home for work, leisure and education. The ACCC remains of the view that RSPs will need to be able to acquire superfast broadband wholesale access services at reasonable prices in order to effectively compete in downstream retail markets.

The ACCC therefore considers that extending declaration of a Layer 2 superfast broadband access service is likely to be in the LTIE because it will promote:

- competition in the downstream retail market for superfast broadband services
- the efficient use of, and investment in, infrastructure.

We are of this view because in the absence of declaration, network operators have incentives to set prices above efficient costs.

Consistent with the 2016 SBAS declaration, the ACCC does not consider declaration will promote the LTIE where there are a number of different networks supplying superfast broadband services to business customers, public bodies and charity customers in the CBD areas of major capital cities. In these cases, the ACCC considers that competition appears generally effective and has again exempted these superfast broadband services from the declaration.

The ACCC recognises that there are areas where it may be commercially viable for multiple superfast broadband networks to co-exist. However, as noted throughout this inquiry, to date there appears to be only limited instances of competitive overlap between fixed line networks (including NBN and non-NBN networks). Where overlap has occurred, it appears to be confined to more densely populated areas. Generally, the threat of entry by new fixed line networks to areas served by incumbent networks will probably remain low. However, the ACCC will further consider the development of a competition-based exemption framework in the FAD inquiry that may exempt providers from the standard access obligations. We note that there has been some support in this inquiry for a mechanism that excludes networks from regulation where effective competition is likely to exist.

The ACCC's reasoning for this Final Decision is provided below.

3.1. Relevant markets including substitutes

The CCA requires the ACCC to consider whether declaring a service is likely to promote competition in markets for listed services.¹⁶ This involves identifying the markets in which the eligible service is supplied and in which declaration is likely to promote competition. To define the market, the ACCC considers the service in question and any substitutes for that service. The ACCC is not required to define the scope of relevant markets precisely for the purpose of a declaration inquiry. It is sufficient to broadly identify the scope of the markets likely to be affected by the declared service.¹⁷

The ACCC's Draft Decision was that the relevant markets for this inquiry were the wholesale and retail markets for all broadband services supplied over fixed-line superfast broadband networks.

The ACCC did not consider that satellite and mobile services are sufficiently strong substitutes for fixed line broadband services currently, such that their availability would negate the need for declaration of fixed line services at this time. Specifically:¹⁸

- Satellite services are currently provided primarily by NBN Co and generally only available in regional and rural areas and in the outskirts of major cities where fixed line broadband is not available. While there is potential for new entrants in this market their services are not yet widely available in Australia.¹⁹
- Mobile broadband services are considered by most end-users as a complementary service, rather than as a direct substitute for fixed line broadband. Most end-users appear to maintain a preference for fixed line broadband to perform data intensive activities given the increasing need for non-limiting data allowances and reliable download and upload speeds. However, we did consider that low usage users, particularly those on lower incomes may find mobile broadband an affordable substitute.²⁰
- 5G mobile and fixed wireless services could become a substitute for fixed line broadband services in terms of speed, data allowance and price. 5G services in some areas are becoming increasingly attractive to consumers as an alternative to fixed line services. However, the technology currently has a limited geographic footprint and it is not clear whether it could service the majority of fixed line broadband end-users.

At this stage, the impact of wireless as a substitute for fixed line broadband is likely to be small due to its limited footprint. This means only a limited amount of consumers currently have a choice of access technology. The rapid pace of development in the superfast broadband market, and the degree to which end-users may substitute their fixed line service for wireless technologies may change as further investment occurs, additional spectrum is released and more consumers have access to wireless services. It is clear, however, that the extent of competition is likely to vary area-to-area. Those living in densely populated areas are likely to benefit more or sooner than those where it is less commercially attractive to build competing infrastructure.

The ACCC's Draft Decision was to retain a national market definition for the purpose of conducting the LTIE analysis, given the predominantly national pricing policies of service providers and in support of administrative simplicity regarding application of the declaration and related FAD.

¹⁶ CCA, subsection 152AB(2).

¹⁷ ACCC, *A guideline to the declaration provisions for telecommunications services under Part XIC of the Competition and Consumer Act 2010*, August 2016, p. 33.

¹⁸ For further discussion, see: ACCC, *SBAS & LBAS Declaration Inquiry Draft Decision, December 2020*, pp. 20-23.

¹⁹ For example, Low-Earth Orbit (LEO) satellite broadband networks are currently being deployed globally, the most progressed of which is SpaceX's Starlink. While we consider these services have the potential to be a strong competitor in under-served regional areas, their potential to compete effectively in densely populated areas where the NBN and various wireless networks maintain a large market presence is less certain.

²⁰ As noted by ACMA in its research, while 60% of Australian adults were mobile-only for voice, only 16% were mobile only for data: <https://www.acma.gov.au/publications/2020-12/report/mobile-only-australia-living-without-fixed-line-home>.

Submissions

Gary McLaren submitted that the ACCC should not declare an SBAS on a national basis. Mr McLaren argued that the ACCC should limit the scope to areas where the NBN has not been rolled out, which would predominantly be new residential developments and areas outside the NBN fixed line footprint.²¹ In areas where the NBN is available (which is the majority of Australia), Mr McLaren submitted that any competing SBAS infrastructure will be constrained by the prices set by NBN Co.²² These views were similar to those of TPG Telecom (TPG), although its preference was that the ACCC allow the existing declarations to expire.²³

While Telstra was broadly supportive of the ACCC's Draft Decision, it considered the ACCC's adoption of an open-ended service description (i.e. incorporating lower speed tiers) to be an over-reach, noting that:

- unlike the NBN which was subject to forced migration, end-users have no obligation to migrate to competing non-NBN networks if they see no value in them
- wireless technologies, as well as the potential for NBN over-build, exist which potentially provide low-cost alternatives for entry-level users
- regulation of the 25Mbps broadband service is consistent with both Government policy and NBN Co's statement of expectations and intended as the baseline broadband service nationally.²⁴

The Australian Communications Consumer Action Network (ACCAN) broadly supported declaration of all Layer 2 services offered over a superfast network.²⁵

In relation to the retail market for superfast broadband services, Telstra agreed that mobile networks should not be included within the scope of the declaration, noting that the 5G market is still nascent. It considered that regulation may reduce incentives to invest in 5G, especially in rural and remote areas, where end-user benefits are material.²⁶

In response to the Discussion Paper, ACCAN argued that the service description should be updated in line with the new Statutory Infrastructure Provider (SIP) obligations to capture areas which may be serviced exclusively by a fixed wireless or satellite network.²⁷ ACCAN acknowledged there are currently no satellite or fixed wireless areas operating as local monopolies, though maintains this may become a possibility in the future under the SIP regime.²⁸

ACCC's decision

Consistent with our Draft Decision, the ACCC considers that the relevant markets are the retail and wholesale markets for all broadband services supplied over fixed-line superfast broadband networks.

As data consumption continues to increase, consumer appetite for higher data rates, accompanied by relatively high download limits, is also anticipated to increase. Therefore, access to a superfast

²¹ Gary McLaren submission to the SBAS & LBAS declaration Draft Decision, pp. 3-4.

²² Gary McLaren submission to the SBAS & LBAS declaration Draft Decision, pp. 3-4.

²³ TPG submission to the SBAS & LBAS declaration Draft Decision, pp. 4-5.

²⁴ Telstra submission to the SBAS & LBAS declaration Draft Decision, pp. 2-3.

²⁵ ACCAN submission to the SBAS & LBAS declaration Draft Decision, p. 1.

²⁶ Telstra submission to the SBAS & LBAS declaration Draft Decision, p. 2.

²⁷ ACCAN submission to the SBAS & LBAS declaration Discussion Paper, p. 5.

²⁸ ACCAN submission to the SBAS & LBAS declaration Draft Decision, p. 1.

broadband service is, and will increasingly be, essential for wholesale access seekers to compete effectively in retail markets.²⁹

The ACCC considers it appropriate to maintain our decision to adopt an open-ended service description for the SBAS declaration which encompasses entry level offerings at lower speed tiers (e.g. below 25 Mbps) as well as higher speed tier services. Only Layer 2 broadband access services that are provided over superfast fixed line networks are covered by this declaration. However, there are no minimum or maximum data rates nominated in this declaration which would limit the range of services that an access seeker could request from an access provider.

The ACCC has previously expressed concerns about the continued availability and affordability of entry-level broadband services for people transitioning from legacy networks, as discussed in our recent public inquiry into NBN access pricing.³⁰ These concerns stemmed from the progressive withdrawal of basic speed retail plans from the market and the shift to higher priced plans, leaving consumers at risk of being left on plans that do not reasonably meet their needs due to affordability and/or the preference for a basic entry-level plan. In this regard, following NBN Co's withdrawal of its 'Focus on 50' pricing in 2018, Optus has withdrawn its 12/1 and 25/5 plans. Vocus (comprising of the Dodo and iPrimus brands) and Vodafone have also withdrawn their 12/1 retail plans, either for new customers or entirely.³¹ While there is limited comparable information on non-NBN networks, only smaller RSPs such as Launtel, Leaptel and Activ8me offer 12/1 plans, but usually not on a national basis. TPG offers 12/1 plans (on its own FTTB network), however Aussie Broadband, iiNet and Exetel do not offer 12/1 plans on non-NBN networks despite offering such plans on the NBN.

The ACCC is not persuaded that the provision of wholesale access to lower speed services will deter future competition and investment in fixed line networks. Though the market for lower speed services is declining, we consider there is currently an important segment of the broadband market that continues to value lower speed services. As of March 2021, approximately 12% of the market (excluding voice-only customers) accessed the NBN using a 12/1Mbps service.³²

The ACCC maintains that an open-ended service description for the SBAS declaration will enable RSPs to access the declared service to compete for the broad spectrum of data rates sought by end-users. That is, declaration will allow RSPs to fall back on regulated access terms where the products and pricing that an access provider is willing to supply do not reflect the full scope of end-user demand.³³

Retail markets

Superfast broadband services provided over fixed lines can be delivered over a number of technologies, for example HFC, FTTP, FTTN, FTTC and FTTB. From a functional perspective, the services supplied over these different technologies are generally capable of supporting similar downstream applications and most are likely to be effective substitutes from an end-user perspective, with some exceptions where very high data rates are required.

Consistent with our Draft Decision, the ACCC maintains the view that broadband services offered over wireless alternatives (such as mobile, satellite and fixed wireless) are not comprehensive substitutes to a fixed line broadband connection at this time. The ACCC recognises that there are

²⁹ Chapters 3 and 4.1 of the ACCC's Draft Decision provide further analysis on the developments in consumer behaviours and trends in broadband usage.

³⁰ ACCC, *Inquiry into NBN access pricing*, November 2020.

³¹ For example, Optus' withdrawal of its 12/1 and 25/5 plans represent a \$15/month increase in its entry level NBN price. Aussie Broadband, Dodo and Exetel entry level prices have increased by \$15, \$20, and \$29 per month respectively over the same period.

³² ACCC, *wholesale market indicator report, March 2021*. While market forces play a role in the relatively low demand of the 12/1Mbps, this has also been heavily influenced by RSP decisions concerning migrating customers to the NBN (for example, temporary promotions and discounting of higher speed tier services).

³³ We would still expect only those end-users that do not see sufficient value in higher speeds to migrate to a 12/1Mbps service, and hence overall demand for this product would remain dependent on access providers' commercial offers for higher speed products.

some ongoing developments in wireless technologies, such as the 5G rollout and deployment of LEO satellite systems,³⁴ which have the potential to become a substitute for fixed line broadband services where these wireless services are offered and as more unlimited data plans become available.³⁵ However, wireless technologies are unlikely to offer a universal substitute for fixed line broadband services across Australia within the 5-year declaration period for SBAS, such that the need to declare the SBAS is negated.

In some instances, the SIP regime may allow for premises to be connected by a satellite or fixed wireless network. We indicated in our Draft Decision that though not our intention, we would consider regulating these networks if a compelling case could be made that these networks hold significant market power. Stakeholders have not raised further concerns regarding wireless networks exercising market power to the detriment of access seekers or end-users that would warrant further regulation through this inquiry. We note that the SIP obligations require these networks to operate on an open access and non-discriminatory basis, which precludes their ability to reasonably deny access.

Geographic dimension

Non-NBN superfast broadband networks are usually available in discrete areas – a particular building that has been enabled for FTTB or a new housing development where FTTP has been deployed. However, the ACCC notes that as a general rule both RSPs and access providers tend to price their services on a national basis rather than according to a particular local or regional geographic market.

Consistent with our Draft Decision, the ACCC considers it appropriate to adopt a national market definition for the retail and wholesale supply of superfast broadband services, given the predominantly national pricing policies of service providers and in support of administrative simplicity regarding application of the declaration and related FAD. The ACCC also notes that RSPs generally compete nationally for end-users.

From a consumer perspective, residential end-users require services at their premises and therefore can only substitute between products available in their area. Additionally, business end-users often have premises in more than one geographic market and the larger corporate and government end-users typically operate nationally.³⁶

The ACCC recognises that in geographic markets where infrastructure-based competition exists, access providers may respond to local competition by lowering prices or offering different terms to their downstream customers in order to retain business. In such cases, the ACCC acknowledges that regulation is unlikely to be necessary to promote the LTIE (see Chapter 3.3 for further discussion). As noted previously, the ACCC expects to consult on the implementation of a competition-based exemption framework to the standard access obligations as a part of the FAD inquiry for the declared SBAS.

The ACCC also notes that under recent amendments to the wholesale-only rules under the Telecommunications Act, network operators are able to voluntarily submit undertakings to the ACCC for approval to operate on a functionally separated basis as opposed to a strictly wholesale

³⁴ In our Draft Decision the ACCC did not consider LEO satellites to be an effective substitute for fixed line broadband as these services were not yet available in Australia. As of April 2021 these services are being offered on a limited basis to rural customers in Australia. Source: Communications Day, 12 April 2021.

³⁵ Conversely, the ability of these technologies to substitute for a fixed line service may decline over time as consumer data needs continue to increase, unless further capacity investment is undertaken by network owners.

³⁶ Corporate and government end-users generally prefer 'whole of business' service provision, where all of their telecommunications needs are provided by the same service provider. This provides the advantages of convenience, reduced administration costs and often 'whole-of-business' discounts.

only basis.³⁷ Additionally, small network operators can elect to be bound by the class exemption³⁸ made pursuant to subsections 143A(1) and (2) of the Telecommunications Act, which exempts them from the requirement to operate on a wholesale-only basis. These regulatory changes are intended to encourage greater competitive entry.³⁹

While we would consider exempting networks from SBAS regulation under a future FAD in areas where effective competition exists (e.g. through the presence of multiple competing providers), additional competitive safeguards may be required for carriers that operate their networks on a vertically integrated basis. That is, a condition for networks operating on a vertically integrated basis may be to continue to provide a regulated wholesale product.⁴⁰ The ACCC intends to give further consideration to this issue in our inquiry into making a FAD for the declared SBAS.

3.2. State of competition in relevant markets

The following section sets out the ACCC's assessment of the effectiveness of competition in the relevant markets. When assessing the effectiveness of competition, the ACCC considers current conditions and market behaviour. It also considers features likely to affect the competitive supply of broadband services in the future, which include the potential for sustainable competition to emerge and the extent to which the threat of entry (or expansion of existing suppliers) constrains pricing and output decisions of incumbents.

Wholesale market for fixed line superfast broadband services

Throughout the inquiry, stakeholders submitted mixed views on the current state of competition in the wholesale market for fixed line superfast broadband services. ACCAN observed that while there are instances where infrastructure competition is present, in most areas a fixed line superfast network is likely to remain a natural monopoly as there is not enough customer spending to sustain multiple network operators in a single location.⁴¹ Vocus similarly noted that in most areas where these services are supplied, there is limited, if any infrastructure competition.⁴² Southern Phone submitted that the Telecommunications in New Developments (TIND) policy observes that in many greenfield areas there will only be one provider (which may not be NBN Co), and this underscores the need for an effective means to ensure that retailers can access non-NBN networks on reasonable terms.⁴³

In contrast, TPG submitted that NBN Co provides effective and extensive competition to non-NBN wholesale networks currently covered by the LBAS and SBAS declarations.⁴⁴ Gary McLaren also submitted that the ACCC should change its position that superfast broadband networks are, irrespective of geographic footprint, natural monopolies.⁴⁵ He contended that the rollout of the NBN into markets covered by private operators highlights that these geographic areas are no longer natural monopolies.⁴⁶

³⁷ Network operators can also elect, if eligible, to be bound by the ACCC's [Telecommunications \(Deemed Functional Separation Undertaking\) Determination 2020](#).

³⁸ *Telecommunications (Superfast Broadband Network Class Exemption) Determination 2020* available at: <https://www.legislation.gov.au/Details/F2021C00171>.

³⁹ *Telecommunications Legislation Amendment (Competition and Consumer) Bill 2019 – Explanatory Memorandum*, p.29 & 77.

⁴⁰ In deciding to declare the SBAS in 2016, the ACCC considered that most vertically-integrated networks (which were then unregulated) typically had limited retail competition and charged higher retail prices on average than comparable NBN and regulated non-NBN networks.

⁴¹ ACCAN submission to the Discussion Paper, pp. 8-9.

⁴² Vocus submission to the Discussion Paper, p. 2.

⁴³ Southern Phone submission to the Discussion Paper, p. 4.

⁴⁴ TPG submission to the Discussion Paper, p. 4.

⁴⁵ Gary McLaren submission to the Discussion Paper, p. 9.

⁴⁶ For example, Canberra, Geelong, Ballarat, Mildura. Also, FTTB apartments serviced by TPG. These examples were identified by Mr McLaren in his submission to the Discussion Paper (p. 6).

ACCC's decision

Effective wholesale competition can occur in areas where there is more than one network operator offering superfast broadband services, allowing RSPs to choose which network operator to purchase wholesale services from. However, consistent with the Draft Decision, the ACCC considers that competition at the wholesale level is unlikely to be effective in most areas of Australia in the foreseeable future. Economic and technical barriers to entry may prevent multiple network providers from operating in the same service area and competing at a wholesale level. Where there are localised monopolies the opportunity for the network provider to extract monopoly rents from end-users will be present.

Greater wholesale competition may develop in the future with the recent amendments to the Telecommunications Act which allow superfast fixed line broadband networks to operate on a functionally separated basis, subject to ACCC approval. These regulatory changes are intended to encourage new network operators to enter the market, and create more competition at the wholesale and retail level. However, the ACCC considers it too early to form a view on the likely extent of new entry and potential competitive constraint on incumbent network operators. In areas with high costs and low density of end-users, there is a likelihood that competition will not develop within the declaration period.

The ACCC is aware of some instances where NBN Co has improved network competition in superfast broadband markets. For example, NBN Co overbuilt TPG's VDSL2 network in Canberra and a significant proportion **[c-i-c]** of TPG's FTTB network in metro areas.⁴⁷ In greenfield developments, the ACCC understands that NBN Co has overbuilt some private FTTP networks with its own infrastructure.⁴⁸

The Government recently amended its TIND policy to allow NBN Co to overbuild non-NBN networks supplying residential premises where there is a commercial reason to do so and without seeking approval from its Shareholder Ministers.⁴⁹ The ACCC does not consider that the amended TIND policy has an impact on the need for declaration of the SBAS. As previously noted, economic and technical barriers to entry prevent multiple network providers from operating in the same service area and competing at a wholesale level in many areas of Australia, particularly outside of densely populated metro areas.

Where there is a larger pool of customers, for instance in higher density areas such as CBDs, multiple network operators co-exist. Where RSPs have a choice of wholesale networks including the NBN, this is likely to serve as a competitive constraint on network operators extracting monopoly rents from RSPs and end-users. The ACCC's view is that it remains appropriate to exempt from the SBAS service description, services that use access multiplexers that exclusively service business, public body and charity customers in CBD areas of the major capital cities. The ACCC has formed this view after reviewing the geographic location of fibre networks, based on the information we collect from the Infrastructure Record-Keeping Rule,⁵⁰ and considering the submissions to this declaration inquiry. The ACCC considers that there is sufficient competition in the supply of superfast broadband services to these classes of end-users in CBD areas of major capital cities and that declaration of services in these areas is not in the LTIE.

The ACCC concludes that the state of competition in wholesale markets largely remains the same since the Draft Decision. Accordingly, the ACCC confirms its findings in the Draft Decision on wholesale markets.

⁴⁷ Gary McLaren submission to the Discussion Paper, pp. 5-7.

⁴⁸ The ACCC notes networks operated by OPENetworks in [Gold Coast, Sydney and Melbourne](#) as examples.

⁴⁹ Department of Infrastructure, Transport, Regional Development & Communications (DITRDC), *TIND policy*, September 2020.

⁵⁰ The Infrastructure Record-Keeping Rule and the providers required to provide information (see Schedule 1) is available at: [Infrastructure RKR](#). While it does not cover all the fibre providers, it captures those with significant networks and provides indicative information about where there is infrastructure competition.

Retail market for fixed line superfast broadband services

The ACCC received three submissions on the current state of competition in the retail market for fixed line superfast broadband services.

ACCAN submitted that the current state of competition and RSP choice on non-NBN networks is considerably weaker than on the NBN.⁵¹ It observed that reviews and commentary available online appear to show that many consumers are frustrated by the lack of choice and being forced to choose smaller lesser-known RSPs.⁵² ACCAN noted that the willingness of RSPs to provide services over multiple wholesale SBAS / LBAS networks may be restricted by barriers to entry. ACCAN referred to barriers such as limited revenue due to the size and density of the market, increased costs associated with multiple network interconnection, and inconsistent service characteristics.⁵³ However, ACCAN still considered that the level of competition attained at the retail level to have materially increased as a result of the declaration of the SBAS and LBAS.⁵⁴

The ACCC received an anonymous submission that identified Telstra's Velocity networks as an example of a market with a lack of retail competition, excessive retail pricing, and networks of limited speed or low services quality. The submission noted that in many Telstra Velocity Estates there is no choice of retail provider.⁵⁵ ACCAN similarly observed the absence of retail competition on these networks.⁵⁶

Telstra's submission disagreed with the ACCC's view that there is currently an absence of strong retail competition on the South Brisbane and Velocity Networks.⁵⁷ Furthermore, Telstra submitted that retail competition may continue to increase on these networks and other non-NBN superfast networks after Uniti Group's acquisition of Telstra's South Brisbane and Velocity Networks.⁵⁸ Telstra noted that the acquisition requires Telstra to offer retail services on Uniti's other networks, subject to Telstra's arrangements with NBN Co, and suggested that other RSPs providing retail services on Uniti's networks may look to start providing services on the South Brisbane and Velocity networks.⁵⁹

ACCC's decision

The retail market for superfast broadband services in Australia continues to be concentrated despite the rollout of the NBN, with around 84% of connections on the NBN currently shared between three RSPs.⁶⁰

However, the ACCC considers that the NBN footprint for fixed broadband provides a relatively defined geographic area where competitive entry at the retail level is open and subject to regulatory safeguards. As of May 2021, there were 180 RSPs providing NBN services to residential consumers, offering the majority of consumers a large choice of retail providers.⁶¹ Most of these retailers do not service the whole of Australia, and some provide only fixed wireless and satellite services. Notwithstanding this, the majority of consumers accessing the NBN have a large choice of

⁵¹ ACCAN submission to the Discussion Paper, pp. 9-10. ACCAN considered that the NBN footprint for fixed broadband provides a geographic area where competition at the retail level can be considered effective.

⁵² ACCAN submission to the SBAS & LBAS declaration Discussion Paper, pp. 9-10.

⁵³ ACCAN submission to the SBAS & LBAS declaration Discussion Paper, pp. 9-10.

⁵⁴ ACCAN submission to the SBAS & LBAS declaration Discussion Paper, p. 14.

⁵⁵ Anonymous submission to the SBAS & LBAS declaration Draft Decision, pp. 1-2.

⁵⁶ ACCAN submission to the SBAS & LBAS declaration Discussion Paper, p. 10.

⁵⁷ Telstra submission to the SBAS & LBAS declaration Draft Decision, p. 3.

⁵⁸ Telstra submission to the SBAS & LBAS declaration Draft Decision, p. 3.

⁵⁹ Telstra submission to the SBAS & LBAS declaration Draft Decision, p. 3.

⁶⁰ The NBN Wholesale Market Indicators Report for March 2021 records that 84% of services are operated by the largest three providers, with Telstra maintaining a 46% market share. Even where such services are resold by other retailers, the provider is responsible for provisioning such that the quality of the service is at least in part controlled by the provider.

⁶¹ NBN Co, List of phone and internet providers. Accessed 30 May 2021 at: <https://www.nbnco.com.au/residential/service-providers>.

retail providers compared to non-NBN networks, with RSPs competing on price and non-price terms more vigorously on the NBN compared to non-NBN networks.

As identified in the Discussion Paper for this inquiry,⁶² there are several hundred thousand customers that are served by non-NBN networks where there is significantly less choice of RSPs for consumers. Most current RSPs offering NBN based services, particularly the largest ones, do not provide non-NBN services for a variety of reasons. This has generated commentary from consumers that are dissatisfied with their choice of available providers and services, as noted in Chapter 4.2 of the Draft Decision.

The ACCC maintains that Telstra's South Brisbane and Velocity networks provide an example of where there is an absence of strong retail competition. Telstra Retail holds a very high market share of **[c-i-c]** customers on these networks and its pricing is not attractive to end-users compared to the NBN, particularly for low data users.⁶³ The ACCC acknowledges Telstra's submission that Uniti's acquisition may encourage greater retail competition over these networks once Uniti integrates the Telstra infrastructure into its existing networks. We have previously observed that the networks operated by Uniti, including LBN Co and OptiComm, have benefitted from steady increases in the number of RSPs offering services since the LBAS was declared in 2012.⁶⁴

In summary, while the SBAS and LBAS declarations have played a role in encouraging competition in the retail market for superfast broadband services, the ACCC considers there is still progress to be made in ensuring end-users of non-NBN networks are able to receive a comparable service and choice of retailer relative to those available on the NBN.

3.3. Promoting competition

In determining whether declaration of the SBAS will promote the LTIE, the ACCC must have regard to the extent to which declaration is likely to promote competition in the relevant markets. As part of its assessment, the ACCC has considered the likely future state of competition in the relevant markets with and without declaration. The ACCC has also had regard to the extent to which declaration will remove obstacles to end-users gaining access to listed services.⁶⁵

Submissions

ACCAN, Telstra, NBN Co and several access seekers (Launtel, Southern Phone and Vocus) all supported continued declaration on the basis that it would promote retail competition on non-NBN networks.⁶⁶

ACCAN submitted that the barriers to entry that led the ACCC to declare SBAS in 2016 still exist, that is, network operators continue to have the incentive and opportunity to seek monopoly rents from access seekers and by extension end-users. ACCAN considered that the continuation of the declarations will promote competition and protect the LTIE.⁶⁷

⁶² ACCC, *SBAS & LBAS declarations inquiry 2020 – Discussion Paper*, July 2020, p. 19.

⁶³ The cheapest internet plan available on Telstra's South Brisbane network is \$75/month, with 500 GB included and speeds of 30/1 Mbps. Exetel's lowest offering is \$90.99/month. On the NBN, plans as low as \$50/month are commonly available for users with low data requirements.

⁶⁴ ACCC, *SBAS & LBAS declarations inquiry 2020 – Draft decision*, December 2020, p. 26.

⁶⁵ CCA, section 152AB(4).

⁶⁶ ACCAN submission to the SBAS & LBAS Discussion Paper, p.4; NBN Co submission to the SBAS & LBAS Discussion Paper, p.3; Launtel submission to the SBAS & LBAS Discussion Paper, p.1; Southern Phone submission to the SBAS & LBAS Discussion Paper, p.1; Vocus submission to the SBAS & LBAS Discussion Paper, p.1;

⁶⁷ ACCAN submission to the SBAS & LBAS Discussion Paper, p. 14.

Southern Phone and Vocus both considered that the declarations are important in allowing retailers to provide high speed broadband services to customers on competitive terms, as well as facilitating retail competition.⁶⁸

In contrast, Gary McLaren submitted that the continuing declaration of the SBAS limits, rather than increases, competitive pressures on NBN Co as the compliance costs of regulations impose barriers to existing or new SBAS providers building competing infrastructure.⁶⁹ He contended that the completion of the NBN rollout meant that SBAS providers were no longer able to compete with NBN Co “for the market” by building networks prior to the rollout of the NBN.⁷⁰ However, Mr McLaren’s submission also considered that there may be merit to an SBAS declaration in areas where the NBN is not operational to address concerns around monopoly pricing power.⁷¹

TPG submitted that its ability to effectively compete against NBN Co has been impeded by compliance costs and restrictions imposed by the current regulatory framework and that the SBAS declaration should be allowed to expire now that the NBN is built and fully operational.⁷²

Both Gary McLaren’s and TPG’s submissions opposed the ACCC’s Draft Decision to extend the SBAS declaration nationally and supported deregulation in areas where there is sufficient infrastructure-based competition. While Telstra’s submission did not comment on the state of infrastructure competition, it too supported a case-by-case exemption from access regulation where there were multiple superfast broadband networks placing competitive constraint on each other.⁷³

ACCC’s decision

As noted previously in this chapter, there are several local fibre networks that appear to be operating as local monopolies in a number of geographic areas. Some of these networks operate on a vertically integrated basis and offer wholesale access (regulated under the SBAS and LBAS declarations) in addition to competing in downstream retail markets.⁷⁴ Others operate on a wholesale-only basis.

Consistent with the Draft Decision, the ACCC considers that in many areas across Australia there is usually insufficient customer demand to sustain multiple rival fixed line networks. For these areas, there are barriers to potential new entrants and in the absence of declaration, the incumbent network operator will have the incentive and opportunity to seek monopoly rents from access seekers and by extension end-users.

The continued declaration of the SBAS and LBAS will constrain the ability of network operators to set unreasonable terms of access and inefficiently high prices. Declaration alone is unlikely to generate greater competition in competing networks and the wholesale market within which superfast broadband services are provided. However, we expect that declaration will promote competition in downstream retail markets where it facilitates the entry of RSPs utilising the incumbent’s monopoly infrastructure. Over the period of the current SBAS and LBAS declarations there is clear evidence of RSP entry to areas covered by regulated networks. For example, in 2016, LBN Co, which is covered by the LBAS, had 9 RSPs retailing its services. Today, there are 30 RSPs retailing LBN Co’s services.⁷⁵ OptiComm currently provides services to 44 RSPs, compared to 22 in 2016.

⁶⁸ Southern Phone submission to the SBAS & LBAS Discussion Paper, p. 4. Vocus submission to SBAS & LBAS Discussion Paper, p. 2.

⁶⁹ Gary McLaren submission to the SBAS & LBAS declaration Draft Decision, p. 2.

⁷⁰ Gary McLaren submission to the SBAS & LBAS declaration Draft Decision, p. 3.

⁷¹ Gary McLaren submission to the SBAS & LBAS declaration Draft Decision, p. 4.

⁷² TPG submission to the SBAS & LBAS declaration Draft Decision, pp. 2-3.

⁷³ Telstra submission to the SBAS & LBAS declaration Draft Decision, pp. 1-2.

⁷⁴ For example, Telstra’s South Brisbane and Velocity networks and those operated by Uniti. Recent legislative changes to the wholesale-only rules will enable an increasing number of network owners to operate on a functionally separated basis, subject to approval by the ACCC.

⁷⁵ Source: [LBN Co website](#).

Superfast broadband services have become more highly valued and sought after by end-users with the high growth in consumer demand for data.⁷⁶ As data downloads increase, consumer demand for higher data rates accompanied by high download limits and choice in service offerings will also increase. The ACCC remains of the view that RSPs will need to be able to acquire superfast broadband services on reasonable terms in order to service and compete in the growing retail markets for these services. Continued declaration of the SBAS and LBAS will help to remove obstacles to end-users gaining access to these services at reasonable price and non-price terms. Providing end-users with additional RSPs to choose from will provide greater scope for RSPs to compete on price and non-price terms and innovate to provide a wider range of retail products. This in turn will have flow on benefits for end-users.

Recent legislative changes to the wholesale-only rules in the Telecommunications Act are intended to raise the prospects of increased market entry in the future. However, the impact of these changes on wholesale competition remain largely untested and, to date, there are only limited instances of competitive overlap between NBN and non-NBN networks. Whilst there may be certain geographic areas where network operators will compete, such as more densely populated areas, there will continue to be areas where it is not commercially viable for carriers to duplicate existing fixed line networks. Where these circumstances prevail and, in the absence of effective substitutes from other technologies (such as mobile, fixed wireless or satellite), access and price regulation will be necessary to promote the LTIE.

Overall, the ACCC's view is that continued declaration of the SBAS and LBAS, and regulated terms that reflect the criteria in section 152BCA of the CCA, will promote competition by providing greater scope for RSPs to enter retail markets and compete. Further, declaring a Layer 2 wholesale service will give RSPs flexibility in how they package their retail service offerings and how they differentiate themselves from other service providers.

The ACCC recognises that declaring wholesale access does not ensure that competitive outcomes are achieved. Even though the barriers to entry at the retail level are lowered by declaration, RSPs may make commercial decisions not to offer services on particular networks or in particular geographic areas. RSPs may choose not to enter markets in certain areas due to logistics, interconnection and transmission costs, limitations on revenue due to the size and density of the market, and the presence of other RSPs already servicing the market. Also, RSP entry may be less likely where a network will be (or has been) overbuilt by NBN Co. **[c-i-c]**.

The ACCC acknowledges that in some areas it may be commercially viable for multiple networks to co-exist and compete, such that regulation under the SBAS and LBAS would not necessarily promote further competition and may impose unnecessary regulation and cost. We have received support through this inquiry for the development and implementation of a broader competition-based exemption framework that could exclude other networks from future regulation. The ACCC considers there is merit in progressing the potential implementation of an exemption framework that excludes networks from regulation where an effective wholesale market exists. This acknowledges that the ACCC already exempts networks in the CBD areas of major capital cities from SBAS regulation because there is sufficient broadband services competition in these areas.

The ACCC intends to consult on the development of a competition-based exemption framework through the FAD inquiry.⁷⁷ We note that there are a number of potential ways to exclude services from regulation where competitive pressure is evident or likely – for example, by:

- Geography – specified geographic areas or types of areas could be exempt. These exemptions could be made:

⁷⁶ For further discussion, see Chapter 3 of the ACCC's Draft Decision.

⁷⁷ That is, the ACCC's SBAS FAD may include terms and conditions providing that the standard access obligations are not applicable to specific service providers (or classes of) or geographic areas either unconditionally or subject to conditions and limitations as are specified in the determination. CCA, section 152BC.

- ex-post, applying to specified areas following a case-by-case assessment process of competing networks in an area
 - ex-ante, exempting all areas where the NBN is operational (i.e. 'ready for service' areas), or similarly
 - by limiting the exemptions to densely populated metropolitan areas, where alternative networks including the NBN are already competing.⁷⁸
- Carrier – for example, certain service providers or classes of service providers could be made exempt.⁷⁹

We consider that one of the core requirements of any potential decision to grant an exemption would be the absence of significant market power. While network operators may be eligible for exemption to the extent that effective competition constrains their ability to misuse market power, NBN Co will remain subject to regulatory oversight under a Special Access Undertaking. This reflects NBN Co's dominant position as a supplier of wholesale fixed line superfast broadband services nationally.⁸⁰ A likely precondition for applying exemption criteria to an SBAS and LBAS network would be the presence of the NBN as an alternative access network for RSPs and end-users. While competition from non-NBN networks within a locale is generally limited at this time, we recognise that there is the potential for more competition to develop. In areas where non-NBN networks compete, we consider that key criteria for any exemption framework may include the absence of significant market power by a single operator and evidence that independent RSPs are connecting to the networks and end-users have a choice of provider.

3.4. Any-to-any connectivity

Any-to-any connectivity is achieved only if each end-user is able to communicate with other end-users supplied with the same service or a similar service, whether or not the end-users are connected to the same telecommunication network.⁸¹

In determining whether to remake, vary or extend the current declarations, the ACCC must make an assessment as to whether this is likely to achieve any-to-any connectivity in relation to carriage services that involve communication between end-users.

The ACCC did not receive any submissions regarding any-to-any connectivity. Continued declaration of the SBAS and LBAS is unlikely to impact the objective of achieving any-to-any connectivity, consistent with the 2016 SBAS declaration.

3.5. Encouraging efficient use of, and investment in, infrastructure

The CCA requires the ACCC to have regard to the extent to which declaration is likely to encourage the economically efficient use of, and the economically efficient investment in, infrastructure.

Submissions

Among the submissions in favour of continued declaration of the SBAS and LBAS, there was consensus that declaration, combined with cost-based pricing, would be adequate to promote

⁷⁸ This approach would reflect the commercial reality that facilities-based competition in the medium term is likely to be focussed in densely populated metropolitan areas where it is commercially viable for multiple networks to co-exist.

⁷⁹ For example, TPG argued that its networks should be made exempt from SBAS regulation in its response to the Draft Decision (p. 4) on the basis that its networks have been significantly overbuilt by NBN Co. In the 2016 SBAS declaration inquiry some stakeholders argued that networks predominately serving business customers should be made exempt for competition reasons.

⁸⁰ Such an approach is consistent with that adopted by the ACCC in its previous declarations of Telstra's legacy fixed line services.

⁸¹ CCA, subsection 152AB(8).

efficient investment in infrastructure. Few submissions elaborated on or addressed this issue directly.⁸²

TPG submitted that regulation of superfast broadband networks has not resulted in significant use by wholesale access seekers and was designed as a policy to protect the NBN from competition.⁸³ Gary McLaren argued that a blanket approach to declaration will limit rather than increase competitive pressures on NBN Co as the regulations impose barriers to existing or new SBAS providers. Mr McLaren argued that in areas where the NBN is available, which is the vast majority of the Australian market, any existing or new investment in competing SBAS infrastructure will be constrained by the regulated wholesale prices and downstream retail prices already established in the market by NBN Co. Mr McLaren therefore submitted that the declaration should be limited to areas where the NBN is not operational in order to promote competition and economically effective use of infrastructure.⁸⁴

ACCC view

Subsection 152AB(6) of the CCA requires the ACCC to have regard to specific matters in examining whether declaration will encourage the economically efficient use of, and the economically efficient investment in, infrastructure. These matters include the technical feasibility of supplying and charging for particular services, the legitimate commercial interests of the supplier(s) and the incentives for investment in infrastructure.

The ACCC notes that it is technically feasible to supply the SBAS and LBAS as they have been supplied and charged for as wholesale services since their declaration in 2016 and 2012 respectively. With regard to a supplier's legitimate commercial interests, the ACCC recognises this encompasses a supplier's obligations to its owners, including the opportunity to recover the cost of providing services and earn an appropriate commercial return on investment.

Allowing for an appropriate commercial return on investment provides an incentive for the access provider to maintain, improve and invest in the efficient provision of the service. The ACCC considers that this objective can be met for the SBAS and LBAS by setting the price terms in an access determination at a level that recovers the costs of supplying the services including an appropriate commercial return. This will be considered in the FAD inquiry following this Final Decision on declaration. It is through declaration and regulated prices under a FAD that access providers are constrained from charging monopoly rents. In this way, declaration and regulated pricing provides a framework for access providers to recover only the efficient costs of investing in infrastructure.

To the extent that declaration of the SBAS enables greater competition in retail markets, it will improve productive and dynamic efficiency. Greater competition will give access providers and access seekers the incentive to both invest and innovate in ways that ensure they produce services at the lowest possible cost and of a quality demanded by consumers. Further, allocative efficiency is likely to be improved by declaration of the SBAS because stronger retail competition will lead to the prices paid for retail services by end-users better reflecting the efficient costs of providing these services. This is likely to encourage end-users to migrate to and remain on these networks. Over time, this should also lead to greater use of and investment in existing infrastructure as the needs of these customers change through, for example, the take up higher data rate services.

TPG raised concerns that regulatory burden through the SBAS and LBAS declarations is detrimental to investment as it will impede the evolution of effective competitors to the NBN, a view

⁸² Telstra's submission supported the continuation of current access and pricing arrangements for their Velocity and South Brisbane networks.

⁸³ TPG submission to the SBAS & LBAS declaration Draft Decision, p. 3.

⁸⁴ Gary McLaren submission to the SBAS & LBAS declaration Draft Decision, pp. 3-4.

shared by Gary McLaren.⁸⁵ In our Draft Decision, the ACCC noted that TPG has previously expressed its intention to provide wholesale access to its FTTB network even without access regulation through declaration or the Government's carrier licence conditions.⁸⁶ Since the SBAS was declared in 2016, TPG has continued to operate a vertically-integrated network offering superfast broadband services at rates competitive with NBN-based retail plans whilst delivering comparable speeds.⁸⁷

The ACCC considers that the regulatory burden imposed on larger access providers in complying with the standard access obligations is likely to be minimal. This is because they already have the necessary equipment and infrastructure (including hardware and software) to enable interconnection, billing and fault detection for superfast broadband access services. Some providers, such as TPG, already provided access to wholesale Layer 2 services under commercially agreed terms prior to the SBAS declaration.

Information provided to the ACCC in the course of the 2016 SBAS declaration inquiry indicated that the development and deployment of a wholesale Layer 2 service for a larger provider could cost up to [c-i-c] per network.⁸⁸ The major component of this cost is the development of systems and software, which are primarily one-off capital costs.

The ACCC does not consider that continued declaration will have a significant effect on TPG's or other large access providers' ability to undertake efficient investment and compete with the NBN. While the terms of an access determination for the SBAS may affect return on investment, the ACCC will be required to have regard to the legitimate commercial interests of the access provider in making such a determination.⁸⁹

In relation to other builders and operators of fibre networks (predominately in new developments), the ACCC observes that Uniti (including Opticomm and OPENetworks, which previously operated their networks as separate legal entities) have continued to expand their infrastructure while being subject to the LBAS declaration. We further note Uniti's recently announced plans to expand into the brownfield (i.e. developed) and commercial markets.⁹⁰

Overall we have found no evidence that declaration of the SBAS and LBAS has discouraged efficient investment. The ACCC therefore considers that network builders and operators will continue to invest in network infrastructure and continued declaration is unlikely to discourage efficient investment in, and use of, infrastructure.

Without declaration of the SBAS, RSPs wanting to enter the market may have no choice other than to inefficiently invest in their own superfast broadband infrastructure in order to provide retail services to end-users. As set out above, there may not be sufficient end-users in an area to support more than one network and provide an appropriate return on the investment.⁹¹ The ACCC therefore considers that declaration of the SBAS is more likely to promote economically efficient investment in, and use of, infrastructure than would otherwise occur if the SBAS declaration were to expire.

⁸⁵ TPG submission to the SBAS & LBAS declaration Draft Decision, pp. 2-3. Gary McLaren submission to the SBAS & LBAS declaration Draft Decision, pp. 2-4.

⁸⁶ TPG, submission to the Government's *Carrier Licence Conditions (networks supplying superfast carriage services to residential customers) Declaration 2014 - Draft*, 14 November 2014, p. 1.

⁸⁷ For example, TPG's FTTB service is priced at \$60 per month and offers typical evening speeds of 90Mbps. Comparatively, TPG's NBN100 plans cost \$90 per month with typical evening speeds of 85Mbps. Source: [TPG website](#).

⁸⁸ Varying cost estimates were provided during the course of the 2016 declaration inquiry, between a range of [c-i-c]. The ACCC has adopted a conservative approach and used the upper end of the range for the purpose of establishing the regulatory cost. TPG, confidential submission to the ACCC Draft Decision, 7 December 2015, p. 5; iiNet's confidential submission to the ACCC Discussion Paper, 5 June 2015, pp. 9-10.

⁸⁹ CCA, section 152BCA(1)(b).

⁹⁰ Source: Communications Day, 21 April 2021.

⁹¹ The more likely scenario is that prospective retailers may just abandon the area, given in many areas there are insufficient end-users to justify duplicating an existing network.

4. Scope of the declared service

4.1. Service description

The ACCC has had regard to the following principles in varying the service description for the declared service:

- while some degree of technical specification will be required, the ACCC's preference is to make the service description in terms which are as functional as possible
- the eligible service should be described in a manner which provides sufficient clarity for application of the standard access obligations
- the service should be technically feasible to supply and charge for. Additionally, the service should be one which potential access providers are supplying to themselves and others
- terms and conditions of access should not be included in the service description.

Submissions

Most submissions to the Draft Decision did not specifically address the service description beyond consideration of the relevant markets (discussed in Chapter 3.1).

The proposal to combine the LBAS and SBAS declarations received broad support from stakeholders.⁹² Southern Phone considered that a combined declaration would be administratively simpler and align with the ACCC's May 2017 FAD which considered the pricing for these services together.⁹³

Telstra supported a continuation of the current treatment of its Velocity and South Brisbane networks in the SBAS declaration, where a separate service description (the Fibre Access Broadband (FAB) service) is provided for these networks. Telstra argued that an extension of the current arrangements over the next declaration period would provide certainty for consumers as Telstra migrates customers to the new network owner.⁹⁴ Conversely, an anonymous submitter opposed extending the current arrangements, arguing that the Velocity networks were characterised by limited retail competition, excessive retail pricing and poor service quality.⁹⁵ The anonymous submitter considered that the current treatment is an example of regulatory asymmetry justified on the basis of minimising the cost of regulation for a single market participant, as opposed to being justified on the basis of being in the LTIE.⁹⁶

ACCC's decision

The ACCC has decided to vary the current SBAS declaration to combine the SBAS and LBAS under a single declaration and to revoke the existing LBAS declaration. Both of these decisions take effect from 27 July 2021. We consider this will simplify the access regulations that apply to wholesale superfast broadband networks.

The varied SBAS service description is set out at Appendix A. The service description captures all fixed line superfast broadband services supplied that are either a Layer 2 Bitstream Service or a FAB service provided over a fixed line superfast network. Only broadband access services that are provided over a superfast network are declared. However, there is no minimum or maximum data rates nominated in the declaration which would limit the range of access products meeting the

⁹² ACCAN, NBN Co, Southern Phone and Vocus all supported combining the two declaration instruments in their submissions to the SBAS & LBAS declaration Discussion Paper.

⁹³ Southern Phone submission to the SBAS & LBAS declaration Discussion Paper, p. 2.

⁹⁴ Telstra submission to the SBAS & LBAS declaration Draft Decision, p.1.

⁹⁵ Anonymous submission to the SBAS & LBAS declaration Draft Decision, p.1.

⁹⁶ Anonymous submission to the SBAS & LBAS declaration Draft Decision, p.2.

SBAS service description that an access seeker could request from the access provider.⁹⁷ As discussed in Chapter 3.1, the ACCC considers that lower data rate products are still sought by a significant number of end-users.

The service description excludes services supplied on the NBN (including on HFC networks transferred to NBN Co) and services subject to the domestic transmission capacity service declaration, as these are already subject to access regulation. It also excludes superfast broadband services provided to business customers, public bodies or charity customers in CBD areas of major capital cities.

Regulation of in-building cabling for multi-unit buildings

The ACCC has also amended the service description to make clear that the SBAS applies to Layer 2 superfast carriage services supplied to end-users occupying multi-unit buildings (MUBs).⁹⁸ This provision is intended to address potential confusion over whether such services are covered by the declaration, particularly where the network boundary in a MUB may be unclear. Also, the ACCC has previously recognised that there are commercial and potential technical barriers which often limit infrastructure competition in MUBs.⁹⁹

Lines on the customer side of the network boundary are usually considered to be customer cabling and therefore not part of a telecommunications network, although service providers will generally utilise customer cabling to provide a service to an end-user in a MUB.

However, there can be a range of technologies and network configurations employed by a service provider to supply a service to an end-user in a MUB. For example, a service provider may:

- supply or purchase a wholesale service (from a third-party) over a fixed line fibre link that terminates in the building, connect that line to the customer cabling via a multiplexer in the building, then supply superfast carriage services over the cabling to end-users in the building¹⁰⁰
- use fibre backhaul to a nearby building (usually an apartment complex), connect buildings over a short distance via fixed wireless links, then supply superfast carriage services via customer cabling from a multiplexer to end-users in the building¹⁰¹
- connect a MUB using a fixed line fibre link that terminates in the building and then provide superfast carriage services to end-users within the building using wireless technologies.

Service providers may also have commercial agreements with building owners for exclusive use of their in-building network; which the building owner then retails as the sole provider to end-users within the building.¹⁰²

Under the SBAS service description, the ACCC has specified that the declaration applies to lines used to supply a Layer 2 superfast carriage service to end-users occupying a MUB. This includes instances where the SBAS is used to provide services to end-users in a multi-unit building (such as an apartment complex) by fixed lines that run most of the way to the building but are connected over a short distance using customer cabling or wireless technology. The declaration also applies where, for example, the SBAS is used in conjunction with wireless backhaul links connected to fixed lines

⁹⁷ The ACCC considers this variation to be consistent with the ACCC's general approach in describing the service using a technology neutral basis as far as possible.

⁹⁸ These mainly capture apartment complexes, but may also include shopping centres and education campuses.

⁹⁹ The *Next-generation Broadband Systems Deployment in Customer Cabling Industry Code* developed by the Communications Alliance and endorsed by the ACCC and ACMA governs competitive entry to MUBs where technical limitations occur.

¹⁰⁰ An example of a service provider using this model is Gigafy.

¹⁰¹ Examples of providers utilising this model are Lightning Broadband and Spirit.

¹⁰² For general background, see: Communications Day, *Gigafy builds broadband share in build-to-rent market*, 17 November 2020.

to provide services to end-users within a building. The SBAS declaration does not apply to services supplied only over mobile, satellite or fixed wireless infrastructure.

Telstra's South Brisbane and Velocity networks

The ACCC's decision is to maintain the current treatment of Telstra's South Brisbane and Velocity networks during the declaration period. Under the current treatment, a separate service description (the FAB service) and access pricing arrangement is allowed. This allows Telstra to comply with the declaration without having a Layer 2 access service in place which is required for other operators of fixed line broadband networks.

On 16 December 2020 Telstra entered into a binding agreement to sell its South Brisbane and Velocity networks to Uniti.¹⁰³ An extension of the current treatment will provide a transition period while Uniti undertakes investment to be able to supply a Layer 2 service to wholesale customers. The migration of customers is expected to commence in July 2022 and take approximately 12-15 months to complete.¹⁰⁴

While the ACCC has raised competition concerns about these networks, we recognise that the cost of upgrading the networks is likely to preclude a Layer 2 bitstream service being available on these networks prior to their sale and transfer to Uniti.¹⁰⁵ The ACCC is of the view that an extension to the current treatment will ensure service continuity for end-users and regulatory certainty while the networks are being transferred to Uniti. Following the upgrade of these networks to a Layer 2 service, the regulated price and other terms and conditions of access to Layer 2 services under the SBAS declaration will apply. **[c-i-c]**.

As part of the SBAS FAD inquiry, we will further review pricing for access to the FAB network. We also intend to closely monitor that Telstra does not discriminate in favour of itself in relation to the supply of the FAB service prior to full transfer of control of the networks to Uniti.¹⁰⁶

Small provider exemptions

Under the 2017 FAD, SBAS (but not LBAS) providers supplying up to 12,000 end-users are not required to offer regulated wholesale access to their networks. The ACCC previously considered that the costs of complying with the FAD for these operators would outweigh the benefits to end-users from regulated access and potential retail competition on these smaller networks. In response to this current declaration inquiry, ACCAN and Launtel both opposed extending the small provider exemptions on the basis that these networks are characterised by limited retail competition and high retail pricing.¹⁰⁷

The interim access determination for the SBAS applying from 27 July 2021 to 31 December 2022 (unless revoked sooner) maintains the existing small provider exemptions to the standard access obligations. This will provide regulatory certainty to small providers during the FAD inquiry and enable further consideration of whether the small provider exemptions should be included in the new FAD.

¹⁰³ Telstra will also become an RSP on Uniti's national fibre networks (including OptiComm) as a condition of the sale. Source: [ASX announcement: Uniti acquires Telstra and South Brisbane exchange assets](#), 16 December 2020.

¹⁰⁴ Ibid.

¹⁰⁵ As each carrier's systems and equipment are not completely aligned nor interoperable, commencing a Layer 2 upgrade prior to the transfer would require wholesale customers to interface their systems twice – first under Telstra's upgraded system and subsequently under Uniti's new system.

¹⁰⁶ We note that Uniti is subject to the non-discrimination obligations, in accordance to its [functional separation undertaking](#) lodged with the ACCC, which prohibit it discriminating in favour of itself or between access seekers in the supply of services.

¹⁰⁷ ACCAN submission to the SBAS & LBAS declaration Draft Decision, p. 1; Launtel submission to the SBAS & LBAS declaration Draft Decision, p. 1.

4.2. Duration of declaration

The CCA states that in specifying an expiry date the ACCC must have regard to the principle that an expiry date for a declaration should occur in the period:

- beginning three years after the declaration was made
- ending five years after the declaration was made.¹⁰⁸

The ACCC has discretion to specify an expiry date for a declared service that is shorter than three years or longer than five years if it considers that circumstances warrant it.¹⁰⁹

Submissions

Stakeholders, in submissions to the Discussion Paper and Draft Decision, anticipated significant developments in the telecommunications sector over the next five years, particularly with the introduction of 5G and the possible privatisation of NBN Co. Some cite this as a reason for a three year regulatory period.¹¹⁰ However most supported a five year regulatory period on the basis that it would provide certainty for investment decisions and enable stakeholders to enter into long term agreements.¹¹¹

ACCC's decision

The ACCC's decision is to extend the SBAS declaration for five years until 28 July 2026.

While the superfast broadband market is dynamic and subject to ongoing change and innovation, it is not clear that a period of three years would be an adequate amount of time to gauge whether circumstances had changed sufficiently to warrant changes to the declaration. The ACCC notes that should there be a notable change in circumstances it can commence an inquiry to amend the declaration prior to July 2026.

¹⁰⁸ CCA, paragraph 152ALA(4).

¹⁰⁹ CCA, subsection 152ALA(2).

¹¹⁰ TPG submission to the SBAS & LBAS declaration Draft Decision, p. 2

¹¹¹ NBN Co submission to the SBAS & LBAS declaration Discussion Paper, p. 9; Southern Phone submission to the SBAS & LBAS declaration Discussion Paper, p. 4; Vocus submission to the SBAS & LBAS declaration Discussion Paper, p. 2.

Appendix A

A.1.1 Service description for the SBAS declaration

The superfast broadband access service (**SBAS**) is a point to point service for the carriage of communications in digital form between a **network-network interface** and an **end-user interface** that is:

- (a) a **Layer 2 bitstream service** and is supplied over a **superfast telecommunications network**; or
- (b) a **Fibre Access Broadband service**.

This service does not include:

- i. a service supplied through an **access multiplexer** located in a **multi-unit building** in a **central business district area** or in a **node** in a **central business district area** where all end-users of the services supplied or proposed to be supplied through that access multiplexer and any other access multiplexers owned or controlled by the same access provider located in the same **multi-unit building** or **node** are **business customers, public bodies or charity customers**;
- ii. a service supplied other than through an **access multiplexer** located in a **multi-unit building** or in a **node** where the premises of the end-users of the service is in a **central business district area** and all end-users of the service are **business customers, public bodies or charity customers**;
- iii. services supplied, or capable of being supplied, using a hybrid-fibre coaxial cable network that was in existence on **27 July 2021** and in respect of which there are agreements for the network to be transferred to NBN corporation;
- v. the domestic transmission capacity service defined in the Domestic Transmission Capacity Service Declaration **2019**, as that declaration may be varied, extended or replaced from time to time.

Definitions

Unless otherwise defined in this declaration, words or phrases defined in the *Competition and Consumer Act 2010* or the *Telecommunications Act 1997* have the same meaning in this declaration.

access line means a line used to connect the access multiplexer to the end-user interface.

access multiplexer means a device that separates communications carried by means of guided electromagnetic energy to enable an end-user to make use of high data rate services.

business customer means a customer that:

- (a) carries on a business or enterprise from a premises, regardless of whether there is any incidental use of the premises for occupation (from time to time) as a place of residence; and
- (b) has an ABN for the business or enterprise.

central business district area means a geographic area with one of the following postcodes:

- (a) Canberra CBD: 2600-2601
- (b) Sydney CBD: 1000-1299; 2000-2009

(c) Melbourne CBD: 3000-3010; 8000-8010

(d) Brisbane CBD: 4000-4004

(e) Adelaide CBD: 5000-5005; 5800-5879

(f) Hobart CBD: 7000-7003; or

(g) Perth CBD: 6000-6005; 6800-6899.

charity customer means a charity registered with the Australian Charities and Not-for-profits Commission.

end-user interface means an interface located at either:

(a) a physically defined end-user's premises where the access provider's network is directly or indirectly present to an end-user; or

(b) the jumper cable termination on the customer side of a main distribution frame located in a **multi-unit building**.

Fibre Access Broadband service means a carriage service that:

(a) is supplied or offered to be supplied by means of an optical fibre line; and

(b) is offered as a **superfast carriage service** or with the following maximum **data transfer rates**;

(i) download **data transfer rate** of 30Mbps and upload **data transfer rate** of 1Mbps; and

(ii) download **data transfer rate** of 100Mbps and upload **data transfer rate** of 5Mbps; and.

(c) has the following configurations:

(i) a 'best effort' or non-prioritised service, as characterised by the Differentiated Services Code Point Default Forwarding per-hop behaviour; and

(ii) connectivity made with static Layer 2 Tunnelling Protocol (L2TP) tunnels and Broadband Virtual Local Area Networks giving direct access to end user sessions; and

(iii) end-user sessions are aggregated together via static L2TP tunnels supplied over Ethernet.

Layer 2 bitstream service has the meaning given by section 7 of the *Telecommunications Act 1997*.

line has the meaning given by section 7 of the *Telecommunications Act 1997*.

multi-unit building has the meaning given by section 142A of the *Telecommunications Act 1997*.

Note: For the avoidance of doubt, if a **line** in a **multi-unit building** is used to supply a superfast carriage service to an end-user occupying or using a unit in the building:

(a) the line is taken to be an **access line**; and

(b) the line is taken to form part of the infrastructure of a **superfast telecommunications network**.

The line does not need to be physically connected to a unit in a multi-unit building because, pursuant to section 24 of the *Telecommunications Act 1997*, “used” means use in isolation or in conjunction with one or more other things.

NBN corporation has the meaning given in the *National Broadband Network Companies Act 2011*.

network-network interface means an interface provided by an access provider at a **point of interconnection** where the access seeker’s telecommunications network can interface to the access provider’s network.

node means a roadside cabinet, pillar, pit or distribution point, but does not include an exchange, that:

- (a) houses the equipment for the supply of services, including access multiplexers, and
- (b) enables the physical connection to the end-user premises using access lines.

point of interconnection is a physical point of interconnection which allows the interconnection of facilities in accordance with subsection 152AR(5) of the *Competition and Consumer Act 2010*.

public body means:

- (a) the Commonwealth, a State or a Territory; or
- (b) a municipal authority or other local governing body; or
- (c) a public authority that is constituted by or under a law of the Commonwealth, a State or a Territory.

superfast carriage service has the meaning given by section 142A of the *Telecommunications Act 1997*.

superfast telecommunications network means a telecommunications network, where:

- (a) the network enables end-users to download communications; and
- (b) the network is normally capable of enabling end-users to download communications with a data transfer rate of 25 megabits per second or more; and
- (c) the carriage service is supplied using a line to premises occupied or used by an end-user.

Note: The word “normally” is akin to “usually”; it recognises that circumstances may arise that temporarily displace usual data transfer rates.

telecommunications network has the meaning given by section 7 of the *Telecommunications Act 1997*.