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Superfast Broadband Inquiry
Australian Competition and Consumer Commission

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Submission by NBN Comparable Carriers on Superfast Broadband Access Service and Local Bitstream Access Service Final Access Determination (FAD) - Joint Inquiry

About us - LBAS Operator Carriers/NBN Comparable Carriers

This submission is in response to the ACCC further consultation on pricing for the SBAS and LBAS final access determination. The submission is made on behalf of the following carriers:

- OPENetworks Pty Ltd ACN 118 525 821
- LBN Co Pty Ltd ACN 073 226 114
- CNT Corp Pty Ltd ACN 106 668 071
- OptiComm Co Pty Ltd ACN 117 414 776

The above carriers all construct, own and operate wholesale only, high speed fixed line networks, mostly in new developments (**Greenfields**). Collectively those carriers are herein called the "**NBN Comparable Carriers**", who operate Local Bitstream Access Service (**LBAS**) networks on an open access wholesale only basis, and whose networks are not merely providing Superfast Broadband Access Services (**SBAS**).

We have been operating our networks for well over a decade, long before the nbn was contemplated and operate networks that can now connect over 200,000 premises and provide high speed broadband to those business and residential customers via a diverse range of retail service providers in broad geographic areas across Australia.

Treatment of RBS charge in benchmark prices

We support the view of the ACCC in relation to the proposal to allow the LBAS providers to add the amount of any levy under the Regional Broadband Scheme (**RBS**) to the benchmark prices regulated by the ACCC under the proposed *Superfast Broadband Access Service and Local Bit stream Access Final Determination 2017 (FAD)*. Our reasons for support were set out in our submissions made in February 2017 to the ACCC.

Rebalancing of the Telstra price benchmarks

We make no comment about this matter.

Applying RSP specific discounting to SBAS and LBAS CVC charges

We strenuously oppose the proposal by NBN Co to link the CVC charges of LBAS operators to the NBN Co charges for CVC, including the discounts offered under dimension based discounting for the following reasons:

- (1) The notion of capping LBAS CVC to that of our most aggressive competitor NBN Co who is fully funded by the Australian taxpayer is contrary to fair competition and the level playing field conditions that Government professes that should prevail in the market. The ability of our competitor to reduce CVC charges for political or other motives or merely predatory pricing reasons, is clearly a serious likelihood that would undermine investment incentives in LBAS businesses in the long term.
- (2) It is unfair to compare the costs and circumstances of NBN Co CVC price determination, which is completely opaque, even to government, to the commercial market pressures that determine CVC prices for LBAS operators. Government has fully funded NBN Co to create 121 Points of Interconnection in Australia and LBAS operators usually only have points of interconnection with the RSPs in the capital cities. The cost of backhaul to those POIs for the LBAS operators is prohibitive but driven by market conditions, something LBN Co does not have to consider.
- (3) Despite Government Policy, NBN Co still has not provided commercially available backhaul to LBAS and SBAS operators (other than one mobile carrier). The lack of backhaul in Australia is the most significant cost for LBAS operators and that therefore should not be capped by the competitor whose backhaul network was gifted to it by Government and Taxpayer funding.
- (4) LBAS operators are compared to NBN Co very small businesses that cannot sustain the capped CVC and discounts that NBN Co may be able to provide and maintain for long periods and then raise the CVC prices at a later date.

In any event, if the ACCC is minded to introduce the linked CVC charges then all small LBAS operators with less than 50,000 active broadband end user connections should be exempt from any regulation that links the CVC charges for the reasons given above.

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