



17 February 2017

Ms Nicole Ross
Director, Market Evolution and Access Section
Infrastructure Regulation Division
Australian Competition and Consumer Commission
360 Elizabeth Street
Melbourne 3000

By email: superfastbroadbandinquiry@acc.gov.au
cc: nicole.ross@acc.gov.au

Dear Nicole,

Superfast Broadband Access Service and Local Bitstream Access Service Final Access Determination Joint Inquiry – Draft Decision

nbn welcomes the opportunity to comment on the ACCC's draft decision on the Superfast Broadband Access Service (SBAS) and Local Bitstream Access Service (LBAS) Final Access Determination Joint Inquiry (the Discussion Paper).

Our comments, as set out below, are largely focussed on the price-related terms and conditions for the LBAS and SBAS FADs (the FADs) and build on the comments we provided in response to the September 2016 Consultation Paper.

Proposed legislative changes relating to Parts 7 and 8 of the Telecommunications Act and the Regional Broadband Scheme

- Although the draft decision discusses some of the proposed legislative changes to Parts 7 and 8 of the Telecommunications Act and the Regional Broadband Scheme, **nbn** notes that the FADs need to be based on the legislation as it applies at the time the ACCC makes its final decision and it is not useful for the FADs to anticipate the nature and extent of future legislative changes. In due course, the ACCC can revisit the LBAS and SBAS FADs (and the declarations themselves) and undertake a variation inquiry process to ensure that they are appropriate.

Pricing of non-Telstra FAB services

- In regard to how **nbn**'s dimension-based discount (DBD) arrangement for CVC TC-4 should be accounted for in the ACCC's benchmarking approach, **nbn** highlights that from 1 June 2017 the DBD arrangement is planned to change so that the discount available to an RSP is based on that RSP's own dimensioning (CVC TC-4 per AVC TC-4) rather than industry average dimensioning. DBD by RSP, as compared to DBD by industry average, will provide better incentives for RSPs to dimension to the needs of their individual end user bases in a timely manner and thereby improve the end user experience. The table of available discounts is intended to be published on **nbn**'s website as part of **nbn**'s Standard Form of Access Agreement (SFAA).



nbn suggests that the FADs could be expressed such that the price of CVC TC-4 is determined with reference to the undiscounted price as published by **nbn** (currently \$17.50 per Mbps per month), but that this should be reduced to account for any CVC TC-4 dimension-based discounts as published by **nbn** from time to time. The application of such discounts should be based on dimensioning on the relevant SBAS/LBAS network rather than on the **nbn**TM network – it may not be reasonable to assume that dimensioning will be the same on **nbn** and non-**nbn** networks for an individual RSP, or on average across all RSPs.

- In regard to how **nbn**'s 25/5Mbps AVC TC-4 is used in the ACCC's benchmarking approach, **nbn** highlights the following points that are relevant to delivering on the ACCC's key objective that "retail service providers (RSPs) and end users supplied via SBAS and LBAS networks should not be any worse off than if they were supplied by the NBN."¹
 - **nbn**'s 25/5 Mbps AVC TC-4 is actually supplied as a bundle that also includes (for no extra charge) a 0.15 Mbps AVC TC-1 that is appropriate for a voice service.
 - Separate to DBD, **nbn** also provides access seekers with a CVC credit in each connectivity serving area that has not yet reached 30,000 serviceable premises that is the greater of the amount that an access seeker would otherwise pay for TC-4 CVC (up to a maximum of 150Mbps) and 50kbps of TC-4 CVC in respect of each AVC TC-4 an access seeker has ordered in such a connectivity serving area. Once a connectivity serving area has reached 30,000 serviceable premises, there is an ongoing CVC credit of 50kbps of TC-4 CVC in respect of each AVC TC-4 an access seeker has ordered in such a connectivity serving area - the value of this ongoing credit is expected to be sufficient to meet the (per AVC) cost of TC-1 CVC for the purposes of supplying a voice service.
- In regard to the ACCC's proposed approach to accounting for the Regional Broadband Scheme levy in its benchmarking, **nbn** highlights that the Government has already considered how the net proceeds of the levy should be treated by **nbn** in its own pricing. The Regulation Impact Statement (RIS) for "Establishing an ongoing funding arrangement for **nbn**'s fixed wireless and satellite networks" (p.28) discusses two options - apply the current SAU arrangements (with **nbn** permitted to maintain its prices to recover costs it incurs in the initial build phase), or **nbn** dropping its prices immediately, commensurate with the amount of the proceeds from the charge it is paid each year under the funding arrangements. The RIS goes on to state that "The current arrangements are sufficient and **nbn** should consider the revenues from the funding arrangements as revenues for the purposes of the SAU. This arrangement is already monitored by the ACCC, is already implemented, and provides **nbn** with pricing flexibility."

¹ ACCC, Draft Decision, p.7.



Pricing of Telstra FAB services

- **nbn** notes that the ACCC continues to assert that "the South Brisbane and Velocity Estate networks will be transferred to the NBN within the next several years". In **nbn**'s 26 October 2016 submission, we highlighted that "it is important to note that Telstra and **nbn** have not entered into a binding agreement for any such transfers." (p.3). Given this, we suggest that the ACCC revisit its approach to the pricing of Telstra FAB services, on the basis that the status quo may continue for a currently unknown period (which is not that the networks 'will be transferred' or 'are to be transferred' to **nbn** but simply that they may be).
- Related to this, it is evident that in regard to Telstra FAB services, the ACCC is not applying the same key objective as for non-Telstra FAB services (i.e. that "retail service providers (RSPs) and end users supplied via SBAS and LBAS networks should not be any worse off than if they were supplied by the NBN."²). When the WLR price of \$20.69 per month is added to the proposed FAB pricing, the result is significantly higher than would apply for non-Telstra SBAS networks. This gap will widen if Telstra were to subsequently add the industry levy on superfast local access lines to its FAB prices (as allowed in the draft decision).

Telstra FAB Service Charge component	2016-17 (Draft Decision)	Non-Telstra FAB Service Charge component	2016-17 (Draft Decision)
WLR + Port Zone 1 per month	\$20.69 + \$23.45 = \$44.14	Port per month - 25/5 Mbps	\$27.00
WLR + Port Zone 2/3 per month	\$20.69 + \$28.46 = \$49.15		
Aggregation per Mbps/month	\$16.65	Aggregation charge per Mbps/month	\$15.25

Exemptions for small providers

- In regard to the ACCC's proposal to exempt providers supplying less than 12,000 end users with a Specified Service, **nbn** notes that this is a significantly higher threshold than in the proposed changes to Part 8 of the Telco Act, which introduce a class exemption power that the ACCC could use to exempt an operator from separation obligations where that operator has fewer than 2,000 retail residential customers on all fixed-line networks. Although the statutory exemption could be extended to 20,000 by regulation, the Government has said in the Explanatory Notes to the proposed changes (p.6) that "It is envisaged that the regulation power would not be used in the short-to-medium term."

² ACCC, Draft Decision, p.7.



- In regard to how the ACCC came to propose the 12,000 threshold and UXC Consulting's report for the ACCC on the cost for small providers to provide SBAS, it is not clear why the analysis includes incremental transmission costs – why would transmission costs from an estate to a POI increase as a result of wholesaling SBAS if the traffic from the estate is already being backhauled to that POI?

Transparency

- **nbn** notes that the Draft Decision does not reveal any intention by the ACCC to bring greater transparency to the provision of SBAS and LBAS or any adequate rationale for the difference in treatment between SBAS and LBAS providers on the one hand and **nbn**. As suggested in our October 2016 submission, **nbn** submits that Record Keeping Rules (and disclosure directions) equivalent to those that apply to **nbn** should be imposed on SBAS and LBAS providers.

Technology neutral approach to regulation

nbn maintains that the ACCC should take a technology neutral approach to the regulation of SBAS. The ACCC should consider revisiting the SBAS declaration to make it more technology neutral, to ensure there is no arbitrary distinction between access providers on the basis of the technology used to provide an otherwise equivalent service.

If you would like to discuss any aspects of this letter, please contact Matthew Cole, General Manager Access Regulation at matthewcole@nbnco.com.au or on (03) 9601 5231.

Yours sincerely

A handwritten signature in blue ink that reads "Matthew Cole" followed by "(on behalf of)".

(on behalf of)

Caroline Lovell
Chief Regulatory Officer