

23rd March 2012

Kathryn Wood
Communications Group
Australian Competition and Consumer Commission
Level 20, 175 Pitt Street
Sydney NSW 2000

Dear Kathryn

Re: Response to Discussion Paper on LBAS

Thank you for the opportunity to respond to the ACCC's public inquiry to make an access determination for the local bitstream access service (LBAS) for Non-NBN Co providers.

OptiComm Co Pty Ltd (OptiComm) is a telecommunications carrier established in 2005 as a wholesale only, open access, Fibre-to-the-Premises (FTTP) provider for Greenfield Broadacre and Multi-Dwelling Units (MDU) developments. [REDACTED]

[REDACTED] OptiComm was founded as a wholesale only, open access, Layer 2 bitstream carrier and is fully compliant with the recent changes in the Telecommunications Act pertaining to delivery of high speed broadband infrastructure.

OptiComm operates in every state in Australia and is 50% owned by Hills Holdings Limited (ASX: HIL) and 50% owned by private equity.

As Australia's largest, privately owned and operated, FTTP provider, OptiComm has a vested interest in ensuring any declaration of LBAS is both equitable and will encourage competition within the telecommunication sector which will in-turn protect consumers from high telecommunications prices. The FTTP sector has been a competitive market place for a number of years and prices have been regulated by competitive pressure. OptiComm therefore questions the need for a declaration of wholesale prices as we need to remain competitive to continue to attract RSP's onto our network. I can understand the need to declare the price for NBN Co brownfield rollout as they will have a virtual monopoly on this sector however for greenfield the market is today and will remain competitive.

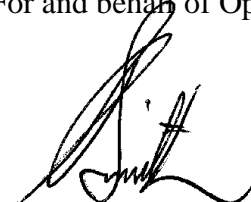
Before addressing the specific questions raised in the discussion paper OptiComm would like to outline the following:

1. The declared wholesale access pricing for Non-NBN Co providers should not be less than the prices for equivalent services offered by NBN Co. Providers like OptiComm invest in the construction and operation of their FTTP networks and require a return on this investment as well as a need to fund network operations, maintenance services and future network renewal.
2. Backhaul services from the Headworks (known as the Fibre-Access-Node or FAN by NBN Co) and the Point of Interconnect where Retail Service Providers connect to the wholesale network should take into account the following models:
 - a. NBN Co's Connectivity Virtual Circuit (CVC) model where each RSP must purchase appropriate CVC capacity for the services they deploy. This charging is a leftover from the old Telstra AGVC product and in OptiComm's opinion does not deliver a competitive or level playing field. This model is unfavourable for Greenfield rollout due to the slow take-up of services in these estates and favours only the very large RSP, hence stifling competition. NBN Co announced "Transitional CVC Pricing" on 30th November 2011 in response to RSP feedback that the CVC pricing makes Greenfield deployment unprofitable in the early stages of the development.
 - b. Carrier managed backhaul where the contention of all RSP services over the backhaul is managed by the wholesale access carrier and charged to each RSP on a per service basis commensurate with the speed of the access service ordered. This is the model OptiComm has deployed and is favourable for Greenfield deployments and provides a level playing field for all RSPs irrespective of their size.
 - c. Developer funded backhaul. This model is typically used for estates that fall below the threshold where a carrier funded backhaul is not profitably. This is often used to service small gated communities.
 - d. RSP funded backhaul where each RSP commissions, funds and operates the backhaul to the Headworks. This model is unfavourable for Greenfield for the same reason as stated for the NBN Co CVC outlined above.

Please find attached answers to the specific questions raised in the Discussion Paper, "Public inquiry to make an access determination for the local bitstream access service", dated February 2012.

Please do not hesitate to contact myself if you have any further questions regarding this submission.

Yours faithfully
For and behalf of OptiComm Co Pty Ltd



Phil Smith
General Manager, Carrier Relations and Regulatory

Answers to Questions on which the ACCC seeks views

1. *Which currently operational networks are designated superfast telecommunications networks under section 152AGA of the CCA? Who operates these networks?*

OptiComm Response:

OptiComm's operates all its networks in compliance with section 15AGA of the CCA. To the best of our knowledge the following companies are deploying designated superfast telecommunications networks under section 152AGA of the CCA:

- Telstra
- Optus
- Service Elements/Fuze Connect/eWire/BES
- Opennetworks
- Fujitsu
- Victorian Urban Development Authority
- Converge Networks
- Broadband Multinet (CNTcorp)
- Club Links Telco
- TransACT/Neighbourhood Cable
- Geomedia
- Halenet
- Aurora Telecom
- Universal Communications Group trading as Open Access Networks
- Pivit

2. *What types of access technologies are used in these networks? Fibre, hybrid fibrecoaxial (HFC), copper?*

OptiComm Response:

OptiComm utilises GEPON, GPON and HFC technologies within its networks. All are operated on a wholesale only, Layer 2, open access basis.

3. *How many customers do these designated superfast telecommunications networks serve? How many customers can they potentially serve?*

OptiComm Response:



4. *What geographic area do these designated superfast telecommunications networks serve?*

OptiComm Response:

OptiComm currently has deployed networks in both metropolitan and regional areas within NSW, Victoria, Queensland, South Australia and Western Australia.

5. *Do these networks currently (as at February 2012) offer wholesale access? If so, at what network layer and under what terms?*

OptiComm Response:

All OptiComm networks are operated on an open access, wholesale only, Layer 2 bitstream basis and OptiComm intends to operate these networks indefinitely.

6. *On what terms do/did these networks offer retail services to end-users?*

OptiComm Response:

All OptiComm's RSP offer equivalent services to end users at the same price as they offer services on NBN Co networks.

7. *What are the access provider's costs in providing the LBAS?*

OptiComm Response:

This commercially confidential information.

8. *Do costs vary depending on access medium, e.g. fibre vis a vis HFC? If so, should regulated prices vary between different access mediums?*

OptiComm Response:

The cost do vary between access medium however OptiComm would not recommend different regulated prices based on different access mediums.

9. *Do costs vary depending on the size and/or location of the designated superfast telecommunications network? If so should regulated prices vary depending on those factors?*

OptiComm Response:

The costs do not vary in the construction and operation of the access network i.e. from the headworks to the dwelling) however the cost of the construction and operation of backhaul network (Headworks to the POI) vary greatly depending on their location

and the size. OptiComm would suggest that it would be extremely difficult to regulate pricing based on location and/or size as this would not be inductive to a level playing field for end users.

10. How are commercial prices for the LBAS or like services structured?

OptiComm Response:

[REDACTED]

11. Are these prices differentiated by port speed? By download quota? If so, how?

OptiComm Response:

[REDACTED]

12. Do these prices include any backhaul component?

OptiComm Response:

[REDACTED]

13. Do retail service providers need to purchase anything besides access to the customer access line to provide a customer with services? If so, what products need to be purchased and how are the commercial prices for these products structured?

OptiComm Response:

No other services are required to be purchased for RSPs to provide services to their customers. OptiComm does not for example charge for the NNI as does NBN Co.

14. What are the charges that are meaningfully needed to use a service such as the LBAS? For example is it necessary to set: a connection charge, a monthly charge, a disconnection charge, or a churn charge?

OptiComm Response:

For a provider to be commercially viable they must charge for service provisioning, service disconnection and monthly network access fees. OptiComm has charges for all these services.

15. Which of the above charges needs to be regulated to ensure access to the LBAS? Which charges can be set by market forces?

OptiComm Response:

In OptiComm's opinion none of these services need to be regulated as market forces will determine the wholesale price e.g. NBN Co is a defacto price benchmark.

The declared wholesale access pricing for Non-NBN Co providers should not be less than the prices for equivalent services offered by NBN Co. Providers like OptiComm invest in the construction and operation of their FTTP networks and require a return on this investment as well as a need to fund network operations, maintenance services and future network renewal.

16. Are any of the above pricing approaches appropriate for pricing the LBAS? What information would be required to implement such an approach?

OptiComm Response:

There are only a small number of open access, wholesale only FTTP providers in Australia, like OptiComm, that don't have an associated RSP with their group of companies or have common ownership. FTTP wholesale services have only been available in Australia since 2007 when OptiComm deployed its first FTTP network and there is not sufficient dwellings connected to enable a meaningful bottom-up, top-down, fully cost associated or building cost costing model. The only way to regulate pricing is to benchmark it against the published NBN Co pricing as this will ensure that privately owned network providers remain competitive and are not disadvantaged in the market.

17. Is there a different pricing approach, not mentioned above, that would be more appropriate? What information would be required to implement such an approach?

OptiComm Response:

No comment.

18. What is an appropriate duration for the LBAS FAD?

OptiComm Response:

No comment.

19. Which non-price terms and conditions from the 2008 Model Terms should be included in the LBAS FAD?

OptiComm Response:

OptiComm would consider any of the listed terms to be acceptable in the LBAS FAD however would prefer no regulation and let the normal competitive market forces determine these factors.

20. Are there any modification to the 2008 Model Terms necessary to make them appropriate for inclusion in the LBAS FAD? If so, please include details.

OptiComm Response:

No comment.

21. Are there any other non-price terms and conditions should be included in the LBAS FAD? If so, please include details

OptiComm Response:

OptiComm would recommend that companies offering LBAS do not offer Retail Services directly or indirectly via an associated or related company. Many of the FTTP providers in Australia have only offered their own Retail Services or the services of just one RSP. The legislation now states that these provider must offer their services on a wholesale basis however just publishing a wholesale price list will not ensure that other RSPs will deliver services on these networks. OptiComm would recommend that LBAS providers operate with a minimum number, say three (3) active RSPs at any given time to ensure the wholesale services are promoted and actively used.