

Frontier Networks Pty Ltd response to Superfast Broadband Access Service declaration draft decision

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Frontier Networks Pty Ltd (**Frontier**) welcomes the opportunity to respond to the Australian Competition and Consumer Commission's (**ACCC**) draft decision on the Superfast Broadband Access Service (**SBAS**) declaration inquiry (the **Draft SBAS Decision**).

1 Executive summary

Frontier is a small provider of internet services to residents of senior housing communities in Australia, with [c-i-c] [c-i-c] services currently in operation.

The significant costs of implementing and complying with an SBAS declaration will have a substantial impact on Frontier's business and services.

Frontier further submits that declaring an SBAS is not in the long-term interests of end-users as it would likely reduce infrastructure competition, prevent seniors from accessing Frontier's innovative products and services and will not promote competition in the downstream markets for retail superfast broadband services (because of the small size of Frontier's networks).

2 Frontier

2.1 Who is Frontier?

Frontier is a small licensed telecommunications carrier. Frontier has [c-i-c] [c-i-c]

Frontier designs, constructs and installs networks in residential aged care facilities and retirement villages (collectively **Senior Housing Communities**) around Australia (each such network being a **Frontier Network**).

Frontier designs, constructs and installs:

- a) network infrastructure upgrades in brownfield Senior Housing Communities to enable high speed connectivity on existing layer 1 infrastructure (including existing copper and HFC infrastructure); and
- b) turnkey solutions for high speed FTTP connectivity in greenfield Senior Housing Communities.

Frontier develops and operates these networks to deliver high-speed broadband and other bespoke services to meet the needs of the operators and residents of these Senior Housing Communities, and which integrate seamlessly onto the operator's infrastructure and service delivery platforms. Services Frontier offers over its networks include:

- c) telecoms solutions, including broadband, voice and payTV bundles;
- d) bill certainty;
- e) "seniors friendly" installation and help desk support; and
- f) telehealth solutions including emergency response, medical alarm, smoke alarm, backup battery and inactivity monitoring services.

2.2 Frontier services in operation

Today, Frontier Networks pass approximately [c-i-c] [c-i-c] independent living units, serviced apartments and aged care beds in Senior Housing Communities, and there are approximately [c-i-c] [c-i-c] services in operation over Frontier Networks.

Frontier forecasts that within 3-5 years, Frontier Networks will pass approximately [c-i-c] [c-i-c] units, apartments and beds in Senior Housing Communities, and deliver services to approximately [c-i-c] [c-i-c] subscribers.

Accordingly, Frontier considers that it is, and will remain, a 'small provider' of ISP services.

2.3 The market for telecommunications services in retirement communities

As reflected in the Australian Government's *Telecommunications in new developments – A new approach to competition* policy document dated March 2015 (the **Greenfield Policy**), network providers like Frontier are expected to compete to win the right from the developer to provide telecommunications infrastructure in new developments.

Frontier considers that the market for the installation of superfast broadband networks in greenfield retirement communities is highly competitive. Similarly, in brownfields retirement communities, there is an active, competitive market for the upgrade of existing networks. In these markets, Frontier sees independent rivalry in all dimensions of price, product and service.¹

Frontier faces competition in these markets from the government-owned and funded National Broadband Network (**NBN**), large entities like Telstra and TPG and several smaller providers.

Frontier notes that there is no legal prohibition on Frontier Networks being overbuilt by the NBN (although in some cases, ministerial approval may be required) or other providers.

In addition, the majority of brownfield Senior Housing Communities retain their legacy copper connections, which means that Frontier Networks compete with ADSL 2+ services delivered by many RSPs in these communities. [c-i-c] [c-i-c]

Frontier also sees competition in retirement communities from mobile operators supplying high-speed data services.

The result of this competition is a tight constraint on retail prices over Frontier Networks. A bundle of unlimited broadband data (upload and download), unlimited calls to Australian landlines and mobiles, monitoring services, seniors friendly technical support and a WiFi router is currently available for \$99 per month on a 12 month contract (with \$0 installation fee).²

3 Effect of the proposed SBAS declaration on Frontier, competition and end-users

3.1 General

In the Draft SBAS Decision, the ACCC notes that:

... costs incurred by carriers in developing a wholesale Layer 2 bitstream service as well as the systems to support wholesale supply are likely to be significant and may be disproportionately high for operators of smaller superfast broadband networks with small customer bases.

¹ See paragraph 4.1 for information on innovative service provisions Frontier supplies because its customers are in retirement communities.

² A \$119 Telstra bundle over the NBN only provides 800gb of broadband data per month over a 24 month contract – this bundle also does not include monitoring, seniors support or unlimited mobile calls, and may need a \$240 installation.

The ACCC encourages parties to make submissions detailing the costs that they are likely to face in complying with the declaration.

The ACCC encourages parties to also make submissions on whether it would be appropriate to exempt some operators of smaller networks and, if so, what they consider to be the most appropriate mechanism.³

Frontier strongly supports the ACCC's statement that the costs of complying with the declaration will be disproportionately high for small providers such as Frontier.

3.2 Frontier's costs of compliance with the SBAS declaration

Substantive compliance costs

Today, Frontier does not offer a wholesale product to retail service providers, nor does Frontier supply a Layer 2 service.

To implement the SBAS declaration, Frontier would need to develop, test and launch:

- a) a wholesale service for retail service providers for each Frontier Network, noting that not all Frontier Networks use the same technology, and as a result, that at least 3 separate wholesale broadband products would need to be developed;
- b) a Layer 2 service for each Frontier Network, noting that not all Frontier Networks use the same technology, and as a result, that at least 3 separate Layer 2 products would need to be developed;
- c) a business to business order to activate software system, and a new billing system, to permit retail service providers to sell retail products over Frontier Networks;⁴
- d) a point of interconnection for access seekers to access each Frontier Network (noting that these networks were not designed to permit backhaul fibre from multiple providers to interconnect, and so the costs of ensuring technical feasibility to supply an SBAS are likely to be prohibitive for Frontier); and
- e) fault reporting and management tools and resources for the above services/systems.

Frontier would, in effect, need to establish a stand-alone wholesale-only carrier.

Frontier's best estimate is that implementing the SBAS declaration, [c-i-c] [c-i-c]

Administrative costs

To ensure ongoing compliance with the SBAS declaration, Frontier will need to hire new staff to:

- a) manually process orders from access seekers;

³ Page vi, the Draft SBAS Decision.

⁴ Note that third parties like Frontier do not have access to the equivalent NBN system, and that development of the 'generic interface service for retail service providers' mooted by the Commonwealth Government's *Telecommunications Regulatory and Structural Reform* document of December 2014 has not yet started.

- b) manage relationships with retirement village operators;
- c) manage relationships with access seekers;
- d) permit and enable access seeker interconnection with Frontier Networks; and
- e) keep records and ensure compliance with the SBAS declaration.

Frontier estimates ongoing compliance with a SBAS declaration would cost [c-i-c]
[c-i-c]

3.3 Effect on Frontier prices

As Frontier is a small network provider, with no ability to cross subsidise between products, the impact of these costs on Frontier is disproportionately heavy, particularly as Frontier has not previously wholesaled any of its services to retail service providers.

Frontier sees significant competitive pressure on the retail prices for services provided over Frontier Networks, and would struggle to recover these SBAS costs via a price increase. Frontier already faces significant costs in complying with its regulatory obligations, and an added layer of regulation will only increase these costs.

Frontier notes that higher retail prices caused by significant new implementation and compliance costs are not in the long-term interests of end-users. End-users are protected by significant competition to provide network infrastructure to Senior Housing Communities, and competition from wireless and mobile networks.

3.4 Effect on competition

Frontier submits that not exempting small providers like Frontier from the SBAS declaration would have a chilling impact on competition.

[c-i-c] [c-i-c]

Were smaller providers not exempt from the SBAS declaration, Frontier submits that small providers would be at a competitive disadvantage to construct new networks; larger providers who can absorb the compliance costs (or who would not need to incur significant implementation costs) would be at a significant advantage in the market, reducing overall competition and economically efficient investment in telecommunications infrastructure.

This is not in the long-term interests of end-users, who benefit from the price and technological competition of a greater number of diverse providers in the market.

The ACCC notes on page 5 of the Draft SBAS Declaration that:

An access regime must not discourage investment in networks or network elements where such investment is efficient.

Frontier submits that there is sufficient competition in greenfield estates (and brownfield estates undertaking upgrades) to win the right from developers to supply fixed network infrastructure in retirement communities.

Declaring an SBAS will therefore not promote the long-term interests of end-users as it will reduce infrastructure-based competition and does not support economically efficient investment in telecommunications infrastructure.

3.5 Access seekers to Frontier Networks

The ACCC notes at page vi of the Draft SBAS Declaration that there may be “limitations on revenue opportunities due to the small addressable market” in certain developments.

Typically, each retirement community served by a Frontier Network has between [c-i-c] [c-i-c] potential subscribers. Given the small size of the addressable market and the high costs to develop a system to order, activate, interconnect and bill this addressable market, Frontier submits that it would not be economically viable for retail service providers to access the SBAS over Frontier Networks.⁵

If so, declaring an SBAS will not promote the long-term interests of end-users as it will not promote competition in the downstream markets for retail superfast broadband services.

In addition, services are not sold over Frontier Networks by Frontier itself, but by the management of the relevant retirement community. In Frontier’s experience, this model is strongly preferred by retirement community residents. It is unlikely that other retail service providers would be able to sell services over Frontier Networks via these channels, and as such, there may not be significant demand from end-users for services provided over Frontier Networks by other retail service providers. In this case, as above, declaring an SBAS will not promote competition in the downstream markets for retail superfast broadband services.

4 Structure of a small provider exemption

Frontier suggests three possible exemption mechanisms.

4.1 Exemption for providers of telecommunication services to Senior Housing Communities

The special nature of residential aged care and retirement village communities means that certain additional services are usually required in connection with a voice or data service, as listed in paragraph 2.1.

Given that other retail service providers may not offer these specialised services, it is likely that if Frontier was subject to the SBAS declaration, and other entities supplied telecommunications services over Frontier Networks, residents would lose the benefit of Frontier’s experience and additional services [c-i-c] [c-i-c] This is not in the long-term interests of end-users.

In addition, as noted in paragraphs 2.3 and 3.4 above, Frontier considers that the market for the installation of superfast networks in Senior Housing Communities is highly competitive.

Frontier therefore submits that superfast networks supplying end-users in Senior Housing Communities be exempt from an SBAS declaration.

Frontier notes that the Federal Government has legislation governing residential aged care facilities, and each State and Territory has licensing legislation for retirement villages. An SBAS exemption could draw on definitions in such

⁵ Frontier notes that there are only two service providers other than Telstra who supply services over Telstra’s South Brisbane fibre network. As the South Brisbane fibre network covers an entire high-density suburb, it is likely retail service provider demand for access to Frontier Networks (covering a retirement community only) will be even lower (see page 29 of the Draft SBAS Decision). In addition, given the relatively high interconnection and set up costs for an access seeker to sell services over a Frontier Network, it is likely that only larger providers like Telstra will be able to access the SBAS in Frontier Networks.

legislation to determine whether a set of premises is a retirement community that should be subject to the exemption.

For example, the proposed an exemption for (see p 56 of Draft SBAS Declaration):

*a service supplied through an **access multiplexer** located in a **multi-dwelling unit** or a **node** 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 in the same **multi-dwelling unit** or **node** are **business customers, public bodies or charity customers...***

could be sensibly extended to include:

*... **business customers, public bodies or charity customers or senior housing community customers...***⁶

4.2 Exemption for providers with less than 100,000 data services in operation or less than 1% of all data services in operation

The Australian Communication and Media Authority's *Communications Report 2013-2014* (the **ACMA Report**) notes on page 19 that at June 2014, there were:

- a) 12,483,000 internet subscribers in Australia (excluding mobile); and
- b) 33,050,000 internet subscribers in Australia (including mobile).

Given the widespread adoption and continuing price reductions of 4G and Telstra recently announcing mobile speeds of over 1Gbps⁷, fixed-line carriers face significant competition from mobile operators.

A provider with 100,000 services in operation would therefore have the following approximate market share:

- c) 0.80% of internet subscribers in Australia (excluding mobile); and
- d) 0.30% of internet subscribers in Australia (including mobile).

Frontier, which is forecasting [c-i-c] [c-i-c] services in operation within 3-5 years, would then have the following approximate market share:

- e) [c-i-c] [c-i-c] of internet subscribers in Australia (excluding mobile); and

⁶ Senior housing community customers could be defined by reference to existing legislation to mean any resident of:

- a) a 'Retirement Village' as defined under the *Retirement Villages Act 1986* (Vic), *Retirement Villages Act 1999* (NSW), *Retirement Villages Act 1987* (SA), *Retirement Villages Act 2004* (Tas), *Retirement Villages Act 1999* (Qld), *Retirement Villages Act 1992* (Qld), *Retirement Villages Act 1992* (WA), *Retirement Villages Act 2012* (ACT), *Retirement Villages Act* (NT);
- b) a residence or facility owned, managed or operated by an 'Approved Provider' as defined by the *Aged Care Act 1997* (Cwlth); or
- c) any other residence, facility or community owned, managed or operated for one or more purposes, which includes the provision of retirement accommodation or aged care.

Note that limb c) is intended to capture other retirement communities (for example, motor home retirement communities that are specifically excluded from *Retirement Villages Act 1999* (Qld)) but to exclude aged care provided to individuals or couples in private homes rather than specialist facilities.

⁷ See <https://exchange.telstra.com.au/2015/11/09/1gbps-the-future-is-here/> dated 9 November 2015.

f) [c-i-c] [c-i-c] of internet subscribers in Australia (including mobile).

When compared to Telstra's almost five million fixed-line internet subscribers⁸ - over 38% of internet subscribers in Australia (excluding mobile), Telstra's market share is over [c-i-c] [c-i-c] times higher than Frontier's.

As such, Frontier considers that an exemption from the SBAS declaration should be available for a provider that has less than either:

g) 100,000 internet subscribers; or

h) 1% of all internet subscribers (excluding mobile).

The benefit of an exemption that operates by reference to a percentage of the total number of internet services in operation is that it automatically scales to the total size of the market.

4.3 Exemption for providers who do not currently offer Layer 2 services

As noted by the ACCC on page 66 of the Draft SBAS Decision, implementation costs will be significantly higher for providers who do not currently offer a Layer 2 product.

Ongoing compliance costs are also likely to be higher for providers offering a wholesale or Layer 2 service for the first time.

Frontier submits that providers who do not currently offer a Layer 2 product could be exempt from an SBAS declaration as the impact on these providers, and the consequent reduction in competition, would be larger than for established providers.

Such an exemption could operate on a network-by-network basis, such that if a provider has two networks, one of which is Layer 2, and one which is not, the exemption would only apply to the non-Layer 2 network.

This exemption could also work when combined with a 'small provider test' as proposed at 4.2.

⁸ Page 21, ACMA *Communications Report 2013-2014*.