



Superfast Broadband Inquiry

Australian Competition and Consumer Commission

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4 September 2020

Dear Inquiry Team

**Superfast Broadband Inquiry – Southern Phone Company submission**

Southern Phone Company (**SPC**) welcomes the opportunity to respond to the ACCC's XIC inquiry into the declaration of the Superfast Broadband Access Service (**SBAS**) and Local Bitstream Access Service (**LBAS**) pursuant to Part XIC of the *Competition and Consumer Act 2010* (Cth).

SPC considers that the continued declaration of the SBAS and LBAS services, for at least a further 5 years, is important to supporting the continued growth of competition and transparency in the provision of high-speed broadband services. Continued access regulation of SBAS and LBAS, which are key inputs into retail service provision to areas and new developments that are served by non-NBN networks, will ensure that the benefits of retail competition are delivered to as many consumers as possible.

Continued declaration, in our view, is the most efficient way to ensure that access seekers are able to obtain SBAS/LBAS from a range of infrastructure owners on reasonable terms, including regulated price and non-price terms, which allow access seekers to then deliver retail broadband services that are attractive to consumers.

Further information is set out in the attachment.

Should you have any questions in relation to this submission, please feel free to contact us.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'David Joss', with a stylized flourish at the end.

David Joss  
CEO  
Southern Phone Company



## Attachment

### Background

SPC was formed in 2002 with the benefit of funding from the Australian Government's Networking the Nation scheme and a vision to deliver more affordable telecommunications services to regional communities.

Since that time, we have grown to be one of the largest providers of telecommunications services in regional Australia with more than 100,000 customers across Australia. In December 2019, we were acquired by AGL Energy.

We provide retail services utilising the physical networks of NBN Co and various other infrastructure owners, including using services that are currently declared. We hope to continue to do so in the future.

### Service Description

1. Do you consider that the LBAS service description as declared in 2012 remains current and appropriate? Please explain the reasons for your view.
2. Do you consider that the SBAS service description as declared in 2016 remains current and appropriate? Please explain the reasons for your view.
3. Should the LBAS and SBAS service descriptions be combined under a single declaration instrument?

We consider that the LBAS and SBAS services should be combined into a single declaration as this would be administratively simpler and aligns with the ACCC's approach in its May 2017 Final Access Determination to consider the pricing for these services together.

Administrative simplicity is a key issue for retailers given the significant complexity associated with access arrangements. Given the complexity associated with access to infrastructure, dealing with multiple infrastructure owners/operators and the legislation by which it is regulated, the consistency that arises from the declaration process, and the resulting final access determinations, is commercially beneficial to the ability of retailers to offer competitive services to a broader range of customers across a broader geographic area.

The declaration should permit access seekers to obtain services at multiple speed tiers, including at least 25/5 Mbps and 50/20 Mbps, where such services are capable of being provided by the network. The 50/20 speed is already the most popular speed tier across NBN's

network.<sup>1</sup> The current declarations refer to services at speeds of at least 25/5 and 30/1. In many cases, the networks are capable of providing significantly faster speeds, and in our view, it would further promote competition in retail markets if the declaration and access determinations supported access seekers being able to access services at faster speeds.

## Retail competition in broadband services

5. How has the NBN affected network competition in high-speed broadband services markets?
6. What is the extent of competition at the wholesale level of the superfast broadband services market, and what is the risk of competition not developing in the future?
7. Have the LBAS and SBAS declarations affected competition in the retail market for nonNBN superfast broadband services?
8. Are there geographic areas where competition at the wholesale or retail levels is considered to be effective, if so where are these areas and why is competition considered effective?

The retail market for high speed broadband services in Australia continues to be highly concentrated despite the rollout of the NBN network. Over 84% of connections on the NBN network are with one of the three largest providers.<sup>2</sup>

The NBN covers a large percentage of Australia's population, but not all of it, and the extent to which its network will continue to expand in the future is uncertain.<sup>3</sup> As is identified in the consultation paper, there are, and will continue to be, a large number of customers that are not served by the NBN network.

In our view, the existing declarations of the SBAS and LBAS services have been important in supporting the development of retail competition for all customers, including those not served by the NBN network. In particular, we observe that SPC, and other retailers, have been able to expand through developing retail products that are provided to various customer groups, including customers served by networks other than the NBN network.

By way of example, SPC has entered into a wholesale agreement with LBN Co to use its network in order supply broadband services to customers connected to that network. In our view, the existing declarations and Final Access Determination assisted us in being able to reach this

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<sup>1</sup> The NBN Wholesale Market Indicators Report for June 2020 records, in table 5, that 59% of services are for the 50/20 speed tier.

<sup>2</sup> The NBN Wholesale Market Indicators Report for June 2020 records, in table (i), that 84.02% of services are operated by the largest three providers. 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.

<sup>3</sup> NBN corporate Plan 2020-23 observes that it will be "*completing the network build to deliver a minimum of 11.5 million RTC [Ready to Connect] homes and businesses by 30 June 2020*", at page 12.



agreement with LBN Co and thus to be able to offer retail services to a broader range of customers.

In cases where customers are served by multiple networks, the ability of retailers to obtain access to more than one of those networks, in our view, promotes both wholesale and retail competition. For example, as technology and usage patterns evolve, there will be considerable scope for innovation and the supply of wholesale and retail products that are better tailored to customers. The ability of retailers to access multiple networks would assist that innovation. One example of this is the provision of services with different speed tiers, including different download and upload combinations.

### Continuing requirement for declarations

13. Do proposed legislative changes regarding the regulation and supply of superfast broadband services enhance or diminish the need for declaration of the LBAS and/or SBAS?

14. Do you consider that continued declaration of the:

a) LBAS

b) SBAS

will promote competition and the economically efficient use of infrastructure? Please explain the reasons for your view.

In our view, the continued declaration of the SBAS and LBAS, for at least the next 5 years, is important to the future development of retail competition in high speed broadband services. This includes the ability of SPC to continue to offer high quality services at competitive prices to both existing and new customers in existing and new areas.

By way of example, as is set out above, SPC has entered into a wholesale agreement with LBN Co to use its network in order supply broadband services to customers connected to that network. Ongoing declaration would provide us with commercial certainty as to the terms on which we can continue to supply high speed broadband services to those customers, even after the expiry of existing access agreements.

For the reasons set out above, we observe that there are, and will continue to be, a large number of customers, including in new developments, that are served by networks other than the NBN, including many that are not served by the NBN and will not be overbuilt by the NBN in the future. The SBAS and LBAS declarations are important in allowing SPC to provide high speed broadband services to those customers on competitive terms, and thus to expand our customer base and footprint.

In this respect, we do not consider there is any easy way to distinguish between different geographic areas and do not agree that competition from non-NBN network operators is limited to point to point fibre networks in business districts. By way of example, residential and commercial development is a dynamic and ongoing process involving a range of construction, including traditional single family homes and multi-dwelling mixed use developments, across a range of geographic areas.

As was noted in the discussion paper, the government's Telecommunications in New Developments policy, which covers a range of developments including greenfield and brownfield sites, single and multi-dwelling units and various uses including residential, business, commercial and industrial<sup>4</sup>, is under review. The proposed updated policy observes that effective competition already exists between network providers for new developments, and that in many areas there will be only one provider (which may not be NBN Co), thus underscoring the need for an effective means to ensure that retailers can access non-NBN networks on reasonable terms. The policy states:

*there will be no special rules relating to the competitive provision of telecommunications infrastructure in new developments or overbuilding of one network by another. In an **open and competitive market like Australia's**, where developers are free to choose which carrier they wish to use and carriers are generally free to make commercial decisions, such rules have no merit going forward. **To the extent market circumstances dictate an area is most efficiently serviced by one fixed-line network, this should be the outcome of normal commercial forces and does not need to be mandated by Government policy.***

*The Government **strongly supports competition in all telecommunications markets and between all providers, including NBN Co and alternative carriers servicing new developments.** In the case of telecommunications in new developments, **this includes competition for the market, as often the first fixed-line provider in a development may be the only such provider**"<sup>5</sup> [emphasis added]*

Furthermore, as is set out above, in cases where customers are served by multiple networks, the ability of retailers to obtain access to more than one of those networks, in our view, promotes both wholesale and retail competition.

It remains too early to tell whether the recent legislative changes diminish the need for ongoing declaration of these services. In the absence of continued declaration for at least 5 years, the uncertainty associated with the new legislation would hamper the ability of small retail service providers such as SPC to continue their development. The business case for expansion plans are often premised on a timeframe of at least 5 years, and uncertainty as to the regulatory environment over that period would be likely to mute competitive activities.

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<sup>4</sup> Telecommunications in new developments policy – 28 April 2020, at page 4 - 5.

<sup>5</sup> Telecommunications in new developments policy – 28 April 2020, at page 10.



Such uncertainty arises on a number of fronts. For example, we observe that the statutory infrastructure provider (**SIP**) legislation and carrier licence conditions (**CLCs**):

- are untested and may require ongoing refinement, which will take time;
  - will not provide the same certainty as to the terms of access, including as to pricing, as that which arises from a final access determination under a declaration;
  - will not apply as broadly as the SBAS and LBAS declarations;
  - will not apply uniformly across networks creating administrative complexities that do not arise under the single access determination in respect of the existing SBAS and LBAS declarations;
  - do not presently provide for access to services at download speeds higher than 25 Mbps; and
  - are not well suited to change arising from innovation in what remains a dynamic market.
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