



# **Superfast Broadband Access Service – access determination inquiry discussion paper**

Submission by the Australian Communications Consumer Action  
Network to the Australian Competition and Consumer Commission

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Australian Communications Consumer Action Network (ACCAN)  
*Australia's peak telecommunications consumer organisation*

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## About ACCAN

The Australian Communications Consumer Action Network (ACCAN) is the peak body that represents all consumers on communications issues including telecommunications, broadband and emerging new services. ACCAN provides a strong unified voice to industry and government as consumers work towards communications services that are trusted, inclusive and available for all.

Consumers need ACCAN to promote better consumer protection outcomes ensuring speedy responses to complaints and issues. ACCAN aims to empower consumers so that they are well informed and can make good choices about products and services. As a peak body, ACCAN will represent the views of its broad and diverse membership base to policy makers, government and industry to get better outcomes for all communications consumers.

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# Contents

Introduction .....	4
Recent case studies from SBAS and FAB networks.....	5
SBAS Pricing .....	6
South Brisbane and Velocity Estates Networks – FAB service.....	7
Other issues for consideration .....	8
Regulated price components.....	8
Regulated access prices .....	8
Non-recurring charges .....	9
Non-price terms and conditions .....	10
Reporting service quality to access seekers .....	10
Exemptions from the SBAS access determination.....	12
Small network exemption.....	12
Competition-based exemption.....	12
Considering infrastructure-based competition exemption.....	12
Potential thresholds for exemption.....	13
Implementing exemptions in practice.....	13
Framework for implementing exemptions.....	14
Duration .....	15

# Introduction

ACCAN thanks the ACCC for the opportunity to comment on the Superfast Broadband Access Service (SBAS) access determination inquiry discussion paper. In July 2021, the ACCC varied and extended the SBAS declaration to regulate non-NBN fixed line superfast broadband services until 28<sup>th</sup> July 2026. This ensures that retailers of broadband services have the right to access SBAS. Following this the ACCC made an interim access determination (IAD) to maintain the current price and non-price terms until a new SBAS Final Access Determination (FAD) is made.

To date, SBAS prices have been regulated in the form of anchor prices benchmarked to NBN pricing for similar wholesale access services. We consider this to be the most appropriate pricing methodology which should be continued in the future SBAS FAD. However we believe the benchmarking could be extended to cover more products offered by SBAS providers, rather than solely the 'anchor' product. In regard to regulated access prices for Telstra's Fibre Access Broadband (FAB), ACCAN considers that these should be adjusted to better reflect the value end users are receiving from the FAB services, until the networks' transfer to Uniti has been completed.

ACCAN is concerned about both small network and competition based exemptions from the Standard Access Obligations (SAOs). In a situation where a network provider is exempt from the SAOs, price and non-price terms of access would be subject to commercial negotiation. The current small network exemption should be removed as the exemption allows for the possibility for vertically integrated network providers to charge prices in excess of competitive market rates. This situation would cause significant consumer harm. Competition based exemptions may be feasible, however we would prefer to see these provided on a case-by-case basis to ensure that effective competition between network providers exists prior to exemptions.

# Recent case studies from SBAS and FAB networks

## Case study 1: Robert, Telstra South Brisbane Network

Robert\* called ACCAN in May 2021. He lives in South Brisbane and was paying Exetel \$40 a month for his internet service. He had been informed that his Exetel service would be disconnected, and he needed to find a new provider. He told ACCAN that he can't afford the cost of a Telstra service as he is on the Carer Pension. He believed that if he was on NBN he'd be happy because he would have choice of retailer, but he felt that currently Telstra could charge what they want and considered them a monopoly. As he has to do many things online, such as fill out his mother's Centrelink forms as she has a disability, the internet is a necessity, yet it is too expensive for him.

## Case study 2: Cameron, Telstra Velocity Network

In March this year, Cameron\* called ACCAN on behalf of his wife who runs an occupational therapy small business. They had been on Telstra Velocity for one and a half years. He told ACCAN that the business had expanded to 3 staff, and they required the internet for email and cloud services, however their internet service was not keeping up with their needs. The only option available to him was to upgrade their Telstra service and pay \$110 a month. As a small business this is a large cost to them. He told ACCAN that an alternative mobile solution was not a viable option as the mobile coverage is not good enough.

## Case study 3: Tim, LBN Co

Tim\* emailed ACCAN in August 2021 and explained that for about 3 months he, and many other consumers on LBN Co's network had experienced small dropouts and packet loss. The dropouts made anything that required constant connectivity frustrating to use, particularly during peak hours. Tim had gone through all the necessary steps with his internet service provider (ISP), and the ISP had informed him that the issues were with the wholesaler. Tim also flagged that the retail price of the service is 10% higher than services on NBN's network and he feels that he is paying more for a lesser service because there is no alternative.

Tim told ACCAN that other residents in his building, with different ISPs, on LBN Co's network were experiencing the same problems. He is frustrated that there is no obligation for the wholesaler to resolve the issue. Tim is unable to change the wholesale provider and told ACCAN that even if the residents in the building agreed to fund the work needed to change the network to NBN, NBN will refuse to do it because they already have fibre installed at the premises.

\*Names changed

# SBAS Pricing

*1. Should regulated SBAS prices be set in line with NBN wholesale access prices and, if not, what alternative price approaches should we consider? For example, should we consider using the retail minus methodology?*

In 2016 ACCAN supported the SBAS Final Access Determination (FAD) adopting an anchor price benchmark approach for setting prices for the SBAS and Telstra's FAB service.<sup>1</sup> Our view at the time considered that specifying wholesale access prices based on residential grade products (25/5 Mbps for the SBAS and 30/1 Mbps for the FAB service) of equivalent NBN broadband services and Telstra wholesale ADSL services respectively, would allow for more retailers to be able to sell the services nationally, increasing retailer choice on the networks.

Setting a regulated wholesale price for superfast broadband access services creates a safeguard for consumers, to ensure that they can access an essential service at an affordable price. This ensures that end users on SBAS networks are no worse off than those residing in NBN service areas. ACCAN continues to support regulated SBAS prices set in line with NBN wholesale access prices. Doing so not only ensures that consumers aren't disadvantaged by the network their premises is connected to, but it avoids the weaknesses of regulating prices via a building block model (BBM) approach, such as the complexity and high regulatory cost of establishing a BBM across multiple networks or regulating with a retail-minus costing approach which could potentially entrench monopoly prices.

*2. If SBAS prices continue to be set directly in line with NBN wholesale access prices, should the regulated price continue to be inclusive of NBN Co's intertemporal bundling/discount offers, or based on prices published in NBN Co's Price List excluding such offers?*

Given the current process with NBN's Special Access Undertaking (SAU) variation,<sup>2</sup> it is difficult to know how prominently intertemporal bundling and discount offers will feature in NBN's access pricing in the future.

If SBAS prices are no longer inclusive of NBN Co's intertemporal bundling and discount offers, this would undermine one of the benefits of setting prices in line with NBN's access prices as it could prevent RSPs from pursuing national price strategies. Similarly, it could leave SBAS end users worse off than those on the NBN. That said, we recognise that NBN may have a greater ability to offer temporary discounts as unrecovered losses can be pooled into their Initial Cost Recovered Account to be recovered later. ACCAN is unable to say whether setting the regulated prices to be inclusive of NBN's discounts is feasible for SBAS networks, or to what extent it may prevent SBAS networks from investing in their networks in the future, yet these are factors which should be considered in the decision to set regulated prices inclusive of bundling and discount offers.

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<sup>1</sup> <https://accan.org.au/files/Submissions/ACCAN%20submission%20to%20ACCC%20on%20SBAS%20and%20LBAS.pdf>

<sup>2</sup> <https://www.accc.gov.au/regulated-infrastructure/communications/national-broadband-network-nbn/nbn-co-special-access-undertaking/replacement-module-process-under-the-current-sau-notice-to-nbn-co>

### *3. Should the Regional Broadband Scheme (RBS) levy continue to be able to be passed through to RSPs and users or absorbed by SBAS providers?*

Ideally the RBS should be funded by the Federal Government, as requiring the scheme to be funded through end users creates a regressive tax because it places a disproportionately higher burden on low income consumers. However, given the way the RBS scheme has been designed, we consider that to ensure competitive neutrality, SBAS networks that are required to pay the RBS levy should be able to pass the fee through to end users, since NBN also passes the RBS levy onto its end users.

Networks that service less than 2,000 chargeable premises should not be able to pass through the RBS levy amount as they are not required to pay the fee. Additionally, there needs to be consideration for the concession period that exempts the first 25,000 residential and small business premises from each carriers' network, or the first 55,000 recently connected greenfield premises for carriers operating greenfield networks for the first five financial years.

## South Brisbane and Velocity Estates Networks – FAB service

### *4. How should we approach regulated wholesale access pricing for the FAB service for the period while the service is still operating and regulated under the 2022 SBAS FAD?*

Currently end users on Telstra's networks pay the same price as if they were connected to the NBN, yet they receive slower upload speeds. For example, an end user on Telstra's network receives 100 Mbps download speeds and 5 Mbps upload speeds for \$110 per month, whilst end users on the NBN can receive up to 100 Mbps download speeds and 17 Mbps upload speeds for the same price. ACCAN regularly hears from consumers on Telstra's network who are frustrated by the slow upload speeds available to them, particularly during COVID-19 lockdowns when many consumers were required to work from home and therefore heavily reliant on sufficient upload speeds. Consumers value upload speeds and end users on Telstra's networks are receiving worse value for money.

ACCAN considers that the wholesale access pricing for the FAB service for the period while the service is still operating and regulated under the 2022 SBAS FAD should be adjusted to account for the significantly lower upload speeds available on Telstra's networks.

### *5. Do you support the regulated access price for the FAB service being set at the same level as the equivalent regulated SBAS and NBN services? Please explain why in detail, including the appropriate speed tier at which to set the regulated access price for the FAB service.*

ACCAN supports setting the FAB service at the same level as the equivalent SBAS or NBN service (such as setting the FAB service wholesale access price for the 100/5 speed tier at the same level as the SBAS 25/5 speed tier) as this will reduce costs for end users until the network can be regulated under the 2022 SBAS FAD. ACCAN hopes this will have a positive effect in terms of expediting the migration of the network to Uniti, with the anticipated effect of increasing retailer choice on the network.

Until the network can be regulated under the 2022 SBAS FAD, the 100/5 Mbps FAB service should be set in line with the 25/5 Mbps NBN service, and the 30/1 Mbps Telstra service should be priced at the 12/1 Mbps NBN service. Until the networks can deliver like-for-like services, end users on these networks should not be worse off due to the location of their premises.

## Other issues for consideration

### Regulated price components

*6. Should we take a different approach to the product components that are price regulated and/or to the structure of regulated charges in the 2022 SBAS FAD?*

Given the current processes taking place regarding NBN's SAU Variation, it is not clear whether NBN's product components will be separated by access and usage charges in the future. If SBAS networks prefer a different price structure for regulated wholesale charges, this could be achieved, however there needs to be an equivalency of outcomes for consumers on these networks as to those on the NBN.

### Regulated access prices

*7. Should only the current anchor price points be regulated, or should prices be set for a range of additional speed tiers above and / or below (e.g., at 12 Mbps) the current anchor points?*

ACCAN considers that prices should be set for a range of additional speed tiers both above and below the current anchor points. Over the duration of the FAD, the ability for the regulated price of the 25/5 Mbps service to restrain the price of higher speed tiers is likely to diminish as consumers, particularly larger households, require higher speed services to meet their needs. Indeed, the proportion of end users on speeds of 25 Mbps or below has been falling,<sup>3</sup> demonstrating changing consumer preferences.

Setting regulated prices across a range of speed tiers will also encourage RSPs to operate across all networks with national plans for different speed tiers. Regulation that applies solely to an anchor product is not likely to fully address the barriers that RSPs face in offering services in these areas, particularly if demand for the anchor product is low. We also consider that there needs to be a regulated price for a voice only/low use internet product. This will act as a safeguard for consumers who only require a voice-only connection.

*8. If prices continue to be regulated at a single anchor point for the SBAS, is 25/5 Mbps still an appropriate anchor point for (non-FAB) prices?*

As mentioned above, prices should be set for a range of speed tiers, ACCAN considers that speeds up to 100 Mbps should be set in line with NBN's prices. If a single anchor price is adopted, we consider that the 50/20 speed tier is the most appropriate anchor point for non-FAB prices. Regulating SBAS based on the 50/20 speed tier will create a more effective safeguard as opposed to the entry level product, where demand for the product is lower.

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<sup>3</sup> <https://www.accc.gov.au/regulated-infrastructure/communications/national-broadband-network-nbn/nbn-wholesale-market-indicators-report/september-quarter-2021-report>



## Non-recurring charges

*9. Should any non-recurring charges be regulated under the SBAS FAD? If so, please explain why and how the regulated charges should be set.*

Non-recurring charges such as transfer fees which are not cost-reflective can prevent retail competition through creating a barrier to switching. Additionally excessively high connection costs could prevent low income households from connecting to a network. In the event that network providers of SBAS and FAB services are found to be charging excessively high non-recurring charges then the non-recurring charges should be set in line with NBN's equivalent charges.

## Non-price terms and conditions

Performance and reliability of services are fundamentally important. ACCAN hears from consumers who are being let down by their SBAS network provider when it comes to the quality of the service they are receiving; there is currently a lack of strong incentives for performance of services at the network level. Latest data from the ACMA shows that fixed-line broadband (non-nbn) services receive the highest number of complaints per 10,000 services in 2020-21.<sup>4</sup>

The Government is currently consulting on a draft Determination on standards, rules and benchmarks for Statutory Infrastructure Providers (SIPs).<sup>5</sup> It is ACCAN's preference that minimum service standards are set via the Determination. However, if the Determination does not deliver appropriate service standards, then the SBAS non-price terms and conditions could be considered as a suitable option to embed service standards in the SBAS FAD in the future.

*10. Should all the non-price terms for the SBAS continue in the same form? If not, how should they be changed and why?*

ACCAN considers that all non-price terms for the SBAS should continue in the same form as those presented in the 2021 Interim Access Determination.

## Reporting service quality to access seekers

*11. Should SBAS and FAB service network providers be required to disclose key network service quality and reliability indicators to current or potential RSPs? If so, which indicators would promote competition and improve quality and reliability of service outcomes for RSPs and end-users?*

Disclosure of key network service quality and reliability indicators to current and potential RSPs is important to enable RSPs to know what level of service they can provide consumers, increasing certainty of quality and potentially encouraging more retailers to resell services from the network. Providing information disclosure in relation to service quality may act as an incentive to improve service quality where network competition exists.

Key indicators which would promote competition and improve quality and reliability of service outcomes for RSPs and end users are:

- Timeframes for fault rectification, new connections, existing connections and appointment keeping.
- Availability metrics including the number of minutes that a customer can expect to be without services in a year and incidence of faults.
- Network performance metrics.
- Whether compensation will be paid when service standards are not met, and the amounts available if applicable.

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<sup>4</sup> <https://www.acma.gov.au/publications/2021-04/report/telco-complaints-handling-performance>

<sup>5</sup> <https://www.infrastructure.gov.au/have-your-say/public-consultation-draft-standards-rules-and-benchmarks-statutory-infrastructure-providers-sips>

ACCAN considers that the New Zealand Commerce Commission's Fibre Information Disclosure requirements in Chapter 7 *Quality metrics and performance measures* provide a comprehensive list of requirements relating to quality and performance measures.<sup>6</sup> ACCAN would support similar information disclosure requirements for SBAS networks. Importantly, metrics should be disaggregated by geography if possible, such as by POI area.

In addition to facilitating network competition, we consider that information on service quality and reliability indicators should be made publicly available to increase accountability. Requiring this information to be made public will also benefit potential tenants and home buyers as they would be able to check the service quality they can expect at a premises prior to moving into it.

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<sup>6</sup> [https://comcom.govt.nz/\\_data/assets/pdf\\_file/0033/271959/Fibre-Information-Disclosure-Final-Decisions-Reasons-Paper-30-November-2021.pdf](https://comcom.govt.nz/_data/assets/pdf_file/0033/271959/Fibre-Information-Disclosure-Final-Decisions-Reasons-Paper-30-November-2021.pdf)

# Exemptions from the SBAS access determination

## Small network exemption

### *12. Should the small network exemption remain, be changed or removed and why?*

The small network exemption should be removed. Infrastructure owners with sufficient market power have the incentive and ability to be able to maximise their profits by charging prices in excess of competitive market rates. Smaller networks are no exception to this, and therefore we are concerned that a situation may arise in which islands of smaller networks, for example in new developments, that face limited competition that may cause significant consumer harm.

### *13. Have changes in the costs or number of small network operators changed since 2017 in a way that should impact the future of such an exemption?*

ACCAN is unable to say whether there has been a change in the costs or the number of small network operators since 2017.

## Competition-based exemption

### Considering infrastructure-based competition exemption

### *14. Do you support a framework to provide an exemption from the Standard Access Obligations where there is effective competition with or between fixed line networks?*

In principle we agree that where there is effective competition between fixed line networks there is merit in removing the SBAS standard access obligations. However, ACCAN is unaware of any situations where a consumer has a choice between network provider that doesn't involve significant switching costs. As NBN is exempt from its obligation to connect premises that are already connected to another network,<sup>7</sup> residents would have to organise the removal of the original network before NBN is required to connect their premises, as exemplified in case study 3. This may require the consumer to become disconnected from a network for a period of time before NBN is installed – a significant deterrent to switching network operators. In a situation where the end user is a renter or lives in a premises with a body corporate this option may not even be feasible. Unless consumers are able to switch network providers with minimal costs, we believe that competitive pressure from alternative network providers will be dampened.

Establishing a framework to provide an exemption for the SAO may be complex to implement and monitor, therefore we would only support this approach if there was sufficient evidence of end users benefitting from effective competition between fixed line networks.

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<sup>7</sup> Telecommunications (Statutory Infrastructure Providers – Circumstances for Exceptions to Connections and Supply Obligations) Determination 2021 <https://www.legislation.gov.au/Details/F2021L00651>

## Potential thresholds for exemption

*15. Would a framework that included localised network areas or developments being eligible for exemption once it meets a competition threshold be workable?*

ACCAN considers that exemptions for SBAS SAOs should be done on a per-premises or area basis where there are at least two competing fixed line superfast broadband networks already supplying services. Exemptions should be granted on a case by case basis following review from the ACCC.

*16. If a competition threshold is introduced, what number and type (i.e., NBN and non-NBN) of competing networks would be appropriate to give rise to an exemption?*

There needs to be a minimum of 2 networks available in a premises before the network provider could be exempt from its SAO for that premise. It is ACCAN's preference that one of the two competing networks is NBN given that NBN will remain subject to the Standard Access Obligations and regulated access prices.

*17. Would defined geographic areas (e.g., by postcode, local government area or another type of geographic boundary) be appropriate for an ex ante exemption and, if so, in which areas are you aware of a sufficient degree of competition now or in the foreseeable future?*

We are concerned that defining geographic areas by postcode or local government area may not accurately reflect the state of competition that consumers currently experience.

*18. Would you prefer a threshold-based exemption or a geographic area-based ex ante exemption?*

We do not prefer an ex ante exemption. As mentioned previously, network providers should have to provide evidence to the ACCC that they operate in a premises where at least one other network is capable of supplying SBAS services before obtaining any exemption.

## Implementing exemptions in practice

*19. Are there likely to be practical issues from implementing a competition-based exemption that would arise once an area becomes exempt from SBAS? If so, please explain why.*

The practical implications of a competition-based exemption will depend largely on how the framework is implemented. For example, the consumer impact of a network terminating access agreements with RSPs following an exemption may be mitigated somewhat if the competing network is the NBN, given that NBN has a significant amount of retailer choice. This is because if a network terminated a contract with an RSP, it's likely that the RSP also sells services over the NBN, allowing the end user to continue to purchase from their preferred retailer. That said, a situation where a network terminates an agreement with an RSP is likely to result in significant service disruptions for end users and there needs to be safeguards such as timeframes for informing consumers of this situation.

Another implication of implementing a competition based exemption is the uncertainty this may create for RSPs seeking to sell services over alternative networks. This may create a barrier to forming an agreement with a network if there is a possibility that the agreement can be terminated upon becoming exempt.

*20. Would the application of SBAS to some areas of a providers' network and not others be costly for the infrastructure owner to implement or manage?*

It is likely that the application of SBAS to some areas of a provider's network and not others would introduce costs if a network provider changed the pricing strategy on the non-SBAS areas of the network. However, the network provider would only do so in the situation where they considered the change to provide a net benefit.

## Framework for implementing exemptions

*21. If we implement a competition-based exemption framework, should we only do it during the more standard inquiries prior to the expiry of a declaration or FAD; or rely on an ad hoc variation inquiry process for exemptions during a FAD period?*

ACCAN sees merit in a less formal, consent based exemption framework without the formality of a declaration/FAD inquiry process, if workable. The ACCC could set the required conditions for a network to be exempt and network providers could request exemption by providing evidence that an area or premises meets the required conditions.

## Duration

*22. Do you support the term for the 2022 SBAS FAD aligning with the expiry of the SBAS declaration (28 July 2026)?*

ACCAN supports the term of the 2022 SBAS FAD aligning with the expiring of the SBAS declaration.