

# **Superfast Broadband Access Services (SBAS) – draft Final Access Determination**

## **ACCC**

**21 April**

**Non-confidential**

## **Superfast Broadband Access Service (SBAS) Draft Instrument dated 23 March 2023**

Uniti Group Limited (**Uniti**) and its related bodies welcomes the opportunity to make this submission to provide input to the Australian Competition and Consumer Commission's (**ACCC**) exposure draft of its SBAS Final Access Determination (**Draft FAD**) instrument.

### **Introduction**

Throughout this submission Uniti will make reference to the *Superfast broadband access service – access determination enquiry, Draft Decision, October 2022 (Draft Decision)*.

The Uniti Group comprises a number of licensed carriers whom, in aggregate, operate under the Opticomm brand, and build, own and operate broadband networks over multiple technologies (including FTTP, HFC, FTTN) providing superfast broadband services, including SBAS, as defined in the Draft Decision and the Draft FAD.

Uniti is a public, Australian registered company with shareholders (interests being held through controlled entities) being Morrison & Co (30%), Brookfield (50%) and Commonwealth Superannuation Corporation (20%). Opticomm, a direct competitor to the National Broadband Network company (**NBN**), in recent times has achieved significant growth in all network and business metrics and is a viable and efficient competitor to NBN.

The emergence and growth of Uniti and the effective competition Uniti has introduced to NBN has been achieved under the current SBAS FAD. In recent years there are numerous other private companies which have emerged and are building SBAS networks and providing SBAS in competition with Opticomm and NBN. This has been achieved under the current SBAS FAD. Today, the SBAS network operators, including Opticomm (**SBAS Operators**), are predominantly providing SBAS on pricing terms substantially equivalent but not identical to NBN.

**It is Uniti's view the current SBAS FAD has achieved the stated purpose and provided the desired long-term interests of end-user outcomes (LTIE).**

**It is Uniti's firm view due to this outcome the proposed changes to SBAS Pricing contemplated at Section 3.1 of the Draft Decision are not required.**

**It is Uniti's firm view due to this outcome the proposed changes contemplated at Section 3.2 of the Draft Decision are not required.**

**Uniti is supportive of the decisions at Sections 3.3 and 3.4 of the Draft Decision**

## Overview

In considering Uniti's views and recommendations (as above) and the arguments for this position provided by Uniti in this submission, there are a number of material matters which should always be considered to support the recommendations made. Uniti believes these matters are considerations which should be paramount for the ACCC in considering any change to the current FAD and the proposed expansion in regulation in the Draft FAD, namely:

**Economics:** The relative economics of the SBAS market participants compared to NBN, the proposed benchmark. There is a significant divergence between NBN and SBAS Operators largely driven by NBN government sponsorship, ownership and government supported access to debt and equity funding. There is significant difference in market share, market power, size, scale, network footprint and connected customers which contributes significant market power and purchasing power to NBN.

The size and scale of NBN with high proportion of fixed costs means small unit price movements provide significant absolute growth in revenues and earnings. SBAS Operators are all recent start-ups who have had to access private debt and equity markets. They have not had the benefit of access to low cost government equity. They have not had the ability to raise low cost debt supported by government guarantees or government ownership. They have not received billions of dollars in grant funding or additional government equity to expand networks or upgrade legacy networks. SBAS Operators have similar but not identical network designs with proportionally higher capital and fixed operating costs than NBN particularly when compared to earnings metrics.

NBN cost of equity is significantly lower than SBAS Operators as is the NBN WACC. And against this backdrop, NBN continues to receive government grants and equity injections as evidenced by the ~\$480M grant to support NBN wireless upgrades (already funded by the RBS Levy) and the ~\$4B Equity for FTTP network upgrades from FTTN. NBN continues to receive grants from the Commonwealth and State Governments toward operational and construction costs of networks.

The Productivity Commission published in October 2022, a comprehensive review into the competitive neutrality of NBN and some salient points from this study are:

- NBN government provided debt of \$19.5B in December 2016 at a fixed rate of 3.96% when the prevailing benchmark at that time was twice that amount, this has provided \$1.7B in interest savings to June 2021 - and growing.
- The NBN market sourced debt of \$27.5B achieved saving in interest costs of more than \$300M in FY22 simply due to government ownership – and growing.
- NBN has not achieved a commercial rate of return on assets from its inception and has not had target rates of return commensurate with the cost of capital for a business of its nature.

### **Is it reasonable to expand SBAS Pricing regulation as proposed in the Draft Decision (Section 3.1) against the benchmark being NBN?**

**Competition.** The significant **Economic** differences between NBN and SBAS Operators and the continued government ownership of NBN is limiting competition with NBN. There is competition to NBN today by SBAS Operators, albeit limited to more lucrative markets because of the **Economic** differences. Increased regulation of SBAS Pricing as proposed in the Draft Decision will reduce the ability for SBAS Operators to continue to compete and will discourage new market entrants. SBAS Operators who may be perceived to be operating exclusive SBAS networks are subject to competition and perceived exclusivity is not occurring. SBAS Operators are or are at risk of being overbuilt by another SBAS network if pricing is excessive. Technology competition also exists from operators who are not subject to the regulation imposed on SBAS Operators via the SBAS FAD, RBS Levy and NDO. The technology competitors have better **Economics** due to regulation. NBN has better **Economics** due to government ownership and a near market monopoly. The ability for SBAS Operators to adopt monopoly pricing practices in perceived exclusive network footprints is not possible due to:

- NBN and SBAS Operators are overbuilding existing SBAS networks where commercial opportunities are evident - in particular, if pricing is considered above market. NBN has recently secured an equity injection from the government of circa \$4B to build FTTP networks of which a

portion is overbuilt. TPG in its submission to the Draft Decision in December 2022 sought an exemption from the SBAS FAD due to the extent of NBN overbuild of certain networks including TransAct & Pipe Networks. Opticomm is regularly being overbuilt by other SBAS Operators. Today Opticomm has ~55,000 end points where two or more SBAS are provided and the majority of this overbuild is by NBN.

- There is technology competition. Fixed wireless access (FWA) and cellular broadband access (CBA) networks directly compete with SBAS networks today. Today all FWA and CBA operators advertise and market their products and services as an alternative to NBN. CBA and FWA operators are churning services off NBN and SBAS Operators to owned networks. NBN has publicly disclosed reductions in service numbers due to migration to FWA and CBA networks. TPG regularly promotes the increase in CBA services away from the NBN. TPG is offering CBA services in competition with its own Vision networks, which are 99.9% overbuilt by NBN. The SBAS nominated speeds in the Draft Decision (25Mb & 50Mb) are the ideal target market for FWA and CBA. This same principle applies to the emerging satellite broadband players particularly in outer metro and regional housing estates where SBAS Operators conduct business. The LEO satellite operators actively advertise and promote in competition with the incumbent SBAS Operators. The FWA, CBA and LEO operators compete with superior Economics. They are not subject to SBAS regulation, do not pay the RBS Levy and operate businesses on a vertically integrated basis attracting both the wholesale and retail margins.

**Is it reasonable to expand SBAS Pricing regulation as proposed in the Draft Decision (Section 3.1) when there is clear evidence of competition to deter excessive pricing behaviour?**

**Complexity.** Any expansion of SBAS Pricing regulation as proposed in the Draft Decision introduces increased once off and continuing cost of working and also increased complexity in day-to-day operations for SBAS Operators who are diminutive relative to NBN. SBAS Operators conduct business across communities where SBAS is provided but also non SBAS services are provided where regulation is not

applicable. SBAS Operators provide services to permanent residential as well as many other end users and expansion of the SBAS FAD proposed through the Draft FAD creates increased complexity in identifying the nature of the end user. SBAS Operators are wholesalers predominantly (with some exceptions where vertical integration occurs) and do not know the identity of end users or the use of an SBAS but must determine identity/use to know whether to adopt SBAS Pricing. This means SBAS Operator OSS/BSS platforms will be highly complex to track the identity of end users and uses for SBAS. And as this changes over time with movements in and out of properties this needs to be continually updated.

Expansion of service types proposed in the Draft FAD increases operating costs and complexity. The Draft Decision also proposes expansion in speeds/plans which “must” be offered if requested but which are not commonly offered by SBAS Operators such as the 25/10 service type. This is unnecessary complexity in building a new product. The emerging changes in property business models (both greenfield and brownfield) such as Build to Rent (BTR), Land Lease, mixed use MDU buildings and integrated housing estates and lifestyle communities is increasing complexity for SBAS Operators to comply with residential broadband regulations such as SBAS, RBS Levy and NDO. These new property models are influencing future broadband network designs and business models and expanding the scope of the SBAS regulations by increasing service types and benchmarking pricing to NBN further increases complexity for smaller market participants relative to NBN. The concept SBAS Operators must adjust their pricing and non-price terms on every occasion the benchmark (NBN) makes a change or introduces a new discount or marketing plan adds excessive overhead and unnecessary complexity.

**Is it reasonable to expand SBAS Pricing scope of application as proposed in the Draft Decision (Section 3.1) considering increased costs and complexity for the diminutive SBAS Operator (compared to NBN) against the Competition and Economic factors which already deter excessive pricing behaviour or unacceptable market practices?**

## Timing and impact of NBN SAU Variation

Uniti believes the ACCC cannot make a final determination in relation to the FAD until such time as the NBN proposed variation to its special access undertaking (**SAU**) is finalised. The SBAS FAD as currently drafted is reliant upon NBN pricing arrangements which are subject to variation by the SAU, therefore it is unreasonable to amend the

SBAS FAD without firstly finalising the SAU and allowing market participants the opportunity to measure and comment on the impact of that varied SAU. To do otherwise increases **Complexity** as operational changes SBAS Operators make for implementation of the proposed FAD may later need to be reversed and this could be within months of having made the original change.

Furthermore, the Draft Decision cannot be adequately evaluated and debated without a full understanding of the long term NBN SAU terms which will be a benchmark for the application of any SBAS FAD. For example, the NBN SAU discussions to date have concentrated on the **Economics** of NBN and in particular commercial rates of return, write off of sunk costs, WACC and cost of debt, all determinants of whether any SBAS FAD is achieving the desired outcome or is even required in the long term.

The concept that a SBAS Operator pricing regulation be expanded and then benchmarked to a pricing regime which is unknown and subject to further negotiation and regulation where equivalence of **Economics** does not exist is quite unreasonable and the unnecessary **Complexity** when the current FAD is not creating market distortions.

The ACCC acknowledged this **Complexity** when it stated in the Draft Decision

*“NBN Co’s future price path is to be considered as part of its special access undertaking variation proposal. Recognising that this regulatory process will continue into 2023, we intend to make our final decision on the SBAS FAD in 2023 when these matters are more settled.”*

Uniti contends “...when these matters are more settled.” the ACCC should then consult further with SBAS Operators on the implication of any changes to the SBAS FAD in light of the NBN SAU short term and longer term impact on SBAS Pricing (and potentially SBAS Non Price terms) regulations. It is premature to implement any changes at this time.

## **Draft Decision 3.1. SBAS pricing**

**It is Uniti’s firm view the proposed changes to SBAS Pricing contemplated at Section 3.1 of the Draft Decision are not required. Uniti will address each of the material elements of Section 3.1 and the reasons for this recommendation. Fundamentally this is due to the Economic, Competition and Complexity considerations which means change is not necessary to the SBAS Pricing regulation.**

## Pricing Methodology

*“Regulated access charges for the SBAS will be the same as NBN Co’s prevailing bundled / discount offers at the speed tiers regulated under the FAD.*

*A benchmarking methodology where access prices are equivalent to NBN residential grade products... is straightforward to implement and is well understood and accepted by access providers and access seekers. The approach supports market entry by RSPs through common regulated access terms regardless of the location of the network.*

*Our draft decision to continue with a benchmarking methodology also helps to ensure that access seekers are not paying more than for equivalent NBN services, which will promote competition and benefit consumers”.*

Regulating SBAS Pricing by benchmarking SBAS Operators **only** to NBN when the **Economics** and business models are so different is not logical. This does not support market entry by SBAS Operators. What “...supports market entry by RSPs...” is the network designs by SBAS Operators such as Opticomm (as described below) which makes it easier to access networks compared to NBN. Regulating SBAS Operator pricing discourages market entrants with more appealing business and network models compared to NBN.

There is no distortion in competition or pricing in markets served under the existing SBAS due to **Competition** to justify any change in the SBAS FAD.

The dominance of NBN and the **Competition** to secure RSPs to interconnect and sell across the SBAS Network Operators is compelling SBAS Operators to emulate NBN price and non-price terms. The Draft Decision compels equivalence for SBAS and the expansion of the Draft FAD increases the regulatory reach and increases costs and **Complexity** inhibiting SBAS Operators’ ability to compete with NBN and alternative technologies.

SBAS Operators’ networks, businesses and **Economics** are not equivalent to NBN, so why would there be a requirement / need for regulation benchmarked to a government owned near monopoly operator with ~96% market share when there is clear evidence of **Competition**.



## Regulated price components and anchor points

*Access providers will be required to provide the SBAS at the same price and discounts offered by NBN Co for equivalent residential grade products at the regulated speed tiers in the FAD. SBAS charges cannot exceed prevailing NBN charges for access and usage... access prices for the SBAS will be regulated at the 25/5-10 Mbps speed tier. Given growing demand for higher speed broadband services, and the strong consumer preference for services at the 50 Mbps download data rate, our draft decision is to also regulate access prices at the 50/20 Mbps speed tier... We consider that anchoring price regulation at both the 25/5-10 Mbps and the 50/20 Mbps tiers reflects the change in consumer preferences since our previous inquiry in 2017. The 25/5-10 and 50/20 Mbps speed tiers together represent around 70 per cent of the Australian broadband services market, with the 50/20 Mbps alone comprising almost 60 per cent. Consumer demand and pricing for 50 Mbps services is now well established... Our draft decision is not to regulate access prices for 12/1 Mbps services supplied over SBAS networks. We consider that low-cost pre-paid and post-paid mobile phone services which are readily available in geographic areas serviced by SBAS networks, are an effective substitute, and provide a sufficient competitive constraint on prices, for low data rate / allowance and voice only services... We consider that our draft decision will facilitate uniform broadband offerings to access seekers across the NBN and SBAS networks, while allowing for flexible access pricing arrangements through negotiation, with the fallback to regulated prices that reflect consumer demand for broadband services. We also consider that our draft decision will promote competition at the wholesale level and in downstream retail markets for broadband services, benefiting consumers of both entry level and higher speed broadband services.*

By expanding the scope of the current SBAS FAD to 25/10 and 50/20 service types benchmarked to NBN, the ACCC is promoting through expanded regulation a wholesale marketplace of “lookalikes” for retail supply of residential broadband. Uniti does not agree the requirement of SBAS Operators to be identical to NBN across more service types will “...promote competition at the wholesale level...” There is no need to expand service types. Competition has assured this has occurred earlier than regulation contemplated through the Draft FAD.

The ACCC acknowledges “...Consumer demand and pricing for 50 Mbps services is now well established...” therefore there is no need to expand regulation. There is no evidence SBAS Operators have not responded. SBAS Operators have responded to **Competition** driven by the need to compete with NBN and attract RSPs and provide 50Mbps services at NBN equivalent prices - this has occurred - no regulation necessary.

The ACCC references the previous inquiry was 2017. SBAS Operators responded to **Competition** and commenced offering 25/5 and 50/20 services before any regulation expansion requiring supply, if requested. This has occurred without a change to the SBAS FAD. Today, Opticomm 25/5 and 50/20 services are 53% of total active services and 50/20 is the most dominant at nearly 40% - this has occurred without regulation.

There is no evidence excessive pricing has occurred for wholesale Layer 2 access and usage for the SBAS current service types or the proposed expansion which would justify expanded regulatory reach. This is because of **Competition** with NBN and competing technologies as well as the **Competition** to secure RSPs as wholesalers. There is no evidence there is a need to promote **Competition** through regulation – this is occurring.

A stated favourable outcome of Draft FAD will be “...*promotion of uniform broadband offerings to access seekers...*”. Uniti would challenge why is this an outcome which is in LTIE. It is a me-too approach and discourages innovation. Uniti contends the existing FAD which regulated SBAS pricing for an entry level broadband product at 25/5 was and remains the best option. There is no need for change. NBN acknowledges the new entry level pricing is the 25/5 service type.

The ACCC acknowledges **Competition**, in particular through the substitutability of competing technologies, has meant the continued regulation of 12/1 SBAS services is no longer required. There is very clear evidence of the same substitutability at 25Mbps and 50Mbps service types in the marketing material of the competing market participants included in this document. This is the evidence that there is no need to proceed with the Draft FAD and expanded scope. **Competition** and substitutability already exist for the 25Mbps and 50Mbps service types meaning any amendments to the SBAS FAD are not required.

The addition of the 25/10 service type to the Draft FAD is unwarranted, an unnecessary **Complexity** and excessive regulation. It is Uniti’s view very few SBAS Operators offer this service type today if at all. The demand for an extra 5Mbps upload on an entry level plan is questionable. The 25/10 service type for NBN today is ~2% of all SIOs. The Draft FAD requiring SBAS Operators to provide this service type if requested creates unnecessary **Complexity** for very small businesses which are diminutive relative to NBN. And then the need to modify OSS/BSS systems every time NBN offers discounts or marketing incentives doubles down on **Complexity**, when there is no evidence of market distortion requiring ACCC intervention.

The concept of benchmarking a SBAS Operator’s access and usage charges for selected SBAS types to NBN, a dominant market participant, and subsequently requiring the SBAS Operator to modify the SBAS Pricing whenever NBN provides discounts or marketing incentives is excessive regulation. It introduces unnecessary **Complexity** (considering current **Competition**) to diminutive market participants. With

every change adopted by NBN the SBAS Operator will need to modify OSS/BSS systems and other business and marketing materials to reflect the change. And this needs to be implemented within 3 months, which is challenging for the much smaller SBAS Operators and once the change is made it is possible another marketing campaign commences. This is a significant cost burden with no real perceived benefits considering **Competition** will drive this outcome if material.

## Non-recurring and ancillary charges

*Our draft decision is to regulate certain non-recurring and ancillary charges levied on access seekers by SBAS providers under the FAD.*

*We consider that where non-recurring and ancillary charges are unreasonably high and do not reflect the costs to the provider of the service or function provided, these charges can impede customers transferring between networks and RSPs and be detrimental to competition and consumers.*

*Our proposed approach will be to benchmark SBAS provider charges for these services against NBN Co's charges at the time for the same or comparable services (i.e. recognising access technology type).*

*Service activation and reactivation charges will similarly use NBN Co's two-tiered approach that distinguishes between a nominal fee for standard connections and a cost recovery formula (based on hourly labour and material costs) for non-standard connections.*

*...we have noted concerns with other ancillary charges such as those for network-to-network interface services and state-based aggregation service charges levied by some providers.*

The concept of benchmarking a SBAS Operator's non-recurring charges for selected SBAS types to NBN, a dominant market participant with ~96% market share with highly evident **Economic** advantages through government ownership providing access to very low cost of debt and equity capital as well as assured access to grant funding and one-off equity, is inequitable and unfair.

To measure the cost of the one-off services or imply the cost of the one-off services is comparable to NBN is flawed. NBN, due to size, scale, national reach and purchasing power has marginal costs significantly better or ought to be for the provision of one-off marginal services. SBAS Operators do adopt network designs, business models or products identical to NBN, consequently it is illogical to benchmark SBAS pricing to NBN.

An important source of capital for SBAS Operators to continue to compete and build FTTP networks in Australia is operating earnings. SBAS Operators do not have access to low-cost government debt or government equity (expecting below market returns) or public markets debt at rates reflecting government ownership. NBN achieves rates of return on capital invested below industry and market benchmarks at the government's discretion. These below market returns notwithstanding, the benefits of government ownership (through low cost debt and equity and access to grant funding) is due to the pricing adopted by NBN. SBAS Operators are expected to achieve rates of return commensurate with other private entities. SBAS Operator pricing should not be benchmarked to NBN – this is inequitable.

SBAS Operators must recycle capital. That is operating earnings. SBAS Operators do not have the same capital advantages as NBN to call on government equity. When evaluating charging by SBAS Operators the ACCC must also consider a whole of service charge. Customer or service lifetime charges by SBAS Operators across all charging elements. This needs to be compared to the diminutive size of SBAS Operators and the FTTP networks which are being built partially funded by non-recurring charges. Non-recurring charges cannot be considered in isolation as much as they cannot be compared to NBN. **Competition** is protection against excessive pricing not regulation.

There is no evidence the non-recurring charges levied by SBAS Operators has caused any market distortion. The SBAS Operators have continued to grow and increase market share against NBN materially in percentage terms but minor in terms of numbers. **Competition** has ensured non-recurring charges are not excessive and fairly reflect the **Complexity** of managing SBAS Operators business against the backdrop of regulation today.

The proposition to include state based aggregation (**SBA**) charges within the Draft FAD as part of regulation of non-recurring charging is an example of misunderstanding the nature of these charges and other non-recurring charges and evaluating these charges in isolation. It is also an example of the fallacy of benchmarking to NBN. The fact it is not included in the Draft FAD is the right decision. For the same reason, the misunderstanding of the nature and purpose of non-recurring charges is why they should be excluded from the Draft FAD and why there is no need to implement a new SBAS FAD.

## In relation to state based aggregation (SBA) and SBA Charging

In the Draft Decision the ACCC states:

*What is the SBAS?*

*The standard SBAS is a point-to-point Layer 2 bitstream service supplied over a fixed-line superfast broadband network and is used for the carriage of communications in digital form between a network-network interface (located at a point of interconnect) and an end-user interface. The provider aggregates SBAS services from their serving areas (e.g. residential developments, multi-dwelling units, etc) and transports the traffic stream to the provider's nearest point of interconnect, typically located in the capital city of each state or territory. These aggregated traffic streams connect to retail service provider (RSP) networks at their points of interconnect.*

*Backhaul transmission systems may be required to connect the points of interconnect to the RSPs point(s) of presence. The aggregation network is usually provided by the SBAS provider. Backhaul services may be supplied by the provider or procured / provided separately by a RSP depending on the locations of points of interconnect and RSP point(s) of presence. This enables the two-way carriage of communications between end-users / devices connected to the provider's network and end-users / devices connected to other networks..."*

The ACCC is forming the view all SBAS networks are the same and states "...the standard SBAS is a wholesale Layer 2 broadband access service that is similar to that provided by the NBN." **SBAS networks are not the same. The NBN is not the same as the network described by ACCC.** Examples of some of the differences are:

- NBN does not adopt SBA (state based aggregation) as described by ACCC or SBA charging but operates 121 points of interconnect (POI) throughout Australia in both capital city and regional locations. RSPs wishing to resell NBN services must purchase a network-network interface (NNI) from NBN and must also, at their own cost, provide backhaul to each POI to be able to resell NBN services to premise serviced by the POI. RSPs either purchase backhaul on a recurring basis from another carrier as an operating expense or incur considerable capital expenditure and build fibre backhaul to the POI and then own, operate and maintain the backhaul network. NNI charges and backhaul costs are services NBN does not provide and are costs RSPs incur.
- Sometime after the commencement of NBN operations, the need for RSPs to purchase a NNI and backhaul to all NBN POIs made it cost prohibitive for

small RSPs and alternative access seekers to resell NBN services. This saw the emergence of new wholesale products by larger carriers/RSPs (such as Vocus or Superloop) who developed a product commonly known as vNNI. This saw these parties resell to smaller aspirant resellers of NBN the NNI and backhaul they had built to the NBN POIs. In effect these carriers were aggregating POIs so smaller resellers could access some or all of the NBN network. The typical revenue model for the carrier was to charge a usage fee on a per Mbps basis for traffic carried over the bundled NNI and backhaul. This is an operating expense for the RSP in place of the RSP directly purchasing backhaul from a carrier and NNI from NBN which normally have minimum quantity and expenditure conditions. This enabled the smaller RSPs and access seekers to have a more scalable approach to reselling NBN.

- Not all SBAS Operators adopt state-based aggregation enabling Layer 2 wholesale services to be provided. In some cases, SBAS Operators cannot supply Layer 2 or can only aggregate Layer 2 for certain parts of the network.
- Some SBAS Operators are offering Layer 3 and managed service products adopting the 25Mbps and 50Mbps service types proposed to be regulated by the Draft FAD.

The current Opticomm network design is to operate 5 POIs to service all of mainland Australia. RSPs purchase a NNI per POI to interconnect with Opticomm to service their addressable markets. Opticomm funds all backhaul from premises or communities (where Opticomm has deployed access networks) back to the POIs to enable RSPs to provide services to all connected locations and premise. Unlike NBN, Opticomm RSPs do not have 121 POIs they need to fund backhaul carriage to provide services across the Opticomm network. This is a cost Opticomm incurs either as an ongoing operating cost, which increases as bandwidth increases over time or as capital expenditure to build backhaul networks which then need to be operated and maintained. Due to **Competition**, the current Opticomm access and usage charges for all service types are near equivalent to NBN where Opticomm provides the same service type.

The cost of backhaul Opticomm provides to POIs (which NBN does not provide) is not recovered through access or usage charges to RSPs. There is no adjustment to

access and usage charges by Opticomm (relative to NBN notwithstanding the **Economic** difference) for the ongoing and ever-increasing cost of providing backhaul. **Competition** and the need for ubiquity with NBN recurring charges requested by RSPs has dictated this equivalence. This is a cost RSPs avoid in reselling Opticomm which is otherwise incurred in reselling NBN whether directly or through a vNNI arrangement.

The above facts highlight why it is flawed to benchmark SBAS Operators to NBN. Even more so when it involves networks. The businesses are not identical and as property models are changing, they are increasingly less alike. As this continues, services delivered by SBAS Operators will change and whilst the service might be fibre and the speed might be 25Mbps or 50Mbps the product will be different. Where the product is identical to NBN then **Competition** for the RSP and connectivity (against competing technology) will ensure near equivalence with NBN pricing especially for recurring charges, except for the very small new market SBAS Operator entrants who historically have adopted revenue and business models not resembling the typical wholesale structure of NBN and Opticomm.

**Competition** means any change to the current FAD is unnecessary. To expand the scope of SBAS regulation increasing the benchmarking to NBN when there are such significant differences in **Economics and Competitiveness**, as well as network design, size, scale, dominance and to introduce more **Complexity** to high growth SBAS Operators like Uniti is not in the LTIE. It will stifle the innovation and evolution we are now seeing in FTTP networks, products and services and it is making it more difficult for SBAS Operators to build FTTP networks deeper into peri urban and regional Australia.

### **Regional Broadband Scheme (RBS)**

*“...providers will be precluded from recovering the cost of the levy from RSPs in addition to the regulated access charges.”*

It is Uniti's view this restriction and regulation should not be imposed and is unnecessary at this time when there is no evidence of any SBAS Operator seeking recovery of some or all of this increased cost.

And once again it is an example of the fallacy of benchmarking private SBAS Operators to NBN, a government-owned near-monopoly with significant **Economic** advantages.

It is Uniti's view to restrict SBAS Operators from recovering some or all of the RBS Levy costs on SBAS is harsh, unreasonable and inequitable in light of the following:

- The RBS Levy at time of implementation was \$7.10/service whether SBAS or not.
- ACMA administers the RBS Levy and can annually increase the Levy by CPI or a part thereof or can elect not to apply any CPI.
- At the first anniversary of the RBS Levy, ACMA passed on the full CPI to SBAS Operators increasing the Levy to \$7.45/service.
- Over this time period NBN pricing did not change and due to **Competition** the SBAS Operators were not able to increase access and usage charges to recover this increase. The NBN SAU was debated at length but not concluded and no CPI mechanism via the SAU was implemented.
- Today, SBAS Operators can only see compounding CPI growth in RBS Levy without any ability to increase recurring charges or applying CPI (due to Competition) until a SAU resolution which may or may not provide a CPI.
- Limited exemptions which apply under the RBS Levy are due to expire before the Draft FAD terminates. Locking in an inability to recover this significant increased cost is unreasonable when **Competition** will always be a limiting factor on extent of recovery.
- The RBS Levy for Uniti at \$7.45 is a tax of 13.5% of revenue/service and greater than 30% of EBITDA/service and growing. This is in addition to all other government and industry charges and taxes including income tax. Against this impost, FWA, CBA & LEO competitors with substitutable services at 25Mbps and 50Mbps do not incur the Levy.
- There is clear evidence of substitutability of alternative technologies provided by carriers who are not paying the Levy (namely FWA, CBA, LEO operators) who are competing directly with SBAS Operators (examples in the attached). This **Competition** is why the Levy has not been passed on to date.
- Whilst NBN pays the Levy and represents it is included in current access pricing of NBN, NBN is also the recipient of the Levy increasing their



competitiveness. This is why the NBN pricing terms should not be a benchmark for SBAS.

- The calculation of the Levy at \$7.10+ CPI is based on recovery of NBN past costs/losses. As part of the SAU deliberations, it is contemplated these costs and losses be written off. If this occurs and the Levy is not reduced SBAS Operators need to retain the flexibility to recover excessive RBS Levy charging. This is further reason why a decision on the Draft FAD should be delayed until resolution of the NBN SAU.
- The ACCC issued an opinion on the calculation of the RBS Levy that NBN should not seek to recover past costs and losses which would have resulted in a lower RBS Levy circa \$2. If it is the ACCC view the RBS Levy at current rates is excessive and should be closer to \$2 why would the ACCC seek to limit partial or full recovery of future excessive costs of the RBS Levy?
- NBN not only benefits from receiving an inflationary linked Levy measured against sunk costs and losses not subject to inflation (and potentially written off) but also receives grants and funding to support the supposed costs of wireless and satellite services (such as the recent \$480m grant funding) whilst the Levy inflates. SBAS Operators are then benchmarked against NBN who has these benefits (and is not required to achieve a commercial rate of return) but cannot recover some or all of the RBS Levy.

The simple concept that SBAS Operators' SBAS Pricing should be benchmarked to NBN, considering all the matters raised in this submission, and without any control over future SBAS pricing (and uncertainty on future NBN SAU) as proposed in the Draft FAD and then not being able to recover some or all of a CPI linked Levy is harsh and unconscionable. Particularly when the SBAS competitor (NBN) and the substitutable competitors do not have the burden of the RBS Levy.

*SBAS providers do not appear to have increased their access prices to recover the levy, despite having the opportunity to do so.*

The ACCC states there is no evidence of SBAS Operators seeking recovery of RBS Levy costs so why is there a need to expand regulation to remove bona fide recovery.

*“Where SBAS providers operate at both the wholesale and retail level there is the risk that giving the provider the flexibility to pass through the levy to its wholesale customers may result in its retail arm having an unfair advantage in the market.” Is there not existing regulations in place to protect against such actions?*

*“We recognise that larger providers will have a greater capacity to absorb the costs of the levy due to the economies of scale and scope of their networks compared to smaller network operators. Also, established network operators are more likely to have already recovered their initial capital investment in their network compared to new entrants and may have a greater capacity to absorb the levy.”*

If the above is a correct assumption by the ACCC why restrict any SBAS Operator from seeking all or partial recovery of the RBS Levy through changes to the SBAS FAD as contemplated when considered in light of prevailing **Competition**. Is this not a business decision of the respective SBAS Operator?

## Draft Decision 3.2. Non-price terms and conditions

*“Our draft decision is that the current regulated non-price terms and conditions be maintained with the additional requirement for SBAS providers to provide information to RSPs if requested (e.g. when the parties are negotiating an access agreement) and on a quarterly basis, covering the following service attributes:*

- *availability, performance, quality, and reliability of the network*
- *timeframes for – fault identification and fault rectification services, and end-user connection, activation, and transfer services, provided by the SBAS provider.”*

Uniti supports this decision.

Uniti notes this decision fundamentally does not change the current SBAS FAD.

This is the recommendation of Uniti for the SBAS Pricing as well.

No change is necessary!

## Draft Decision 3.3. Exclusions for the SBAS access determination

### **“Small network exclusion**

*Our draft decision is to remove the exclusion from the standard access obligations under the access determination for small scale operators of SBAS networks (i.e., <12,000 end-users) built prior to 1 January 2011.”*

Uniti supports this decision. Uniti notes this decision fundamentally does not change the current SBAS FAD as there are no SBAS Operators to which it applies.

This is the recommendation of Uniti for the SBAS Pricing as well.

No change is necessary!

### **“Competition-based exclusion**

*Our draft decision is to not provide any competition-based exclusions from the standard access obligations for SBAS providers for the term of the access determination.”*

Uniti supports this decision.

Uniti notes this decision fundamentally does not change the current SBAS FAD. It is Uniti’s opinion the application of Competition-based exclusion whilst logical creates too much regulatory **Complexity**. This is the recommendation of Uniti for the SBAS Pricing as well.

No change is necessary!

### **SBAS FAD Timing**

If the ACCC releases the SBAS FAD as currently drafted with respect to the price and non-price terms, despite Uniti’s recommendation not to do so, Uniti suggests that the following changes are made to the timeframe for implementation:

1. The FAD should have a commencement date that is no less than twelve (12) months after the new NBN SAU commences. This period is necessary to provide Uniti a reasonable period to make and implement the necessary changes, including:
  - a. Introducing a new wholesale 25/10 product.
  - b. Introducing and communicating wholesale price list changes to its RSPs. The ACCC should note that making such material changes will require significant resources and labour.
  - c. Developing and implementing a set of reporting tools and functions in order to comply with the new Schedule 13 of the FAD, and
  - d. Preparing and reviewing all communications collateral to give effect to the changes.
2. The period afforded to SBAS Operators to match and implement NBN price changes should be the later of (i) the date the published price change comes into effect, or (ii), the date that is six months from the date NBN communicates that price change. This period is necessary as:
  - a. Uniti’s standard contracts with its wholesalers specifies a minimum of 90 days written notice for any pricing changes.
  - b. It would be unreasonable for Uniti to receive, process, and communicate changes within the same day it receives notification from NBN, and
  - c. This extended period would provide a reasonable period for Uniti to manage its internal resources to implement these pricing changes. We further note that NBN has flagged in its SAU that it intends to make these changes no less than twice per annum, which would consume significant resources for Uniti.

## Conclusion

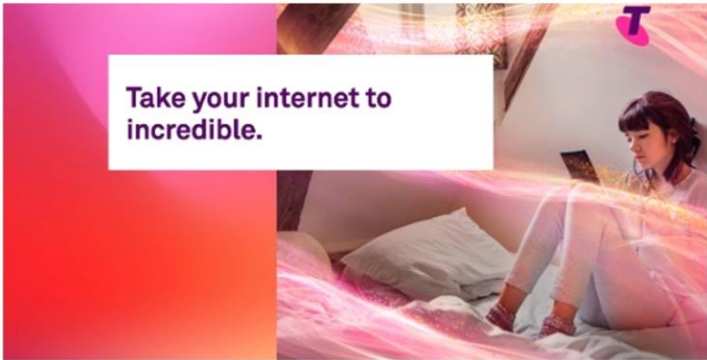
In summary, Uniti submits that the ACCC should not and does not need to amend the current SBAS FAD for all the reasons outlined above. There is no evidence of any distortions in market which would justify any amendment. And the logic any change or increased SBAS regulation be benchmarked to NBN is flawed for the reasons outlined. If for some reason, there is a desire to alter regulations Uniti recommendation is:

1. Finalise and complete the NBN SAU Variation, only then should it reissue the SBAS FAD for consultation with industry.
2. In finalising the SBAS FAD, it should not:
  - a. Include 25/10Mbps and 50/20 Mbps products; and
  - b. Regulate the non-recurring charges for SBAS; and
  - c. Restrict the recovery of RBS Levy costs in respect of SBAS.
3. Regardless of whether the ACCC is minded to regulate the 25/10 Mbps and 50/20Mbps products, and non-recurring charges:
  - a. A further consultation should be taken to identify and construct a mechanism that allows SBAS Operators to recover their reasonable costs of providing the underlying network and services.
  - b. The FAD should only come into effect twelve (12) months after it is finalised, and
  - c. SBAS Operators should be afforded no less than six (6) months to introduce any changes which are made in response to changes implemented by NBN should NBN be a benchmark.

Uniti would welcome any further opportunity to engage or discuss its submission with the ACCC.

# Examples of Fixed Wireless Access as an alternative to NBN

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## TPG


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Fixed Wireless 120	120/20 Mbps	\$99 per month	30-day money back. Unlimited data. No contracts. Minimum cost over 1 month: \$79.
Fixed Wireless 250	250/100 Mbps	\$119 per month	30-day money back. Unlimited data. No contracts. Minimum cost over 1 month: \$99.
Fixed Wireless 500	500/200 Mbps	\$139 per month	30-day money back. Unlimited data. No contracts. Minimum cost over 1 month: \$119.

Typical evening speeds are based on the speed test results of existing customers between 7pm and 11pm. \*If you leave within 24 months, simply pay out the setup fee (\$20/mth for every month remaining in the first 24 months). 30-day money back only applicable for Fixed Wireless plans. 70/20Mbps offer [35% off](#).

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## Internode



**Internode**  
<http://www.internode.on.net> › 5g-home-broadband

### 5G Home Broadband

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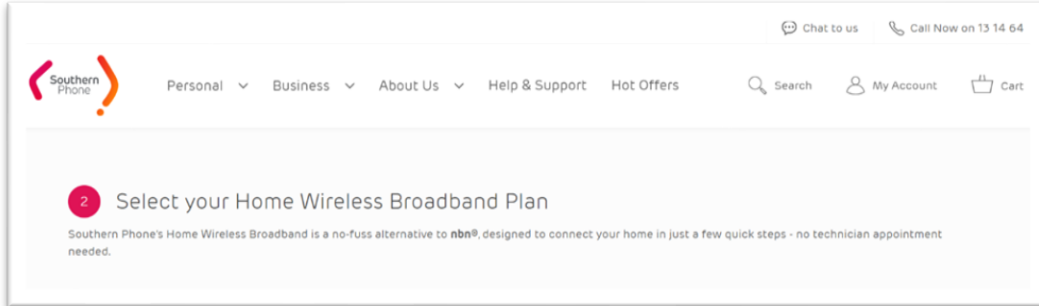
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