



TELSTRA CORPORATION LIMITED

Superfast Broadband Access Service and Local Bitstream Access Service declaration inquiry

Discussion paper

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EXECUTIVE SUMMARY

Telstra welcomes the opportunity to provide this submission to the Australian Competition and Consumer Commission's (ACCC's) Superfast Broadband Access Service (SBAS) and Local Bitstream Access Service (LBAS) Declaration Inquiry (Discussion Paper). Telstra's submission is in response to the declaration of the SBAS.

Superfast broadband underpins the provision of many services that will deliver long-term benefits to consumers. Telstra supports a legislative and regulatory environment that facilitates the provision of equivalent superfast broadband services for consumers.

Telstra currently provides the Fibre Access Broadband (FAB) service in its South Brisbane and Velocity Estates (FTTP Networks). In the previous declaration inquiry, the ACCC made a decision to include a second limb within the SBAS service description to distinguish the FAB service from the SBAS given the technical differences. The ACCC noted that a distinction in the service description would enable Telstra to avoid undertaking inefficient investment to supply a Layer 2 bitstream service, given that it was expected to transfer the networks to NBN Co Limited (NBN Co). Moreover, Telstra had legislative exemptions from the wholesale-only and Layer 2 bitstream service obligations to provide the time needed to finalise a plan with respect to the operation of the FTTP Networks.

Telstra remains committed to exiting the operation of residential and small business fixed access networks within NBN Co's fixed line network. This is in line with the Government's national broadband policy and why, in June 2011, Telstra and NBN Co agreed to the Definitive Agreements.

By now, Telstra expected it would be in a position to set out the timeframe for the transition of customers to a Layer 2 bitstream service on the FTTP Networks. When the most recent exemption applications were made in April 2020, Telstra was exploring a number of options for continued operation of the networks. However, this has yet to be determined. Thus, it is not possible for Telstra to comply with a Layer 2 service description by the current declaration expiry of 28 July 2021.

It is appropriate, therefore, to maintain the existing SBAS service description for FAB into the next declaration period. This will provide certainty to end-users that the existing arrangements can continue until the future operation of the networks can be determined. During that time Telstra will continue to provide the FAB service on an equivalent basis.

To ensure there is no service disruption to end-users and transition occurs smoothly, any timeframe for implementing a full Layer 2 service in South Brisbane and Velocity Estates should be aligned with the ministerial exemptions that have been granted for those networks.¹ In granting the exemptions, the Minister acknowledged the additional time required to allow Telstra to dispose of the networks or become compliant with the requirements of the Telecommunications Act 1997 (Cth) (Telecommunications Act), whilst ensuring continuity of service and minimal disruption to customers.²

¹ See Telecommunications (*Network Exemption—Telstra South Brisbane Network*) Instrument 2012 (Amendment No.1 of 2020) and Telecommunications (*Network Exemption—Specified Velocity Networks*) Instrument 2012 (Amendment No.1 of 2020)

² See Explanatory Note for Telecommunications (*Network Exemption—Telstra South Brisbane Network*) Instrument 2012 (Amendment No.1 of 2020) and Explanatory Note for Telecommunications (*Network Exemption—Specified Velocity Networks*) Instrument 2012 as amended



Requiring Telstra to separately commence a Layer 2 upgrade during the course of finalising the future operations of the FTTP Networks will likely raise several risks, particularly if those plans involve a new owner because:

- the new owner will require its own systems and possibly different equipment to deliver NBN-equivalent services. If Telstra is in the process of transitioning the FTTP networks to a Layer 2 service, the new owner would have to decommission and dispose of Telstra's equipment. This is because each carrier's systems and equipment are not completely aligned nor interoperable. This will have the effect of delaying the Layer 2 upgrade and duplicating investment costs, as well as requiring customers to transition twice; and
- commencing the Layer 2 upgrade prior to a transfer will require wholesale customers to interface their systems twice – once under Telstra's Layer 2 service, and then again under the new owner's Layer 2 systems. This may prompt wholesale customers to defer subscribing to the Layer 2 service under Telstra, preferring to wait until the new owner is able to deliver NBN-equivalent Layer 2 services. Consequently, the benefit of the Layer 2 service for the provision of competitive services in South Brisbane and Velocity Estates will not be realised.

We believe the SBAS declaration should recognise the need for a Layer 2 implementation timeframe that is aligned with the ministerial exemptions. This will enable appropriate regulatory settings that support operational arrangements to deliver a comprehensive Layer 2 service and optimise the end-user experience. It will also avoid the significant risk of a regulatory decision which results in unintended consequences for customers in the South Brisbane and Velocity Estates.



01 Current status of Telstra's FTTP Networks

Summary

- Telstra currently provides the FAB service in its South Brisbane and Velocity Estates. It is provided subject to Ministerial exemptions from the requirements of the Layer 2 bitstream and wholesale-only requirements of the Telecommunications Act.
- The exemptions were initially granted on 9 January 2012. The Telecommunications (*Network Exemption – Specified Velocity Network*) Instrument 2012 originally expired on the 'Designated Day', which was 1 July 2020. The Telecommunications (*Network Exemption – Telstra South Brisbane Network*) Instrument 2012 (**the SBX Exemption Instrument**) originally expired on 31 December 2013, the expected date at which the assets would have been transferred to NBN Co.
- Telstra and NBN Co entered into Definitive Agreements on June 2011. Since then, there were several developments relating to the Definitive Agreements and, subsequently, plans to finalise the future operation of the FTTP Networks. On this basis a number of extensions were granted to the SBX Exemption Instrument, aligning its expiry with the 'Designated Day'.
- In April 2020, Telstra applied to extend the exemption instruments that applied to the FTTP Networks. The Minister granted extensions to the exemptions until the earlier of the following: 90 days after the customer transition completion date, or 1 July 2022 if Telstra still owns the network.
- The Minister noted that Telstra intended to make no more extension requests. The extensions are intended to provide Telstra with a final window of opportunity to either become compliant with Part 8³ or sell the network to an operator who can comply.
- Telstra expected to have a plan for end-user transition to the Layer 2 service by now. Given that finalisation of the future operation of the FTTP Networks is still underway, the exact timeframe for the transition to a Layer 2 bitstream service is uncertain.
- In its 2016 SBAS declaration decision, the ACCC declared the FAB service separately from a Layer 2 bitstream service. The ACCC took this approach to prevent the possibility that the declaration could require an inefficient investment by Telstra to supply the SBAS, which may not be recovered prior to the transfer of Telstra's South Brisbane and Velocity estate networks to NBN Co.
- The current SBAS declaration and associated FAD expire on 28 July 2021. However, it is not practicable for Telstra to complete any such disposal transaction, or transition its customers to a Layer 2 bitstream service, prior to the current expiry date.
- Consequently, the SBAS service description should continue to include a second limb that distinguishes the FAB service. This will prevent inefficient investment in the network to supply SBAS, which may not be recovered prior to the potential transfer of ownership of the networks and is to the detriment of end-users.

The following sections provide an overview of Telstra's FTTP Networks in the South Brisbane and Velocity Estates, as well as a summary of developments in the NBN Co Definitive Agreements. The chapter also provides background for the ministerial exemptions governing the FTTP Networks.

³ We note that Part 7 was repealed on 25 May 2020. See: <https://www.communications.gov.au/what-we-do/internet/telecommunication-reform-package>



Finally, this chapter provides a summary of the current status of options for the future operation of the FTTP Networks, and how this interacts with the SBAS service description.

1.1. The FTTP Networks

Telstra's Fibre to the Premises (FTTP) Networks pass [c-i-c begins] [c-i-c ends] premises, with almost [c-i-c begins] [c-i-c ends] of these premises connected to the networks. Around [c-i-c begins] [c-i-c ends] active data and voice services are supplied to connected premises. The majority of the active services are retail customers of Telstra, with around [c-i-c begins] [c-i-c ends] active wholesale services. Table 1 provides a breakdown of active retail and wholesale services, and Table 2 provides the number of payphones, active PSTN ports and active broadband ports on both the Velocity and South Brisbane networks.

In addition, Foxtel TV services and free to air rebroadcast services are supplied to the connected premises. The networks also connect a small number of non-premises, such as payphones and public wi-fi hotspots. A number of the Telstra retail services are supplied under bespoke arrangements to Enterprise and Government customers. These include a range of complex and/or safety critical services such as those supplied to support police, fire and emergency services; postal, banking, security and education services; corrective services and other Government departments.

[c-i-c begins] [c-i-c ends]

From 2018 to 2019, Telstra undertook a significant upgrade on the FTTP Networks to improve the customer experience. [c-i-c begins] [c-i-c ends]

The network upgrade resulted in improvements in downstream busy-hour performance. [c-i-c begins] [c-i-c ends]

1.1.1. The FTTP Network in South Brisbane

On 30 July 2010, Telstra entered into an agreement with the Queensland Government to sell and vacate the Telstra South Brisbane Exchange building and site to make way for the Government to develop the new Queensland Children's Hospital (Queensland Government Transaction Agreement).

The Queensland Government Transaction Agreement required Telstra to vacate the site by 20 June 2013. Shutting the exchange and vacating the site required Telstra to:

- Re-connect the copper lines to a nearby exchange; or
- Rebuild the exchange on a nearby site; or
- Build an alternative network.

Re-connecting the copper to a nearby exchange would lengthen the distance from each premise to the exchange thereby degrading the quality of service. Rebuilding the exchange on a nearby site was not possible within the timeframe required by the Queensland Government. Consequently, in consultation with the Queensland Government, Telstra determined that it could replace the existing copper network with an FTTP Network for an incremental cost.



These deployments were made to replace the Public Switched Telephone Network (**PSTN**). That is, they were not designed to provide high-speed broadband services. Telstra's network and product design were targeted to PSTN emulation to mirror existing network capabilities rather than to provide new layer 2 bitstream services that enable a suite of IP-based next generation network services, such as those provided by NBN Co. The last migrations from copper to fibre within the South Brisbane exchange boundaries were completed in December 2012.

As at November 2019, the South Brisbane network passes **[c-i-c begins] [c-i-c ends]** premises with **[c-i-c begins] [c-i-c ends]** premises connected. There are **[c-i-c begins] [c-i-c ends]** active retail service providers (RSPs) offering services in the South Brisbane exchange area other than Telstra.

1.1.2. The Velocity FTTP Networks

The Velocity FTTP Networks are in real estate developments that were built, substantially underway or had reached the planning stage by 1 January 2011.

Before the introduction of the NBN, Telstra generally deployed copper cable in real estate developments to meet its universal service obligation. However, a real estate developer could contract with Telstra to build fibre, for an incremental cost.

As at November 2019, the Velocity FTTP Networks span 128 locations across Australia. Fibre passes **[c-i-c begins] [c-i-c ends]** premises, with **[c-i-c begins] [c-i-c ends]** premises connected. There are **[c-i-c begins] [c-i-c ends]** active RSPs offering services in the Velocity estates other than Telstra.

1.2. Ministerial exemptions governing Telstra's FTTP Networks

In September 2011, Telstra applied to the Minister for exemption from the requirements of Parts 7 and 8 of the Telecommunications Act for Telstra's FTTP Networks. These are the Layer 2 bitstream and wholesale-only requirements.

The Telecommunications (*Network Exemption—Specified Velocity Networks*) Instrument 2012 and the Telecommunications (*Network Exemption—Telstra South Brisbane Network*) Instrument 2012 (*the SBX Exemption Instrument*) were granted by the then Minister for Communications on 9 January 2012.

The exemption instruments were granted on the basis that:

- the FTTP Networks were largely in place prior to the original commencement date of Parts 7 and 8 of the Act (1 January 2011);
- without costly modifications, the networks could not support the layer 2 bitstream services requirement; and
- the wholesale-only requirement would be achieved with the intended transfer of the assets to NBN Co prior to the Designated Day.

The Telecommunications (*Network Exemption—Specified Velocity Network*) Instrument 2012 took effect from 12 April 2012 and until the 'Designated Day'. Under s577A of the Act, the Designated Date was originally 1 July 2018, and later set to 1 July 2020.



The SBX Exemption Instrument originally ceased to have effect on 31 December 2013. The cessation date was set because when Telstra made its initial application, it was expected that by 31 December 2013 NBN Co would have replaced Telstra as the operator of the South Brisbane FTTP Network. However, there were several developments that affected the progression of the negotiations between Telstra and NBN Co, including a requirement to renegotiate the Definitive Agreements following the introduction of the multi-technology mix to the NBN. Consequently, on 18 December 2013 the Minister for Communications extended the cessation date of the instrument until 31 December 2015, and on 23 December 2015 it was extended again until 1 July 2018, then later to 1 July 2020.

On 8 April 2020, Telstra requested an extension, for both the Velocity and South Brisbane networks, to the Parts 7 and 8 exemptions until 90 days following the completion of transition to any new owner, or 1 July 2023 if Telstra still owns the network. On 16 June 2020, the Minister subsequently decided to grant exemptions until the earlier of the following:

- 90 days after the customer transition completion date, or
- 1 July 2022, if Telstra still owns the network.

Telstra requested an exemption to provide certainty to end-users that the existing arrangements can continue until the future operation of the networks can be determined. The Minister noted that the latest exemptions are “*intended to provide Telstra with a final window of opportunity to either become compliant with Part 8 (as amended by the Telecommunications Legislation Amendment (Competition and Consumer) Act 2020) or sell the network to an operator who can comply. In this context, the Minister took into account advice from Telstra that it intends to make no more extension requests*”.⁴

Accordingly, Telstra expects that this will be the final opportunity to determine the future operation of the FTTP Networks. In the meantime, we will continue to provide the regulated FAB service on an equivalent basis.

1.3. Definitive Agreements with NBN Co

In June 2011, Telstra and NBN Co entered into the Definitive Agreements. These agreements provided NBN Co access to Telstra’s infrastructure for the national broadband network (NBN) rollout, as well as the progressive disconnection of Telstra’s fixed line infrastructure (including copper and HFC) so that NBN Co would become Telstra’s preferred fixed-line network. **[c-i-c begins] [c-i-c ends]**

1.4. Current status of strategic options for operation of the FTTP Networks

As noted in the previous section, in April 2020, Telstra applied to extend the exemptions that applied to both the South Brisbane and Velocity Estates. **[c-i-c begins] [c-i-c ends]**

The Minister decided to grant the exemptions until the earlier of the following: 90 days after the customer transition completion date or 1 July 2022 if Telstra still owns the network.

[c-i-c begins] [c-i-c ends]

⁴ Explanatory note—Telecommunications (Network Exemption—Telstra South Brisbane Network) Instrument 2012 (Amendment No.1 of 2020) <https://www.communications.gov.au/documents/explanatory-note-telecommunications-network-exemption-telstra-south-brisbane-network-instrument-2012> and Telecommunications (Network Exemption—Specified Velocity Networks) Instrument 2012 as amended <https://www.communications.gov.au/documents/telecommunications-network-exemption-specified-velocity-networks-instrument-2012-amended>



1.5. SBAS declaration

The current SBAS declaration and associated FAD expire on 28 July 2021. In its 2016 SBAS declaration decision, the ACCC declared FAB separately from a general layer 2 bitstream service which is a superfast carriage service. The ACCC took this approach because:

“This will prevent the possibility that the declaration could require an inefficient investment by Telstra to supply the SBAS, which may not be recovered prior to the transfer of Telstra’s South Brisbane and Velocity estate networks to NBN, and which would not promote the LTIE.”

It was thus previously not considered practical to require Telstra to comply with the obligations as the expectation was for the assets to be transferred to NBN Co. Further, NBN Co would have had to deploy its own network equipment and systems. Thus, Telstra does not currently have the systems to comply and it would involve substantial costs to do so.

Consequently, any option that Telstra is now considering for the operation of the FTTP Networks invariably involves financial and operational resources. Telstra’s FAB service is not a Layer 2 bitstream service, as is consistent with the current SBAS service description.⁵ The FAB service emulates some characteristics of Layer 2 bitstream services, although it is not equivalent to NBN Co’s Layer 2 bitstream service offerings over FTTP.

Accordingly, the SBAS service description should continue to include a second limb that distinguishes the FAB service. This will:

- prevent inefficient investment in the network to supply a Layer 2 service, which may not be recovered prior to the potential transfer of ownership of the networks, and is to the detriment of end-users; and
- encourage the continued supply of services on the FTTP Networks without disruption to end-users.⁶

The consequences of not separately defining the FAB service are further outlined in the next section.

⁵ We note that Part 7 was repealed on 25 May 2020. See: <https://www.communications.gov.au/what-we-do/internet/telecommunication-reform-package>. The requirements in legislation to deliver a Layer 2 bitstream service are with the Statutory Infrastructure Provider (SIP), to provide a wholesale service of at least 25/5 Mbps.

⁶ See Explanatory Note for *Telecommunications (Network Exemption—Telstra South Brisbane Network) Instrument 2012 (Amendment No.1 of 2020)* and Explanatory Note for *Telecommunications (Network Exemption—Specified Velocity Networks) Instrument 2012 (Amendment No. 1 of 2020)*.



02 The impact of a Layer 2 service description

Summary

- Telstra expected to be in a position to set out the timeframe for the FTTP Networks being able to meet the Layer 2 service description before commencement of the current declaration inquiry.
- However, plans to finalise the future operations of the FTTP Networks are still in development, such that Telstra is unable to confirm the exact date that the Layer 2 transition will occur.
- As such, for the next declaration period the SBAS service description should continue to have a second limb to include a separate definition of the FAB service. This will allow Telstra to continue to provide the FAB service to end-users, while also allowing plans to finalise the future operation of the networks to proceed.
- Without a rollover of the existing SBAS service description, which includes a separate definition of FAB, there will be several risks: prolonging the finalisation of the future operation of the networks, inefficient duplication of investment costs, and delay of the Layer 2 service. This has the effect of potentially deferring benefits to customers.

The current SBAS declaration expires on 28 July 2021. During the course of this declaration period, Telstra has continued to explore a number of options for the operation of the FTTP Networks. Telstra has dedicated resources to this project and has been in discussions with reputable third parties regarding the potential provision of services over the FTTP Networks by those third parties. Telstra expected to be in a position to set out the timeframe for the networks being able to meet the Layer 2 service description before commencement of the current declaration inquiry.

[c-i-c begins] [c-i-c ends]

Implementing a full Layer 2 service in the South Brisbane and the Velocity Estates, with minimum end-user disruption, is not achievable by 28 July 2021. **[c-i-c begins] [c-i-c ends]** Telstra is not currently in a position to confirm the exact date at which the Layer 2 service transition will occur.

As such, the current SBAS service description should continue into the next declaration period. That is, the SBAS service description should continue to have a second limb to include a separate definition of the FAB service. This will allow Telstra to provide the FAB service to end-users, whilst allowing the process for strategic options on the future of the FTTP Networks to progress.

The following sections provide a summary of the technical requirements for an infrastructure upgrade, and resulting impacts of such an upgrade. Importantly, the significant costs of an upgrade will result in inefficient duplication of investment and prevent Telstra from recovering costs of the investment. This also risks delaying end-users in receiving the Layer 2 service, if a potential new owner of the network is delayed in transitioning consumers to a Layer 2 service.

2.1. Technical requirements for upgrade may result in investment duplication

A Layer 2 bitstream service requires a complete re-build of Telstra's FTTP Networks.



As set out above, Telstra's fibre deployments in South Brisbane and Velocity estates were a direct result of the construction of the Queensland Children's Hospital (South Brisbane) and the need for a cost effective choice in new (Velocity) estates (as opposed to copper extension).

These deployments were not made for the purpose of providing high speed broadband services but rather to replace or augment our PSTN network. Telstra's network and product design were targeted to PSTN emulation to mirror our existing (non-NBN; non-NGN) network capabilities rather than to provide new fully function Layer 2 bitstream services that enable a suite of IP-based NGN services as per NBN and other new superfast networks.

For Telstra to be able to support an NBN-equivalent wholesale Layer 2 Ethernet product on its FTTP Networks, a simple network reconfiguration is not possible. A complete rebuild is required, which requires the following:

[c-i-c begins] [c-i-c ends]

These technical requirements mean that a potential asset transfer may result in some of the above being duplicated and delaying the process.

[c-i-c begins] [c-i-c ends]

Commencing the upgrade to a Layer 2 service would incur significant financial costs, and potentially delay the anticipated benefits.

[c-i-c begins] [c-i-c ends]

2.2. Costs of upgrade will result in higher prices, deterring competitive entry

An estimate of the costs required for a rebuild of the FTTP networks in the South Brisbane and Velocity estates, to deliver a Layer 2 bitstream service **[c-i-c begins] [c-i-c ends]**. The table below provides a breakdown of the estimated costs.

[c-i-c begins] [c-i-c ends]

The largest cost component, and the one that entails the most uncertainty, is IT integration costs. This is due to the need to customise an entirely new IT system for the new Layer 2 bitstream product that is able to integrate with the existing IT environment. Ensuring the new IT system for the Layer 2 service is interoperable with Telstra's existing system is complex because of the wide range of IT systems upon which Telstra relies.

The other cost component that entails significant uncertainty is the replacement and installation of equipment at each customer premise within the South Brisbane and Velocity estates. The main component of this cost is labour costs, and the fact that some premises may require a few appointments to replace the requisite equipment to deliver a Layer 2 bitstream service.

These significant costs will result in higher wholesale prices which would be contrary to the LTIE. Higher wholesale charges are likely because:



- Telstra has no clear capacity under its Velocity agreements with developers to recover a contribution to these costs.
- There are a relatively small number of services in South Brisbane over which the costs of the solution could be spread (a situation which is changed only very little if services in other Telstra GPON sites are also taken into consideration).
- In addition, the period for possible cost recovery is restricted, if Telstra decides to transfer ownership of the assets to another party.

Higher costs will likely deter competition. Not only do higher wholesale charges affect the input prices for wholesalers, but there are costs that are borne by wholesale customers to change their products. The Layer 2 systems of each carrier are custom-made and never completely aligned. Therefore, any change in systems will require access seekers and their end-users to reconfigure to the specific equipment and systems of the network owner.

If access seekers expect the networks to be sold to a new owner, they are unlikely to switch to a Layer 2 bitstream service under Telstra. Wholesale customers of the networks would have to undertake matching IT changes to interface with new or modified systems. This investment by wholesale customers would be wasted as they will likely acquire Layer 2 bitstream services directly from the new network owner. Further, as noted above, the process of double transitioning is disruptive to the operation of the network, and disruptive to customers' experience of the service.

The repercussion of this is that, if wholesale customers are required to interface their systems twice, they may hold off transitioning their end-users to the Layer 2 product, until any new owner has completed the network integration. In effect, enforcing commencement of the Layer 2 upgrade will delay the end-users of access seekers in receiving the Layer 2 service.

Additionally, ensuring an adequate timeframe for any new owner to transition to a comprehensive Layer 2 service is important for wholesale competition. A network that is capable of delivering NBN-equivalent services, with minimum disruption, is likely to encourage wholesale competition in the long-term. Conversely, a network that requires multiple rounds of upgrades, and disruption to consumers, is less likely to attract wholesale customers.

2.3. Timeframe to transition to a Layer 2 service requires a continuation of FAB to minimise end-user disruption

It is not possible to implement a full transition to a Layer 2 service, prior to the expiry of the current declaration given the technical requirements.

[c-i-c begins] [c-i-c ends] Each phase of the transition is provided below. The pre-transition phases include milestones such as system interfacing and IT integration, which are required prior to transition of customers.

[c-i-c begins] [c-i-c ends]



Enforcing compliance imposes significant costs, and delays the transition to a Layer 2 service under a new network owner, if the assets are transferred to a third-party. This represents a significant financial and opportunity cost of an enforced upgrade by the SBAS declaration expiry date.

The ministerial exemptions were granted on the basis that Telstra will not be in a position to comply with Part 7 and Part 8 of the Telco Act by 1 July 2020. As noted by the Minister for Communications, Cyber Safety and the Arts:

“The decision to grant the exemption reflects that Telstra’s continued operation of the network is required to prevent service disruption to end-users in the area. The Minister acknowledged the frustrations about service quality apparent in the public submissions received, noting that maintaining services to end users was of utmost importance. Telstra will not be in a position to comply with Part 7 and Part 8 by 1 July 2020. Forcing Telstra to comply by this date may force Telstra to cease services, which would represent a poor outcome for end-users.”⁷

In summary, without a separate definition of the FAB service in the SBAS service description, Telstra would be required to incur significant financial costs to meet the service description requirements.

[c-i-c begins] [c-i-c ends].

Accordingly, the current SBAS service description should continue into the next declaration period. That is, the SBAS service description should have a second limb to include a separate definition of the FAB service. This will allow Telstra to provide the FAB service to end-users, while allowing the process on exploring options on the continued operations of the networks to progress.

⁷ Explanatory Note Issued by the Authority of the Minister for Communications, Cyber Safety and the Arts; Telecommunications Act 1997, Telecommunications (Network Exemption—Telstra South Brisbane Network) Instrument 2012 (Amendment No.1 of 2020) <https://www.communications.gov.au/documents/explanatory-note-telecommunications-network-exemption-telstra-south-brisbane-network-instrument-2012>



03A smooth transition to Layer 2 bitstream services in the next FAD

Summary

- To ensure a smooth transition for end-users to a Layer 2 bitstream service, the timeframe to transition end-users to a Layer 2 service should be extended, in alignment with the ministerial exemptions that apply to the FTTP Networks.
- A workable implementation timeframe will consider the program of work required to physically upgrade the existing legacy network to one that is capable of delivering NBN-equivalent Layer 2 ethernet services, and transition consumers to the new service with minimum disruption. This will not be achievable by July 2021.
- It is appropriate, therefore, to maintain the existing SBAS service description for the FAB networks into the next declaration period, to allow the network owner to transition to a Layer 2 wholesale-only service.
- Continuation of the existing rules governing the FTTP networks, into the next declaration period, will allow the following:
 - Suitable arrangements to be in place for a transition to Layer 2 services and ensure minimum disruption to end-users.
 - To continue exploring options for the continued operations of the FTTP Networks, whilst allowing Telstra to provide FAB services to end-users with minimum disruption.

This chapter summarises the need to align the Layer 2 transition with ministerial exemptions governing the FTTP Networks. Specifically, a workable implementation timeframe for the transition needs to be considered, as well as implications of the transition on the SBAS service description in the next declaration period. Finally, this chapter provides answers to some of the questions posed in the ACCC's Discussion Paper.

3.1. Aligning the Layer 2 transition with ministerial exemptions

To ensure a smooth transition for end-users to a Layer 2 bitstream service, the timeframe for the Layer 2 transition should be extended, and aligned with the ministerial exemptions. As noted in the previous chapter, these extensions provide Telstra with sufficient time to dispose of the networks or become compliant with the requirements. Without these exemptions, Telstra would be required by Parts 7 (now repealed) and Part 8 of the Telecommunications Act 1997 to supply wholesale layer 2 bitstream services on a wholesale-only basis over these networks.

A workable implementation timeframe will consider the program of work required to physically upgrade the existing legacy network to one that is capable of delivering NBN-equivalent Layer 2 ethernet services. The implementation timeframe will also need to consider the processes required to transition consumers to the new service with minimum disruption, including time to establish commercial, access and pricing arrangements for the duration of the declaration period.

3.2. Rules governing the FTTP Networks in the next SBAS FAD

As noted in the previous sections, a smooth transition of end-users to a full Layer 2 service will not be achievable by July 2021. Implementing a comprehensive Layer 2 service requires a longer timeframe that extends beyond the declaration expiry date.



[c-i-c begins] [c-i-c ends] The implication for the next SBAS service declaration and FAD is that:

- The SBAS service description should still include a second limb of the definition stating that Telstra's FAB service, as defined in the Telecommunications (*Network Exemption—Telstra South Brisbane Network*) Instrument 2012 and the Telecommunications (*Network Exemption—Telstra Specified Velocity Networks*) Instrument 2012, is an SBAS.
- Telstra's FTTP Networks will be subject to the following conditions:
 - Telstra will be required to supply a declared FAB 30/1 Mbps and aggregation services at prices benchmarked to ADSL services;
 - An RSP seeking an access service would also have to purchase Telstra's wholesale line rental service, at an additional price.

Continuation of the existing rules governing the FTTP Networks, into the next declaration period, will allow suitable arrangements to be in place for a transition to Layer 2 services. This will ensure that any significant systems and process modifications are established, so that end-users can transition to Layer 2 services smoothly.

ACCC questions

Question 2: Do you consider that the SBAS service description as declared in 2016 remains current and appropriate? Please explain the reasons for your view.

The SBAS service description as declared in 2016 should be continued into the next FAD. This will:

- Enable plans to deliver a Layer 2 bitstream service to continue developing; and
- Allow transition planning of end-users to the Layer 2 service to take place, whilst enabling end-users to still receive current FAB services without disruption.

It is anticipated that implementation of a Layer 2 service will continue past the expiry of the current FAD, 28 July 2021. The SBAS service description should therefore remain as it is for the next FAD. Any updates to the service description should occur once the Layer 2 service is implemented.

Question 4: Do you consider that Telstra's fibre networks in South Brisbane and Velocity estates should continue to be exempt from the requirement to provide a Layer 2 bitstream service?

Superfast broadband underpins the provision of many services that will deliver long-term benefits to consumers. Telstra therefore supports a legislative and regulatory environment that facilitates the provision of equivalent superfast broadband for consumers regardless of geographic location. However, the requirement to provide a Layer 2 bitstream service should consider whether regulatory obligations will impose costs that outweigh the benefits to customers, and as a result are not in the long-term interests of end-users or infrastructure providers.

[c-i-c begins] [c-i-c ends]



Telstra's fibre networks in South Brisbane and Velocity estates should deliver a Layer 2 bitstream service, provided that there is a timeframe for implementation that allows for:

- Suitable arrangements to be in place, relating to technological upgrades and interfacing of the existing network with the new Layer 2 product; and
- Appropriate transition planning so that consumers do not experience a disruption to their services.

3.3. The future of wholesale competition in the superfast broadband services

Telstra believes that the declaration of the SBAS should promote competition and the economically efficient use of infrastructure. One of the key drivers of competition and the efficient use of infrastructure is the quality of infrastructure and its ability to deliver services equivalent to that of the NBN.

The continued declaration of SBAS will promote competition and the economically efficient use of infrastructure as long as the declaration is appropriate, and encourages access providers to upgrade existing infrastructure in a way that benefits consumers.

ACCC question

Question 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.

Continued declaration of the SBAS will promote competition and the economically efficient use of infrastructure.

Importantly, though, in some cases the economically efficient use of infrastructure requires the infrastructure to be upgraded to a better-quality service (i.e. an NBN-equivalent Layer 2 ethernet service). In such cases, declaration should consider timeframes for undertaking the upgrade, as well as transitioning end-users to the new service.