



16 March 2018

ACCAN thanks the Department of Communications and the Arts for the opportunity to comment on Telstra's request for an indefinite exemption from Parts 7 and 8 of the Telecommunications Act for its South Brisbane broadband network.

## **BACKGROUND**

Parts 7 and 8 of the Telecommunications Act provide an important basis to ensure that broadband networks operate in a similar way and to the benefit of consumers. They require network operators to offer services to any retail providers on request (offer open access on a non-discriminatory basis) and that they must operate separate to the retail level (wholesale only). While these specify the operation of networks, the ultimate aim is to ensure competitive networks exist that benefit consumer by increasing choice of providers.

Since 2012 Telstra have had an exemption to comply with these requirements in the South Brisbane network area.<sup>1</sup> Telstra have now requested an indefinite extension, while the Minister for Communications and the Arts has proposed an extension to January 2020 (designated day).

## **SUMMARY POSITION**

ACCAN previously raised concerns about this exemption and associated extensions. We do not believe they are in the interest of consumers and therefore we support neither an indefinite extension or an extension to 2020.

Instead ACCAN is proposing that an extension until November 2018 could be granted, at which point a confirmed future path for the South Brisbane network must be confirmed. This will allow sufficient time to implement the chosen option so that it is in place by 2020, the timeframe for other Government broadband commitments.

## **SOUTH BRISBANE NETWORK CANNOT CONTINUE AS IT IS**

ACCAN does not believe that the current exempt status of the South Brisbane network is sustainable. Our concerns are primarily based on the ACCC's consideration of the South Brisbane network in its determination and our continued concerns over the state of competition in this area.

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<sup>1</sup> Original exemption 2012 - 2013, first extension 2013 - 2015, second extension 2015 - 2017, and now a request to extend indefinitely.

## **ACCC inclusion of South Brisbane in SBAS and LBAS FAD determination was not an endorsement of the network**

The ACCC final Superfast Broadband Access Service (SBAS) and Local Bitstream Access Service (LBAS) Fixed Access Determination (FAD) in May 2017 treated the Telstra South Brisbane network differently. This was primarily due to the expectation that the South Brisbane network would be transferred to NBN Co within the next few years.

The prices for South Brisbane were also not in line with other included networks because Telstra's Fibre access broadband were "benchmarked to the service-specific costs of the wholesale ADSL service, to which the FAB service has similar characteristics". Another difference with South Brisbane is the ability for Telstra to require a line rental is charged on top of the broadband pricing.

Telstra's request for the indefinite extension and the Minister's proposed decision to extend the exemption until 2020 are both premised on the idea that the regulated nature of the network is a safeguard for consumers.

ACCAN does not believe this is true and is a misunderstanding of the ACCC's final determination.

The ACCC stated "the case for treating the Telstra networks differently weakens substantially if these networks are not transferred or over-built within 3 years".<sup>2</sup> They also stated that it would have been difficult to give South Brisbane a different regulatory period (3 years). Instead they included South Brisbane in the full length of the determination and said that they intended for South Brisbane to have a price variation following the wholesale ADSL pricing determination expiring on 30 June 2019.

ACCAN supported the inclusion of the South Brisbane in SBAS and LBAS as a step in the right direction, however, its inclusion in this determination is not a long term sustainable outcome or safeguard for consumers.

## **Competition concerns have increased**

Despite the inclusion of South Brisbane networks in the SBAS and LBAS regulation ACCAN's concerns over the level of competition have increased.

### **Choice for consumers is reducing**

Two of the larger and more popular retail service providers have stopped offering services over Telstra South Brisbane network in the last 6 months. Namely:

- Internode ceased selling new services in September 2017<sup>3</sup>
- iiNet ceased selling new services late 2017.<sup>4</sup>

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<sup>2</sup> Pg. 25 of the ACCC SBAS and LBAS FAD decision.

<sup>3</sup>

[https://www.internode.on.net/support/historical\\_product\\_info/end\\_of\\_sale/south\\_brisbane\\_fibre/](https://www.internode.on.net/support/historical_product_info/end_of_sale/south_brisbane_fibre/)

The reduced options are a concern for any new consumers moving into the area. This is negatively impacting consumers and not in line with the Government's policy for increased consumer choice.

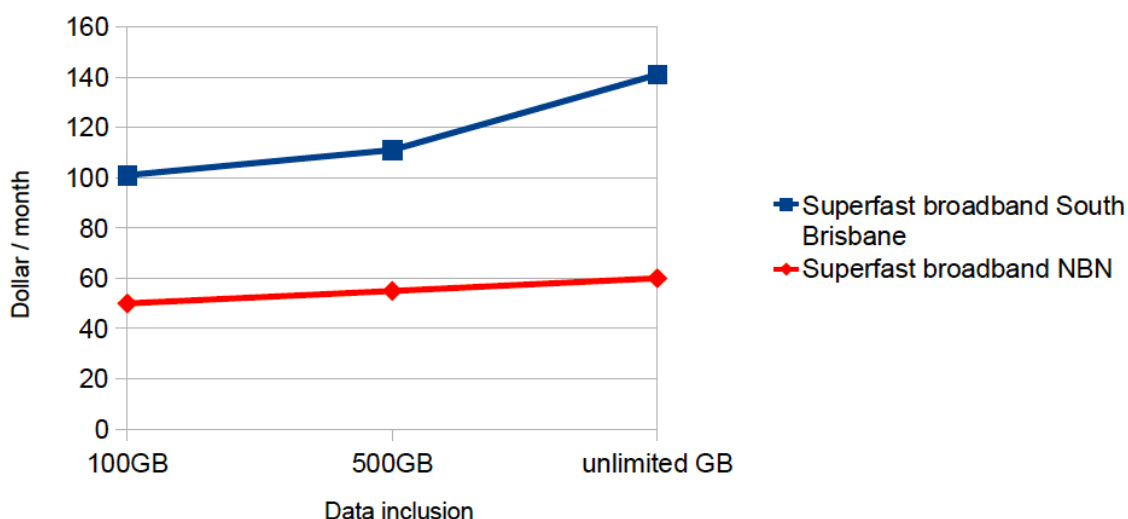
### Price can be comparatively more expensive

While Telstra generally offers broadband plans for the same price across all the networks that it operates over, it is not an entry level retail service provider. Telstra prices are generally at a premium compared to other providers. For consumers wanting a lower price they are unlikely to find any available plans. For a similar product (inclusions and speed) with an alternative provider consumers are likely to pay at least twice as much over South Brisbane than over other networks.

If a consumer is looking for a superfast broadband plan with a 'cheaper' provider, broadband prices in South Brisbane are not comparable to nbn. For a consumer, a superfast broadband plan (that at least meets the minimum retail standard set out in the Statutory Infrastructure Provider of 25 Mbps download and 5 Mbps upload) costs at least twice the price over Telstra's South Brisbane network as it does over NBN.

The graphs below show the price difference for Exetel customers.<sup>5</sup> The price over South Brisbane is in part significantly higher as line rental is a requirement to have internet service, regardless of whether this service is wanted. For Exetel customers this line rental costs \$25/month extra.

Exetel broadband pricing



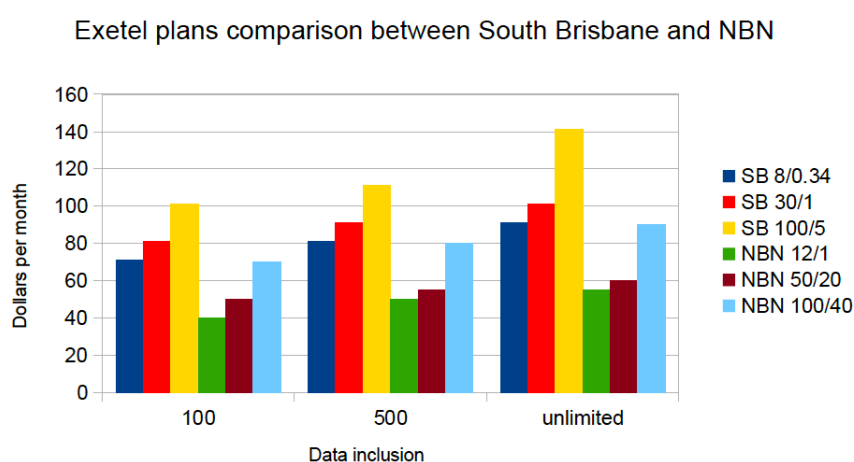
<sup>4</sup> Confirmed with sales representative over the phone on 5th March 2018

<sup>5</sup> Over nbn the 50/20 Mbps service is the first service that meets the standard set out in SIP legislation. Over South Brisbane the 100/5 is the first service that meets the SIP legislation.

The graph below shows that at all data inclusion levels (100GB, 500GB or unlimited GB) South Brisbane has a higher cost than plans over NBN.

The lowest speed South Brisbane plan (8/0.34) costs more (at each data inclusion point) than the highest speed tiers over NBN. i.e. the South Brisbane 8/0.34 plans are more expensive than all 3 nbn speed tier plans (with the same data inclusion). However, NBN 12/1, 50/20 or 100/40 all offer potential better speeds than 8/0.34.

Just comparing basic entry level plans (8/0.34 over South Brisbane versus 12/1 over NBN) - South Brisbane is between 60-70% more expensive than the same on NBN, depending on how much data is included with the plan.



## Case study of consumer on Telstra South Brisbane network

When Mark (not his real name) and his wife moved into their new apartment in South Brisbane they wanted to have an internet connection. They used mobile phones for calls so did not require a landline. However, they were unable to get internet only services. They ended up choosing Telstra and had to have a landline as it is a condition of service in South Brisbane. This was more expensive than his previous plan and provider (which was not available in the South Brisbane area).

Mark faced a further complication as he did not want his address publically available. With a landline Telstra have an automatically included policy for publishing names and address in public listings (i.e. the default process is to publish the information). To 'opt out' there was a charge of \$2.93/month (silent line).<sup>6</sup> Despite not wanting a landline, in order to protect his privacy, the only option for him have an internet services was to pay for a landline and then to pay for his information associated with the landline not to be made public.

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<sup>6</sup> Telstra changed its policy in February to remove the 'silent line' fee.

## **GOVERNMENT'S COMMITMENT TO CONSUMERS**

The Government has committed to provide all Australians with a superfast broadband connection that is available over a wholesale - only network by 2020. As a result consumers will have increased choice in retail service providers. This is not currently being delivered over the South Brisbane network, nor does it appear that it will any time soon. ACCAN believes that consumers in South Brisbane should also benefit from choice and affordable broadband services by 2020. It is unclear how the Ministers proposed exemption to the designated day (January 2020) would aid in meeting this objective or what will happen after this date. ACCAN believes that the Minister needs to take action to ensure that the Government's commitment is delivered to consumers in the South Brisbane area.

## **NOVEMBER 2018 AS THE LIMIT TO CURRENT EXEMPTION WITHOUT ANY CLEAR PATH FOR THE FUTURE OF THE NETWORK**

ACCAN believes that an exemption to November 2018 should be the absolute maximum allowable extension period for the South Brisbane network without a clear transition path.

This timeframe is to ensure that a decision regarding the future of the network is made in sufficient time to implement the required changes. Telstra have stated that it will take 12 months to develop a layer 2 bitstream product and a further three months to rollout the changes. If Telstra is to operate the South Brisbane network in compliance with Part 7 and 8 of the Telecommunication Act by 2020 (designated date) then it will need to commit to this and start undertaking the work by November 2018.

It is likely that arrangements to transfer the network to nbn,, if this is the chosen path, would also take a period of time to negotiate and finalise. November 2018 should give sufficient time to implement this.

Failing either of these options, it will take time for NBN Co to overbuild the Telstra South Brisbane network area. If nbn Co is instructed to do so by November 2018 it should have sufficient time to complete the work by 2020.

## **Negative impact to consumers by Telstra complying with Part 7 and 8 of the Telco Act**

We do not accept that the cost to develop a layer 2 would be so substantial to not undertake this work if services are not transferred to nbn. Other network providers, specifically TPG, recently had substantially less time to take similar action. End users in these circumstances did not experience significant price increases as a result. Furthermore, undertaking this course of action would not be short term. The intention would be to run the network compliant with the Telecommunications Act.

## ACCAN RECOMMENDATIONS

ACCAN strongly disagrees that “no risk to the long term interests of end users arises from the granting of a further extension”.<sup>7</sup> Broadband consumers in the South Brisbane footprint have been in an uncertain situation for six years already. Since 2012 there has been talk of their services transferring to the NBN. There is even less clarity now than there was then about the future of their services. It is not fair to leave these consumers in such a state, particularly as there are growing competition concerns.

ACCAN proposes that the Minister could make an extension to November 2018. After this date we envisage three possible scenarios and recommended courses of action:

1. Telstra and nbn Co confirm the transfer of the network to nbn. The required negotiations and work to transfer the network would then commence.
  - a. Following this decision the Minister could provide a further extension until the designated day to allow time to complete the required transfer arrangements.
  - b. Consumers will benefit by 2020 by having access to all the retail providers available over nbn, without the requirement to pay line rental charges, and have access to a greater range of affordable plans.
2. Telstra confirms that it intends to operate as a wholesale supplier in the South Brisbane area (comply with Parts 7 and 8 of the Telecommunications Act).
  - a. Following this decision the Minister could provide a further extension until the designated day to allow Telstra to complete the required work to separate the network.
  - b. The ACCC would vary the SBAS and LBAS determination to require the South Brisbane network to comply with the full determination and no longer receive special treatment.
  - c. Consumers will benefit by no longer having to pay line rental charges. A larger range of retailer providers are likely to offer services as the wholesale network will be in line with other networks and they can offer national plans to consumers in South Brisbane.
3. Telstra does not make a confirmed decision on the future of the South Brisbane network by November 2018.
  - a. Consumers in this network will be significantly disadvantaged compared to all other areas that benefit from nbn and the level playing field rules.
  - b. In this situation the Minister should use his powers to instruct NBN Co to overbuild the South Brisbane network. This will ensure that consumers in this area will benefit from Government policy in relation to competition and supply of superfast broa

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<sup>7</sup> Pg. 4 of Telstra’s request for variation of South Brisbane Network exemption 2018