

**Draft Carrier Licence Conditions (Networks supplying
Superfast Carriage Services to Residential
Customers) Declaration 2014**

SUBMISSION OF LBNCO

About LBNCo

LBN Co Pty Ltd ACN 073 226 114 (**LBNCo**) is a carrier licensed under the *Telecommunications Act 1997 (Act)*.

LBNCo (formerly called Service Elements) is a multi-technology Layer 2 and Layer 3 Wholesale Access Network supplier. We support VDSL (Fibre to the Node), FTTH and HFC network solutions focussing on the Greenfield Developer market. Our niches are both MDU and Broadacre developments across Australia with particular strength in Melbourne, Perth and Sydney.

LBNCo makes this submission on the Draft Carrier Licence Conditions (Networks supplying Superfast Carriage Services to Residential Customers) Declaration 2014 (**proposed declaration**).

Submission

Small scale exemption

1. LBNCo submits that condition (2) of the proposed declaration (in section 6) should be subject to a “small scale exemption”.
2. Small scale carriers, should they be subject to condition (2), would bear an undue cost burden: the cost of separating wholesale and retail operations (including the initial transaction costs and the ongoing costs) would be substantial as a proportion of their revenues and profits.
3. Separation obligations such as maintaining completely separate boards would be extremely onerous for small scale carriers: they do not have a ready pool of directors willing and able to serve on such boards and as a result directors tend to be executive directors. Further, small scale carriers simply could not afford non-executive director fees. This issue is equally relevant for other proposed separation requirements including senior management, employee and information restrictions and the requirement for completely separated support systems and functions.
4. Given their small scale (by definition) and their consequential immaterial effect on competition in the relevant markets, separation costs for small scale carriers may well exceed any benefits. In any case, the benefits of separation are likely to be ephemeral for small scale carriers: such carriers would remain subject to conditions (3) and (4), and due to their small scale have limited ability or incentive to favour their own downstream operations in cases where they are able to partner with larger third party retail service providers (**RSPs**) with higher-profile consumer brands in the relevant markets.

5. Further, small scale carriers such as LBNCo often face great difficulty in attracting larger third party RSPs onto their networks, precisely because of their small scale, thus further reducing the prospect of any benefits of separation.
6. LBNCo proposes that a carrier may qualify as a “small scale carrier” for the purpose of the proposed declaration if the carrier (in aggregate across all related companies within the carrier's group) owns or operates either (a) not more than 50,000 local access lines or (b) more than 50,000 local access lines and not more than 150,000 local access lines. In this latter case then in addition we propose that a wholesale service is provided to third party RSPs on 50% or more of the number of local access lines exceeding 50,000.
7. For example, a carrier with 80,000 lines in total, where 20,000 of those lines are served by competitive third party RSPs (by the carrier providing a wholesale service to that RSP), would qualify as a small scale carrier.
8. LBNCo proposes the following amendments to the proposed declaration to give effect to this exemption.
9. A new definition of “specified small scale carrier” is included in section 4 as follows:-

small scale carrier means:-

- a) a carrier that either owns or operates a designated telecommunications network at any time on or after the commencement of this Declaration; and
- b) either:
 - i. owns or operates (in aggregate together with its related bodies corporate) not more than 50,000 local access lines; or
 - ii. owns or operates (in aggregate together with its related bodies corporate) more than 50,000 local access lines and not more than 150,000 local access lines and sells and supplies eligible services to wholesale customers, not being related body corporates of the carrier, on 50% or more of the number of local access lines exceeding 50,000.

10. Section 5 (Application) is amended to read as follows:

A carrier licence granted to any specified carrier is subject to the condition set out in subsection 6(1) if...

11. Subsection 6(1) is amended to read as follows:

The specified carrier, if not a specified small scale carrier, must not use, or permit any of its associates to use, any local access line forming part of the designated telecommunications network to supply a carriage service unless all the conditions specified in subsections 6(2), (3) and (4) are met. The specified carrier, if a specified small scale carrier, must not use, or permit any of its associates to use, any local access line forming part of the designated telecommunications network to supply a

carriage service unless all the conditions specified in subsections 6(3) and (4) are met.

Condition (4) price

12. In relation to condition (4), LBNCo submits that the price of \$27 specified therein should be expressed as a price “exclusive of GST, per month”.

Exclusion of HFC networks

13. LBNCo submits that the exclusion of “Specified HFC networks” from the definition of “designated telecommunications network” is not required and supports the deletion of this exclusion from the conditions.
14. LBNCo submits that superfast HFC networks pass a considerable number of homes, and given the obvious competition impacts of “closed access”, considers that these networks should also be subject to separation requirements (where applicable) and open access requirements (for all specified carriers).

- End of submission -