Frontier Networks Pty Ltd response to draft Carrier Licence Conditions for new developments

**1 February 2016**

Frontier Networks Pty Ltd (**Frontier**) welcomes the opportunity to respond to the draft Carrier Licence Conditions on new developments proposed by the Department of Communications and the Arts on 18 December 2015 **(CLCs)**

# Executive summary

The Networks CLC would impose an access requirement on carriers whilst that issue is being properly considered by the ACCC SBAS inquiry. The matter should be determined by the ACCC inquiry, which is also considering the role of exemptions for smaller carriers and providers to senior housing communities.

The Network CLC lacks technical neutrality in requiring carriers to follow the NBN in technology choices, irrespective of cost or market demand.

Frontier is a small provider of internet services to residents of senior housing communities in Australia, with [c-i-c] services currently in operation. The Network CLC would impose highly demanding service levels on small carriers and carry severe penalties far in excess of any service level rebates imposed under current regulations or wholesale agreements.

Whilst it may be appropriate to specify more moderate service levels, systemic failure should lead to an ability for NBN to overbuild, not the application of maximum penalties which would threaten the viability of smaller carriers.

It makes no sense to exclude Telstra and NBN from the CLC given they are able to bear the compliance costs far better than small carriers. Those exclusions would create a highly uneven playing field.

# Frontier

## Who is Frontier?

Frontier is a small licensed telecommunications carrier. Frontier has [c-i-c] full-time equivalent (FTE) employees.

Frontier designs, constructs and installs networks in residential aged care facilities and retirement villages (collectively **Senior Housing Communities**) around Australia (each such network being a **Frontier Network**).

Frontier designs, constructs and installs:

1. network infrastructure upgrades in brownfield Senior Housing Communities to enable high speed connectivity on existing layer 1 infrastructure (including existing copper and HFC infrastructure); and
2. turnkey solutions for high speed FTTP connectivity in greenfield Senior Housing Communities.

Frontier develops and operates these networks to deliver high-speed broadband and other bespoke services to meet the needs of the operators and residents of these Senior Housing Communities and which integrate seamlessly onto the operator’s infrastructure and service delivery platforms. Services Frontier offers over its networks include:

1. telecoms solutions, including broadband, voice and pay-tv bundles;
2. bill certainty;
3. “seniors friendly” installation and help desk support; and
4. Telehealth solutions including emergency response, medical alarm, smoke alarm, backup battery and inactivity monitoring services.

## Frontier services in operation

Today, Frontier Networks pass approximately [c-i-c] independent living units, serviced apartments and aged care beds in Senior Housing Communities, and there are approximately [c-i-c] services in operation over Frontier Networks.

Frontier forecasts that within 3-5 years, Frontier Networks will pass approximately [c-i-c] units, apartments and beds in Senior Housing Communities, and deliver services to approximately [c-i-c] subscribers.

Accordingly, Frontier considers that it is, and will remain, a ‘small provider’ of ISP services.

# Effect of the proposed Networks CLC on Frontier, competition and end-users

The proposed CLC on Networks in New Developments **(Networks CLC)** is fundamentally flawed:

1. **it usurps the ACCC’s SBAS inquiry**: Condition 5(3)(f) requires carriers to have contracts with at least three carriage service providers to offer retail services in a new development **(3 CSP Obligation)**. This would entirely usurp the ACCC’s current inquiry into the declaration of a Superfast Broadband Access Service **(SBAS)**. That inquiry will determine both whether mandating access to such services is in the long term interest of end users, and if so, whether there should be an exemption for small carriers like Frontier because of the high costs of setting up wholesale services. It is entirely inappropriate for a CLC to make redundant a current ACCC inquiry and for the Minister to substitute his view of what access is required for that of the expert independent access regulator;
2. **the 3 CSP Obligation makes no commercial sense:** for many new developments there may be no CSP interest in supplying retail services (let alone there being three interested CSPs). As noted in Frontier’s submission to the SBAS inquiry **(SBAS Submission)** (see attached):

*The ACCC notes at page vi of the Draft SBAS Declaration that there may be “limitations on revenue opportunities due to the small addressable market” in certain developments.*

*Typically, each retirement community served by a Frontier Network has between [c-i-c]and[c-i-c] potential subscribers. Given the small size of the addressable market and the high costs to develop a system to order, activate, interconnect and bill this addressable market, Frontier submits that it would not be economically viable for retail service providers to access the SBAS over Frontier Networks.*

*Frontier notes that there are only two service providers other than Telstra who supply services over Telstra’s South Brisbane fibre network. As the South Brisbane fibre network covers an entire high-density suburb, it is likely retail service provider demand for access to Frontier Networks (covering a retirement community only) will be even lower (see page 29 of the Draft SBAS Decision)….*

*…*

*In addition, services are not sold over Frontier Networks by Frontier itself, but by the management of the relevant retirement community. In Frontier’s experience, this model is strongly preferred by retirement community residents. It is unlikely that other retail service providers would be able to sell services over Frontier Networks via these channels, and as such, there may not be significant demand from end-users for services provided over Frontier Networks by other retail service providers. In this case, as above, declaring an SBAS will not promote competition in the downstream markets for retail superfast broadband services.*

1. **the 3 CSP Obligation will impose very substantial compliance costs on small carriers adversely affecting their ability to compete:**  as noted in the SBAS Submission:

*To implement the SBAS declaration, Frontier would need to develop, test and launch:*

1. *a wholesale service for retail service providers for each Frontier Network, noting that not all Frontier Networks use the same technology, and as a result, that at least 3 separate wholesale broadband products would need to be developed;*
2. *a Layer 2 service for each Frontier Network, noting that not all Frontier Networks use the same technology, and as a result, that at least 3 separate Layer 2 products would need to be developed;*
3. *a business to business order to activate software system, and a new billing system, to permit retail service providers to sell retail products over Frontier Networks;*
4. *a point of interconnection for access seekers to access each Frontier Network (noting that these networks were not designed to permit backhaul fibre from multiple providers to interconnect, and so the costs of ensuring technical feasibility to supply an SBAS are likely to be prohibitive for Frontier); and*
5. *fault reporting and management tools and resources for the above services/systems.*

*Frontier would, in effect, need to establish a stand-alone wholesale-only carrier.*

*Frontier‘s best estimate is that implementing the SBAS declaration [would cost Frontier] [c-i-c]]*

*…*

***Effect on Frontier prices***

*As Frontier is a small network provider, with no ability to cross subsidise between products, the impact of these costs on Frontier is disproportionately heavy, particularly as Frontier has not previously wholesaled any of its services to retail service providers.*

*…*

***Effect on Competition***

*Were smaller providers not exempt from the SBAS declaration, Frontier submits that small providers would be at a competitive disadvantage to construct new networks; larger providers who can absorb the compliance costs (or who would not need to incur significant implementation costs) would be at a significant advantage in the market, reducing overall competition and economically efficient investment in telecommunications infrastructure.*

*This is not in the long-term interests of end-users, who benefit from the price and technological competition of a greater number of diverse providers in the market.*

*The ACCC notes on page 5 of the Draft SBAS Declaration that:*

*An access regime must not discourage investment in networks or network elements where such investment is efficient.*

1. **the mandated service levels lack technical neutrality and are very vague:** the carrier networks must be “*capable of keeping up with the technology of the fixed line national broadband network as set out in the*  *[NBN] corporate plan from time to time” (Condition 5(3)(b)(i))*. This is astonishing public policy requiring all carriers to adopt whatever technology is chosen by NBN over time. This departs from a key tenet of good regulatory policy – technical neutrality. Also, why should the carriers be required to follow any gold-plating chosen by the taxpayer-funded NBN? Why not simply let the market decide? What does “*capable of keeping up*” mean? What lag would be permitted between an NBN technology improvement and the carrier networks “catching up”?
2. **the mandated service levels are entirely uncommercial:** as an example, carriers are given only one day to rectify a network fault (Condition 5(14)) which is highly likely not to be possible if there is a cable cut. This would be less objectionable if the consequences were moderate, such as the small customer rebates payable under the *Telecommunications* (*Customer Service Guarantee*), or the small rebates for service level breach found in wholesale supply agreements. In particular the remedies offered in NBN and Telstra wholesale agreements for service level breaches are very modest. In contrast the penalties for CLC breach run to a maximum of $10,000,000 **per breach** (*Telecommunications Act Section 570(3)*). To have such large potential penalties for simple operational failures would risk putting small carriers out of business. The ill-defined exception of a ‘trivial breach’ (Condition 5(18)) is of little comfort. Also, there is no clear force majeure defence in Condition 5(14) meaning a carrier could face very large penalties for an outage caused by factors beyond its control.
3. **a systemic failure to meet mandated service levels might properly allow NBN overbuild, but not massive penalties:** The Government’s Greenfields policy of March 2015 indicated (paragraph 3.6.1) that poor service provision by an alternative carrier could justify NBN overbuild. The CLCs however make no reference to such an outcome, instead imposing massive potential penalties on carriers.
4. **the CFC will create a very uneven playing field favouring Telstra and NBN:** for reasons not made clear, both the largest carrier, Telstra, and the carrier fully funded by the Australian taxpayer, NBN, will not be subject to the Network CLC, and so the 3 CSP Obligation and the mandated service levels and associated reporting obligations will not apply, giving them a hugely unfair competitive advantage to the detriment of smaller carriers, competition and the interests of end-users.

# Exemptions for residential aged care communities and small carriers

In the event that despite its fundamental flaws it is decided to make the Networks CLC, it would be appropriate to consider including exemptions for:

1. carriers in providing services to residential aged care and retirement village communities, given the relatively small size of those communities and the residents’ preference to acquire their telco services from the manager of the community. These points are made more fully at paragraph 3 b) above; and
2. small carriers, given the undue impact on them of the costs of compliance. This point is made more fully at paragraph 3 c) above

As to the possible structure of such exemptions, please see sections 4.1 and 4.2 of the SBAS Submission.

A more limited exemption would be to allow the ACCC SBAS declaration inquiry due primacy, so that there would be an exemption from the Networks CLC for carriers who are providing services in accordance with an SBAS declared service or who are specifically exempted therefrom.