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Mr Robert Wright  
General Manager  
Water and Wireline Markets Branch  
Australian Competition and Consumer Commission  
GPO Box 520  
Melbourne VIC 3001

By email: [DeclarationGuidelines-PartXIC@accc.gov.au](mailto:DeclarationGuidelines-PartXIC@accc.gov.au)

Cc: [claire.preston@accc.gov.au](mailto:claire.preston@accc.gov.au)

Dear Robert,

### Draft guidelines for Part XIC declaration provisions for telecommunications services

Thank you for the opportunity to review the ACCC's Draft guidelines for Part XIC declaration provisions for telecommunications services.

**nbn** notes the following points from an accuracy and clarity perspective.

1. p.8, third para, last sentence - the statement that "the ACCC now determines up-front terms and conditions ..." is only relevant to non-NBN Corporations.
2. p.21, section 3.3 - in discussing declaration following publication of an SFAA by **nbn**, it would be worth noting that this has been **nbn**'s standard practice.
3. p.21 and p.6 (declaration following publication of an SFAA by **nbn**) – we suggest that the wording on p.6 be aligned with that on p.21 for accuracy and clarity, i.e. so that p.6 notes that 'The ACCC does not have any role in declaring these **nbn** services', rather than '...(the SFAA does not need to be accepted or approved by the ACCC for the service to become a declared service)'.
4. p.23, figure 2 - the process depicted in relation to declaration via an SAU is inaccurate in relation to **nbn**. In the centre box, it is stated that an SAU can only be provided if the service is not already declared. This limitation does not exist in relation to an SAU lodged by **nbn** (for example, **nbn** has declared a number of fibre, wireless and satellite services by publishing SFAs and subsequently lodged an SAU).
5. p.34, last dot point - this factor (for assessing the effectiveness of competition) appears to be missing a word, as follows "The importance of the service in the downstream market as it may constrain the ability of the provider of the service to affect competition in that market, i.e. low importance of the services may result in [limited] market pricing power." Correcting for this apparently missing word would make the point consistent with the 1999 guideline (p.47).



6. p.36, first dot point, last sentence - the reference to TSLRIC is outdated. It would be better to reword as follows, "... for example where the unregulated supply is at an inefficiently high price ~~significantly above total service long-run incremental cost.~~"
7. p.37 - section 6.4 - The ACCC refers here to "facilities-based" competition (as compared to "service-based" competition), but the terminology that has been used more commonly to refer to the same underlying concept is "infrastructure-based" competition.
8. p.38, last para, last sentence - the ACCC has characterised "the declaration of the NBN" as something that promotes service-based competition rather than facilities-based (i.e. infrastructure-based) competition. Noting that **nbn**'s SAU and SFAAs declare Layer 2 services, this characterisation is accurate to a degree, but overlooks that **nbn** does not supply end to end services and that the 121 POI decision served to promote (and preserve) more infrastructure-based competition (in regard to backhaul transmission).
9. p.45 - the acceptance of **nbn**'s SAU is included as an example of how the ACCC considers incentives for investment in infrastructure. **nbn** notes that the SAU also serves to declare certain services and to set out some of the terms and conditions on which nbn will provide access to the declared services.

In addition to the above points we note that section 7 of the draft guidelines highlights that depending on the service under consideration the objective of any to-to-any connectivity may not be given substantial weight. We also note that section 7 goes on to provide two examples where the objective of any-to-any connectivity has been given specific consideration and how the ACCC has considered this issue. **nbn** suggests that given the future prevalence of regulated layer 2 bitstream services the ACCC provides some guidance as to the weight it will give to consideration of this objective when declaring future bitstream services. In this regard the SBAS draft declaration may serve as a useful example.

Please let me know if you require any further information or would like to discuss anything in this letter.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Caroline Lovell', is positioned above the printed name.

Caroline Lovell  
Chief Regulatory Officer