

Explanatory Statement

Issued by the Authority of the Minister for Communications, Cyber Safety and the Arts

Telecommunications Act 1997

Telecommunications (Nominated Service Area and Statutory Infrastructure Provider) Declaration 2020

Authority

Subsection 360K(3) of the *Telecommunications Act 1997* (the Act) provides that, for the purposes of the statutory infrastructure provider (SIP) regime in Part 19 of the Act, a carrier which held a licence that was subject to a particular carrier licence condition declaration immediately before the commencement of the section is the SIP for the nominated service area ascertained under s 360J by reference to that declaration. Subsection 360K(4) of the Act enables the Minister, by legislative instrument, to declare that subsection 360K(3) does not apply to a specified nominated service area and that a specified carrier is the statutory infrastructure provider (SIP) for an area which section 360J provides is a nominated service area.

Purpose

The purpose of the *Telecommunications (Nominated Service Area and Statutory Infrastructure Provider) Declaration 2020* (the Declaration) is to substitute the SIPs for eight nominated service areas set by the SIP regime to reflect subsequent changes in ownership or operation.

Background

The SIP regime is set out in Part 19 of the Act and commenced on 1 July 2020. It provides a framework for ensuring that all people in Australia can access high-speed broadband services (and, on fixed-line and fixed wireless networks, voice services). The regime contains mechanisms for determining the carriers that must serve different geographic areas of Australia, recognising that there is a competitive market in Australia for the provision of telecommunications networks. Recognising its position in the market, NBN Co is the default wholesale broadband provider for Australia. However, the SIP regime also provides for alternative carriers to be the SIPs for the geographic areas where they deploy networks, particularly where they contract with a developer to service the area.

Prior to the SIP regime commencing, some alternative carriers were subject to carrier licence conditions which required them to supply carriage services, on reasonable request, in development areas specified in the carrier licence condition declarations. This was on the basis they had contracted to install telecommunications networks in those areas. The carriers were NT Technology Services, OptiComm and Pivit. In total 48 such development areas were subject to licence conditions, set out in three carrier licence condition declarations:

- the *Carrier Licence Conditions (OptiComm Co Pty Ltd) Declaration 2013*;
- the *Carrier Licence Conditions (Pivit Pty Ltd) Declaration 2013*; and

- the *Carrier Licence Conditions (NT Technology Services Pty Ltd) Declaration 2014*.

Under section 360J of the Act, the development areas specified in these three declarations became ‘nominated service areas’ on the commencement of the SIP regime, and under subsection 360K(3) the carriers subject to the licence conditions under the declarations became the SIPs for those nominated service areas.

This conferred two main obligations on the carriers. First, they are required to connect premises to networks in the nominated service areas on reasonable request from a carriage service provider. Second, and also on reasonable request from a carriage service provider, they are required to supply wholesale services that are capable of being used by carriage service providers to supply retail broadband services with peak download and upload speeds of at least 25/5 Mbps. On fixed-line and fixed wireless networks, the wholesale services that SIPs supply must also be capable of being used by carriage service providers to supply retail voice services.

In light of these new obligations, the three carrier licence conditions declarations were therefore repealed (see Part 2 of Schedule 3 to the *Telecommunications Legislation Amendment (Competition and Consumer) Act 2020*).

Over time, alternative carriers may acquire networks from other carriers or replace them with other networks, so the Act contains a power for the Minister to substitute the SIP for a nominated service area created by subsection 360J, by declaring under subsection 360K(4) that subsection 360K(3) does not apply to a specified nominated service area, and that a different specified carrier is the statutory infrastructure provider for the nominated service area.

After the commencement of the SIP regime, NT Technology Services advised the Department of Infrastructure, Transport, Regional Development and Communications (the Department) that it had sold the five networks that were subject to its licence conditions to OptiComm Ltd (‘Forte’, ‘EXO’, ‘Serrata’, ‘Convesso’ and ‘Concavo’, all in the Docklands in Melbourne). Pivit also advised the Department that it had sold two networks to LBN Co Pty Ltd (Elements Retirement Living in Springwood, Queensland, and Kelvin Grove Urban Village in Kelvin Grove, Queensland). Pivit also advised that it had migrated its customers on its network in Little Bay Estate in Sydney to LBN Co’s networks in the same service area, and had therefore ceased to operate a network in the area.

This Declaration therefore substitutes the SIPs for the eight nominated service areas so that OptiComm will now be the SIP for five nominated service areas previously serviced by NT Technology Services and LBN Co will be the SIP for three nominated service areas previously serviced by Pivit.

For ease of reference for the reader, LBN Co Pty Ltd is a subsidiary of Uniti Group Ltd (formerly Uniti Wireless Pty Ltd).

Nominated service areas, along with their SIPs, are recorded by the Australian Communications and Media Authority on a SIP register available on its website.¹

¹ www.acma.gov.au/sip-register (accessed 14 August 2020)

The Declaration is a legislative instrument for the purposes of the *Legislation Act 2003*. The Declaration commences the day after it is registered.

Details of the Declaration are set out in Attachment A.

Consultation

The Department consulted LBN Co, NT Technology Services, OptiComm and Pivit on the status of the nominated service areas. After confirming with all carriers that the nominated service areas were now being serviced by LBN Co and OptiComm, the Department provided a draft of the Declaration to LBN Co and OptiComm for comment. Neither raised objections to the draft of the Declaration, and supported the Department by providing the geographical boundaries of the networks they operate within the nominated service areas.

The Department also consulted the Australian Communications and Media Authority on a draft of the Declaration.

Regulatory Impact Statement

The Office of Best Practice Regulation (OBPR) has advised the declaration is covered by the Regulation Impact Statement prepared for the SIP regime as a whole (OBPR ID: 21886).

Statement of compatibility with human rights

A statement of compatibility with human rights for the purposes of Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* is set out at Attachment B.

Attachment A

Details of the Telecommunications (Nominated Service Area and Statutory Infrastructure Provider) Declaration 2020

Section 1 – Name

This section provides that the Declaration is the *Telecommunications (Nominated Service Area and Statutory Infrastructure Provider) Declaration 2020*.

Section 2 – Commencement

This section provides for the Declaration to commence on the day after it is registered on the Federal Register of Legislation.

Section 3 – Authority

This section provides that the Declaration is made under subsection 360K(4) of the *Telecommunications Act 1997* (the Act).

Section 4 – Definitions

This section provides definitions of terms used in the Declaration.

The note in the section indicates that a number of terms used in the Declaration are defined in the Act, including nominated service area and statutory infrastructure provider (SIP). These terms have the same meaning in the Declaration as under the Act, pursuant to section 13 of the *Legislation Act 2003*.

Act is defined to mean the *Telecommunications Act 1997*.

Section 5 – Nominated service areas and statutory infrastructure providers

This section declares the SIPs for the nominated service areas for the purposes of Part 19 of the Act.

Section 360J of the Act provides that development areas specified in three carrier licence condition declarations became nominated service areas for the purposes of Part 19 of the Act on commencement of that Part. Section 360K then sets out the mechanism for determining the SIPs for those nominated service areas created under section 360J. Subsection 360K(3) provides that if a carrier held a carrier licence that was subject to a condition under a declaration mentioned in section 360J immediately before the commencement of the section, and as a result of the application of section 360J to the declaration, an area is a nominated service area, then the carrier is the SIP for the nominated service area.

Subsection 360K(4) of the Act provides that the Minister may, by legislative instrument, declare that subsection 360K(3) does not apply to a specified nominated service area, and declare another carrier as the SIP for the nominated service area.

For the purposes of paragraph 360K(4)(a) of the Act, paragraph 5(a) of the Declaration provides that subsection 360K(3) does not apply to each nominated service area specified in column 1 of the table in section 5. The effect of this is that NT Technology Services and

Pivit are no longer be the SIPs for the nominated service areas specified in the table in section 5.

For the purposes of paragraph 360K(4)(b) of the Act, paragraph 5(b) of the Declaration provides that the carriers listed in column 2 of the table in section 5 are the SIPs for the respective nominated service areas. The effect of this paragraph is that LBN Co Pty Ltd and OptiComm Ltd are the SIPs for the respective nominated service areas.

The note following paragraphs 5(a) and (b) is intended to provide context and assist the reader to understand the operation of sections 360J and 360K of the Act.

Noting that section 360J of the Act provides that a ‘development area’ is a nominated service area where a carrier was subject to a licence condition in relation to that development area under one of the named declarations, the names of the nominated service areas provided in column 1 of the table correspond to the development areas of the same name specified in the original carrier licence condition declarations, the *Carrier Licence Conditions (Pivit Pty Ltd) Declaration 2013* and the *Carrier Licence Conditions (NT Technology Services Pty Ltd) Declaration 2014*. The note following the table is intended to assist the reader to understand the relationship between the nominated service areas listed and the development areas referred to in the relevant carrier licence condition declarations.

The note also provides that the geographical area of each nominated service area to which the Declaration relates is the area specified for the corresponding development area in the relevant carrier licence conditions declaration. While the nominated service areas created by section 360J of the Act are fixed by the operation of that section and the carrier licence conditions as in force immediately before the commencement of the SIP regime, geographical coordinates are given in Attachment C to this Explanatory Statement for the convenience of the reader. Attachment C used the same format as used in Schedules 1-17 of the *Telecommunications (Designated Service Area and Statutory Infrastructure Provider) Declaration (No. 1) 2020*.

Attachment B**Statement of Compatibility with Human Rights**

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Telecommunications (Nominated Service Area and Statutory Infrastructure Provider) Declaration 2020***Overview***

The purpose of the *Telecommunications (Nominated Service Area and Statutory Infrastructure Provider) Declaration 2020* (the Declaration) is to substitute the statutorily deemed statutory infrastructure providers (SIPs) for eight ‘nominated service areas’ set by the SIP regime.

Prior to the SIP regime commencing, two carriers were subject to licence conditions which required them to supply carriage services, on reasonable request, in development areas specified in the licence conditions, on the basis they had contracted to install telecommunications networks in those areas.

The Declaration substitutes these SIPs in light of subsequent changes in ownership and operation of the networks concerned. Specifically OptiComm will now be the SIP for five nominated service areas previously serviced by NT Technology Services and LBN Co will be the SIP for three nominated service areas previously serviced by Pivit.

Human rights implications

The Declaration is compatible with the rights and freedoms recognised or declared by the international instruments listed in subsection 3(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011* as they apply to Australia.

The Declaration does not engage any of the applicable rights or freedoms.

Conclusion

The Declaration is compatible with human rights as it does not raise any human rights i

Attachment C

Boundaries of nominated service areas

To assist readers, the table below provides a description of the geographical boundaries for the eight nominated service areas in TAB Vector format using the GDA94 coordinate system, and lists the designated SIP for each nominated service area. The geographic area of the relevant nominated service areas is fixed by law by the operation of section 360L of the Act as being the development areas as defined in the *Carrier Licence Conditions (Pivot Pty Ltd) Declaration 2013* and in *Carrier Licence Conditions (NT Technology Services Pty Ltd) Declaration 2014*.

Item	Nominated service area to which subsection 360K(3) does not apply	Carrier that is the statutory infrastructure provider for the nominated service area	Vector boundaries of the nominated service areas using the GDA94 coordinate system
1	Elements Retirement Living Dennis Road, Springwood QLD 4127	LBN Co Pty Ltd	POLYGON((153.15123820261411 -27.616213846997994, 153.15186583952359 -27.616560834644517, 153.15151715235166 -27.618853560927935, 153.1496356471184 -27.617281502867169, 153.14973220664294 -27.616630310253662, 153.15009162265093 -27.616307089124412, 153.15045640307696 -27.616425920532812, 153.15123820261411 -27.616213846997994))
2	Kelvin Grove Urban Village Kelvin Grove QLD 4059	LBN Co Pty Ltd	POLYGON((153.01301552391976 -27.45029378434918, 153.0124629888627 -27.45114114012905, 153.01270975209206 -27.45140296222764, 153.0128438625428 -27.45130775426371, 153.0131496343705 -27.451612419459043, 153.01264001465768 -27.451974208285396, 153.01330520249337 -27.452775611101817, 153.0134714994523 -27.453142156433653, 153.01305307484597 -27.453284965973406, 153.01290287114114 -27.454122778215105, 153.01391674614877 -27.45426558648501, 153.01370216942757 -27.455282561975967, 153.01285459137887 -27.455677660248778, 153.01296187973946 -27.455910910371802, 153.0158798849373 -27.45520170851904, 153.01579405424883 -27.45495417616826, 153.0162232076912 -27.454863731516866, 153.01601935980608 -27.45426379501782, 153.01505376456072 -27.45436852096658, 153.01538596729324 -27.453243802976292, 153.01587949375198 -27.45289153897889, 153.01618526557968 -27.452910580304824, 153.01628182510422 -27.45233048128629, 153.01560590843246 -27.45160214439672, 153.01492462734268 -27.45154978012129, 153.0132601635805 -27.450563030681902, 153.01301552391976 -27.45029378434918))

27.45029378434918))			
3	Little Bay Estate Little Bay NSW 2036	LBN Co Pty Ltd	POLYGON((151.24333215391675 - 33.97664837506216,151.24760223066846 - 33.97720090809031,151.24805284178296 - 33.97762351429348,151.24842835104505 - 33.9784509266715,151.2498767439131 - 33.97896249481204,151.2505633894209 - 33.97945626635848,151.25066531336347 - 33.979714271971666,151.25050438082258 - 33.980763445917276,151.24998939669172 - 33.98142624167063,151.24939931070844 - 33.981448483049256,151.24835324919266 - 33.98140400028621,151.24669174739628 - 33.98386938730225,151.24287602200945 - 33.982269793453874,151.24323543801745 - 33.98150469407888,151.2443083216234 - 33.9807929675474,151.24487694993456 - 33.97984547235545,151.24482330575427 - 33.97876266673545,151.24465700879534 - 33.97842013803761,151.24333215391675 - 33.97664837506216))
4	'Forte' residential apartment complex 807 – 811 Bourke Street Docklands Victoria 3008	OptiComm Ltd	GEOMETRYCOLLECTION(POLYGON((144.94092233168848 -37.8199351097501, 144.9411530016621 - 37.820439379758426, 144.9418718336783 - 37.820248689823806, 144.94165189253567 - 37.81964695391254, 144.94092233168848 - 37.8199351097501)), POLYGON((144.9417484520593 - 37.81961729074765, 144.94235463130542 - 37.81937998500018, 144.9426496742918 - 37.820053761826486, 144.9420005797128 - 37.82021478933995, 144.9417484520593 - 37.81961729074765)), POLYGON((144.94325585353792 - 37.82090338987446, 144.9439907788096 -37.82067880086714, 144.9441946266968 -37.821098315627985, 144.9441946266968 -37.82113645321489, 144.94413561809952 - 37.82117035327615, 144.94332559097515 - 37.820979665230716, 144.94327194679337 - 37.82095424012071, 144.94325585353792 - 37.82090338987446)), POLYGON((144.94431264389132 - 37.819827051443106, 144.94449503410763 - 37.82021267055945, 144.94482762802033 - 37.82011520657687, 144.94480080593394 - 37.82007283089262, 144.9449671028948 -37.82003893032728, 144.9448437212758 -37.81975077489574, 144.94472033966574 -37.81975077489574, 144.9447042464103 - 37.81971687418249, 144.94431264389132 - 37.819827051443106)), POLYGON((144.94490809429752 - 37.8196617854905, 144.94498856056572 -37.8198058635213, 144.94520313728387 -37.819746537307346, 144.94517095077302 -37.81957703357707, 144.94490809429752 -37.8196617854905)), POLYGON((144.94020349968125 -37.82003045518405, 144.94079895007843 -37.81985247694138, 144.9408794163556 -37.82003893032728, 144.9410939930738 - 37.820496586643166, 144.94048781383665 - 37.820674563332744, 144.94020349968125 - 37.82003045518405)))
5	'EXO' residential apartment complex 55 Merchant Street Docklands Victoria 3008	OptiComm Ltd	37.820053761826486, 144.9420005797128 - 37.82021478933995, 144.9417484520593 - 37.81961729074765)), POLYGON((144.94325585353792 - 37.82090338987446, 144.9439907788096 -37.82067880086714, 144.9441946266968 -37.821098315627985, 144.9441946266968 -37.82113645321489, 144.94413561809952 - 37.82117035327615, 144.94332559097515 - 37.820979665230716, 144.94327194679337 - 37.82095424012071, 144.94325585353792 - 37.82090338987446)), POLYGON((144.94431264389132 - 37.819827051443106, 144.94449503410763 - 37.82021267055945, 144.94482762802033 - 37.82011520657687, 144.94480080593394 - 37.82007283089262, 144.9449671028948 -37.82003893032728, 144.9448437212758 -37.81975077489574, 144.94472033966574 -37.81975077489574, 144.9447042464103 - 37.81971687418249, 144.94431264389132 - 37.819827051443106)), POLYGON((144.94490809429752 - 37.8196617854905, 144.94498856056572 -37.8198058635213, 144.94520313728387 -37.819746537307346, 144.94517095077302 -37.81957703357707, 144.94490809429752 -37.8196617854905)), POLYGON((144.94020349968125 -37.82003045518405, 144.94079895007843 -37.81985247694138, 144.9408794163556 -37.82003893032728, 144.9410939930738 - 37.820496586643166, 144.94048781383665 - 37.820674563332744, 144.94020349968125 - 37.82003045518405)))
6	'Serrata' residential apartment complex 815 Bourke Street Docklands Victoria 3008	OptiComm Ltd	37.820053761826486, 144.9420005797128 - 37.82021478933995, 144.9417484520593 - 37.81961729074765)), POLYGON((144.94325585353792 - 37.82090338987446, 144.9439907788096 -37.82067880086714, 144.9441946266968 -37.821098315627985, 144.9441946266968 -37.82113645321489, 144.94413561809952 - 37.82117035327615, 144.94332559097515 - 37.820979665230716, 144.94327194679337 - 37.82095424012071, 144.94325585353792 - 37.82090338987446)), POLYGON((144.94431264389132 - 37.819827051443106, 144.94449503410763 - 37.82021267055945, 144.94482762802033 - 37.82011520657687, 144.94480080593394 - 37.82007283089262, 144.9449671028948 -37.82003893032728, 144.9448437212758 -37.81975077489574, 144.94472033966574 -37.81975077489574, 144.9447042464103 - 37.81971687418249, 144.94431264389132 - 37.819827051443106)), POLYGON((144.94490809429752 - 37.8196617854905, 144.94498856056572 -37.8198058635213, 144.94520313728387 -37.819746537307346, 144.94517095077302 -37.81957703357707, 144.94490809429752 -37.8196617854905)), POLYGON((144.94020349968125 -37.82003045518405, 144.94079895007843 -37.81985247694138, 144.9408794163556 -37.82003893032728, 144.9410939930738 - 37.820496586643166, 144.94048781383665 - 37.820674563332744, 144.94020349968125 - 37.82003045518405)))
7	'Convesso' residential apartment complex 8 Waterside Place Docklands Victoria 3008	OptiComm Ltd	144.94079895007843 -37.81985247694138, 144.9408794163556 -37.82003893032728, 144.9410939930738 - 37.820496586643166, 144.94048781383665 - 37.820674563332744, 144.94020349968125 - 37.82003045518405)))
8	'Concavo' residential apartment complex	OptiComm Ltd	144.94079895007843 -37.81985247694138, 144.9408794163556 -37.82003893032728, 144.9410939930738 - 37.820496586643166, 144.94048781383665 - 37.820674563332744, 144.94020349968125 - 37.82003045518405)))

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