



## **Response to the Productivity Commission, *Telecommunications Universal Service Obligations: Issues Paper*, June 2016**

### **Background<sup>1</sup>**

The basic question being asked by this Inquiry is as follows:

*...to what extent, in the evolving Australian telecommunications market, Government policies may be required to support universal access to a minimum level of retail telecommunications services. This will involve a consideration of the nature, scope and objectives of a universal service obligation, whether the retail market for relevant services will deliver appropriate outcomes for consumers without Government intervention and, if not, what options should be considered by Government to deliver universal services and the costs and benefits of these interventions.<sup>2</sup>*

Internet Australia's response is based on the underlying principle of the global Internet Society, of which we are a chapter, that "The Internet Is For Everyone".

We note the United Nations resolution on "The promotion, protection and enjoyment of human rights on the Internet" dated 27 June 2016.<sup>3</sup> We also note that 2016 has been declared The National Year of Digital Inclusion.<sup>4</sup>

### **Submission**

Internet Australia believes that in the 21st Century access to the Internet is an essential service. Accordingly, we submit that the provisions of the Universal Service Obligation (USO) need to be expanded so as to ensure that in future access to the Internet via a suitable fast and reliable broadband connection is universally available, just as they now provide an entitlement to a telephone service.

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<sup>1</sup> Productivity Commission, *Telecommunications: Universal Service Obligations: Issues Paper*, (Issues Paper) June 2016

<sup>2</sup> Ibid p iii

<sup>3</sup> [https://www.article19.org/data/files/Internet\\_Statement\\_Adopted.pdf](https://www.article19.org/data/files/Internet_Statement_Adopted.pdf)

<sup>4</sup> <https://www.godigi.org.au/NYDI>

We note that from small beginnings in the early 1990s the Internet has now grown to become the single most important element of global communications and economic infrastructure. Today the Internet forms the platform for education, government services, most forms of commerce and social interaction. Along the way, it has grown from a few thousand users in research institutions to around four billion users globally. It is already becoming difficult to perform purchasing and other financial transactions, and to access the media and many social and educational interactions, without access to the Internet. Increasingly, the main mechanism for accessing the Internet is via high speed broadband. The use of the Internet to provide voice over IP telephony is also steadily replacing traditional forms of telephony.

The underlying rationale for governments to impose universal service obligations on private sector providers of essential services is to create a form of safety net for citizens who because of financial hardship, disability, or remoteness of location will not receive adequate minimum services through the actions of the market. This is the basis upon which universal service obligations have been placed on Telstra for many years.

Traditional telephony technologies are increasingly redundant in the Australian market place, and it is clear that the existing universal service obligations are failing to deliver an adequate safety net for citizens in accessing modern communications technologies. It is for this reason that Internet Australia considers that governments should broaden the concept of universal service to encompass access to the Internet via a suitable fast and reliable broadband connection.

Access to the Internet should include both appropriate upload and download speeds, be affordable, and in particular should be available to people in rural, regional and remote areas and to people with disabilities.

## **Service Definition**

The current USO includes the provision of a standard telephone service that is reasonably accessible to all Australians.<sup>5</sup> A Standard Telephone Service (STS) is defined as a service for voice telephony or its equivalent that meets the ‘any-to-any’ connectivity test.<sup>6</sup>

Increasingly, Australians are moving away from a traditional wireline telephony service as their means of communications. Both the Issues paper and the latest ACMA’s *Communications Report* document Australians’ use of broadband services from the premises or mobile platforms for voice, and increasingly, a range of over-the-top (OTT) services for communications.

### **Recommendation:**

**The Universal Service Obligation be extended to include the provision of broadband services that deliver access to the Internet and are reasonably accessible to all Australians**

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<sup>5</sup> *Telecommunications (Consumer Protection and Service Standards) Act 1999* s. 9

<sup>6</sup> *Ibid* s. 6

## Quality standard

There is an existing technical standard for the provision of a standard telephone service.<sup>7</sup> That standard is, however, increasingly irrelevant for three reasons:

- The Standard was not set for the use of IP technology<sup>8</sup>
- It applies only to the provision of a standard telephone service – not to the many other ways Australians are communicating, including VoIP services.
- It does not reflect the existing split between infrastructure providers and retail service providers.

There are a range of consumer protections on carriage service providers, including those contained in the Telecommunications Consumer Protection Code<sup>9</sup> and other protections such as the Customer Service Guarantee. However, aside from the requirements under ACIF C519, other quality standards such as the Network Reliability Framework are primarily on Telstra.

Legislation allows the Minister to set performance benchmarks and standards for wholesale providers, which can be enforced by the ACMA.<sup>10</sup> To date, neither wholesale performance benchmarks nor standards have been set, but the mechanism is in place and can be implemented.

Currently, Telstra as the universal service provider, has the obligation to provide the standard telephone service which encompasses the provision of infrastructure. Indeed, Telstra is responsible for operating and maintaining its existing copper network in areas outside of the NBN company's fixed-line footprint and providing voice services over that network. Telstra is also required to act as the retailer of last resort to provide standard telephone services on request over the NBN fixed-line network.<sup>11</sup>

There is no similar requirement for the provision of broadband services. Nothing in legislation or the NBN carrier licence requires it to provide broadband services of a minimum capacity or quality. However, in its 'Statement of Expectations' to the Executive Chair of the NBN Company, the Government set out its policy objectives:

*.. of providing download data rates (and proportionate upload rates) of at least 25 megabits per second to all premises and at least 50 megabits per second to 90 Per cent of fixed line premises as soon as possible.<sup>12</sup>*

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<sup>7</sup> ACIF C519:2004 End-to-End Network Performance for the Standard Telephone Service

<sup>8</sup> Ibid Clause 3.2.8

<sup>9</sup> Communications Alliance, C628:2015 Telecommunications Consumer Protection Code

<sup>10</sup> T(CPSS)A ss 117 D, 117E and 118

<sup>11</sup> Under the Telstra Universal Obligations Performance Agreement between the Australian Government and Telstra, from 1 July 2012 to 1 July 2032.

<sup>12</sup> "Statement of Expectations" Letter to Dr Ziggy Switkowski, Executive Chair NBN Co from The Hon Malcolm Turnbull, Minister for Communications and The Hon Mathias Cormann, Minister of Finance, dated 8 April 2014.

More recently, in its response to the 2016 Regional Telecommunication Independent Review Committee Report, the Government went further:

*The NBN will provide for universal broadband infrastructure for all Australians. The Government is developing legislation to introduce a statutory infrastructure provider of last resort regime. Under this statutory regime, NBN Co (or in certain areas, potentially other infrastructure providers) will be required to connect premises to its network. This means that consumers will have a guarantee of an infrastructure connection. Retail service providers (RSPs) will be able to offer voice and data services to customers using that infrastructure.<sup>13</sup>*

As part of any expanded USO a range of minimum performance standards should be defined that are technology neutral and enable all forms of Internet Protocol based services over the top.

#### **Recommendation:**

**That the Universal Service Obligation be expanded from a voice telephony service or its equivalent, to include a minimum level of broadband service; and that appropriate minimum performance standards and benchmarks for technology neutral broadband services be set.**

#### **Affordability**

In the current environment, affordability has been addressed through price caps and a licence condition on Telstra to provide 'low income measures' for people on low incomes.

While the legislation provides for a price cap regime on the universal service provider<sup>14</sup>, that mechanism has not been used. Instead, Telstra prices were subject to price controls until March 2015.<sup>15</sup>

The remaining mechanism to assist people on low incomes is the 'Low Income Measures' licence condition on Telstra to develop products and arrangements to 'address the needs of low income customers' by Telstra's Low Income Measures Assessment Committee (LIMAC), and report annually to the Minister on their work. LIMAC has been very successful in developing programs and products such as HomeLine, InContact, Bill Assistance and PhoneCard Assistance.

In the emerging new structures for telecommunications, affordability will have to be addressed at two levels: infrastructure costs that Retail Service Providers will have to absorb, as well as meeting their own costs for providing services to customers.

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<sup>13</sup> Australian Government Response to the Regional Telecommunications Independent Review Committee Report: Regional Telecommunications Review 2015, February 2016, p ,4

<sup>14</sup> T(CPSS)A 1999, ss 18 – 18E

<sup>15</sup> Telstra Carrier Charges – Price Control Arrangements, Notification and Disallowance Determination No. 1 of 2005 Instrument of Revocation 2015, dated 18 March 2015.

**Recommendation:**

**That the Universal Service Obligation include provisions that ensure that access to the Internet via a suitable fast and reliable broadband connection is available at an affordable price determined in collaboration with appropriate government and non-government welfare agencies and consumer representatives.**

**Funding the Universal Service Obligation**

The cost of current USO is covered in part by an industry levy with the addition of government funding.

Internet Australia believes that this is no longer a suitable mechanism and argues that the full cost of an expanded USO (the delivery of Internet access via broadband) should be funded by government.

Delivery of Internet access via broadband under an expanded USO would involve collaboration between the National Broadband Network company and the Retail Service Providers that stand between the NBN and retail consumers. Such collaboration would include both logistical / technical considerations as well as pricing mechanisms.

Internet Australia is one of the appropriate bodies to help to advise the Commission on ways in which this collaboration should be structured, and we could do this in collaboration with those of our members who provide RSP services, as well as through further research into this matter (see Offer To Provide Advice and Assistance below).

**Recommendation:**

**That the delivery of Internet access via a suitable fast and reliable broadband connection be funded by government (note: the existing funding arrangement for the provision of telephony via the USO would presumably remain in place).**

**Offer To Provide Advice and Assistance**

Internet Australia has already met with the Productivity Commission and been afforded the opportunity to provide some initial input into the preparation of the Issues Paper.

On a number of recent occasions we have been requested to provide formal and advice and assistance in relation to the drafting of legislation or the creation of policies by government agencies in relation to other Internet-related public policies.

Our members include a range of Internet service providers, IT specialists and regulatory experts. Accordingly, and given the complexity of the matters to be determined should some or all of the provisions of our submission be accepted, we hereby indicate our willingness to provide additional technical assistance to the Commission as it finalises its recommendations.

## About Internet Australia

Internet Australia is the not-for-profit peak body representing everyone who uses the Internet. We are a broad member-based organisation not an industry lobby group. Our mission – “Helping Shape Our Internet Future” – is to promote Internet developments for the social and economic benefit of the whole community, including business, educational, government and private Internet users. Our directors and members hold significant roles in Internet-related organisations and enable us to provide high level policy and technical information to Internet user groups, governments and regulatory authorities. Through our participation as the Australian chapter of the global Internet Society<sup>16</sup> we contribute to the development of international Internet regulations and policies.

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<sup>16</sup> [www.internet.org](http://www.internet.org)