



Australian
Competition &
Consumer
Commission

ACCC submission to the Productivity Commission's Issues Paper on the Telecommunications Universal Service Obligation

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Executive Summary

The Australian Competition and Consumer Commission (ACCC) welcomes the opportunity to make a submission to the Productivity Commission's Issues Paper on the Telecommunications Universal Service Obligation (Issues Paper).

The ACCC considers that a universal service regime of some kind will continue to be important to ensure that essential communications services are available, accessible and affordable for all Australian consumers no matter their circumstances. The currently proposed universal service regime that will apply under the National Broadband Network (NBN) will ensure that broadband services are available to all end-users. However, we consider that current arrangements relating to the provision of universal voice services could be improved, and that additional measures to address affordability and accessibility issues for some end-users may be required.

The following submission sets out the ACCC's views on the key elements of an effective universal service regime in a post-NBN market. In summary:

- A universal service regime should ensure that consumers are able to access essential communications services in order to promote social inclusion. To meet such an objective, broadband and voice services of a standard quality should be available at all Australian premises.
- The arrangements to require NBN Co to connect all Australian premises to a wholesale broadband network, when coupled with wholesale pricing regulation, mean that retail competition will likely be sufficient to ensure all consumers are able to acquire a retail broadband service over the NBN. Such arrangements should also ensure that consumers inside the NBN fixed line footprint can acquire a voice service.
- The universal service regime under the NBN could be strengthened in relation to voice services. In particular:
 - There is no need for Telstra to be designated as the retailer of last resort to provide standard telephone services inside the NBN fixed line footprint. This is because competition should be sufficient to ensure retail voice services are able to be provided to all premises without regulation.
 - NBN infrastructure should be used to provide voice services in all areas where it is capable of meeting minimum service quality standards.
 - If the NBN is not capable of providing an adequate voice service over fixed wireless or satellite networks, Telstra should not automatically be designated as the universal service provider of voice services in these areas. Rather, the universal service provider should be selected using a competitive process.
 - If there is a continued obligation on Telstra to act as a universal voice service provider, the arrangements for subsidising Telstra for providing such services should be reviewed in order to mitigate risks of anti-competitive or inefficient outcomes.
- In addition to the measures aimed at ensuring voice and broadband services are available to consumers, we consider that any universal service regime should contain additional safeguards to ensure consumers with special needs benefit from communications services.
- If a universal service provider needs to be selected under a universal service regime, it should be done via a competitive process.

- If it is necessary to calculate funding or subsidies to be provided to a universal service provider under a universal service regime, it should be done via a transparent process which promotes economic efficiency, contestability, sustainability and equity.
- In addition to the Universal Service Obligation USO, other consumer safeguards continue to be important to ensure consumers receive reliable services and can obtain redress when problems occur.

Background

The current Telecommunications Universal Service Obligation (USO) is set out in the *Telecommunications (Consumer Protection and Service Standards) Act 1999*. Its objective is to ensure that standard telephone services (and payphones) are 'reasonably accessible to all people in Australia on an equitable basis, wherever they reside or carry on business'.¹ A 'standard telephone service' is a voice telephony service or its equivalent for people with a disability.² Currently, Telstra is the designated 'primary universal service provider' and must fulfil the USO throughout Australia. Telstra receives around \$300 million per annum to provide such services.³

The Government is also developing legislation to introduce a statutory infrastructure provider of last resort regime, which will place an obligation on NBN Co to connect premises to its network. This means that once the rollout of the NBN is complete, a wholesale broadband connection should be available at all premises in Australia. Inside the NBN Co fixed line footprint, Telstra will be the retailer of last resort to provide standard telephone services over the NBN. Under the Telstra Universal Service Obligation Performance (TUSOP) Agreement, outside of the fixed line footprint, Telstra will need to maintain its copper network and provide standard telephone services over that network.⁴

The objectives and scope of a universal service regime

Universal service obligations aim to promote social inclusion by helping to ensure that all individuals are able to access services necessary for them to fully participate in social, economic and political life. In Australia, and internationally, telecommunications USOs have been designed to promote availability, accessibility and affordability of essential communications services for all end-users. The ACCC supports the retention of a universal services regime with these objectives.

Contestable retail communications markets can deliver a range of services which meet the objectives of accessibility and availability for the majority of consumers. However, certain groups of consumers are unlikely to fully benefit from a competitive market, and in the absence of a USO, there is a risk that the needs of these consumers will not be met. This is because retail service providers do not have the same economic incentives to meet the needs of some groups of

¹ Section 4 of the *Telecommunications (Consumer Protection and Service Standards) Act 1999* (TCPSS Act). The USO includes access to payphones, however for the purposes of this submission the ACCC does not comment on access to payphones.

² Section 1 of the TCPSS.

³ This consisted of \$253 million for the standard telephone service and \$44 million for payphones.

⁴ These are contractual obligations on Telstra contained in the Telstra Universal Service Obligation Performance (TUSOP) Agreement.

consumers, such as those in low populated regional or remote areas or in difficult to connect areas, or those on low incomes and those with special needs.

However, while USOs are important for promoting social objectives, the implementation of a universal service regime can also impact on competition and economic efficiency. For instance, how a universal service provider is selected can have competition implications in communications markets as it may result in one provider receiving a competitive advantage. Similarly, the funding arrangement for the universal service regime can impact economic efficiency by subsidising the use of legacy infrastructure.

Therefore, we consider that, where possible, consideration should be given to minimising any distortionary impact that a universal service regime may have on competition and economic efficiency within a market.

Which services should be available?

To meet its objective of ensuring social inclusion for all consumers, the ACCC considers a universal service regime should ensure that a broadband and voice service of a standard quality of service, are available, affordable and accessible at all Australian premises. We also consider that in order to promote efficient use of infrastructure, any obligation to provide services under the USO should be technology neutral.

Broadband and voice services appear to be the most important for social inclusion. Voice services remain important for the majority of consumers, despite the growth of alternative forms of communication such as instant messaging services. The number of voice call minutes made from mobile or fixed line phones has fallen slightly over the past five years, from its 2011 level of 73.5 million minutes, but remained significant in 2015 at 71.5 million minutes.⁵

The importance of broadband services to Australians is supported by the growth in the number of internet connections and the volume of data consumed.⁶ The increasing use of data, consumer demand to access services online, and the efficiencies associated with providing online services mean that a number of important services, including government services, are being provided over the internet. For example, ACMA research shows that Australians increasingly use the internet for a range of important activities, such as accessing finance and banking services, online education, seeking health or medical information, communicating with others, and accessing government services.⁷

⁵ ACCC, *ACCC telecommunications report 2014-15: Competition in the Australian telecommunication sector*, February 2016.

⁶ As at June 2015, 86 per cent of adult Australians had an internet connection, and only 14 per cent did not access the internet daily (see, ACMA, *Regional Australians Online*, 28 April 2016, <http://acma.gov.au/theACMA/engage-blogs/engage-blogs/Research-snapshots/Regional-Australians-online>). Further, in 2014-15 there was a 40 per cent increase in the volume of data downloaded over fixed networks (see, ACCC, *ACCC telecommunications report 2014-15: Competition in the Australian telecommunication sector*, February 2016).

⁷ ACMA, *Regional Australians Online*, 28 April 2016, <http://acma.gov.au/theACMA/engage-blogs/engage-blogs/Research-snapshots/Regional-Australians-online>.

A framework for a universal service regime under the NBN

The proposed universal service arrangements which will apply to NBN Co will ensure that broadband services are available (or able to be accessed) at all Australian premises, and that voice services are available at nearly all premises.⁸ The ACCC supports such measures, and considers that it is important that the obligations on NBN Co as the universal broadband infrastructure provider are clearly set out in the legislative framework.

Currently, there are no proposed legislative requirements on any retail service provider (RSP) to provide consumers with a retail broadband service over the NBN and the ACCC does not consider that such measures will be necessary. Competition over the NBN, and wholesale pricing regulation, should mean that equitable retail services are available to all end-users connected to the NBN without further universal service regulation.⁹ This is supported by the development of the markets for NBN fixed line and the long term satellite service (LTSS) so far.

There are already a large number of RSPs providing NBN services, with NBN Co reporting that there are over 130 providers of NBN services.¹⁰ Further, the LTSS officially launched in late April 2016, and there are already eight RSPs providing services using the LTSS. The development of competition in this market in a relatively short period has led to a range of broadband satellite services being made available to end-users seeking satellite services. The LTSS is intended to reach the most remote areas of Australia, which are the areas that are most likely to be underserved due to the low population in these areas and the costs to build infrastructure. Despite this, the market for LTSS retail services is still at a very early stage of development, and it is difficult to predict how competition will develop in this market over the longer term.

We recognise that retail markets for NBN broadband services are still developing as the rollout of the NBN infrastructure proceeds. There remains, however, some uncertainty about how the markets will develop in the future. While there have been a number of significant mergers in the industry in recent years, we consider that the NBN provides opportunities for new RSPs to enter and compete. Therefore, the ACCC would support a requirement to review the universal service obligations on retail service providers three to five years after the rollout of the NBN is complete to determine if any additional retail safeguards are necessary.

Further, while we consider that the proposed universal service arrangements for the NBN will ensure that reasonable broadband services are available to all end-users, we consider that there are aspects of the current voice USO arrangements that could be improved, and that additional measures to address affordability and accessibility issues for some consumers may also be required.

Voice service arrangements

It is important that a universal service regime continues to ensure that voice services are available to end-users. While the current USO framework provides for this, the ACCC considers that it could be

⁸ Currently, under the TUSOP Agreement Telstra is responsible for operating its copper network outside of the NBN fixed footprint and providing standard telephone service over that network.

⁹ Under the NBN Co special access undertaking, prices for NBN Co's services are the same regardless of location or technology.

¹⁰ As at July 2016, see NBN, *List of nbn Service Providers*, <http://www.nbnco.com.au/connect-home-or-business/information-for-home/whats-involved-in-getting-connected/service-provider-list.html>.

strengthened so that it better promotes competition and the efficient use of, and investment in, infrastructure.

Inside the NBN fixed line footprint

We understand that the NBN fixed network will be able to provide high quality voice services to consumers connected to the network, and that in these areas, NBN Co will essentially be the wholesale voice infrastructure provider. We consider that, as with NBN broadband services, competition and regulated wholesale pricing will ensure access to voice services is available to end-users connected to the NBN from a number of potential service providers. Therefore, we consider that the current requirement on Telstra to act as the retail service provider of last resort to provide standard telephone services on request over the NBN fixed line network is unnecessary.¹¹

Outside the NBN fixed line footprint

As noted previously, currently Telstra has an obligation under the TUSOP Agreement to continue to operate its copper network outside of the NBN footprint and to provide standard telephone services using this network. We do not consider that this aspect of the TUSOP Agreement promotes competition or efficiencies.

If NBN Co's fixed wireless and satellite networks can provide voice services of comparable quality to voice services on the NBN fixed line networks there would be no need to have a universal voice service provider in these areas. Similar to the circumstances inside the NBN fixed line footprint, we consider that competition over the NBN and wholesale pricing regulation is likely to ensure access to voice services for consumers living outside the fixed line footprint. Therefore, if voice services offered on NBN Co's wireless and satellite network are of an adequate quality to meet end-users' needs (for example, they are of a similar quality to the fixed voice services), we consider that the current obligation on Telstra to provide a standard telephone service over its copper network outside of the fixed line footprint should be removed.

However, we recognise that due to the current technology available, voice services offered over the NBN outside of the fixed line footprint may be of a poorer quality than those on the fixed line network.¹² In particular we note that there may be latency issues with a voice service provided using the LTSS.¹³ If this is the case, voice services may need to be provided over other networks in the areas where the NBN cannot provide an adequate service.

In these circumstances, we consider that rather than placing an obligation on Telstra to provide a standard telephone service over its copper network in these areas, the universal service provider of voice services in these regions should be selected via a competitive process.

If, however, the current arrangements mean that Telstra is to remain the service provider of last resort of voice services outside of the fixed line footprint, we think that the arrangements for determining the subsidy to Telstra to provide these services could be improved. Currently, the USO funding that Telstra receives is set out in the TUSOP Agreement and is based on costing estimates

¹¹ This obligation is included in the TUSOP Agreement.

¹² This is suggested by the current arrangements for Telstra to maintain its copper network in these areas.

¹³ See, RTIRC, *Regional Telecommunications Review 2015*, 2015, and submission from the Local Government Association of Queensland, and the Broadband for the Bush Alliance submissions to the Review.

made in 2011. We consider that if it is possible to modify the current arrangements under the TUSOP Agreement, it would be preferable that Telstra's USO funding was determined using a transparent method and based on a current estimate of the efficient costs of providing the number of USO services supplied.

We have discussed issues around selecting a universal service provider, and funding arrangements for a universal service regime further below.

Affordability and accessibility – addressing the specific needs of consumers

The ACCC supports including additional measures in a universal service regime that are targeted towards meeting the specific needs of particular groups of consumers, such as those on low incomes, some indigenous communities in regional and remote areas, and those with disabilities. Such measures will help to reinforce the social objectives of a universal service regime by promoting digital inclusion in the Australian community.

The needs of consumers who may require assistance under a USO will be diverse. This means that policy interventions should be targeted, flexible and aimed at removing the obstacles that may prevent consumers accessing and using telecommunications services. This may involve developing a mix of policies and various practical measures.

There are currently measures in place that are aimed at helping low income consumers access telecommunications services. For example, it is a condition of Telstra's carrier licence to offer a package of products and services to low income consumers which has been endorsed by low-income consumer advocacy groups.¹⁴ In addition, the government provides assistance via the Centrelink Telephone Allowance (CTA).¹⁵

While such measures help to address important social objectives, they can also have implications for competition. For example, requiring a single RSP to provide basic services for low income consumers can create market distortion. In contrast, demand side interventions which enable low-income consumers to choose a plan from any RSP based on their needs and preferences may be less distortionary.

Further, other innovative measures directed at encouraging more online engagement and use of essential services by groups of consumers, such as those on low incomes or in regional areas, could also be considered. For example, consumers in the low income group, those with disabilities or those living in regional areas, may have an increased need to access government services, or to access these services online. Providing free or unmetered access to government services online is likely to help with accessibility and affordability issues faced by these consumers.

OTHER ISSUES

As we have discussed above, we consider that universal infrastructure provider requirements imposed on NBN Co and regulated wholesale pricing will be sufficient to ensure that broadband, and

¹⁴ See Clause 22 of Carrier Licence Conditions (Telstra Corporation Limited) Declaration 1997.

¹⁵ Department of Human Services, *Telephone Allowance*, 23 June 2016.

to some extent voice, services are available to all Australian premises, especially within the NBN fixed line footprint.¹⁶

However, depending on the exact form of any new universal service framework, there may be a need to select a universal service provider, such as where a RSP of last resort is required in a particular area (e.g. outside the NBN fixed line footprint), or an alternative network is used to provide universal voice services. Further, there may also be a need to determine universal service subsidies. In these cases, we believe that consideration should be given to incorporating mechanisms within the framework that promote competition and economic efficiency within the market. We have suggested some mechanisms below.

Further, we note that the Issues Paper has sought views on current telecommunications consumer protections. We have also set out our views on these issues below.

Selecting a universal service provider

The ACCC considers that any universal service provider should be selected using a competitive process, rather than simply designating a provider. This will help to better promote competition and economically efficient outcomes.

For example, the ACCC considers that designating Telstra as the single USO provider may have adversely affected competition in communications markets and resulted in inefficient investment in legacy technology. This regime has provided little incentive for Telstra to reduce the costs of providing services under the USO. Further, it has provided Telstra with a degree of competitive advantage in terms of reputation and scale benefits from being the universal service provider.

We acknowledge that there were a number of benefits to nominating the incumbent as the universal service provider when it provided the necessary infrastructure to deliver universal access. However, the development of infrastructure competition has meant that there is now more diverse infrastructure that can be used to provide universal services. As such, we consider that it is no longer necessary to rely on the incumbent to deliver such services.

Instead of such arrangements, the ACCC would support the use of market based, competitive processes to select a universal service provider where necessary under a new universal service regime. Bidding under such a process is likely to determine the efficient cost of providing the universal service. As such, a separate costing exercise to determine a universal service subsidy needed may not be necessary. A competitive process should also help to minimise the level of subsidy required by ensuring that universal service is offered over the most efficient network. Further, a competitive process will help to minimise the risk of any one provider gaining a competitive advantage from the allocation of funds to support the provision of universal services.

An example of such a process is competitive tendering. We note that the trial of the use of competitive tendering for universal services in 2001 was unsuccessful, with no carriers participating.

¹⁶ We have commented on the funding of non-commercial NBN services in submissions to the Bureau of Communications Research review. See ACCC, *Submission to the NBN non-commercial services funding options consultation paper*, 5 June 2016; ACCC, *Submission to the NBN non-commercial services funding options final consultation paper*, November 2016.

However, circumstances have changed significantly since this time, with greater infrastructure based competition and greater convergence of fixed and mobile services.

Funding the USO

The ACCC has previously expressed the view that the most efficient funding models, or subsidies, are those that minimise market distortions and are targeted towards promoting specific and measurable pricing and service objectives.¹⁷ We consider that the model used to determine funding for universal services under a universal service regime should aim to do this and to promote principles of transparency, economic efficiency, contestability, sustainability and equity.

As noted above, there may not be a need to calculate a subsidy for the provision of universal services where a competitive process, such as tendering, is used to select a universal service provider because such processes will determine the efficient level of funding or subsidy. However, in cases where funding or subsidies do need to be determined, we consider that a comprehensive costing exercise should be undertaken, with industry consultation, to determine the net cost to the provider of providing the universal services to consumers who it will not otherwise serve.

Further, to promote transparency and accountability, record keeping requirements, which require details about universal services in various areas to be provided to the regulator, should be introduced. This would assist in making periodic adjustments to the funding provided to the universal service provider, so that it reflects the actual cost incurred in providing universal services. Such arrangements will help to ensure that the universal service provider does not obtain any unfair advantage from the universal service regime by being provided with more funds than it needs to fulfil its obligations. This information will also be useful to ongoing assessments of the efficacy of the universal service regime and future reviews.

Finally, the allocation of the cost of providing universal services between taxpayers and industry should be underpinned by principles of transparency, economic efficiency, contestability, sustainability and equity. There are a number of ways that this can be achieved.

For instance, a narrower funding base whereby only the USO provider and its competitors contribute to the cost of the USO is more likely to promote economic efficiency compared to broader industry based levies or general taxation. On the other hand, funding the USO through general revenue, such as taxation, would have the effect of higher income consumers contributing a greater share of the cost than lower income consumers.¹⁸ These examples show that the extent to which each funding option promotes or adversely impacts on each of these principles will be important in considering which funding option is the most appropriate.

Quality of service and other consumer safeguards

For a USO to be effective in meeting the needs of consumers, there should be a guarantee that broadband and voice service are of a specified quality or standard. This will help to ensure that no

¹⁷ ACCC, *ACCC submission to the Independent Cost Benefit Analysis Review of Regulation first issues framing paper*, 14 March 2014.

¹⁸ We note that general taxation is not an option that was considered by the BCR review as it was outside the scope of the Terms of Reference.

matter their location, consumers will be able to access services that will, at a minimum, enable them to conduct essential communications and transactions.

No matter what level of service is determined appropriate, we consider that it is important for a voice and broadband standard to be clearly set out in any universal service regime. It is also important that consumers have access to objective information to help them assess whether the services they are getting conform to the required services standards. Further, in order for a universal service regime to remain relevant, any framework should include a process for periodically reviewing the quality of service requirements.

The current USO forms part of the broader telecommunications consumer protection framework, which includes the Australian Consumer Law (ACL) and other protections provided for under the *Telecommunications Act 1997* (such as the Customer Service Guarantee (CSG) and the Telecommunications Consumer Protection Code). The ACCC considers that other consumer safeguards are also important to ensure that all consumers have access to telecommunications services of a minimum standard and reliability, and have appropriate redresses for when problems arise.

For instance, the ACCC considers that essential telecommunications services should be subject to minimum performance standards relating to connections, fault repairs and network reliability. We consider that some form of CSG scheme should continue to apply. It is important that consumers continue to be protected by clear performance standards and reducing or removing such protections may disproportionately impact vulnerable consumers and those in regional, rural and remote areas.

In its response to the 2015 Regional Telecommunications Review, the Government agreed that certain consumer safeguards relating to the standard telephone service (including the CSG) are increasingly outdated. The Government undertook to conduct a separate review of the broader telecommunications consumer safeguards in parallel to this process. Therefore we have limited our comments about a future CSG and the effectiveness of other consumer protections in this process, as it will be more appropriately considered in the review of telecommunications consumer safeguards.

The ACCC would appreciate the opportunity to further engage with you as you conduct the review of the USO. If you have any questions about any of the issues raised in this submission please contact Clare O'Reilly on (02) 9230 3854.