OPTUS

Submission in response to Exposure Draft

Telstra Carrier Licence Conditions on Regional Service Information

Public Version

November 2021

Executive Summary

1. Optus welcomes the opportunity to provide input on the Exposure Draft of the *Telecommunications (Carrier Licence Conditions - Telstra Corporation Limited) Amendment (Regional Service Information) Instrument 2021* (draft Instrument).

2. The draft Instrument improves reporting on Telstra's delivery of voice services in regional and remote areas under the Universal Service Obligation (USO). Optus supports this initiative, and it is a welcomed step forward. But it is also important the Instrument provides genuine transparency over this important piece of regional funding.

3. To achieve genuine transparency, Optus submits that the Instrument should include further reporting requirements on Telstra's activities in relation to the $230 million standard telephone service (STS) and $40 million payphone components of the USO scheme. This includes the number of mobile services and satellite services (if any) that Telstra supplies in fulfilment of its USO; the internal costs and benefits of Telstra payphones; and an accounting of Telstra's annual USO expenditure. [1]

4. It is the lack of financial accountability which is of most concern. Telstra is to be paid approximately $6 billion towards USO service delivery over the 20-year term of TUSOPA.[2] Despite this funding, Telstra remains under no obligation to demonstrate compliance or otherwise report on how it is spending this money.

5. The Productivity Commission and the Australian National Audit Office (ANAO) have previously raised concerns about the value for money and administration of the TUSOPA.[3] Yet four years later, there remains a lack of transparency over how money provided by the rest of industry and Government for the delivery of standard telephone and payphone services is spent by Telstra. Optus submits this Instrument presents an opportunity for the Government to inject long overdue accountability into Telstra's performance under TUSOPA and more broadly under the USO scheme.

6. The lack of accountability has very real negative impacts on regional Australia. Since 1992, Optus has been forced to pay more than $1.2 billion to fund Telstra's network. There is no evidence that this has contributed to any improved regional connectivity. Rather, this money has resulted in materially less competitive infrastructure, with the only impact being to deprive regional Australia of competitive infrastructure and to lock them into a single supplier. Without this USO tax, Optus' mobile network could have delivered competitive mobile services to an additional 900,000 km^2 of regional Australia.

7. Optus calls on the Government to finally undertake meaningful USO reform. Optus encourages the Government to use this Instrument to make real changes to the USO reporting framework that can make a real difference to regional communications. Optus sets out its comments on the draft Instrument and more generally in relation to its ongoing concerns with the lack of transparency over the USO arrangements below.

[1] Telecommunications (Overall Levy Target Amount) Statement 2020; available at www.acma.gov.au

[2] "Overview Inquiry Report – Telecommunications Universal Service Obligation"; Productivity Commission Inquiry Report No. 83, April 2017, p.2

[3] ANAO Report, *Management of the Contract for Telephone Universal Service Obligations*: ANAO Report No.12 2017–18; p.8

ACCOUNTABILITY IS LONG OVERDUE

8. Telstra's universal service obligation (USO) requires that Telstra "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."[4] Under TUSOPA, Telstra is required to maintain its copper network in areas outside the NBN fixed-line footprint from 2012 until 2032 ("Copper Continuity Obligation" or CCO).

9. Telstra receives $270 million per year under TUSOPA -- $230 million for provisions of standard telephone services (STS) and $40 million for payphones. Yet there is no public reporting on Telstra's performance and expenditure of this public money.

10. Australians have no information on which to assess whether this $270 million annual scheme is a good use of money. This is an important threshold question as the majority of this funding is from Government and industry – and would otherwise result in additional competitive investment, lower prices and consumer choice. The USO diverts potentially beneficial competitive investment to the dominant incumbent – without any obligation to report on whether it leads to actual outcomes.

11. This situation is particularly unacceptable in relation to funding for payphones, which are widely recognised as a declining service. The need for greater accountability over the $40 million in funding for payphones is clearly long overdue.

12. The Productivity Commission recommended that the Government should commence negotiations with Telstra to terminate the payphone component of the TUSOPA 'as soon as practical', with the STS component to be terminated shortly after the NBN is fully rolled out in 2020.[5] The ANAO's Report 2017 on TUSOPA noted that "*existing performance reporting provides limited transparency as to whether contracted services are achieving policy objectives*" and that there is a lack of clear evidence of public benefit. The Departments own report on "Development of the Universal Service Guarantee" where it notes that its consultant

> "concluded that the delivery of voice services using wireless (mobile and fixed) and satellite technologies would be more cost-effective than the current arrangements. While the costings are high level, potential savings in the hundreds of millions of dollars over the period from 2020 to 2032 were identified. …This result aligns with the PC's tentative conclusion – and the widely held perception – that utilising extensive mobile and national satellite coverage is a more efficient means of providing voice services. The current copper network was the most expensive of the scenarios considered and costed."[6]

13. The ANAO made two key recommendations to the Department to promote value for money under the TUSOPA. The first was to utilise the existent "flexibility mechanisms" under the TUSOPA to identify cost savings and to develop options for USO transitional arrangements. The second recommendation related to the quality assurance regime governing Telstra's performance reporting under TUSOPA. The Joint Committee of Public Accounts and Audit (JCPAA) Inquiry into Commonwealth procurement also made a number of recommendations based on the ANAO Report, including that the Department report:

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[4] Section 9(1)(b) and 2A; *Telecommunications (Consumer Protection and Service Standards) Act 1999*

[5] Overview Inquiry Report – Telecommunications Universal Service Obligation"; Productivity Commission Inquiry Report No. 83, April 2017, p.2

[6] Development of the Universal Service Guarantee, Summary Report, November 2018; p.23

> "on whether it will be utilising flexibility mechanisms and the additional reporting clause under the Telstra Universal Service Obligation Performance Agreement to bring forward cost savings, as well as access data on the quantity of standard telephone services that Telstra supplies solely on the basis of its universal service obligations and on Telstra's net cost in terms of supplying standard telephone services and payphones under its universal service obligation.[7]

14. While the draft Instrument provides welcome transparency into the degree to which Telstra is meeting its obligations in ESAs outside the NBN fibre footprint, particularly in relation to the connection and fault rectification timeframes under the CSG Standard, it will not provide any greater transparency in relation to how USO funds are actually spent in meeting the USO.

15. Optus calls on the Government to adopt reporting obligations that will provide further transparency into the efficiency and efficacy of the USO scheme.

BASE LEVEL OF REPORTING REQUIRED

16. The draft Instrument should require Telstra to publish information on funds used to supply reportable services in the relevant ESAs on a quarterly basis. This information should be broken down based on the local access technology used by Telstra to supply the reportable services in each relevant ESA.

17. Telstra's statutory USO is technology neutral and therefore, while it is traditionally met via the supply of a fixed line telephone service, Telstra may choose to supply "public mobile telecommunications services" or "satellite services" in fulfilment of the USO. In such cases, the services will be subject to the CSG Standard.[8]

18. The draft Instrument should provide greater transparency over the number of mobile services and satellite services (if any) that Telstra supplies in fulfilment of its USO to the relevant ESAs. Telstra should also report on its compliance with the CSG Standard in relation to these services. The report to the ACMA/the Department (draft section 13D) should also detail the addresses to which Telstra supplies mobile and satellite services.

19. Telstra should also be required to report on the number of "interim services" that it has supplied and offered to supply (which may have been refused by the end-user) during the reporting period.[9] In the detailed report to the ACMA and the Department, Telstra should also be obliged to identify the unique service identifier of the service for which the interim service has been supplied and the length of time that it has been supplying that service.

20. Telstra should be obliged to report on the number of wholesale services that it supplies in the relevant ESAs (if any), including a breakdown by wholesale service type. Telstra should be required to report on the number of wholesale services it was required to connect and/or rectify during the reporting period.

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[7] Committee Recommendations 2 and 4; accessible at https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Public_Accounts_and_Audit/CommonwealthProcurement/Report_472/section?id=committees%2Freportjnt%2F024140%2F25573

[8] Section 4 of the CSG Standard

[9] As defined under the CSG Standard – in summary, an "interim service" is more often than not a mobile service, and should not be supplied for longer than 6 months.

21. Other key information that Telstra should report on in relation to the annual $230 million standard telephone service (STS) funding includes:

(a) Detailed list of expenditure of the $230 million annual funding

(b) List of all STS recipients, including network type

(c) List of mobile sites funded through the STS component

(d) For USO funded sites, the revenue accrued through provision of services directly connected to that site

(e) The area of additional mobile coverage that has been funded through USO funding

(f) Revenue accrued from Subscribers located within USO-funded coverage areas (including services that travel through the coverage)

22. Other key information that Telstra should report on in relation to the $40 million annual funding of payphones includes:

(a) Number of payphones provided under the USO scheme

(b) Benefit (direct financial and indirect marketing) of Telstra branding on all Government and industry funded payphones

(c) Benefit (direct financial and indirect marketing) of providing free wifi to Telstra customer on all Government and industry funded payphones, including information relating to reduced churn

(d) Cost and benefits of providing free voice calls over Government and industry funded payphones, including the marketing benefits

(e) Benefit (direct financial and indirect marketing) of providing free wifi to Telstra customer on all Government and industry funded payphones, including information relating to reduced churn

(f) Revenue associated with provision of advertising space on all Government and industry funded payphones

DELIVERING FOR REGIONAL AND REMOTE AREAS

23. Optus considers that the USO arrangements are failing to meet the needs of regional Australians and are no longer fit for purpose as they do not deliver value for money. The USO/G funding arrangements reduce the level of private investment in regional networks which have real negative impacts on regional consumers. The arrangements also unnecessarily overlap with the Regional Broadband Scheme.

24. Optus submits that the draft Instrument provides a good opportunity to impose greater transparency and accountability on Telstra in the use of USO funding, which should in turn facilitate a review and ultimately, we submit, removal of industry funding obligations. This funding can then be invested in new services for regional and remote areas, such as next generation satellite services and improved mobile coverage.

25. In the event that the removal of the industry funding requirement for the entire USO is not feasible in the short term, then Optus submits that an adjustment to the overall levy

target amount should be made through the TIL assessment process as matter of priority. This adjustment should be based on transparent costs of delivering the USO services and a removal of any contributions from industry for payphone services.

26. Optus understands that, as per the recommendations of the ANAO and the JCPAA, the removal of the payphone related USO funding may be facilitated by way of the “scope of services” flexibility mechanism under TUSOPA. Optus understands that this allows for either Telstra or the Department to claim a payment for variation if the scope of STS or payphone services is varied by way of amendment to the Act or a determination made by the Minister. The ANAO Report states that the mechanism may be triggered when the value of the variation “*exceeds $12 million per year for STS and $2 million per year for Payphones*”.[10] Optus submits that the scope of services mechanism could be enlivened by a Ministerial determination or amendment to section 9 of the Act to remove the payphone related obligations from the USO.

27. The ANAO report notes that the “TUSOPA also provides for possible reviews of payphone payments amounts every five years where the number of payphones has declined by at least 2000 since the prior potential review point. The first potential review point is 1 July 2017”. Data collected by the ACMA shows that number of public payphones continues to decrease – at 30 June 2020, there were 15,495 public Telstra payphones down from 16,593 at 30 June 2017.[11]

28. Optus urges the Government to:

    (a) Incorporate the suggested changes to the draft Instrument to improve transparency and accountability over Telstra’s USG expenditure

    (b) Expedite a review of the USO and USG arrangements for remote and regional areas, including the scheduled review of relevant technology and systems underpinning key parts of TUSOPA scheduled to commence in July 2021.

    (c) Give effect to the “scope of services” “flexibility” and/or review mechanisms under the TUSOPA and take the necessary steps to unwind industry funding requirements for the USO to the greatest extent practicable, particularly those relating to payphones.

[10] Paras 3.7 and 3.12, ANAO Report
[11] ACMA Communications Report 2017-2018, p.107