OPTUS

Submission in response to DITRDCA discussion paper

Funding of universal telecommunications services

Public Version

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EXECUTIVE SUMMARY

1. Optus welcomes the opportunity to provide feedback on the Department of Infrastructure, Transport, Regional Development, Communications and the Arts (DITRDCA) discussion paper, ‘Funding of universal telecommunications services’ (the discussion paper).

2. A holistic review of funding arrangements for regulations and programs supporting telecommunications infrastructure and services for all Australians is long overdue. This includes funding for the universal service regime (USO), the Regional Broadband Scheme (RBS) to support NBN Co, as well as related Government programs to support the deployment of telecommunications infrastructure in underserved areas.

3. It is clear the plethora of current programs and policies have significant issues and are failing to deliver on their objectives. There has been overwhelming independent evidence that the USO lacks transparency and does not represent value for money. Such lack of transparency means there may be duplication in funding from both the RBS and universal service regime. The original purpose and objective of the RBS seems to have been forgotten and the outcome of all of these programs and policies has been to effectively entrench the market dominance of a single network provider (Telstra) in regional Australia, and to shield NBN Co from real competition, to the detriment of Australian consumers.

4. The essential nature of telecommunications means these programs and policies are well overdue for a reset. A transparent, coherent framework must be adopted to ensure any funding achieves its intended outcomes. Industry should no longer be funding Telstra to expand and entrench its network.

5. Telstra’s dominance in regional areas (with a market share greater than 70%) is protected by the USO. Since 1992 Optus has contributed more than $1.2 billion in USO levies – paid to Telstra – which Optus could have otherwise invested in its own mobile network. This equates to almost one million square kilometres of competitive mobile network coverage that has never been rolled out because of the USO levies.

6. Yet there is no transparency about whether those funds provided to Telstra to deliver universal services have been spent efficiently or offers value for money. Data in the consultation paper suggests the USO is being provided largely in metropolitan areas. The key question for Government is whether the existing funding model, which has clear negative impacts on investment, is delivering positive outcomes for regional Australia. Optus submits that it clearly is not.

7. Optus submits there is no policy justification for the current design of USO funding that taxes competitors of Telstra to fund the provision of Telstra services in competitive areas. The USO should be funded solely through general revenue.

8. Should the Government wish to maintain industry funding for universal services then it should take a more holistic and future focused approach, including the scope to promote investment in essential mobile connectivity in remote communities and consideration of expanding the entities to which the USO tax is applied.

9. The beneficiaries of national networks are no longer just other telecommunications carriers. Large digital platforms have built highly profitable businesses that effectively free-ride on investments made in telecommunications networks as these digital platforms contribute nothing towards their costs of access. The leading digital platforms are reported to make almost $14 billion in revenue from their Australian operations – which would make digital platforms amongst the largest non-Telstra contributors to the

USO. Optus sees value in examining how digital platforms can be brought into the USO scheme.

10. Optus remains concerned that this consultation conflates the RBS and universal service funding. To be clear, the RBS is not a universal funding scheme. The RBS has a much more limited role – to compensate NBN Co for premises that it is excluded from serving due to the presence of alternative fixed line broadband networks. It is designed to ensure that metropolitan cherry-picking by alternative fixed line operators does not undermine the commercial model of NBN Co.

11. The RBS should continue to be funded by this narrow subset of the market; that is, only by owners of metropolitan superfast fibre networks, that exclude NBN Co from rolling-out its metropolitan fibre network. No other alternative network operator should pay the RBS levy where that network does not preclude NBN Co from serving a fixed line premises.

INDUSTRY SHOULD NOT FUND THE USO SCHEME

12. Optus welcomes the opportunity to provide feedback on the funding arrangements for the USO and the RBS review. This follows on from DITRDCA's consultation in 2023 regarding better delivery of universal services. In that consultation, DITRDCA sought stakeholder input on ways to better deliver baseline universal telecommunications services – that is, what services a modern universal service framework should cover and the best way to deliver those services.[1]

13. In response to that consultation paper, Optus' submission noted that:

    (a) Government funded trials should avoid entrenching supply of existing services and should be designed to support market entry for long term consumer benefit;

    (b) Telstra should be publicly accountable for its USO performance;

    (c) Industry should not have to fund Telstra so it can meet its regulatory obligations;

    (d) The market is already delivering high quality telecommunications for all Australians; and

    (e) The Government should repeal the USO.

14. The current consultation follows on from this and seeks stakeholder feedback on delivering long-term funding of non-commercial telecommunications services, particularly in regional and rural areas. This also includes non-commercial public interest services, such as the National Relay service and emergency calls, and includes a review of the RBS.

15. Optus' view of funding arrangements for universal services and the operation of the RBS is that any funding arrangements should be consistent with desirable industry outcomes. This includes:

    (a) Industry should no longer have to fund Telstra to meet its universal services obligations, particularly if the TUSOPA contract requires Telstra to use legacy network infrastructure when there may be commercial alternatives also available;

    (b) Funding arrangements should not undermine competition, either by diverting industry capital from alternative network investment or by entrenching Telstra's market power and dominance in non-metro areas; and

    (c) Any funding to assist consumers in accessing telecommunications services should be by way of a direct government subsidy, particularly when there are other commercial options available.

16. The existing approach to funding universal services, where industry has contributed the bulk of funding by way of the Telecommunications Industry Levy (TIL), is no longer appropriate in the modern telecommunications landscape with the ever-increasing

[1] See DITRDCA, Better delivery of universal services discussion paper, October 2023.

commercial availability of mobile and satellite service alternatives. Funding universal services in this way has negative outcomes for consumers.

Existing universal service funding arrangements have reduced regional investment

17. The existing USO scheme relies predominantly on industry funding with some additional Government funding. This money is paid directly to Telstra with no transparency on how the funding is spent and whether it represents value for money. Independent experts, such as the Productivity Commission and the Australian National Audit Office (ANAO), have long criticised these aspects and the overall administration of the existing USO scheme and called for the scheme's repeal.[2]

18. There has long been criticism of the lack of transparency surrounding the existing Telstra TUSOPA arrangements. Telstra receives around $230 million under its TUSOPA contract and notes that it supplies approximately 285,000 copper-based phone services to meet its obligations.[3]

19. However, there remains an unacceptable lack of transparency over the TUSOPA arrangements which makes it difficult to comment in detail on funding arrangements. Optus considers the Government should release the TUSOPA contracts to inform the current policy debate on the USO and associated funding arrangements.

20. Even without this detail, it is clear there are issues with current funding arrangements for the universal services. This includes:

    (a) The diversion of industry capital from investment in competing networks;

    (b) The consumer harm that flows from a lack of network investment and competition in regional areas; and

    (c) The entrenchment of Telstra's market power and dominance in regional and rural areas.

21. Industry funding schemes, such as the TIL, divert industry capital that could otherwise be invested in alternative network infrastructure and services. Since 1992 Optus has contributed more than $1.2 billion in USO levies – paid to Telstra – which Optus could have otherwise invested in its own mobile network. This equates to almost one million square kilometres of competitive mobile network coverage that has never been rolled out because of the USO levies.

22. As a result of that, consumers experience less network competition and the further entrenchment of Telstra's market power and dominance outside of metropolitan areas. Consumers in regional Australia have missed out on the benefits that come from increased network competition, such as, more choice, lower prices and better service. Therefore, not only are the existing industry funding arrangements inefficient, they also cause consumers harm by lessening network competition and infrastructure investment.

23. This is the not the intent of the USO.

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[2] Productivity Commission, Overview Inquiry Report – Telecommunications Universal Service Obligation –Inquiry Report No. 83, April 2017 and ANAO, Management of the Contract for Telephone Universal Service Obligations: ANAO Report No. 12, 2017-2018.

[3] Telstra, Telstra submission in response to the Department of Infrastructure, Transport, Regional Development, Communications and the Arts discussion paper on Better delivery of universal services, 1 March 2024, p. 4.

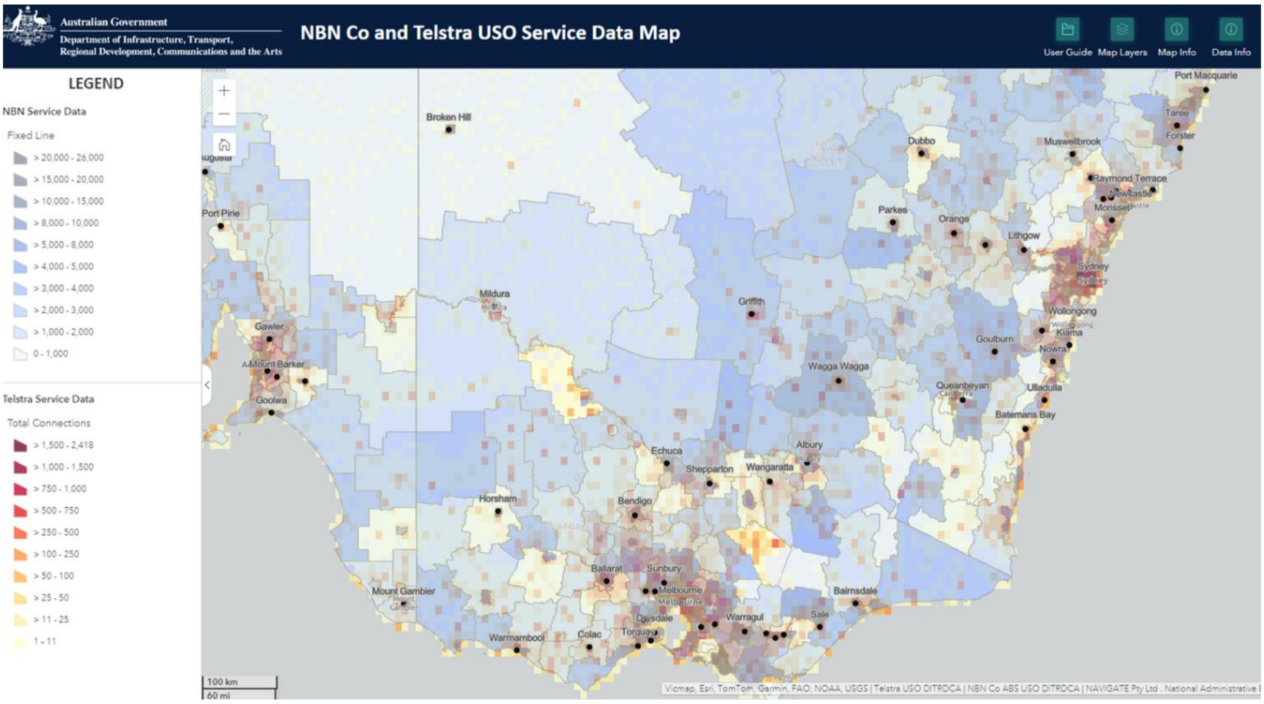
Government funding should support services where there are no commercial alternatives

24. The existing universal service funding arrangements support a scheme that has changed little over the last 20 years. It has failed to adapt to modern telecommunications technologies and updated regulatory obligations.

25. Optus firmly believes that the Government must repeal the existing industry funding arrangements for USO services, particularly as the TUSOPA contract locks Telstra in to providing USO services by way of legacy infrastructure (i.e. copper-based services) when there may be other commercially available technologies. Instead, Government funding should be directed towards directly subsidising truly non-commercial services or supporting consumers to acquire other commercially available services and allowing consumers to choose the service that best suits their needs.

26. DITRDCA's data shows that the majority of Telstra's universal services appear to be supplied relatively close to capital cities and outer-metro areas (see Figure 1 below and excerpt of map at Appendix A). Optus is concerned this new data seems to undermine the policy justification for the USO – that it is needed to supply services in non-commercial areas. It is clear that the USO is failing to meet this basic policy objective.

Figure 1: Screenshot of map excerpt showing Telstra USO services (red shaded)



Source: Screenshot of Map excerpt of NBN Co and Telstra USO Service Data, DITRDCA website available at: [NBN Co and Telstra USO Service Data Map (infrastructure.gov.au)](https://spatial.infrastructure.gov.au/portal/apps/experiencebuilder/experience/?id=6ee60aaafdd64f20909a3ba5a57804a5&page=USO-Service-Data-App)
https://spatial.infrastructure.gov.au/portal/apps/experiencebuilder/experience/?id=6ee60aaafdd64f20909a3ba5a57804a5&page=USO-Service-Data-App

27. Optus submits there is no policy justification to taxing competitors of Telstra to fund the provision of Telstra services in competitive areas.

The market is delivering high quality telecommunications for all Australians

28. To be effective, a USO framework should be regularly reviewed in order to adapt to changes in technology and the market. There have been numerous consultations and inquiries into the operation of the USO. The resounding message from these inquiries is that the USO is anachronistic and undermines private investment in competitive

infrastructure in areas of Australia that need it the most. Yet despite some minor adjustments to Telstra's reporting and the Determination governing the circumstances in which Telstra is to supply a standard telephone service (STS), there has been little USO reform.

29. The USO is based on legislation originally enacted in 1999. The baseline performance metrics for the STS are set out in a 2004 Code that pre-dates IP telephony standards. Yet, SIPs are now required to connect premises to their fibre networks and supply wholesale services that enable at least 25/5 Mbps broadband services. VoIP services via traffic class 1 are available over all NBN access technologies and there are now at least 18 retail service providers present in all 121 points of interconnect, many of which provide retail voice services.

30. The wider telecommunications sector remains dynamic and there has been seven years of network investment since the Productivity Commission found that "…TUSO should be wound up and replaced by a new universal service framework to reflect policy, market and technological realities".[4] It is generally accepted that commercially available alternatives exist delivered over terrestrial infrastructure with low latencies to easily support quality voice calls including mobile services, fixed line and fixed wireless broadband.

31. There are services for which the USO and attendant funding requirements should be repealed now. The most obvious of these is the approximately 14,500 payphones towards which $40 million of annual TIL funding is provided to Telstra, many of which are provided in areas served by multiple mobile networks. If payphones are to be maintained for public interest reasons they should be funded by the Government as a not-for-profit community service. To support migration off legacy copper, funding could be redirected to provide demand side support for the wider adoption of new technologies.

32. Telstra's USO extends to priority assistance services for customers with diagnosed life-threatening medical conditions. While the market can and does deliver voice services across all technology platforms that outperform the STS requirements, there are vulnerable consumers and end-users with particular needs that may require support to ensure they can access services suited to their needs. However, Optus reiterates such a policy objective is better delivered via direct subsidies or financial support schemes designed for vulnerable customers rather than a cross-subsidy arrangement such as the USO.

33. Optus submits there is no policy justification for the current design of USO funding. That is, taxing competitors of Telstra to fund the provision of Telstra services in competitive areas.

Digital Platforms should contribute to the TIL / USO

34. Optus supports the removal of industry funding to the USO given its distortionary impact on telecommunications competition. However, should the Government maintain industry funding, there is a very strong argument that other beneficiaries of telecommunications investment should contribute to USO funding.

35. Industry funding of the USO is determined through Eligible Revenue (ER) determinations made by the ACMA. This reflects revenues of carriers. Total ER for 2021-22 was $24.8 billion – almost half of that is Telstra, with Optus and NBN Co both contributing around

[4] Productivity Commission, Overview Inquiry Report – Telecommunications Universal Service Obligation –Inquiry Report No. 83, April 2017, p. 109.

$4 billion and TPG contributing less than $3 billion. This proportion of revenue flows through to TIL contributions. Assuming a TIL of $220 million, this means that Optus and NBN Co pay around $40 million per year and TPG around $26 million.

36. Large digital platform providers have built highly profitable businesses in Australia off the back of investment by telecommunications carriers and the USO. The largest digital platforms are estimated to make over $14 billion from their Australian activities.[5] This revenue comes from using telecommunications infrastructure to both connect with their customers and deliver their content to their customers.

37. Inclusion of these digital platforms would increase ER; and would materially reduce the tax on the Australian telecommunications industry. The large digital platforms would contribute around 35% of the TIL, or around $76 million per year.[6]

38. Importantly, the cross-subsidy of Australian carriers to Telstra would decrease materially. Optus and NBN Co would see a reduction of almost $15 million each year and TPG would see a fall of $10 million. The reduction in these fees would flow through to more efficient competition and increase incentives for further investment in infrastructure and new technologies.

THE RBS IS NOT THE USO

39. In combining the statutory required review of the RBS with a policy review of the USO it is important to remember that these two schemes have different objectives and serve different functions. The RBS is not intended to collect funding for supporting universal services, the RBS is a tax. It's fundamental purpose is to compensate NBN Co for the loss of opportunity to acquire revenue where areas are already served by other superfast fixed line networks given the inefficiencies and increase in costs associated with duplicating fixed line network infrastructure.

40. The RBS is not designed to compensate NBN Co for bad service or inferior products. The RBS is not supposed to shield NBN Co from the consequences of poor commercial decisions and execution. Rather, the RBS was designed for a very limited purpose – where the roll-out of superfast fixed broadband networks in metropolitan areas prevented NBN Co from rolling out its fibre network.

41. In reviewing the RBS one of the key matters for consideration is the charging base of the RBS. Optus continues to hold the view that the RBS should only be applied to operators of other superfast fixed line services and should not apply to wireless / mobile services.

42. Optus considers:

    (a) This is consistent with the original purpose of the RBS to ensure parity between NBN Co and other superfast fixed line networks;

    (b) The existence of mobile networks does not preclude NBN Co from providing services;

[5] https://www.smh.com.au/technology/google-quietly-makes-billions-from-australia-as-twitter-hogs-headlines-20230502-p5d4wu.html ; ACCC, DPI6, p.10

[6] Assuming TIL equals $220m

(c) Mobile services have limited substitutability for NBN services (unlike services supplied over other superfast fixed line networks); and

(d) There would be significant negative outcomes if the RBS is applied to mobile services.

The charge base of the RBS must remain consistent with the original intent

43. The RBS was introduced after the Vertigan Review to replace the opaque cross-subsidy arrangements that existed as part of NBN Co's uniform wholesale pricing obligations following the removal of these obligations. It was to improve transparency over funding NBN Co's fixed wireless and satellite services from more profitable fibre-based services provided in metropolitan areas. It was applied to superfast fixed line networks to ensure parity across superfast fixed line networks.

44. This is consistent with the original purpose and reasons for the RBS – it effectively provides compensation to NBN Co for loss of revenue where superfast fixed line networks already exist (in metropolitan areas). This is because the natural monopoly characteristics of fixed line networks mean it is unlikely that a premises would be serviced by more than one fixed line network. This is why the charge base has been and should continue to be only applied to superfast fixed line broadband services.

45. Indeed, it has always been part of the NBN policy framework that areas could be declared adequately served if they were already serviced by a high-speed fibre network.[7] In those areas NBN Co would not build another fibre network over the top of any existing adequately served network unless it was too expensive or difficult to build around or past the existing network. This approach ultimately impacted the physical infrastructure serving a premises and was underpinned by the goal of rolling out the NBN is an efficient manner.

46. These alternative superfast fixed line networks have cherry-picked profitable areas (and can continue to do so with new developments) and for those reasons it is reasonable that the RBS apply to services on those networks to compensate NBN Co for this loss in revenue.

47. However, there are clear reasons why the RBS should not be extended to apply to mobile networks, and extending the application of the RBS to mobile networks would have significant negative outcomes to the ultimate cost of consumers.

The existence of mobile networks does not prevent NBN rollout

48. The existence of mobile networks has not and does not preclude NBN Co from rolling out infrastructure or supplying services. Further, mobile services have limited substitutability with superfast fixed line (including NBN) services.

49. Mobile networks do not prevent NBN Co rolling out fixed line infrastructure to metropolitan premises. Therefore, there is no policy justification for taxing mobile services under the RBS.

50. Unlike alternative superfast fixed line networks, the existence of mobile networks was not a relevant factor when deciding how to build and roll out the NBN. Mobile networks

[7] See for example, https://www.infrastructure.gov.au/media-technology-communications/internet/national-broadband-network/nbn-policy-information#:~:text=Some%20parts%20of%20Australia%20already%20have%20fibre%20networks,any%20existing%20adequately%20served%20networks%20in%20residential%20areas.

are national networks and cover much of the same area as NBN. But the physical infrastructure characteristics of mobile networks did not preclude NBN Co from rolling out the NBN in areas with mobile network coverage. The physical infrastructure of mobile networks and fixed line networks are quite different and mean that both networks can easily service a premises.

51. Mobile networks are designed to offer convenient voice and data services within the broader mobile network footprint. Mobile services are not tied to the one premises like fixed line services. The number of users within a particular area can change and unlike NBN services, this is potentially more likely to affect the service's performance.

52. Each generation of mobile services brings greater enhancements to user experience. Despite the prospect of enhanced mobile services being available in future, NBN Co continued its rollout of services regardless of mobile networks.

53. The ACCC has considered the competition between and substitutability of 5G/mobile broadband and superfast fixed line services (which includes NBN services). The ACCC considers there is limited substitutability between mobile broadband and superfast broadband services. That is, low-cost mobile phone and data services that are readily available in the same geographic regions as other superfast networks can be substitutes for low speed (12/1Mbps) fixed line broadband services.[8] NBN fixed line networks offer superior low latency and high bandwidth products. All other things being equal, there is limited technical substitutability between fibre and wireless services.

54. Optus submits the margins at which consumers consider wireless as an alternative to NBN services is determined by commercial decisions of NBN Co. If NBN Co provides fixed line services in a competitive and efficient manner, there is limited substitution (if any real substitution at all) between mobile and fixed line services. Due to the monopoly nature of NBN Co, such services are not always provided in this manner. If there are areas of the market that consider mobile and NBN to be substitutable services, this reflects inefficient supply of services by NBN Co. Adding a further tax onto mobile services would entrench this inefficient and monopolistic behaviour by NBN Co and would lead to further consumer detriment.

Taxing mobile services would have significant negative outcomes

55. In the current economic environment neither consumers nor mobile operators would be able to absorb the cost of the RBS levy. Mobile operators are currently undertaking significant network investment to improve capacity and coverage for consumers.

56. However, if the RBS levy is applied to MNOs, they would have to consider whether they are able to absorb the levy or whether it is passed through to mobile users. If MNOs absorb the levy, this would mean less funds to invest in improving network coverage and quality. The only other alternative is that MNOs directly pass on these costs to consumers, which adds to the cost of living concerns currently being experienced by many Australians.

57. MNOs offer a range of pricing plans, noting the ACCC's comments that there may be some substitutability at the lower end of the market for mobile and fixed line services. However, it is these customers who are likely to feel the impact of any price increases more acutely.

58. Neither of these options are desirable outcomes for industry or consumers.

[8] ACCC, Superfast broadband access service – access determination inquiry, Final decision, March 2024, p. 16.

59. It is Optus' view that a key consideration of the RBS levy should be to preserve and encourage efficient competition wherever possible. The benefits of competition to consumers are well known. Competition leads to more investment to deliver better quality of service, cheaper prices, product differentiation and more choice for consumers.

60. Therefore, the RBS levy must remain true to its original purpose of compensating NBN Co for loss of revenue where it makes no economic sense for NBN Co to deploy fixed line infrastructure because another superfast fixed line network already exists and avoid contributing to greater consumer detriment.