



20 December 2022

Mr Philip Mason  
Assistant Secretary, Universal Services Branch  
Department of Infrastructure, Transport, Regional Development, Communications and the Arts  
GPO Box 594  
Canberra ACT 2601

By email: [usb@communications.gov.au](mailto:usb@communications.gov.au)

Dear Mr Mason,

## Review of rules about reasonable requests for Universal Service Obligation standard telephone services

Thank you for the opportunity to provide feedback regarding the Australian Government's review of the *Telecommunications Universal Service Obligation (Standard Telephone Service — Requirements and Circumstances) Determination (No. 1) 2011* (the **USO Determination**), which is due to sunset on 1 April 2023.

The USO Determination sets out the requirements for a valid request for a Universal Service Obligation (**USO**) standard telephone service (**STS**), and the limited circumstances in which Telstra as the primary USO provider is not required to provide an STS.

The Government is considering remaking the USO Determination, with some relatively minor updates, and has provided a draft replacement determination and draft explanatory statement for comment.

### The need for and proposed wording/structure of a replacement determination

**nbn** supports the remaking of the USO Determination in the form proposed by the Department of Infrastructure, Transport, Regional Development, Communications and the Arts (the **Department**). The determination has been in place for over 10 years, and remaking it before the April 2023 sunset date will provide continuity and certainty regarding the requirements for a valid USO STS request, as well as the circumstances in which such a request may be refused, while the existing USO regime remains in place.

In relation to the wording/structure of the replacement determination, as the Department notes, there is an equivalent instrument for Statutory Infrastructure Providers (**SIPs**) – the *Telecommunications (Statutory Infrastructure Providers — Circumstances for Exceptions to Connection and Supply Obligations) Determination 2021* (**SIP Determination**) – which was made by the former Minister for Communications in May 2021. The drafting of the SIP Determination is streamlined and principles-based, which contrasts with the more prescriptive approach used in the USO Determination.



The Explanatory Statement for the SIP Determination addressed the different drafting approaches as follows:

*In drafting the [SIP] Instrument, regard has been given to the Telecommunications Universal Service Obligation (Standard Telephone Service—Requirements and Circumstances) Determination 2011 (the Universal Service Obligation (USO) Instrument), which performs a similar role in relation to the USO, which supports the voice component of the USG. The approach taken in this Instrument is, however, different to that taken in the USO Instrument, which adopts a very prescriptive approach to defining types of eligible and non-eligible premises, reflecting many years of accumulated experience on the ground. In contrast, this Instrument takes a more streamlined, forward-looking, principles-based approach to simplify the drafting so it is easier for stakeholders to understand and more straightforward for SIPs to implement. However, there are many other broader similarities between the two instruments with many exceptions similar in concept, if not exact wording.<sup>1</sup>*

For the reasons outlined in the extract above, **nbn** generally supports the more streamlined, principles-based approach used in the SIP Determination. However, we think that, on balance, the USO Determination should be remade in the form proposed by the Department, which largely mirrors the existing USO Determination, ahead of the imminent sunset date in early 2023.

While **nbn** supports the remaking of the USO Determination as proposed by the Department, for the reasons discussed below, our view is that the sunset period for the replacement determination should be relatively short.

### Sunset period for replacement determination

The Department has asked whether a future instrument should be subject to the default sunset period provided for under the *Legislation Act 2003* (Cth) (10 years) or a different period.

In **nbn**'s view, a shorter sunset period is warranted. This is consistent with recent recommendations by the Senate Standing Committee for the Scrutiny of Delegated Legislation (**Committee**) that legislative instruments should have shorter sunset dates in certain circumstances, rather than defaulting to 10 years. For example, the SIP Determination commenced in May 2021 and was originally due to sunset in October 2031, but the Committee recommended the instrument be amended to cease after three years. That recommendation was subsequently implemented, so the SIP instrument will now cease in May 2024.

In addition, **nbn** considers it would probably be beneficial to have similar sunset dates for the USO and SIP Determinations so that, if warranted, they could be considered together at some future point including to align drafting approaches and available exceptions in each instrument. In this context, **nbn** notes the similar roles of the USO and SIP Determinations within their respective regulatory regimes, and the overlap between the two regimes given Telstra generally uses the **nbn** fixed-line network to deliver USO voice services where available.

More broadly, **nbn** believes a shorter sunset date is appropriate given the changing industry and regulatory landscape and the increasing impetus for universal service policy reform. While the Department has specifically noted it *"is not seeking views on current state and future of the USO arrangements more broadly"*,<sup>2</sup> policy reform in this space is a relevant consideration in deciding whether to remake the USO Determination, and for how long.

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<sup>1</sup> Available at: <https://www.legislation.gov.au/Details/F2021L00651/Replacement%20Explanatory%20Statement/Text>.

<sup>2</sup> See the Department's consultation webpage: [Review of rules about reasonable requests for Universal Standard Obligation standard telephone services | Department of Infrastructure, Transport, Regional Development, Communications and the Arts](#).



In its recent submission to the Productivity Commission's *5-year Productivity Inquiry: Australia's data and digital dividend*, **nbn** set out the following high-level views regarding universal service policy reform:<sup>3</sup>

- Universal service policy should continue to focus on ensuring that telecommunications services are available to people wherever they live or work, are delivered to an acceptable standard to support high-speed data and voice, and are affordable for consumers including those on lower incomes.
- While these universal service policy objectives remain appropriate, the mechanisms through which they are achieved will require reform that takes account of the current and future technology landscape, including the need for and availability of broadband infrastructure, and the provision of voice services over that infrastructure (both fixed and mobile).
- It would seem a good time to consider what policy settings would allow a transition from the existing technologies and regulatory regime to a future state. There are several key policy issues that need to be resolved while developing a revised approach to delivering universal service, including: how market developments and emerging technologies may affect the way universal service could be achieved; the extent to which universal services are likely to be delivered by one or more networks if legacy requirements (e.g., Telstra's copper continuity obligation) are relaxed; and, where non-commercial obligations remain essential to delivering universal service, what the best mechanisms may be for selecting and funding the required infrastructure and/or services.

Against this background, and with the drivers for universal service policy reform continuing to increase, **nbn** considers the best course would be to:

- remake the USO Determination in the form proposed for a relatively short period to allow reconsideration once broader universal service policy reform has progressed; and
- have similar sunset dates for the USO and SIP Determinations so that, if warranted (and subject to any policy reform outcomes), the instruments could be considered together at some future point including to align the drafting approaches and available exceptions in each instrument.

Please contact [REDACTED] if you would like to discuss any aspect of **nbn**'s submission.

Yours sincerely

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<sup>3</sup> **nbn**'s submission is available at: [https://www.pc.gov.au/data/assets/pdf\\_file/0004/347791/sub147-productivity.pdf](https://www.pc.gov.au/data/assets/pdf_file/0004/347791/sub147-productivity.pdf).