

Department of Infrastructure, Transport,
Regional Development, Communications and the Arts
GPO Box 594
Canberra ACT 2601

By email: usb@communications.gov.au

To whom it may concern

Re: Review of rules about reasonable requests for Universal Standard Obligation telephone services

The Australian College of Nursing (ACN) would like to thank the Department of Infrastructure, Transport, Regional Development, Communications and the Arts for the opportunity to provide feedback on the draft *Telecommunications Universal Obligation (Standard Telephone Service – Requirements and Circumstances) Determination 2022* (the Draft Determination).

As the national leader of the nursing profession, ACN is committed to ensuring real and lasting change by shaping health care and advancing nursing. ACN works to achieve its mission through the pillars of world-class professional education, community engagement and development, championing nurse leadership, ensuring a positive social impact, performing advocacy at all levels, and effective policy development.

The Universal Service Obligation (USO) is a long-standing consumer protection that ensures everyone has access to landline telephones and payphones regardless of where they live or work. Telstra, as the Primary Universal Service Provider (PUSP) is responsible for delivering the USO.

Fixed voice services remain essential to households who live in regional and remote areas, in bushfire prone areas, in areas with no or limited mobile coverage, and for older people or people with life threatening medical conditions. It is vital that consumers in these circumstances should have access to fixed line voice services upon request. Adequate, reliable access to a landline or consistent mobile phone service is imperative for the success of telehealth. In particular, in the future when the legislation is changed for voluntary assisted dying services.

The PUSP should only refuse to provide a USO standard telephone service (STS) in exceptional circumstances. As such, there is an enduring need for the Draft Determination, which sets out the limited circumstances in which it is not considered reasonable for a PUSP to provide an STS under the USO and requirements for a valid request.

While the Draft Determination limits the circumstances where it is unreasonable to provide a STS, ACN believes there is benefit in following the approach taken in *Telecommunications (Statutory Infrastructure Providers – Circumstances for Exceptions to Connection and Supply Obligations) Determination 2021* (the SIP Instrument). In particular, rather than defining eligible and non-eligible premises, the Determination should use a broader concept of premises such as that used in the SIP Instrument.

The SIP Instrument provides that a place of residence is “generally expected to be capable of supporting continual or periodic independent private residency, have basic utilities, and incorporate or provide reasonable access to sanitation and food preparation facilities”.¹ ACN considers that this principle-based approach is preferable to the approach adopted in the Draft Determination.

Defining eligible premises could unnecessarily restrict a consumer from being supplied with an STS. For example, the Draft Determination requires the person requesting the service to reside or intend to reside for 183 days or more per year in the premises where the STS will be supplied. There are practical limitations to proving someone’s intent in order to distinguish whether a premise is eligible for the service. This could result in a consumer being refused an STS unreasonably. Furthermore, this requirement may result in people who live and work in industries where they are required to sporadically move being excluded from the service, for example fly-in-fly-out workers, or seasonal farm workers.

The key benefit of utilising a principled based approach would be to ensure there are limited circumstances of refusal, however it also works towards improving the clarity of the instrument. Streamlining the Determination will make it clearer to the PUSP to follow, as well as make it easier for consumers to understand the PUSP’s (Telstra’s) obligations to supply the STS.

Additionally, as Telstra relies on the National Broadband Network (NBN)’s infrastructure to provide USO voice services in the fixed-line footprint, there would be merit in aligning the instruments where applicable. This would prevent a situation where a request is rejected by the infrastructure provider, but not the retailer, or vice versa.

The approach in the SIP instrument could be reviewed to ensure it remains comprehensive enough to ensure all premises that need to be connected are connected. Similarly, there would be benefit in carrying out a review of the Draft Determination, to ensure that consumers who should reasonably receive an STS are able to do so. A shorter sunset period for the Determination would allow for such a review.

¹ Telecommunications (Statutory Infrastructure Providers—Circumstances for Exceptions to Connection and Supply Obligations) Determination 2021: Explanatory Statement.

ACN supports a shorter sunset period for this instrument of two years, at which point it would be appropriate to review whether the instrument is operating as intended. We note that in regard to the SIP instrument, the Senate Standing Committee for the Scrutiny of Delegated Legislation states that:

exemptions from primary legislation by delegated legislation should not continue in force for such time as to operate as a de facto amendment to the principal Act. The committee's longstanding view is that provisions which exempt person or entities from the operation of primary legislation should cease to operate no more than three years after they commence.²

It is important that the primary legislation is not contradicted by delegation and that instruments made under delegation like the Determination operate to provide clarity as to the scope of regulatory obligations. Where regulatory obligations are subject to material or permanent revision, this should be undertaken through amendment to the primary legislation rather than via a delegated instrument.

Thank you for the opportunity to comment on this consultation. Please do not hesitate to contact me, [REDACTED]

Yours faithfully

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[REDACTED]

13 January 2023

² Senate Standing Committee for the Scrutiny of Delegated Legislation, 2021, *Monitor 14 of 2021 - Committee correspondence: Correspondence relating to chapter 1 and appendices*. Available at: https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Scrutiny_of_Delegated_Legislation/Ind ex/-/media/73ED4500D2D84B72830313E41761A6B3.ashx