

The logo for Optus, consisting of the word "OPTUS" in a bold, teal, sans-serif font.

Submission in response to
Department consultation
paper

**Telecommunication Universal
Service Obligation (Standard
Telephone Service –
Requirements and
Circumstances)
Determination 2022**

Public Version

January 2023

EXECUTIVE SUMMARY

1. Optus welcomes the opportunity to provide a submission in response to the Department of Infrastructure, Transport, Regional Development and Communications (the Department) consultation on the draft *Telecommunication Universal Service Obligation (Standard Telephone Service – Requirements and Circumstances) Determination 2022* (the draft Determination) and associated draft Explanatory Statement.¹
2. Optus understands that the draft Determination is to replace the existing *Telecommunications Universal Service Obligation (Standard Telephone Service— Requirements and Circumstances) Determination (No. 1) 2011* which is due to end on 1 April 2023. The Department is particularly interested in feedback on the need for the replacement instrument, the proposed wording and structure of the draft instrument, whether a future instrument should be subject to the default sunset period provided for under the Legislation Act 2003 (10 years) or a different period, and why and whether an alternative approach would be preferable, and if so, why.
3. At the outset, Optus reiterates its long-held view that the Universal Service regime requires fundamental reform, including measures to improve the financial transparency and accountability of the primary universal service provider. The time for reform is well overdue and is supported by numerous studies and reports, including by the Productivity Commission, the Australian National Audit Office (ANAO) and the Department itself.
4. Significant amounts of industry and government funding is provided to support delivery of universal services, with Telstra receiving approximately \$270 million under the Telstra USO Performance Agreement (TUSOPA) and the Telecommunications Industry Levy (TIL). Without transparency it remains very difficult for industry, government and the broader public to gauge Telstra’s performance in relation to these obligations and the level of public benefit and value for money that is derived from USO funding.
5. In Optus view, this lack of transparency over the allocation of USO funds is unjustifiable, particularly given the potential 10-year term of the Determination and therefore the apparent continuation of the TIL and industry and government funding for the USO. Remaking the Determination is an opportune time to introduce greater transparency into the costs and funding of the USO. Optus has previously set out its views on the base line level of reporting that it considers is warranted and would welcome the opportunity to discuss these matters in further detail with the Department.²

¹ Optus notes that the draft Determination needs to be updated to include “Service” in the title

² Optus submission on Telstra Carrier Licence Conditions on Regional Service Information, November 2021, p.6

THE NEED FOR FINANCIAL ACCOUNTABILITY

6. As Optus has stated on numerous occasions meaningful universal service reform is a crucial pre-requisite to the delivery of broader communications policy objectives for regional and remote Australia. As currently administered, the USO remains an economically inefficient subsidy of out-of-date technologies that ultimately serves to reduce the level of private infrastructure investment in regional and remote areas.
7. Since 1992, Optus has been forced to pay Telstra more than \$1.2 billion to fund Telstra's network and there is no evidence that this has contributed to any improved regional connectivity. Rather, Optus submit that this money has resulted in materially less competitive infrastructure in regional Australia.³ It appears that the limited scope of the Department's consultation constitutes another missed opportunity to remove out of date USO legislation which would have enabled industry to reallocate TIL funds to new competitive infrastructure investments.
8. Notwithstanding Optus general view that the universal service regime requires fundamental reform, Optus accepts that the replacement Determination is required while the USO remains in place. Optus notes that the Determination is designed to provide greater clarity as to what constitutes a valid request for standard telephone service (STS) and the circumstances where the USO will not arise. In Optus's view it follows that Telstra should be readily able, and ultimately required, to provide transparency and accountability over how it uses industry and public funding to meet its universal service requirements in circumstances where it is required to do so.
9. Optus welcome recent amendments to Telstra's carrier licence to require quarterly reporting and improved transparency over its delivery of STS outside the NBN fixed-line footprint.⁴ However, this reporting relates to Telstra's performance in the supply and maintenance of STS against the Customer Service Guarantee Standard and does not provide financial accountability over Telstra's USO performance. There remains insufficient information for government, the public and industry to assess whether Australians are receiving value for money in relation to this public expenditure.
10. The Productivity Commission and the Australian National Audit Office (ANAO) have previously raised concerns about the value for money and administration of the TUSOPA. Yet more than five years after these reports, there remains a complete lack of transparency over how money provided by the rest of industry and Government for the delivery of STS and payphone services is spent by Telstra. Optus submits that the remaking of this Determination presents an opportunity for the Government to inject long overdue financial accountability into Telstra's performance under TUSOPA and more broadly under the USG scheme.
11. Telstra should be required to publish a sufficiently detailed list of expenditure to account for annual USO funding, including a detailed breakdown of the expenditure based on whether it is directed to the STS or the payphone component of the USO. The funding allocated to the STS component should be identified on the bases of the access technology used,⁵ as well as any additional mobile coverage that may have been

³ As Optus has noted in its previous submissions, Optus could have otherwise invested the \$1.2 billion in USO levies in our mobile network to extend coverage to an additional 900,000 sq km of regional Australia.

⁴ [Regional service performance \(telstra.com.au\)](https://www.telstra.com.au/regional-service-performance)

⁵ 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

funded through USO funding (for example as a result of the supply of interim services”).⁶ Optus also considers that revenue generated from USO funded sites should be accounted for. Optus has previously identified other baseline reporting requirements needed to deliver transparency and accountability over the use of USO funds and would welcome the opportunity to discuss these with the Department.⁷

12. More broadly, Optus believes that the operation and administration of the universal service policy and arrangements continue to require review and reform to ensure that obligations are fulfilled in an efficient and prudent manner where public and industry funding is provided. In addition, broader consideration should be given to alternative service solutions to avoid entrenching any digital divide. This view was echoed by the Regional Telecommunications Independent Review Committee (RTIRC) in its report “*Regional Telecommunications Review – a step change in demand*”.⁸
13. RTIRC ultimately recommends a “technology agnostic approach” to USO service delivery, noting that alternative services should exceed the existing reliability standards of current USO services.⁹ Optus actively participated in the Alternative Voice Service Trial (AVST), which completed in June 2022. The AVST trial included Optus satellite VoIP and satellite wireless PoP, as well as Optus femtocell technology all of which are designed to provide voice equivalent services. Optus encourages the Government to provide an update on any implementation of the outcomes of the trial.¹⁰
14. Instead of piecemeal remaking of existing Determinations, Optus considers the Government should undertake a more in-depth review to consider the above issues holistically. This would allow the Government to identify opportunities for reforming the approach to universal service arrangements, such as identifying obligations that should have greater reporting and transparency measures attached, including in relation to financial accountability.
15. Notwithstanding the views reiterated above, and in acknowledgment of the purpose of the consultation, Optus provides further specific feedback on the issues for comment relating to the draft Determination sought by the Department. Optus would welcome the opportunity to discuss our feedback with the Department.

SPECIFIC COMMENTS IN RESPONSE TO CONSULTATION

16. Optus accepts that if the USO is to be retained in its current form, then the replacement Determination should be made. Optus agrees with the ongoing need for the Determination as a means of providing “clarity for the community, the primary universal service provider, the Australian Communications and Media Authority (ACMA), the Telecommunications Industry Ombudsman (TIO) and other stakeholders” as to the circumstances in which Telstra is obliged to meet the USO.¹¹
17. Optus does not have any specific comments about the wording and structure of the Determination and notes that it is almost identical to the 2011 Determination. That said, Optus queries why section 5 of the 2011 Determination which provided that “*In*

⁶ 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.

⁷ Fn2

⁸ Recommendation 4, p.5

⁹ Recommendation 8, p.11

¹⁰ [Alternative Voice Services Trials Program | Department of Infrastructure, Transport, Regional Development, Communications and the Arts](#)

¹¹ Draft Explanatory Statement, Telecommunications Universal Service Obligation (Standard Telephone Service—Requirements and Circumstances) Determination 2022

*interpreting the provisions of this Instrument, regard should be had to the objects of Part 2 of the Act*¹² appears to have been removed, though a reference is retained in the draft Explanatory Statement.¹²

18. The main objects of Part 2 of the Act are to “ensure all people should have reasonable access to STS and payphone”.¹³ 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.¹⁴
19. Optus also notes that the Explanatory Statement explains that a catalyst for the 2011 Determination was to reduce Telstra’s discretion to meet its USO on a case-by-case basis assessment, and to address concerns about the lack of transparency over the practical implementation of Telstra’s business practices in supplying eligible services.¹⁵ Optus queries the degree to which this objective has been realised, noting that Telstra’s performance remains the subject to reporting to the ACMA and the Department and from the Telecommunications Industry Ombudsman (TIO) with little public transparency over any active monitoring and enforcement action that may be undertaken to ensure Telstra’s compliance. As noted above, there remains no real transparency over Telstra’s decision-making in this area despite the considerable public and industry funding directed towards supporting universal service arrangements.
20. Optus submits the removal of section 5 may allow Telstra greater discretion to decide not to supply STS and payphones in fulfilment of its USO, instead opting to supply mobile services. Such an outcome would appear unjustifiable in the context of Optus stated concerns about the lack of transparency concerning Telstra’s USO performance. To address this, Optus would recommend the inclusion of criteria as to the presence of competitive mobile services as a factor relevant to Telstra’s decision-making on how it will meet its USO. The draft Determination should provide greater transparency over the number of mobile services and satellite services (if any) that Telstra supplies in providing an STS. Telstra should also report on its compliance with the CSG Standard in relation to these services.
21. The Department has referred to the exceptions set out for the Statutory Infrastructure Provider (SIP) scheme as a possible alternative model to streamline the USO arrangements set out under the draft Determination. Optus notes that the Department appears to be suggesting that the regime, which requires SIP operators to supply eligible (wholesale) services based on service area types set out under the legislation, could be adapted to the USO regime with suitable adjustments to reflect the retail nature of the USO.¹⁶
22. On the basis of limited information provided, Optus recognises the conceptual appeal of this proposal, particularly given that the existing SIP regime requires that an eligible service must enable a CSP to supply to end-users “*carriage services that can be used to make and receive voice calls*”.¹⁷ However, while Optus notes that the objective of streamlining the scheme sounds commendable, the actual benefit of such amendment to the administration and delivery of the USO appears limited. Optus has previously

¹² Ibid, p.2

¹³ Section 8 of the *Telecommunications (Consumer Protection and Service Standards) Act 1999* (the Act)

¹⁴ Section 4 of the CSG Standard

¹⁵ fn14

¹⁶ [Review of rules about reasonable requests for Universal Standard Obligation standard telephone services | Department of Infrastructure, Transport, Regional Development, Communications and the Arts](#)

¹⁷ Section 360Q; Telecommunications Act 1997

observed that healthy retail competition depends on robust wholesale regulation and baseline wholesale service standards. However, the wholesale SIP regime is not compatible with retail regulation and in particular does not adequately support CSG obligations.

23. Further, it is unclear whether the Department is contemplating expanding the voice-related obligations of the USO to other SIPs based on relevant service areas, which would arguably introduce greater complexity into the administration of USO voice services and removes justification for the significant industry funding that Telstra receives via the TIL. Should the Government be contemplating such reform then Optus considers that further consultation is required before it is implemented in any new legislation.
24. In regard to the duration of the instrument, Optus submits that the draft Determination should be subject to a shorter timeframe than the default 10-year sunset period under the Legislation Act 2003. Given the increasing rapid pace of change in service provision to regional and remote areas of Australia, Optus suggests an initial duration of 3 years, with a mechanism to review and extend the term again at the time of expiry if necessary. The Determination should be reviewed in the context of the ongoing evolution and increasing availability of reliable alternative voice solutions for hard to serve areas and must reflect genuine and transparent consideration of the ongoing value for money offered by the USO regime and the impact of inefficient subsidisation of out-of-date fixed line voice only services by Government and industry.