



TELSTRA CORPORATION LIMITED

Response to consultation: review of rules about reasonable requests for Universal Service Obligation standard telephone services

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General



Introduction

Telstra welcomes the opportunity to provide feedback on this consultation by the Department of Infrastructure, Transport, Regional Development, Communications and the Arts (**Department**) regarding the proposed remaking of The *Telecommunications Universal Service Obligation (Standard Telephone Service—Requirements and Circumstances) Determination (No. 1) 2011 (2011 Determination)*, with some updates.

The Universal Service Obligation (**USO**) is an important and longstanding consumer protection that provides Australians with reasonable access to fixed telephone and payphone services wherever they reside or carry on business, as set out in the *Telecommunications (Consumer Protection and Service Standards) Act 1999 (Act)*.

In accordance with the terms of the Act, Telstra is the primary universal service provider. Telstra has been responsible for delivering the USO for the entirety of the duration of the 2011 Determination and will very likely continue to hold this responsibility after the 2011 Determination is due to sunset on 1 April 2023.

The need to replace the 2011 Determination

The 2011 Determination sets out the requirements for a valid USO request, as well as defining the specific and limited circumstances in which it is not considered reasonable for the primary universal service provider to provide a standard telephone service (**STS**) under the USO.

The 2011 Determination provides important clarity for the community, for Telstra as the primary universal service provider and for other stakeholders including the Department, the Telecommunications Industry Ombudsman and the Australian Communications and Media Authority as to the circumstances in which an STS will be provided under the USO.

Without it, the primary universal service provider would be left with wide discretion to make decisions on requests for an STS under the USO on a case-by-case basis. When the 2011 Determination was introduced, it was determined it would be beneficial for all stakeholders for a legislative instrument to clearly set out the circumstances in which an STS will be provided under the USO. Since then, the 2011 Determination has operated as intended to provide that beneficial regulatory certainty and Telstra believes there is strong merit in continuing this status quo through the replacement of the 2011 Determination with a new determination containing essentially identical terms (**Replacement Determination**).

Approach to the wording and structure of the Replacement Determination

Telstra considers the best approach to take regarding the wording and structure of the Replacement Determination is to replicate as closely as possible the terms of the 2011 Determination. This approach will provide important regulatory certainty and stability for the community and other stakeholders regarding the primary universal service provider's fulfilment of the USO obligations to supply an STS set out in the Act.

Telstra does not support alternative approaches, such as attempting to re-write the Replacement Determination using wording based on the wholesale level obligations to supply services on request to carriage service providers under the Statutory Infrastructure Provider (**SIP**) regulatory regime applicable to the NBN and other providers of superfast broadband infrastructure.

For more than a decade, the nature and level of detail set out in the 2011 Determination has been proven to work well to provide regulatory certainty to customers in need of an STS from the universal service provider. Any change to this approach, even well intentioned "streamlining" of the current



drafting, risks creating regulatory uncertainty or other unintended consequences for no clear benefit to consumers or to the universal service provider.

The appropriate sunset period

The Replacement Determination would be a disallowable legislative instrument for the purposes of the *Legislation Act* 2003. The default approach to the sunset of such instruments is that they are repealed automatically approximately 10 years after being registered. This approach provides certainty for stakeholders and avoids unnecessary administrative rework.

Importantly, setting a sunset period does not prevent the legislative instrument from being able to be amended or repealed earlier, should circumstances arise to make this necessary or appropriate. As is the case with all legislative instruments, if the default sunset period was applied to the Replacement Determination, it could still be amended or repealed in the future if consideration of issues raised in the future shows that is desirable, subject to appropriate further stakeholder consultation.

In these circumstances, Telstra sees no reason to depart from the default approach of having the Replacement Determination sunset approximately 10 years after it is made. While it would be possible to set a shorter sunset period there is no obvious public benefit to be gained from doing this, as the Replacement Determination simply replicates the terms of the 2011 Determination which have been proven to operate as intended over a period of more than a decade. All that a shorter sunset period would achieve is to create the risk of unnecessary administrative rework should it be necessary to rely on the Replacement Determination for a longer period.

Drafting comments – exposure draft of the Replacement Determination

The 2011 Determination contains the following wording *“In interpreting the provisions of this Instrument, regard should be had to the objects of Part 2 of the Act”*, which does not appear in the exposure draft of the Replacement Determination. Potentially, this wording has been omitted by mistake, given the exposure draft of the Explanatory Memorandum to the Replacement Determination states: *“When interpreting the provisions of the Determination, regard should be had to the objects of Part 2 of the Act. The objects of Part 2 are set out in section 8A of the Act and include giving effect to the policy principle that all people in Australia, wherever they reside or carry on business, should have reasonable access, on an equitable basis, to a standard telephone service”*.

In some instances in the Replacement Determination, the wording *“the primary universal service provider”* in the 2011 Determination has been replaced with the wording *“a primary universal service provider”*. However, this has not been done consistently throughout the Replacement Determination. We recommend the adoption of a consistent approach throughout the instrument.