Better delivery of universal services: Discussion Paper

TPG Telecom response

March 2024

Public submission

A Summary

TPG Telecom welcomes the Government's review of universal service arrangements and appreciates the Government seeking input on ways to better deliver baseline universal telecommunications services to consumers.

The current USO is an outdated and costly subsidy for legacy fixed line copper voice services, which has long distorted competition, delivered poor consumer outcomes and does not reflect value for money for taxpayers.

The shortcomings of the current USO arrangements have been thoroughly detailed in past inquiries, including the Productivity Commission's 2017 inquiry, numerous Regional Telecommunication Reviews and the Australian National Audit Office's 2017 report.

TPG Telecom believes this is an ideal time to modernise the USO. This submission does not revisit matters thoroughly examined in previous inquiries. Rather, this submission puts forward five recommendations to reform and modernise the USO. These recommendations will support a more level playing field and sustainable telecommunications sector, reflecting technological advances and changing consumer preferences along with the opportunities presented by the completion of the NBN rollout.

Our primary recommendations are:

1. Transition away from existing Telstra contractual arrangements. The USO is no longer required where the Statutory Infrastructure Provider (**SIP**) regime compels wholesale providers to provide a voice service. Any residual concerns regarding consumer safeguards can be dealt with by imposing obligations on NBN Co, as the default SIP.
2. To the extent necessary, the Government should directly fund targeted USO initiatives through competitive tendering.

If the Government considers it appropriate to retain some form of industry levy, we recommend:

3. Payphone arrangements are amended to reflect industry contributions and ancillary benefits gained by Telstra.
4. The Telecommunications Industry Levy (**TIL**) be expanded to include Over-the-Top (**OTT**) providers.
5. Calculate levies based on profits rather than eligible revenue for the purposes of the TIL.

TPG Telecom looks forward to the Department's consultation on funding arrangements related to the USO. TPG Telecom considers that an appropriately reformed USO should require significantly less funding through the TIL. However, if the Government considers it is necessary to continue TIL funding at any level, there is a need for fundamental reform of these arrangements. This should include ensuring beneficiaries of telecommunications infrastructure are making a fair and equitable contribution to Government levies. OTT providers, such as Netflix and Amazon, and large digital platforms, such as those operated by Google and Meta, substantially benefit from the Universal Service Guarantee, which ensures Australians have access to both broadband and voice services, and the telecommunications ecosystem required to deliver OTT services.

A fair and equitable system would see OTT providers contribute to the TIL or meet the cost of new initiatives to support the improved resilience of telecommunications services, such as funding for an emergency roaming solution.

TPG Telecom's recommendations are based on the limited information publicly available regarding the USO contracts. As the Department is aware, the terms of the Telecommunications Universal Service Obligation Performance Agreement (**TUSOPA**) between the Government and Telstra have <u>not</u> been made public.

TPG Telecom has requested access to the TUSOPA under freedom of information laws, however Telstra has appealed the FOI Commissioner's decision to release it and related documents to the Administrative Appeals Tribunal. The current USO remains opaque and there is a lack of transparency regarding Telstra's obligations and rights, and the terms the Government would rely on to modernise the USO.

We do know the payments Telstra receives under the TUSOPA are fixed, regardless of the number of services connected. However, take up is at historic lows and declining each year. A modernised USO should not involve Telstra continuing to obtain millions of dollars in industry and Government funding each year, where only Telstra and the Government are aware of the full particulars of the arrangement. Modernisation of the USO must improve on transparency.

B Recommendations

Recommendation 1: Transition away from existing Telstra contractual arrangements

In modernising the USO, the Department must take up the opportunity afforded by the completion of the NBN rollout and the establishment of the SIP regime. The SIP regime removes the need for the USO, as voice services must be available if the SIP operates a fixed line or fixed wireless network.

We understand Telstra provides voice services via a range of networks, including via the Telstra copper network, the NBN, satellite phone or radio concentrator networks. Given the majority of voice services are now supplied using the NBN, the impact of the phased removal of the current USO scheme is likely to be minimal.

The ACCC Communications market report 2022-2023 notes there are over 6 million voice services in operation and the majority of these customers are serviced using the NBN.[1] There only remains around 367,000 end-users using Telstra's copper network. This reflects a decline of 94.6% since September 2007.

While we do not have access to Telstra data related to the number of end-users supplied by radio concentrators and satellite phones, the Australian National Audit Office reported 16,426 radio concentrator services and 981 satellite phone services as of September 2016. The Consultation Paper notes there are currently around 15,000 voice services supplied over non-copper networks.

A phased shift away from the Telstra legacy copper service provides an opportunity for these end-users to transition to higher quality and more reliable services. The 2021 Regional Telecommunications Review (**RTR**) noted there were significant maintenance and repair issues with the copper network, indicating it is not being adequately maintained in some areas.

Not only are these consumers receiving services on outdated technology, they are also paying a relatively high price for a service with reduced utility when compared with alternative telecommunications services. For example, Telstra offers a voice service for $50 per month, excluding discounts or concessions. This advertised price is similar to entry level fixed broadband and mobile products, both of which offer far greater utility.[2]

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[1] The ACCC's Snapshot of Telstra's customer access network showed that total 'voice only' services in operation (SIOs) across Telstra's customer access network dropped 20.5 per cent from September 2022 to September 2023 (from 461,464 to 366,730 SIOs) and have declined 94.6 per cent since the record keeping rules began in September 2007.

[2] For example, TPG offers a 4G home wireless broadband service with an unlimited data allowance for $54.99

The prolonged subsidisation of legacy copper services means these consumers are being left behind, as there is little (if any) incentive in the market to innovate, when the competing service is subsidised by the Government.

The absence of competition means Telstra has no incentive to reduce costs or improve service quality, meaning consumers end up paying more for the same service. This is demonstrated in Telstra's decision to not pass through 100% of cost savings when the cost of the equivalent wholesale NBN voice service was reduced.

As part of the Special Access Undertaking accepted by the ACCC in 2023, NBN Co agreed to reduce the wholesale charge for NBN12, which can be used to deliver voice only services. The wholesale charge decreased from $22.50/month to $12/month, equating to a saving of $10.50/month. However, Telstra only passed through less than 50% of this reduction, by reducing the retail price for standalone voice services from $55/month to $50/month (including GST).[3] This means for every voice service supplied over the NBN, Telstra receives an immediate margin uplift of around 21.65% or $5.95 per month. This is a significant windfall gain and would equate to millions of dollars when multiplied over Telstra's voice services, giving Telstra significant advantages as the USO provider compared to its competitors. This is yet another example of the harmful impacts of the USO.

The negative impacts of the overall arrangements are also evident in Telstra's decision to migrate some NBN fixed line voice customers onto its own 4G network on an opt-out basis. This raises questions about the efficacy of the USO arrangements, given Telstra received up to $165 million over 10 years to migrate voice customers to the NBN network, only to transfer customers back to Telstra's own mobile network after the voice only module expired in 2022.

With regard to the SIP regime, any residual concerns regarding consumer safeguards can be dealt with by imposing obligations on NBN Co, as the default SIP for all of Australia. Transferring obligations to the wholesale level through NBN would consequently maximise competition at the retail level (through retailers using NBN), which would in turn drive affordability and choice for consumers.

Where the NBN has been built with $32 billion in taxpayer funding, $19.5 billion in taxpayer debt funding (which has now turned into at least $19 billion of cheap external debt that no commercial operator has access to), it is appropriate for NBN Co to take on increased obligations and service levels.

There is an opportunity for the Government to impose greater obligations on NBN Co through existing mechanisms in the SIP regime, which will be expanded under the proposed

per month. Vodafone offers a mobile plan with unlimited national calls and texts, and 50 GBs of data (and no excess usage charges) for $49 per month. Many retailers also offer a VOIP service with an NBN connection.

[3] When GST is excluded, this equates to a change from $50/month to $45.45/month, representing a decrease of $4.55/month.

Telecommunications Legislation Amendment (Enhancing Consumer Safeguards and Other Measures) Bill 2023 or through other forms of regulation.

Recommendation 2: To the extent necessary, directly fund targeted USO initiatives through competitive tendering

If the Government considers it appropriate to transition away from existing Telstra arrangements, the remaining access gap to be addressed is the small cohort of consumers located in areas receiving NBN Co's Sky Muster satellite internet. We understand Sky Muster provides high-latency services not typically considered suitable for voice services (as noted in the Consultation Paper). In these areas, NBN Co is not required to provide voice services under the SIP regime.

In lieu of a wide-ranging USO, we support a flexible, technology neutral approach and the establishment of targeted initiatives where needed. This could be achieved from competitive tendering to ascertain the most efficient alternative technology, depending on the specifics of each location. Such an approach would be fair and competitively neutral. Funding targeted initiatives will mean Telstra is no longer subsidised for outdated legacy services or for services it would otherwise deliver on commercial terms.

This approach is consistent with the recommendation of the Productivity Commission, which found remaining gaps in service would be better addressed via targeted Government intervention, such as programs specifically for First Nations and remote communities, as opposed to broadly scoped programs like the current USO arrangements.[4]

A technological neutral approach to the USO would allow the flexibility to include an element related to mobility (reflecting consumer preference in regional areas) and newer technologies, such as Low Earth Orbit (**LEO**) satellites (reflecting potential future technologies).

Mobile coverage is important given many households no longer use landline services and consumers may prefer mobile over landlines:

- An ACMA survey commissioned in 2022 found 63% of people have only a mobile for voice calls at home, with no landline and only 1.6% of people have just a landline.[5]

- The First Nations Digital Inclusion Advisory Group Initial Report (October 2023) found "*there can also be a strong preference for mobile connectivity due to the benefits it offers, such as allowing access to the internet whether inside the community, in transit, or elsewhere.*"

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[4] Productivity Commission - *Telecommunications Universal Service Obligation Inquiry Report* (19 June 2017).
[5] ACMA, *How Australians make voice calls at home,* available at: https://www.acma.gov.au/publications/2022-10/report/how-australians-make-voice-calls-home

As noted in the Consultation Paper, LEO satellite technology may be vulnerable to weather (e.g. heavy rain), hilly terrain, and vegetation. As such, the feasibility of LEO satellite technology to provide a voice service requires further consideration. NBN Co has stated it is exploring connectivity solutions with LEO satellite providers. This could change the feasibility of providing voice services in Sky Muster service areas.

In locations where consumers already have access to mobile coverage and, in the future, LEO satellite service (e.g. direct to cell connectivity), we believe the USO should not focus solely on a fixed line connection, and instead consider the whole range of connectivity solutions available now and in the future to consumers in those areas.

The adoption of a more efficient and targeted initiative would substantially reduce the cost of the USO and obviate the need for industry funding. Rather than taxing competitors of the provider delivering the USO, the least distortionary option for any ongoing funding would be through consolidated revenue. This has been supported by the Productivity Commission in its 2017 report, which repeated comments from the Vertigan Panel that consolidated revenue was by far the best option for funding any ongoing subsidy.

Recommendation 3: Amend payphone arrangements to reflect industry contribution

TPG Telecom recognises the benefits of payphones for vulnerable consumers.

However, the existing arrangements do not recognise the ancillary benefits Telstra receives from supplying payphones. Payphones carry Telstra's branding and commercial advertising, including large digital advertising screens, which defrays some of the costs.

Telstra announced it was making payphones free in 2022, accompanied by an extensive advertising campaign. Telstra uses payphones to deploy free Wi-Fi hotspots. Telstra's brand and reputation benefits from payphones, yet none of Telstra's marketing materials acknowledge the industry and Government's contribution for payphone costs.

The USO arrangements further offset part of Telstra's costs of delivering transmission backhaul capability to regional areas. This assists Telstra to compete in both the fixed line and mobile markets.

The TUSOPA does not specifically take into account the value of all of these benefits, in circumstances where they can easily be quantified. The subsidies provided to Telstra for payphones clearly tilt the playing field further in its favour.

The adoption of targeted initiatives, as recommended by TPG Telecom, will reduce the overall cost of the USO. This means rather than levying Telstra's competitors and continuing to distort competition, the Government could directly fund the cost of payphones.

If the Government considers it reasonable to continue levying industry for payphones then, at a minimum, payphones and marketing materials should include branding to recognise the contribution from industry and Government delivering this service.

Recommendation 4: Expand Telecommunications Industry Levy to include OTT providers

If the Government believes the USO should continue to be industry funded at any level, there is an opportunity to create a fairer and more equitable levy scheme by requiring OTT providers to contribute to the TIL.

Although OTT providers may not directly benefit from the provision of voice services, they financially benefit from Government policy under the USG, which ensures all Australian homes and businesses have access to both broadband and voice services, regardless of their location. OTT providers are a fundamental part of the digital ecosystem and cannot operate without telecommunications infrastructure. Despite this, OTT providers are not required to contribute to the costs involved in deploying and maintaining this infrastructure in Australia. OTT providers do not contribute to the myriad of levies and taxes paid by telecommunications operators, including the TIL, RBS, Annual Carrier Licence Charge, Annual Numbering Charge, spectrum licence taxes, etc.

The role of OTT providers and their need to contribute in various ways is already being considered in other jurisdictions. There is recognition of the need for OTT providers to contribute to the cost of telecommunications infrastructure and contribute their fair share to meet social obligations, particularly given the revenues they generate over the same infrastructure. However, the same debate and discussion is not being had at the policy level in Australia.

For example:

- **United States**: A bipartisan bill has been introduced in Congress to require edge providers and digital companies to contribute to the Universal Service Fund in the US. This means edge providers and digital companies that account for more than 3% of the US internet traffic or have more than $5 billion in annual revenues will contribute to the Universal Service Fund.[6] The US Federal Communications Commission noted in some rural areas, the top 5 largest streaming services accounted for 75 per cent of network traffic in rural areas, travelling over infrastructure that is in many cases provisioned under the Universal Service Fund. The bill is intended to ensure those providers pay their fair share, where they are the primary financial beneficiaries of the internet.

- **European Union:** The European Commission conducted a consultation into the electronic communications sector and its infrastructure in 2023.[7] This followed a joint

[6] US Congress - *S.3321 - Lowering Broadband Costs for Consumers Act of 2023, 118th Congress (2023-2024)*.
[7] European Commission, *Results of the exploratory consultation on the future of the electronic communications sector and its infrastructure* (10 October 2023).

call from France, Italy and Spain, and a separate letter from 20 European telecommunications companies for OTT providers to contribute towards network infrastructure costs.

- **South Korea:** In South Korea, the three largest internet service providers (ISPs) must pay peering fees to send data to each other. A 2021 law also requires OTT providers to help ISPs maintain network quality, which in effect compelled them to pay network fees directly to ISPs. Whilst this differs from the Australian context in terms of the legislative environment and resultant power balance between network operators and OTT providers, it does represent a real example of OTT providers bearing some of the costs of providing infrastructure on which they rely.

Without exploring this further, Australia risks falling behind other jurisdictions. This would be an unfortunate outcome given Australia has been a global leader in the regulation of digital platforms and recognising their market power, including through the introduction of the News Media Bargaining Code and ACCC reviews into digital platforms.

Recommendation 5: Calculate levies based on profits rather than eligible revenue

If any industry tax is retained, then consideration should be given to the most equitable and fair way to calculate it. So far, contributions have been made based on revenue. However, this approach means smaller and even unprofitable companies end up supporting Telstra, who is the largest and most profitable industry player.

As the TIL is levied on eligible revenue rather than profits, it acts as a disincentive for investment into other network operations. TPG Telecom contributed approximately 0.84% of its eligible revenue to the TIL in 2022-23. This has a material impact on finely balanced investment decisions, particularly in the rural and remote areas the USO is intended to serve, where the profitability case for new infrastructure investment is more difficult than metro centres.

In this regard, we recommend the Department consider calculating contributions based on methods which are likely to have less harmful impacts on competition, such as profit rather than revenue.

Additional comments

One option potentially put forward by Telstra is to have the USO arrangements changed such that Telstra will instead be subsidised for providing voice services using the technology chosen by Telstra. This could include LEO satellite technology.

We caution against policy decisions that will only benefit Telstra and further enable it to expand the reach of its network and competitive advantage. Telstra has publicly stated its commercial agreement with Starlink could provide a 'cost-effective USO compliant solution, with performance and customer experience better than ADSL'.[8] If Telstra is already willing to provide this service on a commercial basis and at a cost-effective price then there is little, if any reason for the Government to subsidise it.

TPG Telecom would not support any move to expand the USO to subsidise Telstra's (or any other provider's) deployment of LEO satellite technology, where it is clear the market can provide these services on commercial terms. If this occurs, the Government would be subsidising providers to supply a service it is willing to provide on a commercial basis.

If the Government decides to directly or indirectly fund Telstra's agreement with Starlink or another LEO satellite provider, the outcome would be Telstra further entrenching its dominant position by obtaining millions of dollars in Government subsidies, which would act as a significant handbrake on competition related to a nascent and emerging technology.

We note NBN Co has previously called for the Regional Broadband Scheme (**RBS**) to be extended to fixed wireless services. The extension of the RBS levy to wireless providers would further distort the market by disincentivising investment and innovation.

We do not support this proposal given it would harm competition and have flow on impacts for consumers, who are already facing cost of living pressures. NBN Co increased prices for some of its lowest speed tiers (NBN12 and NBN50) and can impose year-on-year price increases under the revised Special Access Undertaking. This shows NBN Co does not want to service price sensitive customers. This is not a situation which requires policy intervention, and rather is an example of NBN Co seeking to make fixed wireless consumers pay more for internet access because it has decided not to service a key customer segment.

In the circumstances, operators such as TPG Telecom are incentivised to offer alternative services to price sensitive consumers to ensure they can access reliable and affordable internet services. Fixed wireless services are not substitutes for the NBN. Levying such services could reduce choice for consumers least able to afford it and disincentivises providers from creating new and innovative products.

[8] Telstra, *Investor Day Presentation 2023*.