

This working paper has been produced for the inaugural conference of the Australian Communications Consumer Action Network (ACCAN). The paper is intended to generate debate and discussion on aspects of universal communication and will inform further work in this vital policy area.

Universal Communications in a Broadband World

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1. Introduction

Do Australians have a right to access a telecommunications service? There are at least two schools of thought: the view that sees universal service as a basic right of citizens, essential for membership in the community, as against the view that sees universal service as an economic good to be delivered in the market, where the paramount questions are efficiency and the distribution of economic welfare. (Raiche)(1998:11)

In Australia, the judicial view is that access to telecommunications should be viewed as a 'political duty' of government rather than an enforceable individual right. (Yarmirr)(1990:749). Whether an individual right or governmental duty, however, there is little argument that access to communications has been critical for citizens' participation in society. As early as 1982, telecommunications services were considered essential:

Telecommunications services are as much a part of the national infrastructure as roads, ports and railways. Quality and security of telecommunications have a widespread influence on industry, commerce, health, education and community. (Davidson)(1982:44)

In the 21st century context, the Government sees the digital economy as 'essential to Australia's productivity, global competitive standing and improved social wellbeing'. The Government's commitment to a national broadband network (NBN) as the new telecommunications platform very much underpins its vision for a digital economy. In Senator Conroy's words, the Government announced its commitment for an NBN 'because it recognises the importance of world-class, high speed broadband for Australia's future economic growth and social well being'. (Conroy) (2009:ii)

The challenge for governments over the past 35 years has been how to define a universal communications service, to determine who should provide it and how it should be funded.



2. A Changing Universal Service

The history of the universal service obligation in Australia is one of change: change particularly as the technology has changed, and with it, people's expectations of what constitutes an 'essential' service.

From 1975, the fundamental elements of an obligation for the provision of universal service were there. Legislation required that Telecom provide 'telecommunications services' that 'best meet... the social, industrial and commercial needs of the Australian people and that such services would, as far as 'reasonably practicable to do so' be 'available throughout Australia for all people who reasonably require those services' with particular regard to 'the special needs for telecommunications services of Australian people who reside or carry on business outside the cities'. (*Telecommunications Act 1975*, s. 6) Because Telecom was, at that time, a monopoly provider of telecommunications infrastructure and services to the public, it could cross subsidise basic telephone services from metropolitan to rural and remote Australia, to ensure their affordability. (Davidson)(1982:134-5).

The obligation to supply 'telecommunications services' was taken, in practice, to mean the provision of a standard service that, in 1975, was a fixed-line standard telephony service that provided automatic connection for local and national calls (Davidson)(1982:Vol 1, pp 106-7). The concept of a universally provided service as essentially a public switched fixed-line service was retained in the 1989 and 1991 legislation that required Telstra to be the universal service provider (*Australian Telecommunications Corporation Act 1989* s. 27) and *Telecommunications Act 1991* s. 5). The 1997 legislation, however expanded the definition of a standard telephone service (STS) to be a service with two basic elements: a service for voice telephony (or its equivalent) and a service that passed the 'connectivity' test. (*Telecommunications Act 1997* s. 6) In practice, however, Telstra as the Universal Service Obligation (USO) provider has, in its USO Marketing Plan, defined the STS it provides under the USO as a fixed line voice service.

What a 'standard' telecommunications service is in 2010 is almost unrecognisable from its 1975 counterpart. By 2009, in addition to fixed-line services, there were more public mobile services than people, with roughly three quarters of the population also having access to the Internet (ACMA)(2009b:21), and with fourteen per cent of the Australian population having access to VoIP services. (ACMA)(2009a:7) To some extent, this was recognised in the expanded legislative definition of the STS that was introduced with the *Telecommunications Legislation Amendment (Competition and Consumer Safeguards) Bill 2009* Part 4. Specifically, mobile and VoIP services would, under certain circumstances, be considered as an STS for the purpose of the USO. However, the expanded definition is still tied to the concept of voice services rather than a broader concept of access to higher bandwidth that would support a range of communications services.

The introduction of competition has also changed (and continues to change) the funding and delivery of universal service. (see particularly Wilson & Goggin (1993:Chapter 1) and (Raiche)(1998). When there was only a monopoly provider of infrastructure and services, the cost of providing the service was simply their cost of doing business. With the introduction of competition, however, the USO provider had to be compensated its costs in providing the USO in loss-making areas. Both the 1991 and 1997 Act provided methodologies for determining that cost and a basis on which such cost would be divided among relevant carriers – later, among carriers and carriage service providers. (*Telecommunications Act 1991* Part 13, *Telecommunications Act 1997*, Part 7 and *Telecommunications (Consumer Protection and Service Standards) Act 1999* Part 2) Further, while the concept of a universal service provider still envisaged an entity that provides both infrastructure and a defined service, the possibility of more than one universal service provider was introduced in 1999. (*Telecommunications (Consumer Protection and Service Standards) Act 1999*)(Part 2 Divisions 4-6).



3. The National Broadband Network

There are a number of documents that set out what the NBN will be, some more authoritative than others. The policy aims for the NBN were clearly spelled out in the Government's press release of April 2009: An NBN Company will be created, separate from Government (but with majority Government ownership at least until the network has been operational for five years) and provide:

- fibre to the premises will deliver up to 100 Mb/s
- for more remote parts of Australia, broadband, wireless and satellite technologies that will deliver speeds of up to 12Mb/s
- the network will be wholesale-only open access. (Rudd & Conroy)(2009)

Other relevant documents include a consultation paper released by NBN Co, and its response to submissions received (NBN Co)(2010). The Government also commissioned an Implementation Study which, while only recommendations to the Government, will be very persuasive to NBN Co. There are also a number of technical documents on the design of the NBN and some technical implementation issues that have been developed by the NBN Project Team under the Communications Alliance. Finally, the announced agreement between NBN Co and Telstra on the NBN has important implications for the USO. (Rudd)(2010:2) Specifically, a new entity, USO Co will be established to assume responsibility for 'most of' Telstra's Universal Service Obligations for the delivery of the STS, payphones and emergency call handling.

Together, they give a picture of the very new and different framework in which a universal service will be delivered – or not.

What has not changed are higher level principles that should define a universally available service into the future:

- Universal geographical availability
- Universal accessibility
- Universal affordability
- Universal technological standard
- Universal telecommunications and participation in society (Wilson & Goggin)(1993:61)

The rest of this Paper will discuss what universal service issues might look like in a National Broadband Network world. Specifically:

- Do we still need a concept of universal service? If so,
- How might an 'essential communications service' be defined?
- Will it include performance standards?
- Who will provide it?
- Who will fund it?
- Who can afford it?

Each of these questions are considered below, beginning with a brief discussion on how the objective is achieved (or not) in the existing regulatory framework. This is followed by questions (in bold) on how the issue might be addressed in an NBN environment.



4. Issues for Universal Service in an NBN World

4.1 The Need for a Universal Service Obligation

Existing requirements on the USO provider are to provide an STS (voice telephony or its equivalent that passes the 'connectivity' test) and payphones that are reasonably accessible to all people in Australia wherever they reside or carry on business. The obligation has implicitly included the provision of infrastructure to underpin service provision.

With NBN Co established to provide fibre to 90% of the premises and wireless/satellite services to the remaining 10%, do we still need a requirement about the provision of infrastructure? Are there mechanisms to ensure NBN Co does provide fibre/wireless/satellite that is reasonably accessible to all Australians?

Under the revised Australian Broadband Guarantee Scheme (effective 1 July 2010), a metro-comparable broadband service is defined as any service that offers a minimum one megabit per second download, and 256 kilobits per second upload with up to six gigabit data usage allowance per month at a total cost of \$2500 GST inclusive over three years (including installation and connection fees). If a metro-comparable service is not available in an area, Government subsidies are available for service providers to provide a broadband service in that area.

Do we still need a USO in addition to the Australian Broadband Guarantee Scheme?

4.2 Defining an Essential Communications Service

Existing Requirements under the USO are for the provision of an STS – a voice service (or equivalent) that passes the 'connectivity' test. As stated above, the Australian Broadband Guarantee Scheme also provides a mechanism for subsidising the provision of the broadband service.

If the Government's commitment is for an NBN to all Australians that provides 90% of the premises with fibre that can deliver up to 100 Mb/s, and the other 10% with access to wireless or satellite capacity that can deliver up to 12 Mb/s, should the USO be redefined as the provision of a service with minimum quality standards and broadband levels of transmission speed?

With the announcement of a new USO Co, once a definition of the required service is reached, who will determine circumstances in which that service must be provided by USO Co?

4.3 Industry Funding Universal Service

Existing requirements are that the USO provider is compensated for providing loss making USO services, at a rate determined by the Minister (on advice from ACMA). Other carriers and CSPs contribute, based on their 'eligible revenue'.

Given that the bulk of the cost of providing the USO was in infrastructure provision and that NBN Co will be providing the infrastructure, and that USO Co will receive significant funding from Government, is there still a case for industry contribution to the USO?



4.4 Affordability of the Service for consumers

Under existing legislation, there is provision for the imposition of price caps on the USO provider(s). Separately, there are price cap requirements on Telstra and, under its licence conditions, an additional requirement to provide measures for those on low incomes.

The prices of services charged to consumers in an NBN world will have at least two components: the cost of NBN Co's wholesale service, and the additional cost of the retail service provider (including a margin above the wholesale cost of access to NBN's network). In areas where backhaul may be more expensive, the prices charged to consumers may be costly.

Should there be requirements on NBN Co for a cost based, uniform tariff structure for NBN Co? Should there be a subsidy for retail service providers operating areas where there is no business case to provide affordable retail services to consumers? Should there be price caps on services provided under the USO, as possible in existing legislation? And should the Government take over responsibility for the provision of services to people on low incomes, or should that responsibility be given to USO Co?

4.5 Enforcing Universal Service Obligations

Existing legislation gives ACMA oversight of compliance with USO requirements.

Will ACMA be given oversight of both NBN Co's and USO Co's mandates to ensure that the infrastructure and service (however defined) are both reasonably affordable and accessible to all Australians?



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