

Submission

7 June 2024

Universal Services Branch
Department of Infrastructure, Transport, Regional Development, Communications and the Arts

Re: Funding of universal telecommunications services (RBS Review)

The Australian Communications Consumer Action Network (**ACCAN**) thanks the Department of Infrastructure, Transport, Regional Development, Communications and the Arts (**the Department**) for the opportunity to comment on the consultation for the *Funding of universal telecommunications services (RBS Review)* (**the review**).

ACCAN is the peak body that represents consumers on communications issues including telecommunications, broadband, and emerging new services. ACCAN provides a strong unified voice to industry and government as we work towards communications services that are trusted, inclusive and available for all.

The funding of the universal service obligation (**USO**) is integral to ensuring the efficacy and longevity of Australia's communications services, especially for those who are living in regional, rural and remote (**RRR**) areas, have specific accessibility needs, or are living on a low income.¹

In considering the overarching question of how best to sustainably fund non-commercial communications services, ACCAN considers the Department adopt the following approach:

- Retain the Regional Broadband Scheme (**RBS**) as a wholesale broadband levy upon Statutory Infrastructure Providers (**SIPs**).
- Revise and expand the Telecommunications Industry Levy (**TIL**) to ensure that it is technology-neutral and accounts for digital communications services.
- Develop internal governance and review mechanisms to ensure that USO services remain technology-neutral and adapt to evolving consumer expectations.

Please see a more detailed response to the consultation in **Attachment A**, with specific responses to select consultation questions in **Attachment B**.

We thank the Department for the opportunity to comment on the review. Should you wish to discuss any of the issues raised in this submission further, please do not hesitate to contact me at audrey.reoch@accan.org.au.

Yours sincerely,

Audrey Reoch
Acting Policy Manager

¹ For more information on ACCAN's approach to the USO, please consult our submission to the *better delivery of universal services* consultation: ACCAN (2024) *Better Delivery of Universal Services*, available at: <https://accan.org.au/accans-work/submissions/2279-better-delivery-of-universal-services>.

Attachment A: ACCAN's detailed response

Background and context

ACCAN supports the Department's definition of the role of the USO as to ensure the provision of non-commercial baseline telecommunication services that would not otherwise be provided.²

Under the existing system, baseline telecommunication services are defined as fixed-line telephone services, access to Telstra public payphones, and access to a broadband internet connection of 25/5 Mbps.³ It also includes the National Relay Service (NRS), a communications service for those who are deaf or hard-of-hearing. However, in its *Better Delivery of Universal Services* consultation, the Department indicated that this definition is likely to evolve, to reflect the widespread adoption of mobile services across Australia, as well as satellite and low earth orbit satellite (LEOSat) services.⁴

In ACCAN's submission to this earlier consultation, we expressed our view that a modernised USO should adopt a 'capability' approach, centring consumers' ability to meaningfully access and afford communications services over mandating particular service types or technologies.⁵ This would necessitate a technology-neutral approach which would retain existing services for so long as they are necessary, but also encourage the adoption and dispersal of new and emerging technologies where they can provide equivalent or improved capability. In this sense, ACCAN views the USO as an effective mechanism to uplift the communications capability of communities who may otherwise not have access to services available on the commercial market.

In fulfilling this broader purpose of uplifting the capability and reliability of communications services across Australia, there have been a range of activities and consultations being undertaken within this sector. The Department, following the Australian Competition and Consumer Commission (ACCC) report into Mobile Tower Infrastructure,⁶ has been considering how best to support the expansion of mobile networks in Australia's regions.⁷ Relatedly, extensive work is currently being undertaken to ensure the reliability of Australia's triple zero emergency services,⁸ as well as investing in broader

² Department of Infrastructure, Transport, Regional Development, Communications and the Arts (2024) *Funding of universal telecommunications services: Discussion Paper*, p. 1. Available at:

<https://www.infrastructure.gov.au/have-your-say/funding-universal-telecommunications-services-rbs-review>

³ Department of Infrastructure, Transport, Regional Development, Communications and the Arts (2024)

Modernising universal telecommunications services, available at: <https://www.infrastructure.gov.au/media-communications-arts/modernising-universal-telecommunications-services>

⁴ Department of Infrastructure, Transport, Regional Development, Communications and the Arts (2023) *Better delivery of universal services: Discussion Paper*. Available at:

<https://www.infrastructure.gov.au/department/media/publications/better-delivery-universal-services-discussion-paper>

⁵ ACCAN (2024) *Better Delivery of Universal Services*.

⁶ Australian Competition and Consumer Commission (ACCC) (2023) *Regional mobile infrastructure inquiry 2022-23*, available at: <https://www.accc.gov.au/inquiries-and-consultations/regional-mobile-infrastructure-inquiry-2022-23/final-report>

⁷ Department of Infrastructure, Transport, Regional Development, Communications and the Arts (2024) *Issues Paper – Facilities and Tower Access Regimes and Mobile Network Infrastructure Providers*, available at:

<https://www.infrastructure.gov.au/department/media/publications/issues-paper-facilities-and-tower-access-regimes-and-mobile-network-infrastructure-providers>

⁸ Department of Infrastructure, Transport, Regional Development, Communications and the Arts (2024) *Australian Government Response to the Bean Review Final Report - Review into the Optus outage of 8*

disaster resilience, with particular regard for the importance of, and impact upon, telecommunications services.⁹ There is substantial policy work and collaboration between representatives of industry, academia, government and advocacy to develop frameworks that centre the essential nature of Australia's communications network.¹⁰

In this vein, determining the appropriate funding arrangements should be a responsive, rather than proactive, element of the consultation. Once the evolving scope of these range of reforms has been determined, the USO funding can be appropriately determined. As a non-commercial and non-governmental organisation, ACCAN does not have access to the technical or commercial information required to provide detailed responses to the granular questions raised in the discussion paper.

However, we believe that a more sustainable USO funding arrangement can be developed through retaining the system of external transfers that characterise the current system, while broadening its scope to ensure that retailers who rely upon communications infrastructure are contributing to its upkeep. The remainder of this submission set out our recommendations for ensuring the long-term fiscal sustainability and efficacy of the USO.

Regional Broadband Scheme (RBS)

Based on current market conditions, ACCAN believes that the RBS should remain relatively unchanged, with some scope for additional review processes to account for technological progress to account for the possibility of widespread adoption of LEOsats.

The purpose of the RBS to formalise the cost-recovery of NBN's loss-making commercial services, is an appropriate mechanism for the Australian broadband market to ensure that SIPs operating in commercial areas contribute to the development and upkeep of wholesale broadband services in non-commercial areas. ACCAN acknowledges the rise of LEOsats as a potential complication for this model of economic transfers, as some consumers in RRR areas may choose to opt for the costlier but faster services associated with Starlink, with other providers such as Amazon's Kuiper to enter the Australian market in 2025.¹¹

The potential widespread adoption of LEOsats and the possibility of direct-to-device services does raise questions about what Australia's broadband and communication services would look like in the future. However, as these are still nascent developments, and that for the moment, LEOsat services are provided solely on a commercial basis, at a price point significantly above SkyMuster satellite services, it would be difficult to incorporate these services into the existing scheme. Given the statutory requirement for the RBS to be reviewed every four years, ACCAN considers that 2028 would likely be an opportune time to revisit the issue of LEOsats, and potentially incorporate them into the scheme as wholesale broadband providers and potential SIPs.

November 2023 - April 2024, available at:

<https://www.infrastructure.gov.au/department/media/publications/australian-government-response-bean-review-final-report-review-optus-outage-8-november-2023-april>

⁹ See ACCAN (2023) *Submission to the Select Committee on Australia's Disaster Resilience*, available at:

<https://accan.org.au/accans-work/submissions/2235-select-committee-on-australia-s-disaster-resilience>

¹⁰ Australian National University, Tech Policy Design Centre (2023) *Telecommunications Sector*

Risk and Resilience Profile, available at: <https://techpolicydesign.au/telecommunications-sector-risk-and-resilience-profile>

¹¹ Rohan Pearce, "Amazon's Project Kuiper becomes an Australian carrier", *Communications Day*, 17 May 2024

Telecommunications Industry Levy (TIL)

The TIL funds a significant portion of the existing USO. However, the communications services market has grown significantly since the USO was created in 1997. The rapid evolution of digital communications and digital platforms markets is fundamentally reshaping the services used by consumers. This was observed by the Productivity Commission in their review of the USO funding in 2017, who noted that:

A levy base should ideally capture all those who benefit from the services that it funds. Where these beneficiaries are difficult to identify or by definition are not required to pay, as broad a base of potential beneficiaries as possible should be captured.¹²

Where services are not fully substitutable, a broader levy is preferable over a narrower levy:

To further minimise distortions, the base should also include all providers in the levy that supply services that are close substitutes, particularly where there is evidence of convergence in telecommunications services... Consumers in the paying sector (who ultimately bear at least some of these levy costs through higher prices) would tend to adjust their demand for services and buy substitute services that do not attract the levy.¹³

Accordingly, in the spirit of maintaining a broad levy for communications services, ACCAN recommends the Department consider expanding the TIL to adopt a technology-neutral approach to communications services. ACCAN considers that the USO funding base should encompass digital communications services, including services known as 'over the top' (OTT) services or digital platforms.

ACCAN notes that this would be consistent with the wide array of reforms that the Australian Government is considering through a range of Joint House, Senate and departmental inquiries into Australia's communications infrastructure,¹⁴¹⁵ and how best to regulate digital communications services and emerging technologies.¹⁷¹⁸ The digital communications market plays an increasingly prominent role in the Australian communications market, yet digital communications services are not faced with the same obligations to contribute to the maintenance of shared communications infrastructure services such as the TIL. This has been borne out by feedback from industry stakeholders, who have noted the discrepancy between digital industries reliant upon domestic

¹² Productivity Commission (2017) *Telecommunications Universal Service Obligation: Productivity Commission Inquiry Report No. 83*, p. 315.

¹³ Ibid. p. 316.

¹⁴ Parliament of Australia (2024) Select Committee on Australia's Disaster Resilience, available at: https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Disaster_Resilience/DisasterResilience.

¹⁵ Parliament of Australia (2024) Shutdown of the 3G mobile network, available at: https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Rural_and_Regional_Affairs_and_Transport/3GNetworkShutdown.

¹⁶ Parliament of Australia (2024) Optus Network Outage, available at: https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Environment_and_Communications/OptusNetworkOutage.

¹⁷ Parliament of Australia (2024) Select Committee on Adopting Artificial Intelligence (AI), available at: https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Adopting_Artificial_Intelligence_AI/AdoptingAI

¹⁸ Parliament of Australia (2024) Joint Select Committee on Social Media and Australian Society, available at: https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Social_Media/SocialMedia

broadband and mobile infrastructure and the lack of economic buy-in to these same services. TPG notes that:

The current regulatory framework has failed to address or investigate how these over-the-top players can contribute their fair share to ensure our critical infrastructure can stay ahead of demand.¹⁹

Digital communications services are also increasingly integral to the functioning of many Australian small businesses, with the ability to effectively act as a ‘gatekeeper’, mediating many consumers’ and businesses’ interactions with digital markets.²⁰ ACCAN notes that the Productivity Commission considered the prospect of including digital communications services into the USO in 2017, but considered that it was not feasible as:

[I]t is not clear whether OTT providers substitute or complement broadband service providers. On the one hand, they deliver some similar services (such as voice), but on the other hand, they can also increase the demand for some services (such as data) delivered by existing providers.²²

While we note that there may be various business models adopted by businesses, the current framework treats carriage service providers in a manner that is distinct from digital communications services providing similar services. This has led to regulatory discrepancy, with different service providers delivering similar services and operating in similar markets but being subject to different regulatory obligations. Noting the significant demand these digital communications services place on communications infrastructure, and their lack of contribution to the upkeep of this infrastructure, consideration should be given to strengthening and expanding the scope of the TIL, to require fair contribution to the funding of non-commercial services and ensure all Australians can access and utilise communications services.

In order to achieve this outcome, ACCAN advises the Department to consult on the development of criteria for determining which digital communications services should be required to pay into the TIL, and on the scope of any required reforms to existing legislative arrangements. As an example, Meta, which owns Facebook Messenger, WhatsApp and Instagram, all of which have text messaging and voice calling services, should be considered for inclusion within the levy base.

As digital communications service providers are reliant upon the provision of communications infrastructure services, it is reasonable to include them within the levy base of the TIL to promote the sustainability, equity and resilience of Australia’s communications network, to ensure that all Australian consumers and small businesses are able to access baseline communication services suited to their capabilities.

¹⁹ Jared Lynch, “‘Make them pay’: TPG takes aim at Meta, other tech giants”, *The Australian*, 27 May 2024, available at: <https://www.theaustralian.com.au/business/make-them-pay-tpg-takes-aim-at-meta-other-tech-giants-over-universal-phone-web-access/news-story/e7e8747e845047faaa2e67cec85de836>

²⁰ ACCC (2020) *Digital Platform Services Inquiry: Interim Report, September 2020*, pp. 69 – 74.

²¹ ACCC (2022) *Digital Platform Services Inquiry Discussion Paper for Interim Report No. 5: Updating competition and consumer law for digital platform services: February 2022*, pp. 15 – 25.

²² Productivity Commission (2017) *Telecommunications Universal Service Obligation: Productivity Commission Inquiry Report No. 83*, p. 316.

Attachment B: Replies to consultation questions

What characteristics would ensure adequate certainty to providers delivering funded services?

A clearly delineated USO service provider, with streamlined obligations upon service providers paying into the RBS and TIL, would provide clarity and certainty for the delivery and funding of universal services. While ACCAN notes that concerns over certainty have been raised, so long as there is clarity regarding the process, we believe that this will provide the appropriate certainty for organisations, noting that their contributions would be linked to revenue.

What characteristics would provide adequate certainty to those parties from whom funds would be collected?

See above.

How can the funding arrangements best support provision of non-commercial services but also support flexibility in adapting to market changes and the types of services supported?

Maintaining a technology-neutral service with in-built review mechanisms will help ensure that the USO is able to adapt to technological and market changes.

How should arrangements ensure affordable services will be available across Australia but not crowd out investment by commercial operations?

Given the relative non-substitutability of 'traditional' telecommunications and digital communications services, as well as the more mature nature of the digital communications market, ACCAN does not believe that these proposed reforms will crowd out commercial investment.

What are the characteristics of services that should be receiving subsidies?
How should these be determined on an ongoing basis?

Non-commercial services that meet an accessibility, affordability or availability gap for baseline communication services should receive subsidies. These services should enable consumers to have the capability to access triple zero, communicate with friends and family, participate in the digital economy and interact with government agencies. For more detail, please consult ACCAN's submission to the previous USO consultation.²³

²³ ACCAN (2024) *Better Delivery of Universal Services*.

Is it appropriate to still consider entire networks when determining funding support or should the evaluation of commerciality occur at a more granular level?

Consideration of commerciality at a granular level, while potentially more economically efficient, raises the risk of excluding some consumers from subsidised services in non-commercial areas. In ACCAN's view, this may represent a false economy by potentially compromising the efficacy of the USO, even as it may reduce costs. Given the necessity of telecommunication services to daily life, especially in accessing essential services, ACCAN recommends a broader, network-oriented approach over a granular consideration of commerciality.

There is ongoing interest in network resilience particularly in relation to service availability after natural disasters. Is this something that should be supported through funding for non-commercial services or should all network providers be equally required to provide a specified level of resilience in their own networks?

ACCAN supports investment in network resilience to the extent that this promotes consumer benefit. In considering the role of government, ACCAN considers that network operators should be required to fund the commercial requirement of any resilience investment, with government taking a more limited role in funding the non-commercial component.

Which elements of the telecommunications industry should be contributing to non-commercial services? This can include commentary on those entities that should be considered part of the telecommunications industry.

As mentioned in our above submission, we believe that CSPs in the telco industry, alongside digital communication service providers, should pay into the TIL, with government to provide additional funding to non-commercial but socially beneficial services.

Should funding for non-commercial services provided to individuals be collected from different contributors than should provide funding for other types of public interest services such as Emergency Calls?

Not necessarily. The TIL may be used for other types of public interest services; however, this should not occur at the expense of subsidising non-commercial services.

Are there any particular competition issues that need to be considered? How can the design of funding arrangements promote competition and contestability?

Factoring in digital communications service providers will allow for the development of a more competitive market with consistent regulations. The inclusion of digital communications companies

may also improve overall competition within the telecommunications market, by lowering the relative contributions of emergent CSPs.

Are there are other issues or considerations the Government should take account of in considering the effectiveness of funding arrangements for universal telecommunications services?

As mentioned in this submission and in our previous submission to the USO, ACCAN favours a technology-neutral USO with in-built review mechanisms to allow for amendments to the framework over time while still providing regulatory certainty.

The Australian Communications Consumer Action Network (ACCAN) is Australia's peak communication consumer organisation. The operation of ACCAN is made possible by funding provided by the Commonwealth of Australia under section 593 of the Telecommunications Act 1997. This funding is recovered from charges on telecommunications carriers. ACCAN is committed to reconciliation that acknowledges Australia's past and values the unique culture and heritage of Aboriginal and Torres Strait Islander peoples. [Read our RAP.](#)
