



# Universal Service Obligation Legislative Reform for transition to the National Broadband Network – Discussion Paper

Submission by the Australian Communications Consumer Action Network to the Department of Broadband, Communications and the Digital Economy



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## **About ACCAN**

The Australian Communications Consumer Action Network (ACCAN) is the peak body that represents all consumers on communications issues including telecommunications, broadband and emerging new services. ACCAN provides a strong unified voice to industry and government as consumers work towards availability, accessibility and affordability of communications services for all Australians.

Consumers need ACCAN to promote better consumer protection outcomes ensuring speedy responses to complaints and issues. ACCAN aims to empower consumers so that they are well informed and can make good choices about products and services. As a peak body, ACCAN will activate its broad and diverse membership base to campaign to get a better deal for all communications consumers.

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## Introduction: ACCAN Policy Goals

ACCAN appreciates the opportunity to provide comment on the Discussion Paper about USO legislative reform for the transition to the NBN including the proposed Telecommunications Universal Service Management Agency (TUSMA).

ACCAN believes that the goals for the legislative reform should be the continuation of the USO statutory policy objectives for access to:

- The standard telephone service (STS)
- Payphones
- Emergency services
- National relay service

The other important policy goals against which the legislative reforms should be measured are:

- Affordability of the STS
- Accessibility of the STS
- Continued transparency on USO functioning and regulation
- Continued involvement of consumers in discussions on legislative reforms

Finally, as both ACCAN and its predecessor groups have consistently argued, legislative reforms must provide for the evolution of the concept of universal service in the context of dramatically changed usage patterns and, soon, ubiquitous high-speed broadband.

The Government has flagged that the USO voice arrangements will be reviewed in 2018.<sup>1</sup> We believe that the policy review of universal service should be brought forward to ensure that transition arrangements allow for a re-definition of universal service that is more relevant to the 21<sup>st</sup> century.

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<sup>1</sup> DBCDE, *Implementation of the Universal Service Obligation Policy for the Transition to the National Broadband Environment*, (USO Policy Paper) October 2010, p. 9

## Changes in responsibilities

The following table highlights those areas of responsibility that will change according to Government policy statements; and also in bold those areas of responsibility which ACCAN believes are not clearly spelled out in the Discussion Paper or policy statements.

<b>Responsible Organisation</b>	<b>Task</b>	<b>Proposed Responsible Organisation</b>	<b>Task in future</b>
Telstra as USO provider (after July 2012 under contract with TUSMA)	Provision of customer access network infrastructure under USO (decommissioned over time)	NBN Co	Provision of customer access network infrastructure
Telstra	USO provider of STS (later under contract with TUSMA as USO provider)		Continues until 2018 review of USO
Telstra	Policy and Marketing Plan for USO	<b>Minister and TUSMA?</b>	<b>Contract requirements for USO?</b>
Telstra	Management and implementation of USO policy outcomes	TUSMA	Management of USO contracts
ACMA	Approval (or not) of USO Policy and Marketing Plan	<b>ACMA?</b>	<b>Approval of USO contracts?</b>
Telstra and Industry	Funding for provision of USO infrastructure and service	NBN Co, Government and industry	NBN Co for infrastructure (except copper as required); Industry and Government funding for USO service provision
Telstra until July 2014	Provision of payphones under	Telstra	Provision of reasonably accessible

	USO		payphones under Telstra agreement ( <b>ACMA oversight?</b> )
Telstra – as emergency call person	Regulated by ACMA	Telstra – as emergency call person under contract with TUSMA	Regulated by ACMA
C’wealth contracts for delivery of – managed by ACMA	NRS	TUSMA arrangement on contract arrangements, with ACMA oversight	NRS

## Key concerns

### INFRASTRUCTURE

Telstra will continue to provide copper infrastructure to the premises, but eventually the copper will be replaced by fibre, wireless or satellite infrastructure and the copper will be decommissioned. Over time, the infrastructure that ensures reasonable access of all Australians to a communications service will become that which is owned and operated by NBN Co.

The policy statements on the establishment of NBN Co were that it would provide high-speed broadband infrastructure to all Australians. Those objectives were not, however, incorporated into legislation. Given that NBN Co will become the de facto provider of universally accessible infrastructure, the USO legislative framework must include obligations on NBN Co to provide the infrastructure that will ensure universal access of all Australians to the communications network.

If for any reason NBN Co does not provide customer access network infrastructure to all Australian premises, TUSMA may need to be empowered to manage contracts that will provide for the USO infrastructure.

### PUBLIC TRANSPARENCY AND OVERSIGHT

It is important that the substance of the USO is not merely buried in complex contracts or in a public register which is difficult for the public to access and understand. All elements of the USO including the details on which entity is responsible for providing what service, must be made public in a single document that is released for public comment and reviewed regularly. This single plain English document for the public could form a part of the public register suggested in C.2.5.



ACCAN also supports a continued ACMA role in approving the future contractual arrangements which will be the equivalent of today's Telstra Marketing Plan and in monitoring compliance.

Specific responses to the Discussion Paper are below.

### **Flexibility to add statutory functions (B.1.2)**

We support the possibility of TUSMA having additional statutory functions.

As mentioned above, it would appear there is no provision for TUSMA to manage a contract specifically for USO infrastructure, as opposed to the provision of an STS.

TUSMA should be able to manage contractual arrangements to ensure that USO infrastructure is provided. This will be important in the event of a change in government policy on the NBN.

We would also expect that issues now covered under the USO including the provision of a standard handset as well as equipment for people with disabilities will be addressed in TUSMA contracts but it may be appropriate for these functions to be specifically mentioned as statutory functions. Further, the provision of accessible payphones is provided for under the Telstra agreement. In future, again, it may be more appropriate for TUSMA to manage their provision.

It is also appropriate because it would allow new substantive USO features or new definitions of a USO in the future.

### **Governance and accountability (B.4)**

Openness and transparency in the development and monitoring of TUSMA contracts is crucial (B.4.7).

The ACMA's role must remain as an independent regulator with its range of USO responsibilities including approval (after public consultation) of a USO Policy and Marketing Plan, determination of eligible revenue for industry USO contributions and the monitoring of USO implementation, including monitoring of NBN Co's provision of infrastructure to all Australians (B.4.9).

### **Contracts and Grants (C.2.4)**

The Minister has power under the legislation to determine USO performance standards and benchmarks. It appears the Minister may determine the contract provisions that must be met under TUSMA's contract with the provider of universal service. Therefore, in practice, it will be the Minister and TUSMA that determine the USO policy and what amounts to a USO



Marketing Plan to implement provision of universal service.

Clearly, a Marketing Plan that sets out how universal service will be delivered must cover both provision of universal access to infrastructure and universal access to a basic communications service. Absolutely crucial are the requirements for the type of household equipment that must be provided in fulfillment of the USO. It is these details that determine whether or not the USO is effective in meeting the real needs of people.

To ensure independent oversight of how universal service will be provided, the ACMA's role in both approving a Marketing Plan and monitoring its compliance should remain.

## **TUSMA information gathering and reporting (C.2.5/6)**

The information gathering and reporting obligations are appropriate for a government contracting agency. As a government agency under the Commonwealth Authorities and Agencies Act and the Financial Management and Accountability Act, TUSMA will have clear reporting obligations and be subject to parliamentary scrutiny through the estimates process.

It would also be appropriate for the ACMA to have expanded obligations to report on the implementation of the USO, including both the performance of NBN Co in rolling out its network and the USO provider in ensuring universal access to the STS, payphones, and other services under TUSMA contracts. We therefore support the suggestion that ACMA report specifically on any compliance issues in relation to the provision of USO infrastructure and services.

Because USO performance benchmarks and standards will, presumably, have been set and form the basis of USO contracts, it would be appropriate that TUSMA provide the ACMA with information it obtains on the implementation of USO contracts.

## **Advisory Committee (C.2.7)**

It is not clear why an Advisory Committee is necessary. As a Commonwealth agency, TUSMA would already have access to expertise in managing contracts. It is not clear why an Advisory Committee made up of representatives from industry would be required "to assist and inform the CEO of TUSMA in *efficiently and effectively managing the operations of the TUSMA*".<sup>2</sup>

It is also unclear why an Advisory Committee would be necessary in order to establish new funding arrangements. At present, the Minister, on advice from the ACMA, determines the cost of providing the STS. In the past, the ACMA has calculated both the USO cost and industry contributions based on eligible revenue. They could continue to do so.

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<sup>2</sup> Italics added.



The new calculations would include the annual costs of TUSMA, industry contributions to a fund, based on eligible revenue, taking into account the Government's contribution of \$50 million. It is also presumed that the cost of providing an STS will no longer include the costs of new infrastructure provision of the customer access network, that being paid for by NBN Co.

If additional policy advice is needed from a Committee, it should include consumers representing those who are clearly impacted by the USO, not only representatives of industry. ACCAN would expect appropriate conflict of interest safeguards to be in place for members of any Advisory Committee.

### **Progressive removal of USO regulation (C.3.2)**

ACCAN believes that the review of the USO should be conducted well before 2018. The terms of reference for that review would necessarily include how the nature of a universal communications service is described, delivered and funded. At that time, relevant USO legislation would be reviewed and, as appropriate, amended or deleted altogether. We do not believe USO legislative obligations should be removed prior to that time.

Legislative USO provisions are important, representing a parliamentary commitment to universal access to a communications service. In contrast, provisions without legislative backing contained in contractual arrangements are easily subject to change.

### **Review (C.3.9)**

As stated above, ACCAN strongly supports the suggestion of a review of the USO framework, held well before 2018, as well as a review once the NBN rollout is complete. The suggestion in Clause C.3.2 is that USO legislation be removed in 2014. ACCAN believes the definition of the USO and its implementation should be reviewed before repeal of this legislation. At that time, a preliminary review of TUSMA functions would be appropriate.