Optus Submission to

the Senate Environment and Communications Legislation Committee

Inquiry into the Telecommunications Universal Service Management Agency Bill 2011, Telecommunications Legislation Amendment (Universal Service Reform) Bill 2011 and Telecommunications (Industry Levy) Bill 2011

December 2011

Table of Contents

Section 1. Overview 3

Section 2. The failure to capture the benefits of the NBN in USO policy reform 4

The requirement for the NBN to connect every premise 4

The requirement for the NBN to offer uniform national pricing 5

The proposed USO policy arrangements 6

Section 3. Minimising the funding costs of the proposed arrangements 8

USO costs are increasing without additional benefit to consumers 8

Existing industry funding should not be increased 9

Section 4. Ensuring TUSMA is efficient 13

Proposed amendments 13

Section 5. Constraining the scope of the USO 16

Proposed amendments 16

Section 1. Overview

1.1 Optus welcomes the opportunity to participate in the Senate Environment and Communications Legislation Committee's inquiry into the new legislation relating to proposed changes to the Universal Service Obligation (USO).

1.2 In Optus' view, the USO bills that have been introduced to Parliament are a missed opportunity. Given the significant structural changes being brought about through the National Broadband Network (NBN) deployment, the traditional USO framework is no longer required to deliver the Government's universal service policy objectives. The most efficient and effective response would have been to either remove or significantly scale back that framework.

1.3 That aside, Optus wishes to raise a number of issues relating to the proposed legislation.

1.4 First, Optus has significant concerns about the cost of the proposed USO policy. Under the proposed bills the cost of the USO will increase from $160.5 million per annum to $340 million per annum. This unprecedented increase in cost – which must ultimately be borne by consumers – is not justified by any additional consumer benefits; in fact, the proposed bills envisage essentially no change to the Universal Service entitlements enjoyed by consumers.

1.5 Optus is also concerned that the proposed changes to the costing and funding arrangements are not competitively neutral. We understand that Telstra was able to negotiate over the policy changes as part of its agreement to participate in the NBN. By contrast, the rest of the industry was not consulted with respect to these cost increases that will result in significant benefit to Telstra (Telstra has valued the benefit at $0.7 billion on a post-tax NPV basis). Telstra's supply costs will be unchanged whilst the payments it receives (funded by its competitors) will be significantly increased under the new arrangements.

1.6 A separate issue with the new arrangements is that the proposed Telecommunications Universal Service Management Agency (TUSMA) simply adds a further layer of bureaucracy and cost to the delivery of the USO, which may lead to further cost increases and act as a barrier to longer-term reform. Further, the proposed policy arrangements allow for TUSMA's scope of operations to grow over time in an undisciplined manner, for example through the addition of "statutory functions" and the fact that the Minister will retain discretion to determine the scope of the USO.

1.7 In this submission Optus will propose a number of amendments to the bills, including:

(a) removal of the industry levy;

(b) extension to the current cap on industry funding of the USO with any shortfall in funding to be made up by Government funding;

(c) mechanisms to encourage TUSMA to operate efficiently to minimise operating costs, including guiding principles and consultation requirements;

(d) controls to prevent undisciplined growth in TUSMA's scope of operations and a regular review of the scope of the USO with an overall objective of scaling-back the scope of the USO over time.

Section 2. The failure to capture the benefits of the NBN in USO policy reform

2.1 In Optus' view, the proposed USO policy arrangements fail to take advantage of the benefits of the NBN and are a missed opportunity for substantial USO policy reform.

2.2 Prior to the introduction of competition, the incumbent was required to provide services to all premises and utilised a cross-subsidy to enable uniform retail pricing. This meant that higher revenues from lower cost areas (primarily high density metropolitan) were used to meet the requirements of higher cost areas (primarily low density regional areas) where revenues were lower.

2.3 The USO was introduced twenty years ago alongside competition reforms to address a perceived loss of the incumbent's ability to cross-subsidise the regional areas with revenues from metropolitan areas where competition was expected to be concentrated.[1,2]

2.4 Nevertheless, the USO policy, as contained in section 9 of the Telecommunications (Consumer Protection and Service Standards) Act 1999, is:

(a) to ensure that standard telephone services are reasonably accessible to all people in Australia on an equitable basis, wherever they reside or carry on business; and

(b) to ensure that payphones are reasonably accessible to all people in Australia on an equitable basis, wherever they reside or carry on business; and

(c) to ensure that prescribed carriage services are reasonably accessible to all people in Australia on an equitable basis, wherever they reside or carry on business.

2.5 Essentially, arrangements were put in place to provide universal coverage and address the perceived net cost of the incumbent meeting that obligation. The industry levy was put in place to fund the estimated net costs. The proposed USO policy arrangements largely replicate this policy despite the fact that these very objectives will be addressed with the NBN because:

(a) The NBN will be required to connect every premise in Australia; and

(b) The NBN will be required to offer entry-level products at a nationally uniform price.

2.6 Together these conditions will lead to strong competition for the supply of services to end-customers across all geographic areas and render the continuation of USO policy redundant. Below Optus describes the above features of the NBN and USO policy reform.

The requirement for the NBN to connect every premise

2.7 Currently, Telstra's case for USO funding rests on the argument that to provision a connection to a new customer a provider bears the risk that the revenue received from the customer does not cover the costs of the capital invested. In areas with low population densities, or rural and remote areas which require large dedicated infrastructure, the initial connection represents a real structural barrier to entering the market to compete. However, the requirement for NBN

[1] Ovum, *Unfinished Business – 20 Years of competition in Australia's telecommunications sector*, November 2011, p.6

[2] Optus considers that this threat was overstated and competition did not lead to the incumbent being unable to recover its costs.

Co to connect all premises in Australia[3] means that such substantial structural barriers to providing services to potentially uneconomic end-users are largely removed.

2.8 This should be a game changer for the USO policy since NBN Co will have the responsibility to ensure universal network connectivity. Further, since NBN Co is required to operate as a wholesale-only provider with non-discriminatory terms, barriers to retail competition will have been substantially eliminated.

2.9 This represents a watershed event in the telecommunications industry because since the introduction of the telephone Australia has had a vertically integrated operator. As a result, the NBN will deliver a significant change in both the structure and the level of competition in the fixed line market since no retail provider should have a structural advantage over another.

2.10 In this environment, there is a real opportunity to either remove or significantly scale back the current USO arrangements since the NBN will ensure customers are connected and equivalent wholesale terms for access will encourage retail service delivery, especially when combined with the requirement to offer uniform wholesale pricing.

The requirement for the NBN to offer uniform national pricing

2.11 If the structural changes of a wholesale only network address access, then uniform national pricing addresses affordability.

2.12 The expected increase in competition being brought about by the NBN via non-discriminatory access is further strengthened by the uniform national pricing requirement.[4] This is because the access cost to serve customers in regional areas will be the same as that for customers in metropolitan areas. The only differences for the cost of the physical connection will be in backhaul requirements, for which the ACCC is currently setting prices in locations not subject to competitive supply.

2.13 Unlike today, the opportunity to access the NBN on non-discriminatory terms at uniform national wholesale rates will lead to strong competition for the supply of services to end-customers across all geographic areas.

2.14 And in fact, the uniform national wholesale price will essentially obviate the necessity for an industry levy to fund the incumbent. This is because a uniform national price is essentially a cross subsidy from lower cost/higher density consumers to higher cost/lower density consumers. Further, the NBN legislation specifically protects this cross-subsidy with the 'anti-cherry picking' arrangements – essentially discouraging investment in profitable areas which could undermine NBN Co's ability to fund unprofitable areas.

2.15 Taken together, the characteristics of the NBN reforms replicate the essential objectives of the USO policy: to ensure all consumers are connected at an affordable price. If the USO policy reforms are to appropriately reflect the transition to the NBN then they should embrace the opportunities afforded by the NBN. The end goal of the reforms, therefore, should be a significant scale back or the entire removal of the USO. However, the proposed USO policy does not do this.

[3] NBN Co, Corporate plan 2011-13, 15 December 2010, p.12

[4] S151DA, *Competition and Consumer Act 2010*

The proposed USO policy arrangements

2.16 The proposed USO policy arrangements largely reflect the existing arrangements since:

(a) Telstra will continue to be required to provide connections and maintain the copper network outside the fibre footprint, albeit on a contractual basis rather than a license requirement;

(b) There continues to be an assumed net cost; however, instead of being subject to periodic review and industry consultation, Telstra and the Government have negotiated a price; and

(c) Industry will be required to continue to fund the perceived net cost.

2.17 In addition to replicating the existing arrangements, the Government has added to them by creating an agency for oversight of the industry funding and programme provisioning, TUSMA. Optus considers the proposed arrangements to be largely unnecessary to meet the USO policy goals given the NBN reforms.

2.18 Firstly, since Telstra will be required to maintain the copper beyond the expected completion date of the NBN outside of the fibre footprint, there will be two networks operating in tandem for a period of 20 years. Further, there does not appear to be provision to encourage decommissioning if there are only a handful of customers utilising a particular exchange. Therefore, Telstra may be required to operate and maintain an entire exchange area capable of servicing hundreds of customers in order to provide services for a handful.

2.19 Maintenance of the fixed line copper network is unnecessary and unjustified since:

(a) All regional end users will have access to telecommunications services (voice and data) provided via new wireless and satellite technology through the NBN; and

(b) Telstra currently employs alternative technologies to copper in remote areas.

2.20 As a brand new, world-class network, the NBN will be employing the latest in wireless and satellite technology. There is no doubt that such technologies will be appropriate and reliable for universal service provision and will render any remaining copper connection obsolete.

2.21 Many consumers already have non-copper based USO connections provided by Telstra. This can be illustrated by the following extracts from case studies contained in a Telstra submission:

> *This case study demonstrates the use of a commercial product in place of a USO service…This alternative solution, a Next G Wireless Link (NGWL) services, uses mobile technology to provide a fixed-phone service at fixed-phone rates…Installation timeframes are also shorter than for fixed services without infrastructure…This service is much less expensive to install.*[5]
>
> *There is no terrestrial telecommunications infrastructure serving the community and no mobile coverage…The only way to provide a payphone in the area is via satellite…*[6]
>
> *Wireless local loop was chosen as the most cost-effective technical solution for provision of these services. Wireless local loop uses mobile phone signals to provide a fixed phone*

[5] Telstra, *Universal Service: providing telecommunications services to Australians*, November 2007, p.17

[6] Telstra, *Universal Service: providing telecommunications services to Australians*, November 2007, p.23

service. The advantages of a wireless service are that it is possible to cover a wide geographic area with lesser amounts of infrastructure…[7]

2.22 The fact that these connections already exist means that these technologies are acceptable to consumers. The migration of some consumers from a copper-based service to a wireless or satellite service should be of no consequence given that the wireless and satellite services provided by the NBN will be an improvement over the technologies already in use.

2.23 Secondly, the uniform wholesale pricing of the NBN enables it to meet its universal connection obligations without the need for additional funding. Therefore, as the NBN is rolled out and NBN Co assumes responsibility for connections, the need for the USO and associated funding requirements will diminish.

2.24 Finally, the creation of an independent body to manage the USO is a development about 20 years too late. Given the opportunity to scale back the USO as migration to the NBN occurs, the need for oversight should rapidly fall away. Further, the fact that the Government has reached a commercial agreement with Telstra on the quantum required for delivery of the USO limits the ability for the TUSMA to effect real change (except to potentially increase costs, which is a real risk, as discussed in sections 4 and 5).

2.25 However, putting aside the broader policy debate, Optus wishes to raise a number of issues relating to the proposed legislation. We consider that there is scope within the proposed arrangements to minimise the costs to industry and ultimately, consumers, which we describe in the remainder of this submission.

[7] Telstra, *Universal Service: providing telecommunications services to Australians*, November 2007, p.25

Section 3. Minimising the funding costs of the proposed arrangements

3.1 Optus considers that a primary objective of the proposed arrangements should be to continue to deliver the USO whilst minimising costs.

3.2 However, Optus is concerned that the proposed arrangements substantially increase costs without any benefit to consumers. For this reason Optus considers that the additional costs caused by the policy should be funded by the government. As a result, Optus recommends that as a minimum the cap should be extended on the existing industry funding. A better approach would be for the Government to fund the entire USO as this approach would be more efficient than an industry fund.

USO costs are increasing without additional benefit to consumers

3.3 In the last financial year, the cost of the USO was $160.5 million, which was funded entirely by industry. Under the proposed arrangements, the annual cost will increase to approximately $340 million per annum. This is an unprecedented increase in cost, yet it largely relates to providing existing services, illustrated in the table below.

Liabilities	**Existing**	**Proposed**
USO voice	$131.2 million	$230 million
USO payphones	$13.8 million	$40 million
Emergency call handling	-[8]	$20 million
USO sub-total	*$145 million*	*$290 million*
National Relay Service	$15.5 million	$17.1 million - $20 million
Voice-only migration	-	$15 million
Public interest services	-	$0 - $10 million
TUSMA administration costs	-	$5 million
Total	***$160.5 million***	***$330 million - $340 million***

3.4 The majority of the proposed increase in cost relates to existing services, that is, there has not been an expansion in the USO for the benefit of consumers. In fact, only $20 million - $30 million (less than 10 per cent) of the cost, or less than 20 per cent of the increase in cost, relates to the 'new' activities of the TUSMA, with an additional $20 million for the emergency call service which Telstra was already performing. Optus also questions whether the new activities will replicate existing activities or are a transfer of Government budgetary responsibilities to

[8] Telstra does not receive funding for fulfilling the Emergency Call Person function (DBCDE, *Universal Service obligation Legislative Reform for transition to the national Broadband Network*, Discussion Paper, 23 June 2011, p.29)

industry (for example, the existing activities of the ACMA and the expected activities of the ACMA and NBN Co for migration activities).[9]

3.5 The fact that there is a substantial increase in funding but no increase in service levels means that Telstra will receive a significant windfall gain. Further, the contract price was negotiated between Telstra and the Government without industry consultation with respect to the proposed changes. The competitive neutrality of the arrangement is therefore highly questionable given it will result in significant benefit to Telstra. This is because Telstra's supply costs will be unchanged whilst the payments it receives will be significantly increased under the new arrangements. Although Telstra's own contributions to the levy are likely to increase, as with other industry participants the payments for back to Telstra so overall Telstra will benefit. It has valued the benefit at $0.7 billion on a post-tax NPV basis.[10]

3.6 This can have a damaging effect on competition and ultimately, consumers. The driving force of the NBN reforms is to level the competitive playing field: to allow firms to compete against each other on their own merits and drive down costs and increase innovation, in their rivalry to win consumers. Ultimately, if one player is receiving funding without a commensurate increase in cost, this improves their ability to compete to the detriment of its rivals. Should this result in the capture of a large share of the market, in the end, consumers could face higher prices. This is particularly concerning in the fixed line market where long term contracts are present and consumers are notoriously 'sticky'.[11]

3.7 Should the Government view these additional costs as necessary, then Optus submits that the government should consider assuming responsibility for these costs to minimise any further damage to competition.

Existing industry funding should not be increased

3.8 Optus considers that barring the abolition of an industry levy, the most efficient outcome is for a continuation of the cap on industry funding beyond the 2014 review date that is currently included in the legislation. This can be achieved by extending the funding cap contained in section 99(3) of the TUSMA bill beyond the first and second eligible revenue period.

3.9 In support of this proposal, Optus offers the following reasoning:

(a) Without a cap, the cost to industry will substantially increase which will affect consumers through reduced competition and potentially increased prices;

(b) It is debatable that the expected increase in costs will represent actual costs incurred – instead costs are likely to simply be a transfer from industry to Telstra; and

(c) Government funding of the cap is the most economically efficient approach.

3.10 Without an extension of the cap, the increased costs to industry are considerable and so will not be without effects. The Explanatory Memorandum acknowledges this impact:

---

[9] For example, voice only migration costs are only costs incurred to ensure customers with a voice only service receive such a service on the NBN, ie, no real change in service.

[10] Telstra, "Telstra signs NBN Definitive Agreements", *Media Release,* 23 June 2011, Additional Information, p.2.

[11] 'Sticky' consumers refers to low switching behavior due to the presence of transactions costs and/or information barriers.

The actual increased costs to industry are significant…the rest of industry contribution would be $108 million (an increase of $48 million compared to their current payments of $60 million under the USO and NRS levies).[12]

3.11 Such an increase in costs will have to come from somewhere. Corporations, whether publicly listed or privately held, require a certain return on invested capital. In order to maintain desired returns, an increase in compliance costs will reduce margins unless costs can be cut from other parts of the business or prices raised. Given that industry as a whole will be facing increased costs, it is possible that this could lead to price increases (or delays in price declines, considering the recent downward trend in prices). However, given that Telstra will receive Government funding for the majority of the increase, it is likely that the rest of the industry's cost base will be asymmetrically affected, which will have an impact on competition. As a result, Telstra will be able to fund special offers to capture market share which its competitors will be unable to match due to their cost pressures. Eventually, as a result of less intense competition Telstra would increase its market power and consequently could increase its prices.

3.12 Further, any increase in cost must also be considered in the context of the broader operating environment. The intense competition in the mobile market has lead to declining margins and put enormous pressure on operators' cost base.13 Further, the expected intensification of competition in the fixed space in the lead up to the NBN is inevitably putting pressure on telecommunications operators. A market analyst report has forecast industry growth for next financial year to be lower given developments:

According to the report, declines in the fixed market limited overall telecommunications market growth in 2010 to just 2.7 percent, and, with the expectation of further fixed market falls, subdued broadband growth, and the likelihood of intense competition in the mobile market (which will limit ARPU growth), he expects overall market growth to be limited to around 1%-1.5% in 2011 and 2012.[14]

3.13 Any increase in the levy will also affect consumers by exacerbating the competitive effects of continuing to fund an incumbent for unproven costs. Essentially this transfers profits from competitors to Telstra and raises barriers to competition. Telstra already benefits in a number of ways as the legacy incumbent in terms of branding and consumer perceptions. Whilst the structural reforms the Government is implementing with the NBN will dislodge Telstra as the incumbent provider the current policy arrangements will enable Telstra to retain its brand advantage as the provider of last resort outside the fibre footprint.

3.14 The funding of the USO has also been subject to ongoing debate regarding the actual costs that are incurred.[15] This is mostly due to the use of models to estimate the costs rather than a reporting of Telstra's costs against revenues received. A number of serious methodological flaws with these models have been recognised by the Government itself. It is Optus' view that Telstra does not incur any net costs in delivery its USO obligations, once all relevant revenue and benefits (including intangible benefits such as branding) are taken into account. The same view has been taken by the Department of Communications, Information Technology and the Arts

---

[12] 2010-11 The Parliament of the Commonwealth of Australia House of Representatives, *Telecommunications Universal Service Management Agency Bill 2011*: Explanatory Memorandum, p.18

[13] See, for example, Optus Submission in response to the ACCC's Discussion Paper Public Inquiry to make an Access Determination for the Mobile Terminating Access Service, July 2011

[14] Dinham, Peter, "Australian telecoms revenues pass $40 billion", *iTWire*, 17 November 2011

[15] The Government's consultant (the Castalia Report), does not take into account intangible benefits and does not take into account all relevant revenue and therefore over-estimates the net cost of USO provision.

(DCITA)[16] and by expert consultants Dandolopartners.[17] On this basis, Telstra should not receive any funding, let alone an increased quantum. However, it is important to note that without a confident landing on the costs, it is difficult to justify an increase to industry's liability.

3.15 Consequently, the additional funding requirements that have been determined by the Government should be funded by the Government. Optus considers that the incentives to reduce costs of the USO will be stronger if the Government is liable for continued funding. This is because the Government is subject to a budget constraint for which it is under acute pressure to appropriately manage. Accordingly, if USO funding is required to compete against other public programmes, it is likely that the Government will have the incentive to minimise unnecessary costs.

3.16 The efficiency of Government funding for USO provision was recognised in a report by the OECD:

> *Since it is the political process that will decide on what the warranted level of universal service will be, it may seem appropriate that the case for continued funding of universal service programmes be assessed against arguments in favour of competing government expenditure programmes, such as those for health, education and housing.*[18]

3.17 The view that Government should fund socio-economic programmes is not unique to telecommunications - in fact, the Government funds most socio-economic policies across all human needs but for telecommunications services. The OECD makes a compelling statement on this fact regarding the industry funding of telecommunications socio-economic policies:

> *…it is important to bear in mind that many governments pay for, or subsidise, the purchase of food, shelter, clothing, and education for specific socio-economic groups out of general taxation revenue without imposing the cost on the suppliers or retailers of those products.*[19]

3.18 Furthermore, the most efficient way to fund and deliver government social policy is through general taxation. This has been advocated by economists, as noted by the OECD:

> *Economic analysis provides support for financing USO through general taxation revenue on the basis that it is likely to be less distortive…Indeed, a number of economic analysts have recommended that future universal service support should come from general tax revenues.*[20]

3.19 It would therefore be more efficient if the Government funded the entire USO requirement. Nevertheless, should Government funding of the entire USO not be feasible, a second best

---

[16] DCITA, *Review of the Operation of the Universal Service Obligation and Customer Service Guarantee*, 7 April 2004

[17] Dandolopartners, *Review of the USO scheme: Costs, intangible benefits and funding structures for Singtel Optus*, March 2003

[18] OECD, *Rethinking Universal Service for a Next Generation Network Environment*, OECD Digital Economy Papers, No. 113, 18 April 2006, p.51

[19] OECD, *Rethinking Universal Service for a Next Generation Network Environment*, OECD Digital Economy Papers, No. 113, 18 April 2006, p.48

[20] OECD, *Rethinking Universal Service for a Next Generation Network Environment*, OECD Digital Economy Papers, No. 113, 18 April 2006, p.49

outcome is to improve on the Government's proposal by extending the cap on existing industry funding beyond 2014 and putting measures in place to ensure that costs are minimised and scope constrained.

Section 4. Ensuring TUSMA is efficient

4.1 A key concern with the new arrangements is that the proposed TUSMA simply adds a further layer of bureaucracy to the delivery of the USO. Any bureaucracy has costs and risks, which need to be acknowledged and minimised.

4.2 Primarily, the creation of a new authority introduces additional administrative costs. However, it is unclear whether the expected costs for TUSMA are simply transferred from the ACMA's existing budget (and the ACMA's costs will be reduced) or whether they will represent a straight cost increase. If it is the later, it represents an increased cost imposition on the industry (should the cap not be extended). Further, an independent agency will have a vested interest in the perpetuation and expansion of its role. This can manifest into a barrier to longer-term reform of the USO.

4.3 These are real risks that threaten the effectiveness of the USO scheme. It is appropriate that TUSMA's costs are minimised and it manages the USO (and other programmes) in a manner that encourages efficient delivery. However, the powers granted to TUSMA appear to be very broad, as described in Division 2 of the TUSMA bill:

(a) TUSMA is required to take reasonable steps to ensure the delivery of the USO (section 12);

(b) TUSMA may on behalf of the government, to enter into contracts or make a grant of financial assistance for the achievement of the USO (sections 13, 17 and 18); and

(c) TUSMA has the power to vary the contract (or increase the amounts that may be debited) and/or vary the grant (sections 19 through 21).

4.4 The only oversight provided in the Bill is that TUSMA must notify the Minister of its proposal to enter into a contract/make a grant or when it varies the contract/grant.

4.5 Below Optus offers proposed amendments to the TUSMA bill to impose limits on these powers with the aim of ensuring TUSMA acts in a manner that encourages the efficient operation of the USO.

Proposed amendments

Amendment 1:

Amendment of ss19-21 to the effect that TUSMA must consult with stakeholders about its proposal before it enters into a contract/makes a grant or when it varies the contract/grant.

4.6 This amendment will assist TUSMA in its decision making process. A consultation with the relevant stakeholders will provide TUSMA with valuable information, including industry development and the availability of alternate and contestable technologies and service providers.

Amendment 2:

Amendment of sections 19 through 21 to ensure TUSMA, in its consultation with stakeholders, to take into account whether the proposal is consistent with its corporate plan, the likely impact of the proposal on the financial position of TUSMA, and the total amount of levy payable by participating entities.

4.7 Under sections 19 through 21, TUSMA must provide the Minister with a written statement about whether the proposal is consistent with its corporate plan and the likely impact of the proposal on the financial position of TUSMA, and the total amount of levy payable by participating person.

4.8 Optus supports this clause and considers TUSMA should take the same relevant factors into account when it conducts a consultation with its stakeholders.

Amendment 3:
Amendment of sections 19 through 21 to ensure TUSMA, in its consultation with stakeholders, demonstrates the proposal delivers the USO in an efficient and least cost manner. TUSMA must consider the alternate and contestable technologies available, timeframes, performance standards and contracting models.

4.9 This amendment will provide greater assurance that TUSMA will manage the USO (and other programmes) in a manner that encourages efficient delivery.

Amendment 4:
Amendment of sections 19 through 21 to ensure TUSMA, in its consultation with stakeholders, takes into account whether the net costs Telstra can claim for maintaining the copper network will reduce over time as customers migrate to the NBN.

4.10 This amendment ensures Telstra should not be compensated for more than the costs that are necessary for delivering the USO. As customers migrate across to NBN, the costs for Telstra to maintain the copper network will reduce over time as exchange areas are de-commissioned. It would therefore be prudent for TUSMA to take this factor into account.

Amendment 5:
Amendment of sections 19 through 21 to the effect that the written statement should contain details of how TUSMA will achieve efficiencies; Amendment of section 29 to the effect that TUSMA must monitor the efficiencies that the contractors/grant recipients have achieved over the delivery of USO; and Amendment of section 75 to the effect that the annual report prepared by TUSMA should contain details on the efficiencies TUSMA has achieved over the year.

4.11 Inclusion of an additional provision that Telstra must produce a publicly available annual report accounting for how every dollar of USO funding received from TUSMA is spent.

4.12 These amendments are to ensure TUSMA will be regularly reporting on the efficiencies it has achieved. This provides further assurance that TUSMA will manage the USO (and other programmes) in a manner that encourages efficient delivery.

4.13 Further, the inclusion of the additional provision ensures Telstra reports publicly on expenditure of USP funds is required in order to ensure that Telstra does not mis-use USO funding for non-USO related activities.

Amendment 6:

Inclusion of an additional provision which provides *guiding principles* for TUSMA in setting its objectives.

The *guiding principles* should include a clause which states that its primary objectives are to scale back the USO over time and deliver the USO in an efficient and least cost manner.

The *guiding principles* should not include any objective that will have the effect of duplicating the roles of TUSMA and other government agencies including the ACMA. If there is a duplication, any funds allocated to TUSMA should be offset by an equal reduction in the budget allocated to the ACMA (or other agency as appropriate).

Inclusion of an additional clause which states that TUSMA's corporate plan should be consistent with the *guiding principles*.

4.14 Currently, TUSMA's objectives are not contained in the Bill. Instead it will be provided in the corporate plan prepared by TUSMA (section 74), which has yet to be published.

4.15 Optus proposes that the TUSMA Bill should include an additional provision which provides guiding principles for TUSMA in setting its objectives. This will provide greater certainty about the objectives of TUSMA in particular its objectives to scale back the USO over time and ensure the USO is delivered in an efficient and least cost manner.

4.16 Further, the guiding principles will provide another safeguard that there is no duplication between the roles of TUSMA and other government agencies including the ACMA.

Amendment 7:

Amendment of section 56 to the effect that there is majority representation by telecommunications service providers on the advisory committee.

4.17 This amendment ensures TUSMA will receive adequate advice from telecommunications service providers, and that TUSMA's operations will be guided by advice grounded in sound commercial experience

4.18 Under section 56, TUSMA may establish committees to advise or assist it in the performance of its functions. Telecommunications service providers have the necessary industry knowledge and commercial acumen that will be valuable to TUSMA.

Section 5. Constraining the scope of the USO

5.1 Optus is concerned that as the NBN rolls out, the scope of the USO does not increase.

5.2 The proposed arrangements provide scope for the USO to change over time. This is because in section 11 of the TUSMA bill the Minister is accorded the discretion to include additional policy objectives – so long as the objectives relate to the supply of a carriage service. Further under section 15, the Minister has the power to make a determination that varies the standards and benchmarks with which the contractors and/or grant recipients must comply. There does not appear to be any specific check on the Minister's discretion in this area.

5.3 Optus is concerned that this could lead to a widening of the services and geographic regions that qualify for USO provision. Whilst Optus recognises that a degree of flexibility is important, there should be independent checks and balances constraining the Minister's ability to extend the scope of the USO. This provides assurance that the Minister is making sound policies and it would assist in identifying any potential issues which the Minister may have overlooked.

5.4 Below Optus offers proposed amendments to the TUSMA bill to limit this possibility.

Proposed amendments

Amendment 8:

Inclusion of an additional clause in section 11 which states that any additional policy objective the Minister wishes to introduce should be subject to review by the Productivity Commission or an independent expert and stakeholder consultation.

5.5 The Minister must consider if the changes will result in a net gain in consumer welfare and if it is an appropriate task for TUSMA having regard to the objectives of TUSMA outlined in the corporate plan.

5.6 The Productivity Commission (PC) or an independent expert will provide the Minister with an independent account of the implications of any proposed changes and provide the necessary recommendations. The PC or an independent expert would have the necessary knowledge and expertise in assisting the government to make sound policies.

5.7 In addition to a review by the PC or an independent expert, a consultation with stakeholders will provide the Minister with valuable information. This will assist the Minister in identifying any potential issues that are relevant to the industry.

5.8 This amendment will promote transparency in the Minister's decision making process since independent bodies, such as the PC, will be less susceptible to capture via lobbying. In addition, such an amendment is a prudent way to discourage frivolous proposals for expansion since they will impose costs on such agencies in the conduct of the review.

Amendment 9:

Inclusion of an additional clause in section 11 which states that any additional policy objective the Minister wishes to introduce that relates to the purpose of a community service should be assessed having regard to the Government's investment in the NBN, with a view to determining whether it could be better be delivered over the NBN, rather than over Telstra's network.

5.9 This amendment ensures the scope of the USO does not increase over time as the NBN is rolled out. Not only does it make use of the Government's substantial investment in the NBN but also it minimises costs which may result from duplicating activities over the ageing copper network.

Amendment 10:

Amendment of section 123 to the effect that a regular review (at a minimum every 3 years) is to be conducted (rather than "before 1 January 2018").

5.10 The telecommunications industry is dynamic and so it will be necessary to conduct regular reviews (at least every 3 years) to ensure the policies continue to provide the most efficient way to deliver the USO. Such reviews would enable changes to provisions to take account of:

(a) The technological and competitive benefits of the NBN;

(b) Any other technological developments; and

(c) Consumer preferences.

5.11 Although, potential innovations cannot be foreseen, the legislation should be flexible enough to allow for any prospective changes, especially if this can lead to a reduction in costs or increase in consumer benefit.