



Australian Government
Department of Communications

Drew Clarke

Secretary

Christine McDonald
Secretary
Standing Committee on Environment and Communications
Legislation Committee
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Dear Ms McDonald

Submission to the inquiry into the Telecommunications Legislation Amendment (Deregulation) Bill 2014 and Telecommunications (Industry Levy) Amendment Bill 2014

On 10 February 2015, the Senate referred the Telecommunication Legislation Amendment (Deregulation) Bill 2014 and Telecommunications (Industry Levy) Amendment Bill 2014 to the Environment and Communications Legislation Committee (Committee) for inquiry and report by 1 May 2015. The Bills were referred to the Committee for re-examination in the context of the December 2014 amendments to the Telecommunications Universal Service Management Agency Agreement between Telstra and the Commonwealth (TUSMA Agreement).

By letter dated 16 February 2015, the Secretary of the Committee invited the Department to provide a written submission addressing this issue. The Department welcomes this opportunity to comment on the December 2014 amendments to the TUSMA Agreement.

Background to the TUSMA Agreement

On 23 June 2011 the Commonwealth and Telstra entered into the TUSMA Agreement. The TUSMA Agreement:

- Imposes contractual obligations on Telstra to deliver the standard telephone service universal service obligation (STS USO), the payphones universal service obligation (Payphones USO) and emergency call services.
- Sets out certain obligations of the Commonwealth in relation to the national broadband network (NBN) rollout. Under the Agreement the Telecommunications Universal Services Management Agency (TUSMA) is obliged to fund specific communications by Telstra to voice only customers who have not taken an NBN service within particular time periods prior to the relevant date for cut off of copper services. TUSMA also reimburses Telstra for reasonable connection costs incurred in connecting eligible voice-only customers who connect to the NBN to acquire a voice service but not a broadband service.
- Contains provisions for Telstra to be paid fees to undertake research related to migration of traffic lights and public alarms. These provisions have not been used to date.

The TUSMA Agreement was one of four agreements entered into between the Commonwealth and Telstra (collectively known as the Commonwealth Agreements) at the same time the Definitive Agreements were entered into between NBN Co and Telstra, which provided for Telstra's involvement in the rollout of the NBN.

The TUSMA Agreement is currently administered by TUSMA. Amongst other deregulatory measures, the Telecommunications Legislation Amendment (Deregulation) Bill 2014 and the Telecommunications (Industry Levy) Amendment Bill 2014 provide for the wind-up of TUSMA and the transfer of its functions into the Department of Communications from 1 July 2015.

December 2014 amendments to the TUSMA Agreement

In 2014, the Government and NBN Co engaged in negotiations with Telstra to amend the Definitive Agreements and the Commonwealth Agreements to facilitate the shift of the national broadband network (NBN) from a primarily Fibre to the Premises (FTTP) model to a 'multi-technology mix' (MTM) model. In the negotiation with Telstra of the amendments to the TUSMA Agreement, the Commonwealth was represented by officers of the Department of Communications who acted in close collaboration with officers of TUSMA.

Summary

The amendments to the TUSMA Agreement are described in more detail below. The key points are that the majority of the amendments were made simply to make the TUSMA Agreement accommodate the MTM NBN model rather than a primarily FTTP NBN model. There has been no weakening of the obligations imposed on Telstra to continue to deliver the STS USO, Payphones USO or emergency call services under the TUSMA Agreement arising from the amendments. Further, there has been no increase in the annual amounts payable to Telstra for the delivery of these services arising from the amendments that have been made.

Details

The key amendments to the TUSMA Agreement which were made in December 2014 are:

- New provisions require the Department to administer the TUSMA Agreement on behalf of the Commonwealth if TUSMA is abolished. In this regard I note that the TUSMA Agreement was originally entered into between Telstra and the Commonwealth at a time TUSMA did not exist. TUSMA is not a separate legal entity and has simply administered the TUSMA Agreement on behalf of the Commonwealth.
- The TUSMA Agreement was amended to be 'technology neutral', that is, to accommodate the MTM NBN model rather than a primarily FTTP NBN model. For example, references to the 'NBN fibre network' were replaced with references to the 'NBN Co Fixed Line Network', which was defined in a technology-neutral manner so as to encompass the additional network technologies to be deployed as part of the MTM NBN (primarily Fibre to the Node, Fibre to the Basement and HFC).
- The time limit by which TUSMA may require Telstra to take remedial action in the event of breach has been extended. This will provide TUSMA with more time to liaise with the Australian Communications and Media Authority (ACMA) regarding any action that the ACMA is proposing to take against Telstra for a breach of a provision of the TUSMA Agreement which is also reflected in regulation. This will limit the risk of double jeopardy, that is, of both TUSMA taking action for breach under the TUSMA Agreement and the ACMA taking action against Telstra for a regulatory breach, where the breaches have arisen from the same event.

- A compensation regime has been included for Telstra if it incurs additional separation costs as a result of new regulation imposed if the MTM rollout ceases after 75% of premises in Australia have been passed by the NBN but less than 93% of premises have been passed. The inclusion of this compensation regime reflects an acknowledgement by the Commonwealth that, in the highly unlikely event the rollout ceases after 75% of premises have been passed by the MTM rollout, the operation of the remaining residual part of the copper network by Telstra is likely to be commercially unprofitable and accordingly it would be unreasonable for the full cost burden of newly imposed separation regulation to be borne by Telstra.
- Minor changes were made to reflect operational issues that had arisen in the course of management of the TUSMA Agreement since July 2012. For example, amendments were made to incorporate operational arrangements agreed between TUSMA and Telstra in relation to payphone reporting and to clarify the scope of reimbursable costs in relation to provision of the emergency call service.
- Minor changes were made to reflect some operational issues that related directly to the amended NBN Co/Telstra Definitive Agreements. For example, changes were made to reflect that copper lines in relevant areas will be transferred by Telstra to NBN Co and to ensure consistency between the soft dial tone requirements in the TUSMA Agreement and the soft dial tone requirements in the Telstra's varied Migration Plan.
- Certain outdated or superseded provisions were also removed from the TUSMA Agreement. For example, provisions specifying the conditions precedent to the initial effectiveness of the TUSMA Agreement and provisions specifying the amount of funding required to be provided to TUSMA for the 2012-13 and 2013-14 financial years were removed.

The amendments to the TUSMA Agreement outlined above do not take effect until the amendments to the NBN Co/Telstra Definitive Agreements come into effect. Those amendments will not come into effect until all the conditions precedent for the amendments to the Definitive Agreements are either met or waived by NBN Co and Telstra. The existing TUSMA Agreement remains in effect until that time.

Effect of the 2014 amendments on the integration of TUSMA into the Department

The Department considers that the 2014 amendments to the TUSMA Agreement will not hinder the effective integration of TUSMA into the Department. The Commonwealth is the counterparty to the TUSMA Agreement, so the Department will be able to effectively integrate management of the TUSMA Agreement into the functions of the Department as the other functions of TUSMA are integrated into the Department.

I trust that this information will be of assistance to the Committee.

Yours sincerely

Drew Clarke
27 February 2015