Submission to the Senate Standing Committee on Environment and Communications

Inquiry into the Telecommunication Legislation Amendment (Deregulation) Bill 2014 and Telecommunications (Industry Levy) Amendment Bill 2014

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Contents

Section 1. Executive summary

1.1 Optus welcomes the opportunity to provide its comments to the Senate Standing Committee in relation to the Telecommunication Legislation Amendment (Deregulation) Bill 2014 and Telecommunications (Industry Levy) Amendment Bill 2014.

1.2 These Bills give effect to the policy proposal to bring the operations of the Telecommunications Universal Service Management Agency (TUSMA) within the Department of Communications. It is claimed that these reforms would reduce administration costs of the Universal Service Obligation (USO). Optus sees this as an opportune time to review the efficiency and efficacy of the reforms of 2010-11.

1.3 The USO has been a long standing feature of the Australian telecommunications industry. The impact of the USO has been the funding of Telstra by its main competitors to maintain a set of assets which have commercial benefit to Telstra. In other words, competitive telecommunications providers have subsidised the rural network advantage of Telstra.

1.4 Optus has long advocated for the USO to be funded from Government's general revenue. The USO is an instrument of social policy – namely that end-users in regional areas should face the same costs for telecommunications services as those in metro areas. This is a policy objective that Optus supports.

1.5 There are legitimate policy reasons why the USO provider should be compensated for the net costs of providing the USO – with net costs being the difference between the costs and revenues associated with USO connections *and* any other internalised benefit. However, there are also legitimate policy reasons not to provide such compensation in certain circumstances (as occurs in a number of jurisdictions) because of the substantial intangible benefits that derive from the position as provider of first resort.

1.6 The current industry funding model results in a competitive distortion away from competitive carriers towards Telstra. Since 1996-97 Telstra has received around $1.2 billion in funding from industry. This impact has been magnified following the agreement between the Commonwealth and Telstra to increase USO funding as part of the NBN agreements. The public policy implications of this are mixed.

1.7 Optus considers that it is manifestly inequitable that industry is liable for commitments made by the Government to Telstra to secure Telstra's participation in the NBN. The Government agreed to pay Telstra around $330 million per annum as a condition precedent to Telstra's participation in the NBN. This increase came with a commitment to ongoing Commonwealth funding of $100 million per annum. In effect, the liability of industry increased from $163 million to $230 million – a 40% increase – without agreement from non-Telstra operators.

1.8 The reforms put forward in this Bill do not alter the compliance costs on industry of funding the Commonwealth's liabilities to Telstra. At best, the administrative costs of the scheme are reduced by $1 million. However, it should also be noted that the net impact of the TUSMA arrangements is an increase of $4 million per annum in the administrative costs of the scheme – in other words, the introduction of TUSMA increased government administration costs by $5 million per annum; and its removal reduces administration costs by $1 million.

1.9 Optus sees significant benefits in reviewing the $330 million financial package to Telstra – and the associated increase in liabilities for non-Telstra operators. As such, Optus submits that the Committee consider additional legislative change that gives effect to:

(a) Introduction of a sunset clause in the Telecommunications Industry Levy provisions, subject to the Government undertaking a review of the efficiency and efficacy of the delivery of the USO;

(b) Limiting the industry's liability to the level determined in the last year of the USO subsidy scheme (2011-12);

(c) In the absence of (b), limiting the liability of industry to $230 million – the liability net of Government's committed $100 million annual contribution;

(d) Commencing an inquiry into options to better deliver the communications needs of remote Australia.

1.10 Optus also supports the Committee recommending the Customer Service Guarantee (CSG) as a priority for further red tape reduction and regulatory reform as the concept underlying the CSG is a legacy regulatory obligation that does not reflect the current market structure and removes incentives for carriers to progress innovation and competition initiatives in customer service delivery. It is important to note that the proposed reform will have no detrimental impact on consumers. The competitive market will continue to ensure that consumers can choose the service provider who they believe will offer those services with the best combination of price, customer support and features.

Section 2. The Universal Service Obligation

2.1 The USO has been a long standing feature of the Australian telecommunications industry. The impact of the USO has been the funding of Telstra by its main competitors to maintain a set of assets which are of commercial benefit to Telstra. In other words, competitive telecommunications providers have subsidised the rural network advantage of Telstra.

2.2 Optus has long advocated for the USO to be funded from Government's general revenue. This section describes the USO levy arrangements that were in place prior to the TUSMA reforms; and outlines the effect of the TUSMA reforms and the *Telecommunications Industry Levy* (TIL).

USO Levy arrangements

2.3 Prior to the current arrangements, Telstra received a subsidy towards meeting its obligations under the USO. The subsidy was determined by the Minister on advice from the ACMA. The USO subsidy was set at $145 million, of which, $55.5 million was paid for by competitive carriers.

2.4 In addition to USO funding, Telstra received further grants for the provision of the National Relay Service, to the amount of $17.9 million.

Figure 1 Universal Service Obligation Levy

Liabilities	USO Total	Telstra	Rest of Industry
USO Voice & Payphones	$ 145.1 m	$ 89.6 m	$ 55.5 m
National Relay Service	$ 17.9 m	$ 11.1 m	$ 6.8 m
TOTAL	$163 m	$ 100.7 m	$ 62.3 m

Source: ACMA

2.5 The total USO subsidy amounted to $163 million and was funded wholly by industry. The burden was shared across industry on the basis of eligible revenue. Of the $163 million, Telstra contributed $100.7 million and the rest of industry contributed $62.3 million.

Telecommunications Industry Levy arrangements

2.6 As part of the Definitive Agreements, the Commonwealth entered into contractual agreements to provide annual payments of $330-340 million to Telstra for the provision of its existing USO obligations plus further obligations relating to migration from copper services. This represented a doubling of the previous level of assistance.

2.7 The new policy came with a funding commitment by government of at least $50 million for financial years 2012-13 and 2013-14, and $100 million per annum after that. The residual costs incurred by TUSMA are funded through a revised industry levy scheme. After the initial period, of the increased funding of $330 million, $230 million is funded through the TIL. The funding from the TIL operates in the same way as the previous USO Levy, that is, liability of individual operators is based on its share of eligible revenue.

Figure 2 Change in USO Payments

Liabilities	USO Total	TUSMA
USO voice	$ 131.3 m	$ 230 m
USO payphones	$ 13.8 m	$ 40 m
Emergency call handling	..	$ 20 m
USO Sub-Total	*$145.1 m*	*$ 290 m*
National Relay Service	$ 17.9 m	$ 20 m
Voice-only migration	..	$ 15 m
Public Interest Services	..	$ 0-10 m
TUSMA administration costs	..	$ 5 m
TOTAL	*$ 163 m*	*$ 330-340 m*

Source: Explanatory Memorandum to the TUSMA Bill 2011

2.8 The difference in the USO and TUSMA funding is outlined in figure 2 above. In addition to a 75% increase in the USO voice subsidy, there is an almost doubling of the USO payphones subsidy. The increased subsidy payments were not aligned with any increase in the scope or cost of the obligations.

2.9 In addition to these increases, several additional payments were added:

(a) $20 million per annum to compensate Telstra for the costs incurred in providing emergency call handling services. In addition, TUSMA is to pay Telstra's costs for any major upgrades that are reasonable required to ensure the continued provision of emergency services.[1]

(b) $15 million to ensure appropriate safety net arrangements are in place that will assist the migration of voice-only customers to a NBN fibre service as Telstra's copper customer access network is progressively decommissioned.

(c) $10 million per annum for first two years put in place a framework to assist with the migration of public interest services (traffic lights and public alarms).

(d) $5 million for the administration costs associated with TUSMA.

2.10 These additional payments relate to work that was either:

(a) performed by Telstra prior to the Definitive Agreements for which it did not receive any subsidy – for example, the emergency call handling service – and for which it obtained (and continues to obtain) revenue through other charges.

(b) Or they relate to additional obligations that are placed upon Telstra to deal with the migration of Telstra customers/services to the NBN.

2.11 Within the TUSMA policy framework was a commitment to review the funding arrangements prior to July 2014. The current government has not undertaken this review pending the re-negotiations of the Definitive Agreements with Telstra.

[1] TUSMA Bill 2010, Explanatory Memorandum, p.15

Reasons for the different treatment

2.12 The increase in the payments to Telstra under the TUSMA arrangements compared to the previous USO Levy arrangements are a result of:

(a) Negotiations between the Government and Telstra to induce Telstra to participate in the NBN; and

(b) Modelling prepared for the Department in 2011, using 2009-10 cost data.

2.13 We discuss these below.

<u>Additional funding for NBN Definitive Agreement</u>

2.14 The Government, NBN Co, and Telstra signed a set of Definitive Agreements on 23 June 2011 that comprises the key components of the NBN, including the progressive disconnection copper-based Customer Access Network services and broadband services on its HFC cable network (but not Pay TV services on the HFC); and with large scale access for NBN Co to certain Telstra infrastructure over the long term.

2.15 These commitments were agreed to through a set of agreements:

(a) Between NBN Co and Telstra:

(i) Subscriber Agreement (SA), dealing with the disconnection of Telstra networks;

(ii) Infrastructure Services Agreement (ISA), dealing with long term access and leasing of Telstra equipment;

(iii) Access Deed (AD), relating to the supply of services to Telstra;

(iv) Implementation Interpretation (IID), which set out condition precedents for the above agreement to begin (one of which is the TUSMA Agreement);

(b) Between Commonwealth and Telstra;

(i) TUSMA Agreement, which sets out payments to be made to Telstra for the performance of certain public interest services;

(ii) Retaining Funding Deed, under which the Commonwealth will provide funding to Telstra to enable it to retrain certain employees;

(iii) Information Campaign and Migration Deed, outlines key residual commitments to be met directly by the Commonwealth (i.e. not through TUSMA); and

(iv) Commonwealth Guarantee, where Commonwealth underwrites NBN Co's commitments to Telstra.

2.16 The first set of agreements between NBN Co and Telstra comprised $9b of post-tax net present value to Telstra, with the Government Agreements committing to topping up funding to the extent of $0.7b for TUSMA services[2] and $1.3b for other commitments, including migration of special services to NBN Co.[3]

2.17 The key driver of the increase in existing TUSMA subsidy payments, and the inclusion of new subsidies, was to 'top-up' the Definitive Agreements to reach the $11b post-tax NPV in 2010 terms payment that Telstra required as compensation to participate in the NBN.

2.18 In essence, the Commonwealth entered into a commercial agreement with Telstra, known as the TUSMA Agreement, to increase funding to Telstra in order to secure its participation in the NBN. As a consequence of this, third parties to the agreement faced a substantially higher financial liability. Non-Telstra industry operators were not consulted on the level of TUSMA liabilities under the TUSMA Agreement, nor were we informed prior to the signing. It is inequitable that third parties are forced to pay for the financial commitments made between parties to the agreement.

Estimating cost to comply with USO

2.19 In 2011, the Department engaged Castalia Advisors to prepare a report estimating the net cost of meeting the standard telephone service and payphone universal services obligations (the Castalia Report) for the financial year 2009-10. The final report was published in June 2011.

2.20 The modelling of the net cost of providing the standard telephone service USO (voice USO) was based on the regulatory cost modelling utilised by the ACCC. At the time of the Castalia Report, the author had access to two main sources of data:

(a) 2010 fixed line costings prepared by Analysys Mason; and

(b) April 2011 draft building block modelling prepared by the ACCC for the Final Access.

2.21 There are major methodological differences between the two modelling approaches. The Analysys Mason model estimated costs for a hypothetical fixed line operator and made several efficiency maximising assumptions. The model and the cost inputs did not necessarily reflect actual costs of providing services in Australia. As such, the outputs of the model were not used when setting regulated costs. The preferred approach adopted by the ACCC – and consistent with costing methodologies used for electricity, gas and water – is the use of the Building Block Model (BBM). The BBM uses actual historic cost data from Telstra to calculate the cost of individual services. The BBM, therefore, has a direct connection to the actual costs incurred by Telstra when meeting the voice USO.

2.22 The ACCC has regulated fixed line services since 2011 utilising the BBM approach. The building block method is being used again in 2014 to set regulated prices going forward utilising actual Telstra costs.

2.23 Using the Analysys Mason costs estimate, the Castalia Report found the net cost to be $262 million. Using the ACCC cost estimate, the Report found the net cost to be $168 million.

2.24 At the time, the author placed more weight upon the older Analysys Mason modelling largely due to the unfinished nature of the ACCC process. This is despite the fact that the Analysys Mason model did not use actual cost data.

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[2] Includes STS USO, payphone obligations and emergency call services.
[3] Telstra, 2011, p.vi. This includes the

2.25 As a result of this, the Castalia Report concluded that the net cost of the standard telephone USO was between $215-262 million in 2009-10; and the net cost of the payphone USO was in the range of $35-48 million in 2009-10.

2.26 The range determined in the Report largely rests on the preference for the Analysys Mason estimate – a preference which Optus finds should no longer holds given that it was not used by the ACCC. As such, Optus sees value in updating the Castalia Report methodology to reflect:

(a) Recent changes in the level of usage; and

(b) Latest cost estimates which have been used over the last three years to set regulatory access prices.

2.27 An updated cost estimate will help inform the Committee on the costs incurred by Telstra when complying with its voice USO obligation. It is a useful reference point when assessing whether the increase on the industry's burden as a result of the NBN USO deal remains reasonable. The updates to the Castalia Report include relevant cost, revenue, and market data for the latest observations.

2.28 The following updates have been applied to the methodology and calculations used in the Castalia Report:

(a) 2011 ACCC Fixed Line Services Final Access Determination cost rates are used to calculate the relevant cost inputs;

(b) Current Telstra market shares of 68% for fixed line voice and 52% for mobile;[4]

(c) Total national PSTN lines sourced from Telstra's annual report;

(d) Call volumes sourced from Telstra's TEM FY2014 Report;[5]

(e) Relevant revenues sourced from Telstra's TEM FY2014 Report;

2.29 The following inputs and assumptions remained unchanged:

(a) Number of USO net cost area SIOs;

(b) Number of USO retail SIOs;

(c) ULLS Band 4 cost ratio mark-up (4.14%);

(d) Core network cost rural cost mark-up (2.7).

2.30 Adopting the same approach as in the original Castalia Report, but updating the inputs to latest observations results in the net cost of the USO in FY2014 being $139 million.

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[4] ACMA, 2014, Communications Report 2014.
[5] Available at: https://www.accc.gov.au/regulated-infrastructure/communications/monitoring-reporting/telecommunications-reports-record-keeping-rules/telstra-ssu-migration-plan-reporting/tem-reports

Figure 3 Updating the cost of the voice USO

	Paterson Report 2011	2014 Update
Inside USO Cost	($940 million)	($767.3 million)
Inside USO Revenue	$626 million	$588.4 million
Inside USO Net Cost	**($314 million)**	**($178.9 million)**
Outside USO Cost	($22 million)	($7.2 million)
Outside USO Revenue	$74 million	$47.0 million
Outside USO Net Cost	**$52 million**	**$39.8 million**
TOTAL NET COST USO	**($262 million)**	**($139.1 million)**

Source: Castalia Report, Telstra TEM Reports, Telstra Annual Report

2.31 In summary, the Government entered into a 20 year contract with Telstra for annual payments of $230 million to cover the cost of the USO voice service. One input into this decision was the cost estimate prepared in the Castalia Report using 2009-10 data. Given this Report used data which is now 5 years out of date, it is instructive to assess the reasonableness of the annual payment against the latest available data. Updating the volume and cost data for the latest observable period, and keeping all other assumptions and methods constant, results in a cost estimate of $139.1 million – 47% below the original estimate.

2.32 Telstra continues to receive $230 million annually for the USO voice service. And will continue to do so for a further 18 years. Such a subsidy is far in excess of the costs incurred by Telstra.

Section 3. Proposed amendments to TUSMA provisions

3.1 Upon review of the intent of the USO policy, and the TUSMA/TIL amendments, Optus see merits in two amendments to the Bills before the Committee. The amendments would have the effect of:

(a) Introducing a sunset clause to the TIL subject to a review of the arrangements, including overall funding and the efficient and effective design of the USO.

(b) Capping the TIL so that non-Telstra operators do not face higher liabilities due to commercial agreements between Telstra and the Commonwealth.

Sunset clause

3.2 The Explanatory Memorandum noted the commitment to review the amount of industry levy and associated government funding:

> *The Government made a commitment, when it announced the TUSMA arrangements in June 2011, to review the levy arrangements and the need for any additional Budget funding, over and above the Government's committed base funding, during the course of the first two financial years of TUSMA's operation.*[6]

3.3 We understand that the government has not undertaken such a review given the renegotiation of the Definitive Agreements with Telstra – elements of which drive the level of USO and associated subsidies.

3.4 Optus recommends that a sunset clause be included in relation to the Telecommunications Industry Levy which would have effect June 2015 subject to a review of the levy arrangements; a review of the level of funding required for the provision of the USO; and a review of the efficiency and efficacy of the reliance on copper phone network.

Limit on the Telecommunications Industry Levy

3.5 The increase in the USO funding from $163 million to $330 million was a condition precedent to the Definitive Agreements between Telstra and NBN Co. That is, absent the Government increasing the annual subsidy to Telstra, Telstra would not have agreed to participate in the NBN.

3.6 As a result of this commercial agreement, non-Telstra industry participants have incurred a significant increase in their industry levy liabilities. The obligations imposed on the universal service provider have not increased; and the associated benefits to Australians and the rest of industry have not increased. It is inequitable that a commercial contract imposes liabilities on firms that are not party to the contract. Optus sees merit in introducing clauses to the Bill which have the effect of limiting liabilities imposed on non-Telstra parties to the pre-TIL amount – that is, the 2011-12 USO Levy liabilities.

3.7 Such a clause would allow Telstra and the Commonwealth to enter into any range of agreements they see fit in order to ensure Telstra's participation in the NBN. However, it would have the effect of preventing Telstra and the Commonwealth from increasing liabilities on other parties.

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[6] Explanatory Memorandum to the TUSMA Bill 2011, p.10

3.8 Absent such a clause, Optus submits that the TIL be capped at $230 million – the net amount of the existing $330 million contractual liabilities given the annual Commonwealth contribution of $100 million. There is no legislative prohibition on the Commonwealth removing its annual contribution; notwithstanding that it was and remains a key plank of the overall USO reform package. The Explanatory Memorandum stated:

> *On 23 June 2011, the Government announced that it would contribute Budget funding to the costs of universal service outcomes … **Taking into account Government funding, TUSMA's residual funding requirements will be met through a consolidated industry levy scheme** which, from 1 July 2012, will replace the current USO and NRS levies and cover future funding for TUSMA's other responsibilities.*[7]
>
> *The levy is designed to recover from service providers the total of TUSMA's costs, expenses and other **obligations that are not covered by Commonwealth funding**.*[8]

3.9 The TIL reforms were based on a funding model that comprised Government, Telstra and non-Telstra industry funding. A TIL set at $230 million results in increases to the liability of non-Telstra industry players by around $25 million per year. Without Government funding, the TIL would increase by almost 50% to $330 million. A TIL set at $330 million would increase of the cost of non-Telstra operators by around $63 million – almost double the USO levy liabilities.

3.10 This is a significant amount of money that is dependent on the annual budget process. This uncertainty increase costs to industry. Capping the TIL amount would provide industry with longer term guidance on its annual TIL liabilities, thereby reducing compliance costs.

[7] Explanatory Memorandum to the TUSMA Bill 2011, p.9
[8] Explanatory Memorandum to the TUSMA Bill 2011, p.11

Section 4. Developing a more balanced approach to delivering the USO

4.1 Optus considers that the current approach to delivering and funding the USO has limited policy merit.

4.2 The USO arrangements were put in place over two decades ago. Notwithstanding significant changes in technology and the market since that date the arrangements have barely changed with the exception of the changes to funding noted earlier in this submission. Whilst it is remains open to debate as to whether the current arrangements remain relevant and appropriate for consumers' needs, it is clear that the arrangements create significant competitive distortions in the regional market.

4.3 As indicated earlier in this submission, Telstra is the recipient of significant annual funding from Government and industry to compensate it for the provision of USO services. However, there appear to be no specific measures to ensure that such funding is allocated to the provisions of universal services as opposed to being allocated to Telstra's consolidated revenue. The absence of any direct link between service provision and funding provides Telstra with the incentive and ability to under invest in the provision of universal services and channel funding to more competitive non-USO services. It is by no means clear that the current arrangements provide consumers or taxpayers with value for money.

4.4 Further, the USO funding that Telstra receives from its competitors acts as a significant constraint on their ability to invest and compete within regional Australia. The position of universal service provider gives Telstra a clear advantage when marketing services to regional Australia and it has used this to its maximum advantage. More importantly, the annual funding contribution required from industry directly reduces the capital available from non-Telstra carriers to invest in the provisions of USO services. Since 1996-97 Telstra has received $1.2 billion in direct funding from industry – of which $281 million has been granted in 2012-13 and 2013-14.[9] Since 2001-03, Optus has contributed more than $600 million to Telstra's subsidy. To help put this in perspective the annual cheque Optus has to write to Telstra is greater than the annual funding being made available for the Federal Government's mobile blackspots programme. Money Optus could invest in regional mobile towers or other infrastructure is used to fund Telstra, our main competitor.

4.5 These effects are compounded by the requirement for the industry levy to be paid in cash – resulting in Telstra being the only infrastructure investor in USO areas. This approach has led to an entrenched monopoly in rural areas, depriving these areas of the benefits of competition. Optus sees merit in introducing choice and competition into the payment of USO liabilities. It should be possible for contributors to pay their USO liabilities through cash payments or in kind investment in competitive infrastructure. This should result in net benefit to rural end-users as they get the benefit of universal service *and* competition.

4.6 A further problem with the current arrangements is that they fail to draw on the clear opportunities to leverage the NBN infrastructure to transform how universal services are delivered. Optus understands that under current contract model anticipates that Telstra will maintains its regional copper network for 20 years to fulfil the current USO. This is

[9] This amount is net of Telstra's USO contribution. Source: ACMA, Communications Reports, various years; ACA, 2004, Payphone Policy Review, p.49; Telstra Annual Reports, 2012-13 & 2013-14.

notwithstanding the fact that the copper network will be overbuilt and displaced by NBN Co's fibre, fixed wireless and satellite services.

4.7 Optus notes that 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.

4.8 The NBN infrastructure should be more than capable of be meeting the objectives of the USO policy as NBN Co will be required to:

(a) Connect every household and business premise in Australia; and

(b) To offer entry-level products at a nationally uniform prices.

4.9 These obligations are aimed at ensuring strong competition for the supply of services to end customers across all geographic areas. They should in turn render the continuation of USO policy redundant, because over time the NBN infrastructure should be capable of delivering USO services with the costs recovered in NBN Co's uniform national wholesale access charges. Since the NBN infrastructure is available there should be a range of RSPs capable of delivering the designated universal services.

4.10 Optus considers that in addition to making the changes to the current funding arrangements proposed in this submission, it would be timely for Government or the Committee to examine in full the options to better fulfil the USO. This review should be broad ranging and should consider:

(a) Opportunities to leverage the NBN infrastructure;

(b) Opportunities to leverage alternate technologies in the medium and longer-term as the NBN is rolled-out;

(c) Alternate funding models, including the merits of adopting a direct provision model where contributors can invest in rural infrastructure;

(d) The cost of delivering the USO, based on the ACCC's accepted approach to costing Telstra's network; and

(e) Opportunities to enhance regional competition.

Section 5. Other Issues

5.1 Optus wishes to provide further comments in relation to the amendments to:

(a) Do Not Call Register Act 2006;

(b) Record-keeping requirements;

(c) E-marketing code;

(d) Telecommunications Industry Ombudsman; and

(e) Customer Service Guarantee.

Do Not Call Register Act 2006

5.2 Optus understands the *Telecommunications Legislation Amendment (Deregulation) Bill 2014* will amend the *Do Not Call Register Act 2006* to propose indefinite registration, as opposed to an eight year limit, for fixed and mobile telephone numbers and fax numbers on the Do Not Call Register (Register).

5.3 While Optus does not object to the proposed indefinite registration period for numbers on the Register, it considers that the amendment should be accompanied with a requirement to provide ongoing maintenance of the Register to ensure it accurately reflects the intent of the customer.

5.4 That is, a number should be removed from the Register once it is no longer in service. This process would align with what currently occurs with linking a number to a service address in the Integrated Public Number Database (IPND), when the link between a number and its service address is removed when it is returned to the number pool.

5.5 Not including a requirement for 'data washing' of the Register will:

(a) Remove any opportunity for an individual owner of a new number to determine whether the number should be included on the register or not; and

(b) Result in all fixed and mobile numbers, whether used for business or by an individual, to eventually be listed on the Register, which doesn't accurately reflect the policy objective or the intent of an individual.

Record-keeping requirements

5.6 Optus understands the proposed amendment to Part 13 of the *Telecommunications Act* 1997 in relation to record keeping have now been withdrawn, and therefore will not be considered by the Committee.

5.7 Optus notes correspondence by the Minister for Communications provided to the Committee on 12 November 2014 that:

> … *the Government wants to take the opportunity to make sure disclosure reporting is consistent across government before removing an existing reporting obligation*.

5.8 Optus recommends that the proposed 'process of review' consider any overlap of record keeping requirements as well as well as seeking the view of law enforcement agencies on the utility of the information provided. This could include a case study approach to test whether information provided assists in progressing an investigation or whether it leads to a 'dead end'. (*For example: was information based on false or stolen identification, was a person of interest not at the specified address or swapped services on a regular basis.*) A case study approach could also test the utility of data retention periods. That is, what evidence can be gathered to support the retention of data in the periods from 0 to 3 months, 3 to 6 months, 6 months to a year and a year to two years after a communication took place

5.9 Optus also suggests the Committee recommend that the proposed amendments to Part 13 of the Act be refined to remove unnecessary reporting requirements, such as those related to TIO interactions. As flagged in the initial Explanatory Memorandum to the *Telecommunications Legislation Amendment (Deregulation) Bill 2014*, these reporting obligations 'impose compliance costs on industry without providing an effective consumer protection measure'.[10]

E marketing code

5.10 Optus supports the proposal to remove the current arrangements for the ACMA to register e-marketing codes under part 6 of the *Telecommunications Act 1997* on the basis that the Spam Act 2003 provides adequate consumer protection mechanism.

Telecommunications Industry Ombudsman

5.11 Optus supports the Bill's proposal to make minor amendments to the publishing requirements in Part 6 of the *Telecommunications (Consumer Protection and Service Standards) Act* 1999.

Customer Service Guarantee (CSG)

5.12 Optus supports the proposed minor amendment to remove the terms in section 117A of the *Telecommunications (Consumer Protection and Service Standards) Act 1999* (TCPSS Act). This change will remove the need for Carriage Service Provider (CSPs) to write to a customer to inform them that their CSP has taken the decision not to award Customer Service Guarantee (CSG) compensation.

5.13 Optus also supports the Committee recommending the CSG as a priority for further red tape reduction and regulatory reform on the basis that the concept underlying the CSG is a legacy regulatory obligation that does not reflect the current market structure and removes incentives for carriers to progress innovation and competition initiatives in customer service delivery.

5.14 Provided below is background and a summary of the position Optus and the industry, via Communications Alliance, proposed in late 2013 in response to the Government's '*Red Tape Reduction Program*'.

Background

5.15 The legal instrument that underpins the CSG, the *Telecommunications (Customer Service Guarantee) Standard 2011 (the CSG)* was introduced in 1998 and prescribed performance standards on retail service providers (RSPs) in relation to the connection and fault rectification of voice services (together with certain enhanced call handling features), and

[10] Explanatory Memorandum, *Telecommunications Legislation Amendment (Deregulation) Bill 2014 , Telecommunications (Industry Levy) Bill 2014, p. 107.*

the making of appointments in relation to those activities. RSPs are required to provide customers with an automatic monetary rebate where a performance standard is breached.

5.16 The Explanatory Memorandum (EM) to the *Telecommunications Bill 1996* describes the intent or purpose of the CSG Standard as follows:

> *The CSG is not intended to address every individual service difficulty that may arise, but is intended to supplement other customer complaint mechanisms. The CSG is intended to guard against poor service in key problem areas and provide a streamlined means for compensating consumers where set standards in those areas are not met. Matters not covered by the CSG are addressed by other more appropriate mechanisms either in statute, licence condition or under the [then] proposed industry code-standard regime in Part 6…*

5.17 The EM goes on to state that the primary intention of the CSG is:

> *…not to benefit customers financially, but to provide carriage service providers with an incentive to meet performance standards…*

<u>*Why reform should be supported*</u>

5.18 Optus supports the reform of the CSG for the following reasons:

(a) The importance of the CSG has significantly declined due to dramatic changes in telecommunications technology since 1998. This has resulted in changes to the way that consumers use telecommunications services and a marked reduction of reliance on fixed line voice services.

(b) There is now a significant amount of competition in the market for voice services (including the use of substitute technology such as mobile and VoIP) compared to 1998.

(c) The CSG is based upon the technology of Telstra's public switched telephone network (the PSTN), the level of service that has traditionally been offered over this network and Telstra's historic role as the primary provider of PSTN services. The move towards provision of fixed telephone services via the National Broadband Network (NBN) highlights that the industry is further moving away from the landscape in which the CSG was drafted.

(d) The requirements of the CSG are now essentially more than 10 years old and have therefore been superseded by the current telecommunications needs of consumers, namely the:

(i) increasing use of mobile voice, SMS and data;

(ii) widespread use of the internet (both fixed and wireless broadband), including VoIP services; and

(iii) increasing demand for 'telecommunications bundles' that offer significant cost savings and other benefits.

<u>*Proposed Reform*</u>

5.19 For the reasons set out above, Optus considers that the CSG has outlived its usefulness and should therefore be removed. Service providers should have the freedom to determine their own customer service commitments and guarantees in order to differentiate themselves in an increasingly competitive telecommunications environment.

5.20 There however, remains an ongoing role for consumer protections in relation to customer service standards for customers in rural areas. This obligation should sit with provider of USO services. Optus submission in relation to the USO is outlined above.

5.21 It is important to note that the proposed reform will not have any detrimental impact on consumers. The competitive market will continue to ensure that consumers can choose the RSP who they believe will offer those services with the best combination of price, customer support and features.