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Committee Secretary
Senate Standing Committees on Environment and Communications
Parliament House
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By email

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Universal Service Reform Bills

The Senate has recently referred three Bills concerning reform to the existing universal service arrangements to the Committee for inquiry and report. These Bills are the Telecommunications (Industry Levy) Bill 2011, the Telecommunications Legislation Amendment (Universal Service Reform) Bill 2011 and the Telecommunications Universal Service Management Agency Bill 2011 ("**Bill**") together the "**Reform Bills**". Macquarie Telecom Pty Limited ("**Macquarie**") wishes to submit comments to the Committee on the Reform Bills.

The Reform Bills are the result of a process which has been orchestrated by the Department of Broadband, Communications and the Digital Economy ("**DBCDE**"). The key recent milestones of this process include:

- the promulgation of the Australian Government's Universal Service Policy ¹;
- the agreement reached between the Government and Telstra for the future provision of the Universal Service Obligation and other public interest services ("**Agreement**"); and
- industry consultation on this matter by the DBCDE which commenced with the promulgation of a discussion paper.²

Macquarie is concerned about many aspects of the Reform Bills which reflect matters which Macquarie has already raised with the DBCDE. In this submission to the Committee, Macquarie wishes to address the following points of concern:

- the limited scope of industry participation in the formulation of the Policy;
- the flawed basis on which universal service is funded; and
- the scope of universal service.

Each of these points is discussed in turn.

¹ DBCDE, Universal Service Policy in the National Broadband Network environment, June 2011 ("**Policy**")

² DBCDE, Universal Service Obligation Legislative Reforms for transition to the National Broadband Network, Discussion Paper, 23 June 2011 ("**Discussion Paper**")



Limited Scope of Industry Participation in the Formulation of the Universal Service Policy

Macquarie is concerned about the narrow scope of industry consultation that the DBCDE has provided on this important matter. The DBCDE afforded industry very limited opportunity to provide input into the development of the Policy. In turn, the Policy formed the basis on which the Government and Telstra negotiated the Agreement and on which the Reform Bills were drafted.

In Macquarie's view, the DBCDE's industry consultation process has been insufficient. At the very least operators who under the Reform Bills are obliged to financially contribute to the cost of funding universal services should have had an opportunity to participate in the development of the Policy. Alternatively, if the Government chose to only involve Telstra in the finalisation of the Policy and the Agreement, then the universal service funding arrangements should be strictly between the Government and Telstra.

Flawed Universal Service Funding Model

Under the Reform Bills, service providers will be required to fund the costs of universal service provision through the Telecommunications Industry Levy Scheme ("TILS"). More specifically, the TILS is designed to recover the costs of the Telecommunications Universal Service Management Agency ("TUSMA") which comprise:

- the TUSMA's administration costs; and
- amounts paid by the TUSMA to contractors to supply universal services.

The TILS effectively prolongs the existing universal service funding model by which industry participants make contributions to the costs of universal service provision. Macquarie is strongly of the view that this funding model is fundamentally flawed and is detrimental to competition. Accordingly, Macquarie submits that this legacy funding approach should not have been carried forward to the Policy, the Agreement and the Reform Bills.

The deep-seated problems with the legacy universal service funding model have been brought to the attention of policy makers on many occasions. In 2008, the Regional Telecommunications Independent Review Committee noted the following:

*"There is substantial controversy about the current USO arrangements and the Committee notes that nearly all stakeholders dislike the current arrangement. ACMA referred to the USO arrangements as a 'broken concept'."*³

*"The fiscal arrangements for the cost of the current USO are currently inefficient and not well structured."*⁴

³ Regional Telecommunications Independent Review Committee Report, 2008, p182

⁴ ibid, p183



Macquarie submits that the payment of the existing USO levy by competitive carriers to Telstra is fundamentally detrimental to competition. In effect, competitive carriers are required to make payments to Telstra for the mere “privilege” of competing with Telstra. As such, the USO levy payment is effectively a tax on competition which discourages sector participation and investment.

Macquarie believes that Telstra should fully fund the cost of universal service provision and that this should have been reflected in the Agreement and the Reform Bills. That is, the Government alone (through the TUSMA) should pay Telstra to provide universal services under the Agreement. This view is consistent with recommendations from a comprehensive review of the statutory arrangements for costing and funding the USO undertaken by the Government in 2004.⁵

The review recommended that Telstra should fund all the costs associated with fulfilling the USO. This recommendation was based on the following rationale:

... the Telstra funding approach is preferred because it would resolve many of the contentious issues that have surrounded the USO funding scheme since its inception, is administratively efficient, would have few major negative effects and equity concerns ...”⁶

In objecting to the industry based universal service funding model which is now locked into the Policy, the Agreement and the Reform Bills, Macquarie acknowledges that the Government intends to provide additional funding in the first two financial years which ensures that non-Telstra contributors to the TILS will not face an increase in their aggregate funding contribution. However, this does not alter the fact that competitive carriers are still required to make payments to Telstra for the mere “privilege” of competing with Telstra.

Macquarie acknowledges that the Government is committed to undertake a review of the “adequacy and efficacy” of the universal service funding arrangements before July 2014. Macquarie welcomes this review.

Macquarie also acknowledges that the DBCDE considered other universal service funding options in its drafting of the Reform Bills. While Macquarie reiterates its view that Telstra alone should fully fund the cost of universal service provision, Macquarie is also supportive of an alternative broad-based funding model. Such a funding model may be consistent with “Option D Broad-based levy” as set out in the Explanatory Memorandum to the Bill or may extend to funding through general taxation revenue. Macquarie supports a broader based universal service funding model for reasons including:

- it more equitably spreads the cost of universal service provision to those that benefit from universal service;
- it reduces an investment disincentive on service providers; and
- it reduces a cost burden on service providers.

⁵ Department of Communications, Information Technology and the Arts, *Review of the Operations of the Universal Service Obligation and Customer Service Guarantee*, April 2004

⁶ *ibid*, page xvii

Scope of Universal Service

Macquarie is concerned that the Policy, the Agreement and the Reform Bills effectively lock-in outdated concepts in the definition of universal service. The key services which are supplied by Telstra under the Policy, the Agreement and the Reform Bills are the standard telephone service and payphone services which are essentially delivered over fixed networks. Nowhere in the Policy, the Agreement and the Reform Bills are the services that have emerged in the past 20 years which now comprise basic mainstream public communication services, i.e., mobile services and access to the Internet.

The following table shows Australia's penetration data by communications service for the years 2000 and 2010.

Table 1: Australian Penetration Level by Service

Service	Penetration per 100 Inhabitants	Penetration per 100 Inhabitants
	2000	2010
Mobile cellular subscriptions	44.68	101.04
Fixed telephone lines	52.44	38.89
Fixed Internet subscriptions	20.46	27.85 *

Source: International Telecommunication Union
* = data for 2009

The data in Table 1 shows that over the past decade the demand for fixed services has declined while the demand for mobile and fixed Internet services has increased. Ten years ago fixed telecommunications services might have been the appropriate service base for the provision of universal services. As Table 1 shows, things have changed. Macquarie submits that it is not appropriate for the DBCDE to anchor future universal service arrangements to services which are no longer sought by consumers now let alone in 20 years' time.

Moreover, Macquarie submits that it is particularly ironic that at the same time the DBCDE is undertaking a convergence review (which recognises that telecommunications, broadcasting and computing are no longer distinct) the DBCDE has preserved basic and out-dated telecommunications services into the Policy, the Agreement and the Reform Bills. In Macquarie's view, the DBCDE cannot credibly embrace convergence if it chooses to ignore changes in technology and changes in demand and preserve out-dated telecommunications concepts. As such, there is a very real prospect that the Policy, the Agreement and the Reform Bills will require the Government to pay Telstra \$290 million for each of the next 20 years to ensure that services which no-one wants remain available.

Closing

Macquarie has provided herein comments on the context in which the Reform Bills have been drafted. Macquarie reiterates its views that:

- the DBCDE's consultation with industry on this matter has been insufficient;
- the significant problems with the funding of universal services has been inappropriately preserved in the Reform Bills; and
- the scope of universal services captured in the Reform Bills is out-dated and no longer appropriate.

Macquarie would welcome an opportunity to discuss this submission with the Committee.

Yours sincerely

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