Australian Government

Department of Broadband, Communications and the Digital Economy

Regulation Impact Statement for consumer safeguards relating to payphone services

1. Background

The Government has released five draft legislative instruments relating to payphones. They are the:

- *Telecommunications Universal Service Obligation (Payphone Performance Standards) Determination (No. 1) 2011*;
- *Telecommunications Universal Service Obligation (Payphone Performance Benchmarks) Instrument (No. 1) 2011*;
- *Telecommunications Universal Service Obligation (Location of Payphones) Determination 2011*;
- *Telecommunications Universal Service Obligation (Public Consultation on the Location or Removal of Payphones) Determination 2011*; and
- *Telecommunications Universal Service Obligation (Payphone Complaint Rules) Determination (No. 1) 2011*.

The instruments would be made under sections 12ED, 12EE, 12EF, 12EG and 12EH of the *Telecommunications (Consumer Protection and Service Standards) Act 1999* (the Act). These sections of the Act were inserted by the *Telecommunications Legislation Amendment (Competition and Consumer Safeguards) Act 2010* (CCS Act), passed by the Australian Parliament in November 2010, which introduced legislative reforms to strengthen a range of telecommunications consumer safeguards. The objectives of the CCS Act amendments were to:

- establish clearer requirements for the provision of the Universal Service Obligation (USO) in relation to standard telephone services and payphones;
- provide powers for the Minister for Broadband, Communications and the Digital Economy (the Minister) to make legislative instruments to enhance existing consumer safeguards, including the USO and the Customer Service Guarantee (CSG); and
- strengthen the powers of the regulator, the Australian Communications and Media Authority (ACMA) to enforce consumer safeguards by providing it with enhanced record-keeping powers and the ability to issue infringement notices for breaches of the Act and the *Telecommunications Act 1997*.

2. Problem identification

The Universal Service Obligation (USO) has the objective of ensuring that all people in Australia, wherever they reside or carry on business, have reasonable access on an equitable basis to standard telephone services. The USO also covers the provision of payphones to meet reasonable accessibility requirements. Payphones also provide a valuable service in terms of access to emergency ‘000’ services, particularly in areas where there is limited mobile phone coverage.

Section 12A of the Act allows the Minister to determine a primary universal service provider to provide USO services. Telstra is currently the primary universal service provider and, accordingly, must fulfil the requirements of the USO in relation to

payphone supply, installation and repair. At 30 June 2010, there were 13 009 Telstra-operated payphones in urban areas, 5021 in rural areas and 987 in remote areas[1].
At present, Telstra sets out how it meets its USO payphone obligations in its universal service policy document and standard marketing plan (SMP). Telstra's key obligations under the SMP in relation to payphones fall into the areas of payphone installation, removal and repair.

Under the SMP, Telstra will aim to install a payphone within three months (of making an installation decision), where the proposed payphone site is readily accessible to necessary network infrastructure, such as main/distribution cables. If the proposed payphone site is not readily accessible to infrastructure, then the timeframe is three months (in an urban or major rural area), six months (in a minor rural area) and nine months (in a remote area).

Different timeframes for different geographical areas are also applied in the case of payphone fault repair. Under the SMP, a payphone fault must be repaired in one day in urban areas; in two days in major and minor rural areas and three days in remote areas.

Under the SMP, where there is more than one payphone at a particular site, Telstra may reduce the number of payphones at that site to a minimum of one. Where there is only one payphone at the site, Telstra may remove the payphone in accordance with certain criteria (for example, where the local community no longer wants the payphone, where there have been significant or sustained costs due to repeated misuse of, and damage to, the payphone, and where the health or safety of the public or Telstra staff is at high risk). Before removing a payphone facility Telstra will consult the local community, site owner and local Government authority.

The SMP sets out broad consultation requirements for payphone removal or installation, but the process is vague and unenforceable. Whilst it sets out general provisions for consultation, it does not provide for a well-articulated and understood approach by which affected consumers can have their concerns raised and formally factored in to Telstra's decision-making. Significantly, the SMP arrangements do not provide for an explicit decision-review or complaint-handling process that would help to inform Telstra's initial decisions on payphone siting, installation and removal. The ACMA does not have a role in relation to overturning Telstra decisions on payphone siting, installation or removal. The ACMA can receive complaints from the public regarding Telstra decisions; however, it can only assess whether or not Telstra has complied with its obligations as set out in the SMP. Under the SMP, people can also complain about a payphone removal decision to the Telecommunications Industry Ombudsman (TIO), but the TIO also does not have formal powers to intervene in payphone siting, installation and removal.

Telstra's performance in meeting its SMP commitments has been subject to considerable criticism in recent years. Stakeholders have raised concerns that Telstra does not always meet the commitments it sets out in the SMP, notably in relation to rectifying faults to payphones in rural or remote areas of Australia. For example, payphones in non-metropolitan areas have a lower level of service (in terms of

[1] *Communications Report, 2009*–10, Australian Communications and Media Authority, 2010, p. 81

compliance with fault repair timeframes) compared to urban and rural areas. In 2009–10, Telstra met the ACMA's informal 90 per cent payphone repair performance target only for urban areas (92.6 per cent completed within the one-day timeframe). During the period, Telstra completed repairs within the two-day timeframe for rural areas 87 per cent of the time; and for the three-day timeframe in remote areas, only 65.4 per cent of the time.[2] For the most recent performance data, only 51 per cent of payphones were repaired within the three-day period in remote areas[3]. Table A below shows that for the past three periods, Telstra has consistently performed far below the ACMA's informal performance target of 90 per cent in remote areas, and has not met the target for rural areas (although it has been reasonably close to the target).

Table A: Telstra payphone repair performance by area, 2007-08 to 2009-10

		Payphones	
		Repaired within USO timeframe	NOT repaired within USO timeframe
Urban areas	2007-08	92.5%	7.4%
	2008-09	92.5%	7.4%
	2009-10	92.6%	7.3%
Rural areas	2007-08	85.4%	14.6%
	2008-09	85.9%	14.1%
	2009-10	87.0%	13.0%
Remote areas	2007-08	64.5%	35.6%
	2008-09	65.9%	34.1%
	2009-10	65.4%	34.5%

Source: ACMA reporting data for relevant periods. Figures may not add up to 100 per cent because of rounding.

There has, in fact, been a long history of concern with Telstra's performance in repairing payphone faults. In its 2000 review, the then Australian Communications Authority (ACA) reported a general decline in repair performance.[4] Furthermore, in 2004 the ACA reported that Telstra's payphone fault repair performance in remote Australia was poor.[5] In its report to Government in 2008, the Regional Telecommunications Independent Review Committee (RTIRC) noted that payphones were a valued service in regional areas but that they experienced greater 'down-time' than their urban counterparts.[6]

The ACMA has also shown that, where payphones are repaired outside the informal targets that currently apply, the majority are repaired within the next five working days. Performance in 2009-10 was better in urban areas (where about two-thirds of the payphones which were repaired late were repaired one working day late) and in

[2] *Communications Report 2009-10*, Australian Communications and media Authority, 2010, p.82
[3] *Telecommunications performance data - March 2011 quarter*, Australian Communications and Media Authority, 2011, p.21
[4] *The Universal Service Obligation – Payphones*. Special Report No. 5, March 2000, p.3
[5] *Payphone Policy Review*, Australian Communications Authority, 2004, p.2
[6] *Framework for the Future, September 2008*, Regional Telecommunications Independent Review Committee, p.207

rural areas (43 per cent). By contrast, in remote areas, 41 per cent of the payphones that were repaired late took more than six working days to repair. The majority of these were repaired within 20 working days, but some took several months and even up to a year to repair.[7]

These concerns, particularly in relation to Telstra's fault repair performance in non-metropolitan areas, have prompted the need to explore options in which Telstra's performance can be improved.

There has also been a long history of concern with the availability of payphones. In particular, Telstra's practices in removing payphones, and the degree of consultation it undertakes when it does remove payphones, have been criticised. The ACMA has reported that the overall number of payphones operated by Telstra declined from 30,091 in June 2006 to 19,017 in June 2010; a 36.8 per cent reduction over the period.[8]

In 2006, Telstra announced that it would undertake a removal of up to 5,000 payphones during 2006-07. The Minister for Communications, Information Technology and the Arts at the time sought an agreement from Telstra to undertake consultation to minimise the impact of removals, including more active consultation with affected communities and formal responses to complaints received regarding removals. In its 2008 report, however, RTIRC found that Government intervention was required to provide an assurance of payphone availability and that consultation with communities in relation to the provision and removal of payphones required improvement. In public meetings undertaken by RTIRC, local councils stated that "*the extent and level of public consultation by Telstra in determining payphone removal is grossly inadequate [and] Telstra's review process does not provide sufficient consideration in respect of community needs to access to public telephones*"[9]. In addition, RTIRC found that although Telstra consults on payphone removals in accordance with its SMP, its decisions can appear to be arbitrary and to ignore the interests of the local community. This has led to increasing community concern over Telstra's procedures for installing and removing payphones.

The lack of a defined process to provide for a review of Telstra's decisions in payphone siting and removals means that there is no clear accountability or transparency as to how Telstra weighs up commercial factors against any public interest arguments in relation to payphone siting and removals.

More recently, in 2009 as part of the consultation exercise that resulted in the drafting of the CCS Act, responses[10] from consumer and disability groups and state government to the Department's discussion paper, *National Broadband Network: Regulatory Reform for 21st Century Broadband*, expressed a concern over payphone removals and the need for continued access to payphones. The WA Government

[7] *Communications Report 2009-10*, Australian Communications and Media Authority, 2010, p.83; and data on the length of time to repair remote payphones provided by the ACMA

[8] *Communications Report 2009-10*, Australian Communications and Media Authority, 2010, p.80

[9] *Framework for the Future, September 2008*, Regional Telecommunications Independent Review Committee, p.207

[10] Available at: www.dbcde.gov.au/broadband/national_broadband_network/regulatory_reform_for_21st_century_broadband/national_broadband_network_regulatory_reform_for_21st_century_broadbandsubmissions

submission argued that the ACMA should strengthen its current complaints resolution processes in relation to payphones and the SA Government submission argued that there continued to be community concerns regarding the removal of payphones in regional areas.

Submissions to the August 2011 discussion paper on these draft payphone instruments expressed concerns regarding payphone installation and repair, highlighting the importance of shorter timeframes and effective compliance by Telstra. This was particularly the case for respondents representing the interests of consumers in regional areas. Some respondents called for very strong regulation of payphones, with identical installation and repair timeframes in urban, rural and remote areas, and identical benchmarks in relation to these. The Government has considered this approach as option three in this Regulatory Impact Statement.

The wide geographical dispersion of payphones, in combination with the trend towards lower usage from a correspondingly lower number of potential users, is increasingly making payphones in non-metropolitan areas a loss-making undertaking for Telstra. To date, no other telecommunications carriers provide alternative public payphone services in rural or remote areas to compete against Telstra's payphone network. Consequently, Telstra is not subject to the competitive pressures that might otherwise provide commercial incentives for Telstra to improve its payphone service to customers in regional, rural and remote areas.

A key issue is that the Government has not previously had the regulatory tools available to enforce the SMP. The Government recognised this when it introduced the CCS Act into Parliament.

The Explanatory Memorandum to the Bill noted that 'current requirements imposed on the primary universal service provider (currently Telstra) are imprecise and difficult to enforce'[11]. The powers introduced through the CCS Act provided for the Minister to make determinations in relation to payphone performance standards and benchmarks, rules about the location of payphones, rules about the process for public consultation on the location or removal of payphones and rules about the process for resolving complaints about the locations or removal of payphones. Furthermore, as the Explanatory Memorandum noted, stronger enforcement powers would be available in relation to these Ministerial instruments. Breaches of the instruments would be breaches of the Act, and consequently breaches of a carrier licence condition for which the standard enforcement provisions under the *Telecommunications Act 1997* apply.

The Regulatory Impact Statement (RIS) attached to the Explanatory Memorandum to the CCS Bill[12] dealt with the reasons why these powers needed to be introduced. The RIS to the CCS Bill noted that Telstra's SMP provided inadequate enforcement, and therefore there was a need to introduce powers to make stronger regulatory standards that would be enforceable. The Regulatory Impact Statement stated that regulations

[11] *Telecommunications Legislation Amendment (Competition and Consumer Safeguards) Bill 2010,* Explanatory Memorandum*,* p.6

[12] A copy of the RIS in the Explanatory Memorandum to the CCS Bill is available at www.comlaw.gov.au/Details/C2010B00242/Explanatory%20Memorandum/Text.

should ‘clarify the obligations for both Telstra and consumers’ and, by specifying penalties, lead to a ‘marked increase in compliance’. During debate on the Bill, Government Senators made it clear that the Government’s intention was that the relevant instruments would be made once the Bill was passed.

Consequently, it is not proposed that this RIS will cover the same issues. The Parliament has already decided that the powers should be introduced and what they should target. Instead, this RIS will cover the way in which it is proposed the powers should be implemented at this time, noting that any instruments that are made at this time may need to be amended in the future to reflect changes in the market or regulatory settings.

On 23 June 2011 the Australian Government announced a package of measures to ensure basic universal telecommunication service standards during and after the roll out of the National Broadband Network. The measures included the commitment to establish a new government entity, the Telecommunications Universal Service Management Agency (TUSMA) that will administer contracts and grants for universal service (including so that payphones continue to be reasonably accessible) and other public interest services such as the National Relay Service and to support emergency call handling arrangements. The measures also include an agreement with Telstra to provide universal service and other public interest telecommunications services for 20 years from 1 July 2012. Under the agreement, Telstra will continue to supply, install and maintain payphones for 20 years from 1 July 2012.

On 2 November 2011, the Government introduced three Bills into Parliament – the *Telecommunications Universal Service Management Agency Bill 2011* (the TUSMA Bill), the *Telecommunications (Industry Levy) Bill 2011* and the *Telecommunications Legislation Amendment (Universal Service Reform) Bill 2011* (the Reform Bill). Under the TUSMA Bill, there will be powers for the Minister to make standards, rules or benchmarks that will apply to contracts administered by the Telecommunications Universal Service Management Agency (TUSMA). Contractors must comply with these standards. TUSMA will be responsible for the agreement with Telstra, announced on 23 June 2011, covering the supply of USO services (including payphones).

The Reform Bill proposes amendments to the Act to introduce a framework to enable the progressive lifting of the standard telephone service (STS) and payphones elements of the USO, where the Minister for Broadband, Communications and the Digital Economy is satisfied in each case that pre-conditions have been met. The Minister will make initial declarations in the period between and 18 and 23 months after commencement. This will enable the arrangements to be bedded down during a transition period and for the Minister to take into account Telstra’s regulatory and contract performance during this period. The Minister will have regard to contractual, regulatory performance and other relevant matters in making a declaration to remove STS or payphones USO regulation and the declarations will be subject to Parliamentary scrutiny and potential disallowance.

If the pre-conditions have been met for payphones, then this element of the USO will be removed on a single date in all areas of Australia. Once payphone regulation is lifted, provision of payphones will be covered by the contractual agreement between

TUSMA and Telstra. However, the Government has announced, in the Explanatory Memorandum to the TUSMA Bill, that existing USO safeguards will form the basis of contract standards to be made by the Minister in relation to the provision of standard telephone services and payphones.[13]

It is important to stress that any future lifting of USO regulation would be subject to a number of factors that are currently uncertain. These include the passage of the TUSMA Bill and the Reform Bill, the pre-conditions for lifting regulation being met, and the approval of the Parliament for the relevant Ministerial instrument. Should these factors take place and USO payphone regulation be lifted, it is the Government's intention that Telstra will remain subject to contract standards which will be largely based on the instruments that are the subject of this Regulatory Impact Statement.

3. Desired outcomes

The objectives of this proposal are twofold: (1), to establish regulatory settings that ensure payphones are provided and maintained so that consumers are reasonably able to access such services when required, including in times of emergency, and (2), to establish arrangements that provide for consumers to have adequate input into payphone siting and removal decisions and review and complaint-handling arrangements where such decisions may be disputed. Both outcomes are directly related to a need to improve Telstra's payphone repair performance and the availability of payphones, especially in non-metropolitan areas where ACMA reporting has shown Telstra's performance metrics to be consistently below acceptable levels. Improvements in Telstra's connection and fault repair metrics, reflected in ACMA reporting, will be evidence that payphones are more available for use by the public in accordance with the universal access principles of the USO.

These objectives incorporate notions of equity to reflect that payphone provision and maintenance levels may be different in different geographical areas, where lower populations mean fewer consumers are affected in the event that a payphone is inoperative. Finally, the objectives recognise that many payphones, especially in rural and remote areas, are uneconomical to run. Accordingly, it is necessary to achieve a balance between the costs imposed on Telstra in providing loss-making services with the public welfare benefits provided by readily-accessible and reliable payphone services.

4. Options

Three options are assessed for the purpose of achieving the stated objective. These options are set out in detail in Table B. They are:

Option 1: Maintain the current payphone installation, repair and consultation requirements under Telstra's SMP, on the basis that it is not appropriate to implement

[13] *Telecommunications Universal Service Management Agency Bill 2011*, Explanatory Memorandum, p.7

the powers provided by the Parliament in relation to the regulation of payphones at this time. This is effectively the ‘do nothing’ option. Adopting this option would impose zero additional cost on Telstra; however, improvements in the availability of payphone services in accordance with the objective of meeting the USO would not be achieved.

Option 2: Introduce instruments setting stronger standards and benchmarks for payphone performance (including fault repair and installation and removal), and setting out rules for public consultation by Telstra in relation to installations and removals and for handling complaints. These instruments would attempt to achieve a balance between promoting consumer welfare and recognising the costs and compliance burden to Telstra from stronger requirements. The instruments would, to a large extent, formalise the existing requirements of the SMP while strengthening fault repair, installation, consultation and complaints handling requirements. Furthermore, all obligations would be subject to oversight, compliance and enforcement action by the ACMA.

It is expected that Telstra would undertake a range of internal system and process changes to ensure it meets the requirements. Such changes are likely to include:

- promulgating information to technical and customer service staff to make them aware of the new requirements, in particular the financial risk of fines that may be imposed if connection and repair performance benchmarks are not met;
- altering technical staff work schedules to ensure sufficient staff are available for connection and repair jobs, particularly in non-metropolitan areas;
- enhancing supply and purchasing arrangements to ensure necessary spares and equipment are available to meet timely requests for connection and repair;
- establishing and undertaking notification requirements to ensure potentially-affected groups are made aware of payphone siting and removal proposals; and
- establishing formal complaint-handling arrangements, including creating of, and training staff in, complaint-handling instructions and procedures.

Option 3: Introduce instruments setting much stronger standards and benchmarks for payphone performance (including fault repair and installation and removal), and setting out rules for public consultation by Telstra in relation to installations and removals and for handling complaints. These instruments would set promoting consumer welfare above the costs and compliance burden to Telstra from stronger requirements. The instruments would extend the current requirements of the SMP and set stronger fault repair, installation, consultation and complaints handling requirements than option 2. They would thus represent a greater level of regulatory imposition on Telstra.

Similar to option 2, Telstra would incur additional costs in being required to undertake system and process changes to meet the requirements of option 3. Like option 2, the additional costs would result from:

- drafting and promulgating of information to relevant staff;
- training of staff, particularly those in technical and customer service roles;
- ensuring work schedules provide for sufficient technical staff to meet connection and repair timeframes;

- enhancing supply and inventory management arrangements to ensure timely availability of material and equipment for payphone connection and repair; and
- undertaking system and process changes to accept, manage, track and resolve complaints.

However, the difference in regulatory approach between option 2 and option 3 means those costs are likely to be appreciably higher in the case of option 3. Different (higher) cost aspects for option 3 include:

- no transitional arrangements in the form of compliance with lower connection and fault repair performance benchmarks for an initial six-month period;
- an increased choice for consumers of alternative languages to be provided for instruction purposes on payphones;
- no different (lower) performance standard or benchmarks based on geographic area; and
- ACMA review of payphone installation proposals in addition to payphone removals.

Option 1 maintains the status quo in which Telstra would continue to provide payphone services as the primary universal service provider in accordance with its obligations under the SMP. The ACMA would oversee Telstra's performance, but the difficulties experienced with enforcing the SMP that were recognised by the Parliament when it passed the CCS Act would continue.

Option 2 would see clear performance standards set for Telstra's payphones, with performance benchmarks in relation to fault repairs. The instruments would also set rules promoting clearer obligations that must be complied with by Telstra when installing or removing payphones, and stronger consultation requirements. Furthermore, the instruments would clarify the complaints handling process to be followed by Telstra when a payphone is removed. The instruments would, however, attempt to contain Telstra's costs and compliance burden where possible, recognising that an increase in these will inevitably follow from strengthening payphone obligations. For example, the instruments would apply existing technical standards in relation to payphones, rather than requiring Telstra to invest in new equipment. Similarly, in setting maximum installation and repair timeframes, the instruments would, where appropriate, use existing SMP timeframes but make them clearly enforceable. The instruments would recognise that lower benchmarks and standard timeframes for installation could apply during the first six months the instruments are in operation, given that this period coincides with extreme seasonal weather events when there are likely to be many calls on Telstra's maintenance personnel and resources. The instruments would also recognise that repairing payphones in remote areas may need to have a lower benchmark and a longer installation and fault repair timeframe than in urban or rural areas, given the relatively higher costs to Telstra in installing and maintaining payphones in non-metropolitan areas.

Option 3 would also see stronger and clearer standards, benchmarks or rules applied to Telstra's payphones, but would not be as concerned with containing Telstra's costs and compliance burden relative to option 2. Rather, greater weighting would be given to consumer benefit whilst placing a lower value on the costs imposed on Telstra to meet standards and benchmarks. For example, the instruments could require Telstra to invest in new equipment, and also determine that no transitional period to the standards and benchmarks arrangements should apply. Similarly, timeframes and benchmarks for remote areas would be set at the same levels as timeframes and benchmarks in urban and rural areas, regardless of the high cost/low return aspects relating to servicing minor rural and remote payphones. Finally, extensive consultation requirements could be imposed on Telstra whenever it installs or removes a payphone.

Under all three options, the powers conferred on the Minister under the Act only extend to setting standards, rules or benchmarks to be complied with by a primary universal service provider (i.e., Telstra). While there are other service providers in Australia that operate payphones (e.g. Tritel in metropolitan areas and certain providers of community phones in remote areas), these operators are not primary universal service providers and, accordingly, the instruments cannot apply to them.

These three options are the most realistic options at this time. Alternative options, for example using the regulatory powers in the Act to require Telstra to address payphone siting or improve the robustness of payphones in an effort to reduce the incidence of repairs, would be likely to have only a marginal impact on the incidence of payphone faults and would, of themselves, do nothing to lift Telstra's performance in repairing payphones in remote areas. These alternative options would also have implications in terms of increased compliance costs to Telstra.

Table B: Payphone regulatory options: comparative aspects

Option A - Standard Marketing Plan	**Option B – Formalise Standard Marketing Plan (SMP) provisions; stronger standards and benchmarks**	**Option C – Stronger standards and benchmarks, no transition arrangements, no geographically different benchmarks, additional consultation requirements**
<u>Payphone standards</u> • 24 hours per day access to an emergency number free of charge • 24 hours per day access to operator assistance for directory assistance, national and international call connection and reporting of service difficulties • Voice-grade service with ability to originate calls 99 per cent of the time over a 12 month period • 95 per cent of non-international calls will be successfully switched at the first call attempt over any three calendar months • Payphones have a large screen display with the option of selecting text in four languages, including English and three of French, Japanese, Mandarin and Spanish • The payphone can be modified to	***<u>Payphone standards</u>*** • 24 hours per day access to national and international voice grade telephone calls • 24 hours per day access to an emergency call service free of charge • 24 hours per day access to operator assistance for directory assistance, national and international call connection and reporting of service difficulties • Meet the guidelines set out in the Communications Alliance *Accessibility of Payphones Guideline* • A payphone must provide operating instructions, with the option of selecting text in four languages, including English and three of French, Japanese, Mandarin and Spanish • A payphone must be able to be modified to include a TTY attachment	***<u>Payphone standards</u>*** Similar to option B, but the provider could be required to provide additional languages.

include a TTY attachment but, to reduce the risk of damage to the attachment, TTY equipment is installed in internal semi-supervised locations such as shopping centres, airports, public hospitals	• Exemptions from these standards are available in circumstances beyond Telstra's control (e.g. natural disasters, emergencies).	
Timeframes for installing new payphones Indicative timeframes only: • acknowledge a request in writing within five working days; • decide upon the application within three months • where the site is readily accessible to infrastructure Telstra can use, install the payphone within three months of deciding to install • where the payphone is not readily accessible to infrastructure Telstra can use, install within three months in an urban area or a major rural area, within six months in a minor rural area, and within nine months in a remote area.	***Timeframes for installing new payphones*** • Where the site is readily accessible to telephone network infrastructure and there is sufficient network infrastructure capacity to effect service, no later than three months. • Where these conditions do not apply, in an urban area or major rural area, three months; in a minor rural area, no later than six months; and in a remote area, no later than nine months.	***Timeframes for installing new payphones*** All payphones should be installed within three months, regardless of where they are located.
Fault repair timeframes 'Telstra will use reasonable endeavours' to repair payphones or payphone access lines in the following timeframes: • urban area – end of one full	***Fault repair timeframes - standards*** Transitional provisions apply for the first six months. After that, the maximum periods are: • for an urban area – 10 working	***Fault repair timeframes – standards*** No transitional provisions should apply. All payphones should be repaired within 10 days, regardless of where they are located.

working day after being notified • major rural area and minor rural area – end of two full working days • remote area – end of three full working days.	days • for a major rural and a minor rural area – 15 working days • for a remote area – 20 working days These standard timeframes do not apply if the fault is ‘non-critical’	
	<u>Fault repair timeframes – benchmarks</u> Transitional provisions apply for the first six months. After that, the maximum periods are: • for an urban area – 1 working day • for a major rural and a minor rural area – 2 working days • for a remote area – 3 working days 90 per cent of payphones in urban and rural areas must be repaired within these timeframes. 80 per cent of payphones in remote areas must be repaired within these timeframes.	***<u>Fault repair timeframes – benchmarks</u>*** A single benchmark would apply – repairing payphones within one working day, regardless of where they are located. This benchmark must be met in 90 per cent of cases. No transitional provisions would apply.
<u>Payphone location criteria</u> *Category 1* – payphone located in areas where the facility is considered commercially viable. *Category 2* – payphone located where the projected revenues will at least cover the	***<u>Payphone location criteria</u>*** Three categories as set out in the Standard Marketing Plan. However, a primary universal service provider is required to install a payphone at each location unless: • installing and maintaining a	***<u>Payphone location criteria</u>*** Similar to option B, but additional payphones should be required to be located where mobile phone coverage is not adequate. Furthermore, commercial viability, or covering costs through

depreciation and maintenance costs of maintaining the facility and no payphones are within certain specified distances. *Category 3* – payphone located where it is not commercially viable and there is no payphone within certain specified distances. Telstra will also take into account any unique or special circumstances in assessing a request to install a payphone service.	payphone at the new location would not deliver a net social benefit to the local community, or • a primary universal service provider cannot reasonably install and operate a payphone at the new location. Criteria for determining whether a payphone delivers a net social benefit to the community include factors relating to commercial viability, the extent of funding for the payphone, benefits to the community, the extent of adequate mobile phone coverage in the area and the extent to the which a payphone in the area is needed for the purposes of assisting with responding to an emergency. Criteria for determining whether a payphone can reasonably be installed and operated include whether the provider can obtain relevant approvals, the extent to which it is practicable to provide power to the location and the safety of the public, users and the provider's employees and agents. Clear timeframes and criteria are also set	revenues, cannot be taken into account in making decisions about installing a payphone. The net social benefit test would instead focus on benefits to the community and the need for a payphone to assist with responding to an emergency.

	out for making an eligible payphone request. Telstra must maintain a payphone register containing a description of the location of payphones. All payphones on the register are subject to the payphone standards, rules and benchmarks.	
Criteria for installing TTY payphones Priority is given to providing these at high usage sites such as major shopping centres, airports and major railway stations where 24-hour access is generally available.	***Criteria for installing TTY payphones*** These would need to be installed in a category 1, 2 or 3 location, and also be an area where there is likely to be high usage of a TTY payphone and there is not a high risk of vandalism or misuse of a TTY payphone.	***Criteria for installing TTY payphones*** Similar to option B.
Payphone removals Where there is more than one payphone at a site, Telstra may reduce the number to one as considered necessary. Factors to be considered 'may be' changes in usage and demand as assessed by Telstra, where one or more of the payphones is an obsolete product or technology, and where changes are made to the booth type to improve access or to meet site owner needs. Where a payphone is the only payphone at a site, in addition to the above criteria,	***Payphone removals*** Payphones may only be removed if: • consultation requirements have been followed (see below); • maintaining a payphone at the site would not deliver a net social benefit to the local community; • there is demonstrated community support for the removal of the payphone; • the primary universal service provider cannot continue to reasonably operate a payphone at	***Payphone removals*** Similar to option B, but the net social benefit test would not include criteria relating to commercial viability or covering costs through revenues. Instead, it would focus on the benefits to the community and the need for a payphone to assist with responding to an emergency.

Telstra may also remove the payphone where the site no longer meets the location criteria, where the is demonstrable evidence and community agreement that the local community no longer wants the payphone, where there have been significant or sustained costs because of repeated misuse and damage to the facility and where the health or safety of the public or Telstra staff is at high risk because of issues relating to the location of the payphone.	the site; or • the payphone is to be relocated. 'Net social benefit' and 'reasonably operating a payphone' are defined in similar terms to the use of these expressions in relation to payphone installations, but the net social benefit test includes a consideration of call usage patterns for the payphone.	
<u>Consultation on removals</u> Where the payphone to be removed is the only one at the site, Telstra will, before removing the payphone, consult the local community, site owner and local government authority. This includes posting a notice in the facility for at least three months indicating Telstra's plan to remove the facility and inviting comment. Any comments from this consultation process will be taking into account in making a final decision.	***<u>Consultation on installation and removals</u>*** Clear criteria are set out for consultation on both the installation and removal of a payphone. In relation to installations, the provider must notify the relevant local government body and the owners and occupiers of all premises within 50 metres of the proposed site. Some exemptions are provided to reflect circumstances where payphones are installed under commercial agreements. In relation to removals, different notification and consultation requirements apply if the payphone to be removed is the last payphone at the site, or one or more other payphones will remain at the site. If	***<u>Consultation on installations and removals</u>*** Similar to option B, but the provider would need to notify a range of public interest groups. Furthermore, the provider should publish a notification in a local newspaper twice during the 42-day period. The same consultation requirements would apply even if a payphone to be removed would not be the sole remaining payphone at the site.

	the payphone is the last remaining at the site, the provider must display a notice on the cabinet at least 42 days prior to making a decision to remove the payphone, and must notify the relevant local government body and the owner or occupier of the land from which the payphone will be removed. It must also publish a notification in a local newspaper and on its website, and publish a payphone consultation document setting out its reasons for the removal (including its discussion of how the removal criteria apply to the specific proposal). If one or more payphones will remain at the site following the removal, the provider must still notify the relevant local government body and the owner or occupier of the land from which the payphone will be removed, and publish a notice on its website, but does not need to publish a notification in a local newspaper or publish a payphone consultation document.	
Complaints about payphone removals Parties can submit comments on a proposed removal in writing, and Telstra will acknowledge all comments in writing within 30 days of the end of the three	***Complaints about installation or removals*** The primary universal service provider must establish a complaint process and make details of the process publicly available and accessible. The provider	***Complaints about installation or removals*** Similar to option B, but review by the ACMA should be available for decisions about payphone installation as well as removal.

month notification period. Customers and members of the public 'have access to a formal complaint management process and can expect to be kept informed of proposed actions, expected timeframes, progress and the outcome of their complaint'. Complaints can be lodged over the telephone or on Telstra's website. Callers who are not satisfied with Telstra's response can seek internal review. If a caller remains dissatisfied, he or she may seek an external review by the Telecommunications Industry Ombudsman.	must provide low cost or free, and flexible means by which complaints may be made, either in writing or over the telephone. The provider must acknowledge receipt of complaints in writing within five working days of receiving the complaint, and must make a decision on the complaint within 20 working days of receiving the complaint. Where the complaint is about a payphone removal, a person may apply to the Australian Communications and Media Authority (ACMA) to review the provider's decision. A payphone must not be removed if a decision is subject to a complaint or an objection to the ACMA.	

5. Impact assessment

This section discusses the relative advantages and disadvantages of the three options and their impacts on stakeholders, namely Telstra as the current primary universal service provider and consumers as ultimate users and beneficiaries of payphones. Consumers may be further subdivided into sub-categories of people living in urban, rural or remote areas.

The criteria used in the assessment relate to the Government's objectives of establishing clearer requirements in relation to payphones and ensuring that requirements are enforceable.

Under option 1 (the 'do nothing' option), there will be no change in Telstra's current level of costs or compliance burdens.

Under option 2, Telstra will face some increased costs and compliance burdens. Increased costs would relate to the additional resourcing and effort required for Telstra to meet the installation and repair timeframe standards and benchmarks, especially in remote areas where it is well below the ACMA's informal 90% performance target. Regarding metropolitan and rural areas, there is likely to be very little additional cost for Telstra because it is regularly very close to meeting or exceeding the informal 90% performance target set by the ACMA.

Telstra argued in its submission on the draft instruments that the instruments contain rules that expand upon the current commitments relating to the supply of payphones in the SMP, and that the instrument dealing with rules for public consultation will 'significantly increase the level of consultation that must be undertaken by Telstra'. Telstra also argued it will need to implement a detailed system-based process with an enhanced reporting capability to ensure that maximum timeframes under the instruments are met. At present, Telstra regularly provides a range of management and reporting information to the ACMA on payphone fault repairs in geographical areas[14]. Telstra, however, did not quantify any possible additional compliance costs relating to reporting that it would incur, nor identify whether it would need to take on additional staff, or redeploy existing staff, and the possible costs involved.

Against these possible additional costs to Telstra, under its agreement with the government, from 1 July 2012 the TUSMA will pay Telstra $40 million per annum for the supply, installation and maintenance of payphones. Accordingly, Telstra's additional costs will be offset by this funding contribution. This is a much greater sum than the approximately $13.8 million Telstra currently receives for the provision of payphone services as the primary universal service provider.

Under option 3, Telstra is likely to face increased costs to meet tighter remote area benchmarks and timeframes, principally relating to resourcing to allow the expeditious movement of repair staff and material. Again, in its response to the draft payphone instruments, Telstra did not identify nor quantify any possible increases that may result from meeting timeframe standards and benchmarks. Its system costs are

[14] www.acma.gov.au/WEB/STANDARD/pc=PC_300423

likely to be one-off enhancements to existing management and reporting arrangements and therefore the same as under option 2.

6. Assessment of options

6.1 Option 1 – no change – leave Telstra's obligations as set out under the SMP

Advantages:

- This option has the lowest cost impact on Telstra and also leaves its regulatory compliance burden unaltered.
- This option promotes self-regulation.

Disadvantages:

- The option does not address the low service quality that has been identified, over a number of years, under Telstra's SMP. In particular, it does not provide a mechanism for ensuring Telstra improves its performance in meeting fault repair timeframes, and does not set clear criteria that Telstra must adhere to when it installs or removes a payphone.
- As a consequence, the option does not fully address consumer interests in lifting payphone fault repair standards, and in having clearer requirements around payphone installation and removal.
- The option would also limit the ACMA's powers to prevent payphone removals, as those powers (under section 12EI of the Act) are invoked if there has been a breach of an instrument made under section 12EF or 12EG. If no instruments are made, the ACMA cannot prevent a removal.
- A lack of clear consultation requirements in the SMP creates an information asymmetry, leading to uncertainty on the part of consumers regarding the access and input they have to Telstra decision-making on payphone location and removals.

Whilst imposing no additional regulatory cost or burden on Telstra, continuing with the arrangements under the SMP is not sufficient to ensure improvements to payphone connections and fault repair performance as the SMP commitments are phrased as 'best endeavours' commitments – e.g., Telstra promises to repair payphones in urban areas in one day, but only has to use its best efforts to do so. Consequently, if it does not meet the timeframe it has not breached any commitment. The SMP also does not cover a number of standards set out in the payphone instruments proposed under Option 2 (e.g. complaints handling and detailed consultation over the removal of payphone) and also does not contain benchmark standards or performance benchmarks.

6.2 Option 2 – provide stronger and clearer standards, rules and benchmarks but base them on existing technical standards and timeframes in the SMP to limit the additional costs and compliance burden on Telstra

Advantages:

- This option provides clearer standards around:
    - the characteristics of payphones;
    - maximum timeframes for installing a payphone;

- maximum timeframes to rectify faults;
- benchmark timeframes for rectifying faults;
- rules for areas or places where payphones should be located, and criteria that must be met if Telstra does not wish to install a payphone in such a place or area;
- rules for removing payphones, and criteria that must be met before Telstra can remove a payphone;
- rules for the public consultation that must be undertaken before installing or removing a payphone; and
- rules for the process for handling complaints about payphone removals.

- Some standards will also be stronger than currently set out in the SMP. For example, at present benchmarks for meeting fault repair timeframes have been established as informal targets by the ACMA and are not enforceable. One of the instruments will establish enforceable benchmarks. Similarly, the SMP does not provide clear criteria that Telstra must consider when it removes or installs a payphone. The instruments will set out such criteria.
- All standards, rules or benchmarks will be enforceable, providing Telstra with a clearer incentive to meet them than is currently the case for the commitments in the SMP.
- By basing standards and timeframes on those set out in the SMP, Telstra's actual costs and compliance burdens will be contained. In particular, timeframes for installing new payphones will be based on those set out in the SMP, and technical requirements will reflect existing standards and equipment that have been agreed by industry via the Communications Alliance *Accessibility of Payphones Industry Guideline: G630:2006* [15].
- Where new requirements are introduced, such as new maximum fault repair timeframe standards and benchmarks, the instruments allow for longer timeframes during the first transitional period and for different timeframe standards and benchmarks to be set for urban, rural and remote areas. These also minimise the compliance costs Telstra faces while nonetheless promoting consumers' interests in receiving more reliable payphone services.
- Establishing clear procedures for consumer consultation, review and complaint-handling will significantly address current problems of information asymmetry. Consumers will benefit from a clearly understood process that provides for input into payphone siting and removal decisions, and a review/complaint-handling process where decisions may be questioned. Specific criteria relating to who may be consulted and the form in which review and complaint requests are made, including timeframes, limit Telstra's costs by ensuring only affected consumers have input to siting/removal decisions and eliminating the possibility of vexatious complaints.

Disadvantages:

- This option will require Telstra to enhance existing processes to improve its reporting and performance in repairing payphones. It will likely require Telstra to engage new staff or re-deploy or re-train current staff, and to undergo one-off management and reporting system enhancement costs.

[15] www.commsalliance.com.au/__data/assets/pdf_file/0015/2535/G630_2006.pdf

- Consultation and review/complaint-handling processes will likely affect Telstra's revenue, albeit to a small degree. Delays in installing a payphone may subsequently delay the commencement of a revenue stream from a profitable payphone. In contrast, delaying the removal of a non-profitable payphone subsequently prolongs the losses such a payphone incurs.

6.3 Option 3 – provide much stronger and clearer standards, rules and benchmarks, with a focus on maximising consumer welfare

Advantages:

- This option provides clearer standards around:
  - the characteristics of payphones;
  - maximum timeframes for installing a payphone;
  - maximum timeframes to rectify faults;
  - benchmark timeframes for rectifying faults;
  - rules for areas or places where payphones should be located, and criteria that must be met if Telstra does not wish to install a payphone in such a place or area;
  - rules for removing payphones, and criteria that must be met before Telstra can remove a payphone;
  - rules for the public consultation that must be undertaken before installing or removing a payphone; and
  - rules for the process for handling complaints about payphone removals.
- These standards would, in some cases, be stronger than under option 2. Telstra may be required to invest in new equipment (that provides functionality over and above existing equipment than is currently available, for example, to provide a broader range of languages for payphone instructions from which consumers, who use a language other than English, can choose) and may be required to consult more widely when it installs or removes a payphone, to include less-affected (but nevertheless, affected) consumers.
- All Australians, no matter where they live, would receive the same installation and fault repair timeframes, and Telstra would be required to meet the same fault repair benchmarks in all regions.
- All standards, rules or benchmarks will be enforceable, providing Telstra with a clearer incentive to meet them than is currently the case for the commitments in the SMP.
- More expansive consultation requirements and more in-depth review and complaint handling processes would likely result in increased payphone availability (through increasing the number of potentially-affected consumers consulted, likely leading to more installation requests and possibly reducing the scope for removals).

Disadvantages:

- This option would impose substantial increased compliance costs on Telstra. The level of resourcing required to meet the same fault repair timeframes in rural, remote and urban areas would likely require further investment by Telstra. Such costs would take the form of establishing or maintaining sufficient installation and maintenance resources and staffing to meet the rapid deployment required to meet timeframes in rural and remote areas. The 'downtime' and subsequent uneconomic use of labour and capital of underutilised resources imposes increased costs on Telstra. Allocating of increased costs amongst all its payphones could lead to increased prices for consumers overall[16] or a reduction in service standards and quality in other areas of its business.

- Requiring Telstra to invest in new equipment to provide enhanced (yet not necessarily critical) functionality would be a disproportionate response to the issue. Similarly, more extensive consultation and review-complaint-handling requirements would likely provide only marginal benefits in terms of meeting consumer demand for payphone services. Rather, such requirements would be onerous, and unnecessary, given that targeted consultation could deliver the same outcomes.

7. Consultation

On 15 August 2011 the government called for submissions on draft instruments. In total, seven submissions were received.

Overall, there was clear support in the submissions for clearer and stronger payphone standards and for these standards to be enforceable. Telstra submitted that the draft instruments, if made, would increase its costs and compliance burden; however, no quantitative information was provided in support of its claims. The Australian Communications Consumer Action Network argued that, for reasons of equality, much stronger standards should be imposed, including setting the same maximum repair timeframes and benchmarks for all areas of Australia, and the same installation timeframes for all areas (where there is no ready access to available infrastructure). ACCAN also submitted that Telstra should be required to notify the ACMA when circumstances beyond its control prevent it from complying with a standard. Furthermore, it argued that more extensive consultation requirements should be imposed.

The Centre for Appropriate Technology and the Central Land Council also queried setting the benchmark for meeting timeframes for repairing faults in remote areas at a level lower than the urban and rural benchmarks. Both also highlighted the importance of public payphones in areas where there is inadequate mobile phone coverage.

BoysTown highlighted the importance of payphone services to young people seeking help in times of crisis, and submitted that enhancing or at least maintaining current levels of community access to public payphones should take precedence above any commercial or business related factors.

The Queensland Government highlighted the social impact of decisions to remove payphones in areas where alternative telecommunications facilities are inadequate or costly, and submitted that this should be taken into account when payphones are

[16] Not including prices that are subject to price controls under the *Telstra Carrier Charges—Price Control Arrangements, Notification and Disallowance Determination No. 1 of 2005*

removed. It also raised concerns regarding Telstra's current performance in repairing payphones in rural and remote areas. The Queensland Government proposed that the maximum timeframes for installing new payphones, when there is no ready access to available infrastructure, should be four months in rural areas and six months in remote areas. This compares to timeframes of six months in rural areas and nine months in remote areas proposed in these draft instruments.

The government also considered advice from the ACMA on the draft instruments.

8. Conclusion

Option 1 imposes no new costs on Telstra, but does nothing to raise Telstra's performance in repairing payphone faults (especially in rural or remote areas) and in providing greater clarity and certainty over when Telstra does or does not have to install a payphone and when it will be able to remove a payphone. It also would not strengthen the consultation requirements Telstra must comply with in installing or removing a payphone, and would not set out a clear process for addressing complaints about payphone removals. The Parliament of Australia, in conferring powers upon the Minister to make standards, rules or benchmarks in relation to payphones, has determined that the existing regulatory settings are inadequate and that they should be changed.

Option 3 would ensure that much stronger standards and rules are imposed on Telstra, including rules in relation to payphone installation and removal, consultation and complaints handling and payphone performance standards. All Australians would receive the same maximum timeframes for installing and repairing payphones, and Telstra would have to meet the same benchmarks in relation to fault repair timeframes. Accordingly, maximum repair timeframes could be set at (say) 10 days in all areas, but benchmark repair timeframes would be set at one day for urban, rural and remote area payphones. The draft instruments released in August 2011 proposed that the benchmark should be set (following a six month transitional period) at 90 per cent for urban and rural areas and 80 per cent for remote areas – in other words, Telstra must repair 80 per cent of payphone faults in remote areas within three days. Under option 3, Telstra would need to repair 90 per cent of payphone faults in remote areas within one day.

The problem with option 3 is that requiring Telstra to meet the same timeframes in all areas of the country disregards other factors, such as the nature of Australia's geography, the dispersed nature of payphones in regional, rural and remote areas and the resource implications involved in maintaining such payphones. Timeframes for installing payphones, when new infrastructure is required, are higher in remote areas because it can take a longer period of time to build the additional infrastructure needed to power a payphone and support payphone carriage services. The government's aim has been to set standards so that payphones are reasonably accessible throughout Australia, and then to require Telstra to improve its performance in repairing payphones. In proposing to set the benchmark at 80 per cent for remote areas, the government was attempting to impose a stronger standard on Telstra (which, as recent figures show, has been operating at a little over 60 per cent in terms of its performance in repairing payphones in remote areas[17]) and at the same time to limit the costs and compliance burden on Telstra. The lower benchmark compared to that applied to metropolitan and regional areas recognises that extreme or seasonal weather events could negatively impact Telstra's ability to meet the higher benchmark figure in these areas. Imposing the same benchmark for remote areas could lead Telstra to devote considerable resourcing to payphones, which could raise costs for consumers overall (through allocating costs amongst all payphones) and/or lead to lower service quality in other areas of Telstra's business. Given the declining usage of payphones and the increasing penetration of mobile phones, this option could be a disproportionate policy response.

Option 2 sets clearer and stronger requirements on Telstra in relation to payphone fault repairs, installation and removal, public consultation on removal and complaints handling. It will impose additional costs and compliance burdens of Telstra, some of which will be ongoing. However, by using, where feasible, the timeframes set out in the SMP, the option limits Telstra's need to amend its existing processes and thereby increase costs. The key requirements that will lead to additional costs for Telstra are the new maximum repair timeframes and the obligation to meet or exceed benchmarks in relation to fault repair timeframes, as well as the more extensive public consultation requirements when Telstra installs or removes a payphone. These requirements have been targeted at the areas of Telstra's performance which have caused the greatest concern in the past (i.e. lower service quality in rural and remote areas), and which are considered will best provide a consumer safety net.

9. Implementation of the preferred option

On balance, option 2 is preferred because it strikes the appropriate balance between providing stronger and clearer standards (particularly in areas experiencing lower service quality) whilst not significantly increasing compliance costs to Telstra. Option 2 will be implemented through legislative instruments made under sections 12ED, 12EE, 12EF, 12EG and 12EH of the Act. As legislative instruments, they will be subject to the requirements of the *Legislative Instruments Act 2003*, including future review.

[17] *Telecommunications Performance Bulletin 2010-11*, Australian Communications and Media Authority, 2011, p.6