

## Resolution of Council

**8 April 2019**

### **Item 11.4**

#### **Telstra Payphones**

Moved by Councillor Chung, seconded by Councillor Forster –

It is resolved that:

(A) Council note:

- (i) Telstra has a Universal Service Obligation under the Telecommunications (Consumer Protection and Service Standards) Act 1999 (TCPSS Act) to provide equitable access to payphones;
- (ii) Part 9, clause (1)(a) of the TCPSS Act regarding the Universal Service Obligation to provide reasonable access to payphones for the provision of Standard Telephone Services on an equitable basis does not include an unfettered right for Telstra to install additional infrastructure in association with that Universal Service Obligation;
- (iii) Telstra and JCDecaux are in dispute with a number of city councils around Australia about the installation of public payphones with significant private advertising billboards and other telecommunications infrastructure;
- (iv) Telstra appears to be using its Universal Service Obligation as a 'sword' to overcome any requirement to obtain approvals from city councils to erect unnecessary payphones to be used as unregulated and unwanted billboards;
- (v) any installation of this unwarranted and unapproved infrastructure that contains telephony, data and other communications infrastructure would give Telstra an unfair advantage over its competitors;
- (vi) installation of public payphone services which have additional infrastructure attached cannot be considered a Low Impact Facility; and

- (vii) telecommunications providers have a right under current legislation to install certain communications infrastructure without requiring planning permissions from Council. This will allow multiple 5G small cell installations to occur without Council guidance or permissions;
- (B) the Chief Executive Officer be requested to:
- (viii) write to the Federal Minister for Communications, The Hon Mitch Fifield MP and the Shadow Minister for Communications, Michelle Rowland MP:
    - (a) seeking a determination (or a pledge to make a determination) under the Telecommunications (Low-impact Facilities) Determination 1997 that the installation of public payphones which allow for services and equipment other than that for Standard Telephone Services and include devices or facilities for other uses, is not used solely for carriage and content services and which displays commercial advertising other than advertising related to the supply of Standard Telephone Services cannot be considered as Low Impact Facilities;
    - (b) requesting amendments to the TCPSS Act to provide that Telstra must seek appropriate planning approvals for the installation of public payphone services under its Universal Service Obligation, such installations to contain only necessary payphone (Standard Telephone Service) infrastructure and for which approvals cannot be reasonably refused;
    - (c) seeking a determination (or a pledge to make a determination) under the Telecommunications (low-impact facilities) Determination 1997 that the installation of 5G infrastructure cannot be considered as Low Impact Facilities; and
    - (d) seeking amendments to legislation to ensure carrier agnostic 5G technology;
  - (ix) write to the Chairman of the Australian Competition and Consumer Commission, Mr Rod Sims, expressing Council's concern and seeking a determination that the use of the Universal Service Obligation by Telstra to install payphones which contain services other than Standard Telephone Services is anti-competitive; and
  - (x) write to the Chief Executive Officer and Managing Director of Telstra expressing the elected Council's strong view that any use of the Universal Service Obligation to install payphones with services other than Standard Telephone Services is not permissible under legislation and will be strongly resisted; and
- (C) Council establish a working party of Councillors supported by administrative and expert staff to work cooperatively with other Councils to:
- (i) make representations to the Federal Minister for Communications, the Hon. Mitch Fifield MP, and the Shadow Minister for Communications, Michelle Rowland MP, seeking a determination as described at B(i)(a), and (b) and (c) above;

- (ii) provide a unified and focussed policy approach to the roll out of 5G infrastructure in the City of Sydney and other Council areas;
- (iii) advocate strongly for the City of Sydney and other Councils to have the power to approve the location and installation of 5G infrastructure within local government areas; and
- (iv) advocate strongly for the City of Sydney and other Councils to be able to install carrier agnostic 5G infrastructure throughout individual local government areas.

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Note – the motion above was not carried. The resolution below, as varied by consent, was carried –

It is resolved that:

(A) Council note:

- (i) Telstra has a Universal Service Obligation under the Telecommunications (Consumer Protection and Service Standards) Act 1999 (TCPSS Act) to provide equitable access to payphones;
- (ii) Part 9, clause (1)(a) of the TCPSS Act regarding the Universal Service Obligation to provide reasonable access to payphones for the provision of Standard Telephone Services on an equitable basis does not include an unfettered right for Telstra to install additional infrastructure in association with that Universal Service Obligation;
- (iii) Telstra and JCDecaux are in dispute with a number of city councils around Australia about the installation of public payphones with significant private advertising billboards and other telecommunications infrastructure;
- (iv) Telstra appears to be using its Universal Service Obligation as a 'sword' to overcome any requirement to obtain approvals from city councils to erect unnecessary payphones to be used as unregulated and unwanted billboards;
- (v) any installation of this unwarranted and unapproved infrastructure that contains telephony, data and other communication infrastructure would give Telstra an unfair advantage over its competitors;
- (vi) installation of public payphone services which have additional infrastructure attached cannot be considered a Low Impact Facility; and
- (vii) telecommunications providers have a right under current legislation to install certain communications infrastructure without requiring planning permissions from Council. This will allow multiple 5G small cell installations to occur without Council guidance or permissions;

(B) the Lord Mayor be requested to:

- (i) write to the Federal Minister for Communications, The Hon Mitch Fifield MP and the Shadow Minister for Communications, Michelle Rowland MP:
  - (a) seeking a determination (or a pledge to make a determination) under the Telecommunications (Low-impact Facilities) Determination 1997 that the installation of public payphones which allows for services and equipment other than that for Standard Telephone Services and include devices or facilities for other uses, is not used solely for carriage and content services and which displays commercial advertising other than advertising related to the supply of standard telephone services cannot be considered as Low Impact Facilities;
  - (b) requesting amendments to the TCPSS Act to provide that Telstra must seek appropriate planning approvals for the installation of public payphone services under its Universal Service Obligation, such installations to contain only necessary payphone (Standard Telephone Service) infrastructure and for which approvals cannot be reasonably refused;
  - (c) seeking a determination (or a pledge to make a determination) under the Telecommunications (low-impact facilities) Determination 1997 that the installation of 5G infrastructure cannot be considered as Low Impact Facilities; and
  - (d) seeking amendments to legislation to ensure carrier agnostic 5G technology;
- (ii) write to the Chairman of the Australian Competition and Consumer Commission, Mr Rod Sims, expressing Council's concern and seeking a determination that the use of the Universal Service Obligation by Telstra to install payphones which contain services other than Standard telephone Services is anti-competitive;
- (iii) write to the Chief Executive Officer and Managing Director of Telstra expressing the elected Council's strong view that any use of the Universal Service Obligation to install payphones with services other than Standard Telephone Services is not permissible under legislation and will be strongly resisted;
- (iv) write to the NSW Premier, The Hon Gladys Berejiklian MP, requesting that she raise Council's concerns with the Council of Australian Governments (COAG) and seek the outcomes identified in (B); and
- (v) urgently raise Council's concerns with the Council of Capital City Lord Mayors (CCCLM) and request that the CCCLM again write to the Federal Minister for Communications, The Hon Mitch Fifield MP and the Shadow Minister for Communications, Michelle Rowland MP seeking the outcomes identified in (B); and

- (C) Council establish a working party of Councillors supported by administrative and expert staff to work cooperatively with other Councils to:
- (i) make representations to the Federal Minister for Communications, the Hon. Mitch Fifield MP, and the Shadow Minister for Communications, Michelle Rowland MP, seeking a determination as describe at B(i)(a), and (b) and (c) above;
  - (ii) provide a unified and focussed policy approach to the roll out of 5G infrastructure in the City of Sydney and other Council areas to ensure maximum public benefit and minimal impact on the public domain;
  - (iii) advocate strongly for the City of Sydney and other Councils to have the power to approve the location and installation of 5G infrastructure within local government areas; and
  - (iv) recommend changes to legislation that will ensure 5G technology is rolled out through carrier agnostic infrastructure to avoid the proliferation of small cell installations from multiple carriers cluttering our public domain and streetscapes.

The motion, as varied by consent, was carried unanimously.

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