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playing an
active role in
keeping our
communities
connected. >



Review of the Telecommunications Act 2001

Local Government New Zealand's submission to Ministry of Business,
Innovation and Employment

3 November 2015

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We are. LGNZ.

LGNZ is the national organisation of local authorities in New Zealand and all 78 councils are members. We represent the national interests of councils and lead best practice in the local government sector. LGNZ provides advocacy and policy services, business support, advice and training to our members to assist them to build successful communities throughout New Zealand. Our purpose is to deliver our sector's Vision: "Local democracy powering community and national success."

This final submission was endorsed under delegated authority by Lawrence Yule, President, Local Government New Zealand.

Introduction

Thank you for this opportunity to submit on the consultation document *Regulating communications for the future – Review of the Telecommunications Act 2001*. This submission has been prepared on behalf of New Zealand's local authorities.

LGNZ and its member councils have welcomed the Government assisted roll-out of ultrafast broadband across New Zealand. Broadband is increasingly seen as an essential service, like water and electricity, and provides numerous economic, educational, health and social benefits for communities. Communities are increasingly reliant on online services and information, with councils across the country providing an increasing amount of information and services electronically.

Better broadband, in particular, improves business productivity and will help to attract businesses to our regions. This is in line with LGNZ's strong focus on regional development and growth across all of New Zealand. It is also important that our telecommunication infrastructure and services are equal, if not better, than like nations, to allow New Zealand businesses to compete in global markets.

Councils have been extensively involved in the recent extension of the Ultra-Fast Broadband (UFB) and Rural Broadband Initiative (RBI) programmes and the establishment of the Mobile Black Spot Fund (MBSF). LGNZ and councils have worked closely with the Ministry of Business, Innovation and Employment (MBIE) to help determine where funding should be deployed and how councils can assist with the roll-out. However, LGNZ notes that there is limited government funding for these programmes, so not all communities will benefit.

It is vital that the Government explore how broadband can be deployed to all communities across New Zealand. This is particularly important if the Government intends to achieve its recently announced targets for rural broadband in 2025:

- 99 per cent of New Zealanders able to access broadband at peak speeds of at least 50 Mbps (up from 97.8 per cent getting at least 5 Mbps under RBI); and
- The remaining 1 per cent able to access to 10 Mbps (up from dial up or non-existent speeds).¹

We support the establishment of targets for rural broadband, but encourage the Government to commit to a minimum speed, rather than networks capable of supporting speeds "up to 50 Mbps". The targets will also need to be regularly reassessed to ensure they are adequate in 2025.

We note that the divide between the urban and rural broadband experience is currently improving, but it is important that the technology keeps up with demand and is able to deliver the speeds that are promised. The review of the

¹ Ambitious target set for rural broadband, Hon Amy Adams,
<http://www.beehive.govt.nz/release/ambitious-target-set-rural-broadband>

Telecommunications Act 2001 (“the Act”) is an important step in ensuring that the Government has the right framework in place for future telecommunications investment and deployment.

Purpose of regulatory regime

LGNZ supports the Government’s long-term vision for the communications markets and the proposed principles that should govern the regulatory regime.² It is particularly important that the regulatory regime is future-proofed by taking a technology neutral approach and that it supports all New Zealanders in achieving connectivity.

We agree that there is a need to update the purpose statement of the Act (section 6.1.1 of the consultation document). We support the need for continued pressure on competition, but equally note the importance of continued investment in the network and the incentivising of supplier innovation to ensure the best outcomes for the end-user. We encourage MBIE to consider a purpose statement that puts the end-user at the forefront, for example

“To ensure the long-term benefit of end-users through the promotion of:

- competition, or outcomes consistent with outcomes in competitive markets; and
- promote growth, innovation and investment in communications markets and markets that are enabled and supported by communications technologies.”

In addition, we support the investigation of a more comprehensive “Communications Act” that would consolidate all of the economic regulation for the communications sector. This would better future-proof the regulatory framework by moving away from the traditional service labels, and reflecting the role that convergence is having on the sector.

Pricing

LGNZ supports the assertion that both copper and UFB fixed line networks have enduring natural monopoly characteristics and therefore some form of economic regulation around both price and quality is required. After the roll-out of UFB 1 and 2 and the expiration of wholesale price caps, LGNZ considers that it is important that investors have incentives to:

- continue to invest, particularly in areas where there is not yet quality coverage via UFB or RBI, and where connection may be more costly (supporting the objective of regional development); and
- continue to innovate and upgrade services, to reflect changing consumer demands.

From a council and community perspective, it is also important that the risk of “price shocks” is reduced, as the wholesale price cap is removed. For this reason, it is important that Chorus and Local Fibre Companies (LFC) are subject to the same type of economic price-quality regulation. The Commerce Commission must also provide clear messages about its planned intervention in the UFB market post 31 December 2015 (whether this is proactive intervention or the regulatory backstop within a set timeframe), to provide certainty for both consumers and investors.

Utility-style regulation

LGNZ believes there is merit in further investigating the application of utility-style regulation, particularly the building blocks model (BBM) methodology, to both UFB and copper fixed line services. It is important that

² Sections 1.2 and 1.3 of the consultation document.

all stakeholders can see how it might be applied and what the implementation process could be.

We note the BBM approach has been used extensively in the gas and electricity sectors that are regulated under Part 4 of the Commerce Act. For this reason, it may be better understood (and be perhaps less debated) by stakeholders. In addition, the Commerce Commission has built up its experience in the application of this methodology.

However, the BBM approach is not without its faults. The BBM approach relies heavily on demand forecasts, which may be difficult in the fast moving telecommunications market. Experience in the electricity sector has also shown that the various inputs for the BBM have been subject to extensive industry debate and costly and time-consuming appeals through the Courts. LGNZ notes that during these appeals, it is very difficult and costly for the end-consumer or consumer advocacy groups to get involved. There is often a risk of significant wealth transfer between consumers and the regulated business from these decisions, and consumers are reliant upon the Commerce Commission to advocate on their behalf. If utility-style regulation is pursued for UFB fixed line services, LGNZ recommends that MBIE investigate avenues for ensuring end-user representation is incorporated into the decision-making process.

Mobile competition and radio spectrum

In LGNZ's view, the regulatory regime for the mobile market must have a clear focus on increasing coverage, and to support this, promote the option of infrastructure sharing or co-location in rural areas.

Investment and subsequent coverage by the three mobile networks has increased considerably in recent year. However, there are still rural areas where there is no coverage and limited interest in investment. In many of these cases, it would be inefficient for companies to separately invest in infrastructure to serve small communities. However, if the Government is to achieve its rural broadband targets for 2025, priority must be given to addressing these communities who do not share in the current benefits possible from quality broadband. It will be important for MBIE to assess if the current arrangement is providing strong enough incentives and to ensure the corresponding tools to achieve infrastructure sharing or co-location are in place.

Migration from copper to fibre

LGNZ supports a customer-led migration from copper to high-quality UFB, as the roll-out of fibre is completed across the selected cities and towns in New Zealand. However, it will be important that the government put in place the right incentives to encourage Chorus to:

- make the optimal decisions around copper network decommissioning;
- continue to develop, maintain and upgrade the copper network (for services such as VDSL) in rural areas that are unlikely to have UFB deployment; and
- ensure that consumers do not continue to pay for copper, once it has been withdrawn.

It is currently unclear how ongoing development in the rural copper network will be incentivised, raising concerns with many of our rural council members and communities. We consider that it is essential that the migration to fibre does not further exacerbate the digital divide between urban and rural communities, and hamper regional growth.

Clearly defining the conditions for when the copper network can be withdrawn will be critical. We support the example measures such as:

- **a required notification period:** there must be a clear, well-signalled phase-out plan for affected

communities;

- **the availability of a basis UFB package equivalent to the basic copper service**, whether this be via fibre or alternative technologies; and
- a **threshold** for UFB uptake.

Phase out conditions will be particularly important for rural areas, where communities may be reliant on a mixture of fibre, copper and/or wireless services to supply broadband to their homes and businesses. Clarity will be needed around the phase out of copper, where communities are subsequently to be serviced by mobile towers (as being deployed through RBI). Copper networks in many rural areas may in fact provide a more reliable service and be preferred by communities. It is also important that no outlying communities suffer a drop in broadband quality due to the withdrawal of copper from a neighbouring area.

Other comments

LGNZ has minor comments to make on the following two areas.

Telecommunications Service Obligations (TSO)

LGNZ considers that it is critical that the government maintain the TSO, to ensure all New Zealanders have a basic level of access and connectivity to their communities. We recommend that the TSO now be broadened to include a basic level of broadband, given that broadband is now regarded as an essential service. We recommend the specification of a minimum level of upload and download speed that is adjusted over time to reflect technology and customer demand.

Customer representation

LGNZ believes there would be value in scoping out the requirements for a mandatory end-user complaints and disputes scheme, and further codes of practice for the telecommunications sector such as product disclosure. The Telecommunication Dispute Resolution (TDR) scheme is a positive step for the sector, but does not cover all retail service providers. With broadband increasingly considered an essential service, it is important that end-users have the assurance and support that is available to consumers in other sectors (i.e. gas and electricity).

In regards to customer representation,³ LGNZ believes that there are sufficient agencies in place to advocate for the views of end-users. The Telecommunications Users Association of New Zealand (TUANZ), InternetNZ and Consumer NZ represent a relatively broad spectrum of consumers and provide effective method for advocating for the end-user. They are however, less resourced, than the telecommunications industry sector suppliers. For this reason and as noted above, it will be important to ensure that these consumer advocacy bodies have suitable support to comment on the regulatory regime selected for UFB and copper fixed line services.

³ Section 6.5.2 of the consultation document.