NZ COMMUNICATIONS LIMITED

Response to the Ministry of Economic Development:

Discussion paper on Telecommunications Service Obligations regulatory framework

VERSION FINAL
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TABLE OF CONTENTS

SUMMARY OF KEY CONCLUSIONS

- Increased mobile competition will positively impact the Local TSO with prices falling and NZ consumers benefiting from lower land line pricing as a consequence of cheaper mobile calls

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- Regulation of co-location will contribute to lower land line pricing as mobile operators substitute for land lines.

- The TSO discussion should not just focus on land line solutions. Mobile and land line are the same market - the telecommunications market.

- "Free local land line calling" is not free, it comes with a significant (and high by OECD standards) charge. The TSO industry structure has not served NZ consumers well as it has entrenched a land line monopoly. There is a false perception of value with free land line calling, however NZ consumers interests are better served by a more competitive mobile market - which will in turn create more competitive land line pricing.

- NZCL would like to focus on 2 primary themes
  - **The Local TSO** – the local line calling market is best served by vigorous mobile competition, which will deliver not only lower prices but also improved utility and innovation for consumers – as aggressive fixed to mobile substitution lowers prices and improves services.
  - **The Rural TSO** – this has been a legacy regulatory benefit which has entrenched a monopoly. This must be opened for tender with preference to qualified new operators who would benefit from the immediate scalability that such a large supply contract brings. The last 15 years the TSO has merely cemented an incumbent's position and has done little to prompt the use of wireless technology or in-fact reduce costs as cheaper deployment technologies have become available.

INTRODUCTION

NZ Communications Limited ("**NZCL**") thanks the Ministry for Economic Development for the opportunity to make submissions on questions outlined in its discussion paper on the Telecommunications Service Obligations regulatory framework.

Our primary focus with this activity is an explanation of policy changes that need to be made to ensure an OECD peer group level of fixed to mobile substitution takes place in NZ and relevant mobile market regulation occurs to stimulate sustainable mobile market competition

NZCL has reviewed TSO discussion document questions and answers the questions in this submission.

EXECUTIVE SUMMARY

TSO Issues

The MED needs to consider mobile competition in its TSO review.

NZCL is supportive of removing the TSO land line free calling – it will stimulate more competition and lower mobile costs.

NZCL believes the rural TSO must be put to competitive tender that will serve both rural and urban communities better.

A new infrastructure investor such as NZ Communications should not be obliged to cross subsidise Telecom NZ to provide a rural service under the current regime. There is evidence that the subsidy does not end up with efficient increased rural investment or service provision.

Rural lobby groups have been misled and captured by the Telecom investment argument and have failed to consider alternatives to their significant communications needs which are critical to the New Zealand economy.

The TSO has been a subsidy to Telecom. For this reason Telecom should not qualify to re-supply.

Co-location is the major barrier to building low cost competitive telecommunication networks – an improvement in the co-location regulatory environment will in turn help the TSO local service costs as more mobile phone network operators compete.

The New Zealand Telecommunications industry has a long way to go to catch up with its OECD peer group. For this reason Telecom should not qualify to provide the TSO service, and a new consortium should be considered.

The NZ industry must focus on "net investment" not gross investment, (i.e. investment after depreciation charges). This is because its net investment the community is interested in , there is too much confusion in the NZ telecommunications community of gross investment

New Zealand needs challenger networks with scale and nationwide capability.

Wi Max spectrum allocation and increased Mobile competition should dramatically impact the TSO. NZCL would like to highlight the need for continued co-ordination between both the Commerce Commission and the MED in its enquiries as the telecommunications industry is restructured. Co ordination, will match up the policy outcomes from the MED, with the competitive reality of implementation at the Commerce Commission. Many of the Commerce Commission problems come from the policy settings, more co-ordination will help speed up telecommunications reform in NZ

New Zealand Telecommunications Competition Issues

The TSO is currently un-contestable- illustrating the failure of the past policy and inhibiting fresh innovation.

The TSO has created a legislative monopoly provision of rural services in an un-contestable manner. This has entrenched Telecom's scale and dominance in a network industry whereby because of the 'network effect' the rural provision and national coverage component has held the rest of the competitors in the industry to ransom. What has scattered salt on the industry wound of the TSO has been the subsidy payable from competitors to Telecom whereby new entrants are subsidizing an incumbent's entrenched position.

The TSO must change, it must become contestable.

The MED must review the mobile phone industry's impact on the TSO as it is how local service costs will be reduced .

The MED must review the uncompetitive mobile industry and analyse the impact of the mobile industry on the local TSO obligation and understand that the fixed line industry has never competed with the mobile industry.

To not review the impact of the mobile industry on the TSO is to ignore the major contributor to falling communication costs and increased innovation.

NZCL is investing in New Zealand because there is an opportunity in the telecommunications and data markets. It believes that Telecom and Vodafone do not compete. Evidence of this lack of competition is explained by the ARPU and SAC differences between the two operators. NZCL believes the Commerce Commission should be measuring market share by revenue not by subscribers. Profitability is also a good measure of market power.

We reference the following table to illustrate the lack of competition[1]

Vodafone	**2004**	**2005**	**2006**	**2007**
ARPU Prepay	$ 30	$ 29	$ 28	$14
ARPU Post pay	$ 142	$ 150	$ 150	$81

[1] **[Vodafone plc website & JBWGS research]**

Telecom	2004	2005	2006	2007
ARPU Prepay ARPU Post pay	$ 8 $ 72	$ 9 $ 74	$ 10 $ 75	$7 $42

Legacy cell tower infrastructure must not be used to perpetuate market power associated with the TSO
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The NZCL believes that there is no other mobile phone market where the post paid ARPU's are so extremely different. This is evidence of little competition.

If Telecom was to have a price war with Vodaphone in the NZD $2.5 billion mobile market and fixed to mobile substation were to accelerate aggressively, it would destroy its NZD $5 billion land line monopoly. *This is the underlying concept that needs to be considered in the review of the TSO*.

PROCESS

In no other OECD mobile markets is there such a difference in basic operating metrics this proves the case that there is little competition

NZCL is concerned with the lack of international comparisons with the TSO paper. The TSO is at the core of the previous telecommunications regulatory environment. However to adjust one policy setting without simultaneously reviewing all the other issues which interplay with network development means a further protracted delay until all the other network linked items are sorted. For example there can be no rural 3G wireless competition until the 900 mhz spectrum monopoly is broken.

NZ has had significant barriers to building communications networks

These barriers need to be considered in the TSO review

Accordingly the TSO service provision should not automatically be granted to an incumbent, when a new entrant is equally if not more capable of supplying service and the corresponding benefit from the scale and business of rural service provision would have positive flow on effects for urban competition.

QUESTIONS :

TSO FRAMEWORK

Policy settings should simultaneously consider spectrum, mobile market issues, competition law and TSO – not to do so protracts the process of getting competition started.

3a How important is the KSO/TSO framework as a component of the overall regulatory regime of New Zealand for telecommunications services?

The TSO/KSO mechanism is the core regulatory DNA of the New Zealand telecommunications environment. It is the base ideology which cements the incumbency of Telecom New Zealand. It entrenches a monopolistic position and facilitates a regulated monopoly and rural service provision. It has been proved by 'Network Strategies' that TCNZ does not invest the full benefit of the TSO and in fact on 'net capex' basis the company has not even invested the depreciation allowance on new telecommunications infrastructure.The TSO is crucial part of the NZ regulatory environment

NZCL would like to see further international comparisons.

3b How effective has the TSO framework been in achieving the government's telecommunications objective of ensuring the delivery of cost efficient timely, and innovative telecommunications services on an on ongoing, fair and equitable basis to all existing and potential users?

The TSO has been a significant problem and has been a contributing factor to New Zealand's occupying bottom quarter of the OECD league tables.

NZ needs to be more ambitious for national competition. The Commerce Commission need to be consulted during the TSO process.

3c Would other policy mechanisms be more appropriate than TSO instruments to achieving the government's telecommunications objective going forward?

A competitive tender for rural service amongst qualifying New Zealand telecommunications infrastructure owners and infrastructure builders.

3d What are the strengths and weaknesses of the TSO framework?

Weaknesses:

1) It is not contestable
2) It entrenches the monopoly of Telecom New Zealand
3) It inhibits the development of mobile phone competitive telecommunications service providers
4) It has failed to stimulate investment in rural networks, competitive technologies, and failed to promote efficiency
5) It has had no sensitivity to consumer preference for mobile rather than fixed line calling
6) It has been a vehicle to confuse the government and the regulators on the actual cost of rural service provision

Strengths :

1) It has made a positive return for TCNZ shareholders and in turn assisted in keeping the New Zealand share market on international investors radar screens.

PURPOSE AND MARKET IMPACT OF THE LOCAL SERVICE TSO

The TSO was the old regulatory environment

4a How does the local service TSO contribute to advancing the interests of telecommunications users? By having rural provision it improves the value of the city network because the reach of services is nationwide [i.e. its not just the country consumer who is connected but the city consumer also benefits from being able to call the rural sectors]

With New Zealand's dominant rural and tourist industry it is essential for the country's general economic & social well being that there is good rural service.

4b Would the universal availability and affordability of local residential telephone services for households be better achieved another way? Yes, a more competitive mobile market would see a dramatic acceleration of fixed to mobile substitution which would create a market based service provision which would reduce costs. Mobile network equipment costs have fallen ten fold in the last ten years. Most OECD countries have approximately 50% of telecommunications air time on mobile networks. New Zealand is the bottom of the league tables with only 13% of total minutes on. (Italy has higher than 65% of all traffic on mobile) Even in Australia land lines revenue are dropping 7% per annum, in New Zealand they are flat.

The TSO must be put to competitive tender amongst qualifying new entrants.

By facilitating workable co-location on a 'rapid multi-access' basis insuring a nationwide rapid deployment of a third network would create a substantial uplift in fixed to mobile substitution. This would create downward pressure on fixed price land lines for the first time in New Zealand

Specific focus needs to be allocated to Commerce Act problems because the 1997 Saturn Telecom dispute precedent over pocket pricing has entrenched Telecom's monopoly.

4b What should be the focus of the local service TSO going forward? A market driven mobile society whereby mobile operators can compete with the fixed line. Currently average land line rentals are $45 a month. New Zealand Communications believes that that cost is enough to supply "all you can eat" local to local calling via mobile This will create competition to actively replace land line use. Consumers will benefit not only do to lower pricing but also because of the increased utility and innovation of mobile service provision.

The primary focus of the TSO should be a more competitive mobile market.

NZCL believes that rural service is crucial for the country's development, It also improves the value of urban service because of the network effect.

AVAILABITITY TO SERVICE

5a Does the local service TSO effectively address the gaps in the commercial market for the availability of telephone services? No. The TSO inhibits new network builders because many of the rural areas can be commercially covered by 900 MHz 3g services. We refer to the CEO of Vodafone New Zealand highlighting the competitiveness of 900mgz 3g in 'The Line' communication in May of 2007, whereby he explains that rural broadband service provision is effective in 900mhz 3G

5b Should the local service TSO requirements for service availability be retailed? No.

Its actually a lack of available co-location that has meant that local households are paying too much for service

5c Should geographic coverage requirements for the supply of TSO based services be extended to cover areas currently outside the TSO and why No. This TSO area should be made smaller and the MED should focus on insuring nationwide 3g competition thereby shrinking the rural TSO service area.

SERVICE PERFORMANCE

5a Should the existing performance measures be expanded including down to the geographic regional level to better ensure reliability of telephone service? if so what manoeuvres are recommended and why International comparisons should be made with equivalent service requirements of the OECD.

The Saturn Telecom dispute of 1997 needs to be reviewed as this decision halted network deployment in NZ, and the opportunity to have lower land line calling costs was halted because of pocket pricing.

Are their service measures which would better represent the aspects of the service performance which are of most importance to users In New Zealand the Ministry of Economic Development should consider bench marking the NZ TSO structure with that of similar countries specifically Scandinavian countries .

Should penalty performance rebates apply for non compliance by the local service TSO provider? *Yes*

Should there be reporting on the quality and capacity of network capabilities supplying TSO local service Yes, a lack of visibility and accurate third party data has enabled Telecom to extract monopoly rents from the rural area and other New Zealand infrastructure builders, such as NZ Communications, Telstra, Vodafone, Callplus, and Woosh have been unable to actively critique the costs of provision.

The focus of the Local TSO should be a competitive mobile market

Service reporting

5h Should information about TSO local telephone service supplied in commercially non viable areas be made publicly available by the TSO provider as part of its TSO requirements ? if so why ? Yes, this must be public so that other operators can bid for a tender for the supply of services in these nonviable areas and there can be a level of contestability that is brought to this monopoly. The 'Network Strategies' report illustrates that the public interest has not been upheld by Telecom NZ in the TSO.

900mhz 3G is a important development for rural service

Convergence and transition making of NGN

5l Should the gateway devices installed in customer's homes to support the supply of telephone service be required to have battery back up. If so why , and should there be a requirement that battery back up last for a specified period No, battery backup should be the choice of the consumer. Some consumers will not require the redundancy of the battery backup.

5l Should dial up internet access be discontinued for TSO local service if a bit stream equivalent (NGN version) is supplied as a replacement? Yes.

Competition items can not be considered in isolation -, the network effort needs consideration.

5m Do you have any concerns about aspects of Telecom's planned NGN local service? Yes. There is no focus on competitive aspects of the deployment an example of this is the use of DMR (digital microwave radio) vs. land line back haul.

TSO Charge of Unspecified Amount

6a Should the status quo prevail for setting the TSO charge compensating the Local Service TSO Provider for meeting TSO requirements? No, there are two different concepts. NZ has experienced an aggressive monopoly for 15 years that has suppressed innovation and competition, whilst hiding behind the façade of being the only rural provider. Local service and rural service should be distinguished by competitive markets and non competitive markets. The challenge of the regulator is to ensure that the TSO is really as small as possible covering less than 5% of New Zealand's population.

6b If the TSO charge is to remain an unspecified amount, should the prescribed methodology for calculating the TSO charge be changed? Yes, the TSO charge should be a competitive process and subject to open tender by pre-qualified bidders [bidders must be subject to a minimum requirement of having invested over NZD 100m dollars in NZ telecommunications infrastructure and an ability to provide the service. Telecom must simultaneously enter into interconnection with these providers.

Uncontested TSO Charge of Specific Amount

6c Should a specified amount TSO charge be applied for the Local Service TSO? No.

6d How should any such "specified amount" TSO charge be structured? Should there be fixed charge and variable charge components? Yes but this should be the function of a contestable process.

6e Should a TSO Charge of specified amount be linked to the Communications Producer Price Index (PPI) as a proxy cost standard for the telecommunications industry? The CPI link has failed the NZ consumer. The specified amount should be a function of the contestable bid.

TSO Provider Bearing All TSO Cost – No TSO Charge

6f Should the TSO Charge for Local Service be abolished? Yes , it is not in consumer's interest. The emphasis should be on more competition and fixed to mobile substitution.

6g What importance do you place on the merits and risks outlined for abolishing the TSO charge? NZ Comms does not believe any of the risks are serious enough to prevent the process of having contestability being a larger benefit to New Zealanders on a cost benefit basis.

Contested TSO Charge of Specified Amount

6h What importance do you place on the merits and risks outlined above for contestability in compensating the Local Service TSO Provider? The local TSO should be a function of mobile market competition providing a market outcome.

6i Do you agree that contestability can only be expected to bring net benefits in areas which are commercially non-variable? Yes

6j What form of contestability would best achieve the service objectives? All NZ infrastructure providers should be able to participate in an open tender for the service provision with full transparency of the current network status.

Linking Compensation and Investment

6k How should investment be linked to compensation of the TSO Provider for local telephone service? NO ?

6l What TSO requirements should be added to prevent the deferral of investment for capability renewal by the Local Service TSO Provider? –See the Commerce Commission Mobile market review dated 10th October 2006.

Much of the local TSO service discussion should be avoided by a competitive mobile industry creating a market based solution

6m Should a special fund be established for capability renewal of the networks supplying TSO local service? NO – More market forces in mobile markets should be brought to bear.

6n Who (e.g. a corporate trustee) should be responsible for such a fund? Should it operate on an "escrow" basis? The Telecommunications Regulator

Eligibility for Service

7a Should eligibility for TSO local telephone service be confined to purely residential use? Yes,

7b What are the merits of establishing a 'hybrid telephone service option' for home business use where a business is co-sited with a household in residential premises? This should be encouraged but going forward NZ needs to be more ambitious all consumers should have the same bandwidth availability as small business in the converged world households have the same requirements as small business as media and content delivery expands.

7c Should the incremental revenue for such a new TSO local service by channelled into investment in rural network infrastructure? Yes

7d What are the merits of applying option to all home business premises as opposed to confining the application to only those home business premises located in a rural area as defined by Statistics New Zealand rural definition? An ambitious definition needs to be applied households of the future will require the same band with as business today.

Price Cap

7e Should the CPI price cap be retained for commercially non-viable areas? No, market forces should be brought to bear by a tendering process. The MED needs to benchmark equip cost compression to become familiar with the dramatic fall of equipment.

7f Should the CPI price cap be retained for commercially viable areas where there is not yet full and effective competition? No

7g Should the price cap for commercially viable areas be removed where there is full competition? Yes

7h Should the retail charge for residential local telephone service continue to be capped through the Local service TSO deed? No

7l Should retail prices be controlled outside the TSO framework through regulations made under the Telecommunications Act? No. More effort needs to be focused on creating scalable nationwide competition

7j Should another policy mechanism be used to cap the price of residential telephone service? The policy mechanism should be network competition. All networks should be scalable and nationwide. The two dominate providers in NZ [Telecom and Vodafone] earn a substantial premium return on equity. The MED needs to focus on the Commerce Act barriers to entry and the failure of collocation on mobile towers. This has created large downward price pressure.

7k Do you agree with the factors listed for setting the retail price cap for local service? What is missing? What weight should be given to each? No

Free Local Calling

Visibility to other competitors of full TSO costs is important.

7l Does the option of free local calling for residential customer's present difficulties for development and growth of the broadband market? Yes, the landline is so profitable a closed network has developed and the surplus monopoly rent is used to cross subsidize and bundle other products, thereby creating a barrier to entry. More work needs to be conducted on international comparisons whereby effective free local calling in available at substantially lower pricing on all 'all you can eat' mobile phone bucket prices.

Geographic de-averaging is very dangerous as it creates pocket networks.

Price Rebalancing, De-averaging and Wholesale Services

7m Should retail line rentals for local telephone service be aligned with the degree of geographic de-averaging applied for pricing regulated wholesale services? No not until a 7 year period has expired in NZ whereby new network competition is stimulated.. Geographic de-averaging means that incumbents who have a built out network can legitimize pocket pricing or regional pricing differentials. This means that it is fundamentally harder for new entrants to overcome the network effect while building new infrastructures. Geographic de-averaging can not be permitted until new entrants have had an opportunity to build rural areas. Geographic de-averaging entrenches an incumbent by allowing them to exploit their significant market power in rural pricing

Geographic pricing should not be allowed until a new entrant has had an opportunity to build rural coverage

7n Should prices for local telephone service supplied in rural areas be rebalanced (to align prices closer to cost) more aggressively than the rate of CPI change? No not until a 7 year period has expired whereby competition has been given an opportunity to establish infrastructure in their rural areas.

7o How should any detrimental impact on the consumer affordability of local service due to price de-averaging be addressed? Not necessary if you don't use GDA.

Upfront Subscription Charges

7p Should the upfront charges for establishing telephone access connections be covered by the TSO requirements? No, new service is an implied real estate cost and the capital cost of service should come off the value of the rural real estate **[*if the entire community had to pay for rural service, rural service line costs, it is an implied real estate subsidy to rural land owners*]**

There is no need for a local price cap for local service.

What is needed is more regulation to un block bottleneck access services for a new mobile operator.

TSO Provider Gatekeeper Role

8a Should the gatekeeper role be performed by a government or non-government organisation and why? The gatekeeper role should be performed by the government self regulatory bodies have failed the NZ consumer. The TSO gatekeeper role should be managed by the government for the first 7 years. We evidence the repeated failures and inaction of the NAD and TCF as an example of what can happen when self regulatory bodies start playing with national assets.

8b Should the gatekeeper role continue to be performed under the Local Service TSO or be a new TSO instrument? A new TSO instrument

Emergency Call Information

8c Should all providers of telephone service in New Zealand be required to establish and maintain capability to identify caller location for emergency calls sourced by their subscribers? Yes

8d How should requirements for call information be phased in? Should they apply equally to both legacy telephone networks and next generation telephone networks? Yes, with a seven year moratorium

The TSO should be a competitive tender

8e ***Should the cost for establishing and maintaining call information capability for public telephone networks in New Zealand be borne by the carries operating those networks?*** This service should be a function of competitive tender and there should be at least 3 suppliers of the service. We refer to the superior British off Comm 118118 service whereby information services have become competitive and profitable.

8f ***How should minimum standards be set for the supply of call information? By invoking reserve regulation making powers and/or by an industry code of practice?*** Yes, this should be handled by the regulator at the ComCom.

Availability of Emergency Call Service

8g ***Should requirements for the quality and reliability of emergency call services be prescribed to apply uniformly across the telecommunications industry (TSO service and non-TSO service?)*** Yes,

8h ***Should the requirements for conveyance of emergency calls be prescribed through regulations under the Telecommunications Act, through and enforceable industry code of practice, or a combination of both?*** Yes

8i ***Should all telephone service providers in new Zealand (including those facilitating telephone calling through Internet access) be required to offer their subscribers the ability to make emergency calls?*** Yes

Lifeline Access

8j ***Should access lines be kept in an active state after service is relinquished to enable lifeline calls to be made?*** Yes

8k ***Should the supply of such lifeline connection be compulsory for all operators of public fixed telephone networks, irrespective of whether telephone access is by an analogue line or a VoIP bit stream on a digital line?*** Yes

8l ***Should this requirement be applicable to only cable (wire or fibre) fixed lines that reticulate dwellings and premises?*** yes

Upfront charges must be paid for by the end user. Otherwise urban customers are subsidising wealthy rural property developers

Availability and Adoption of Rural Broadband

9a ***Taking into account likely broadband user requirements in 3-5 year time, what do you consider will be the key broadband***

applications (e.g. email, web browsing etc.) for businesses and households? Broadband and mobile

The TSO must be managed by the government.

9b To what extent do you consider that the market will meet the broadband needs of rural users (including availability and affordability) in the next five years? New Zealand has a legacy capital expenditure deficit which will cost approximately 7 years to catch up until there are 3 competing wireless networks with national reach and economy of scale the 5 year time period is tight.

9c Do you consider there is a case for subsidy mechanisms to fund upgrading of rural broadband infrastructure, and if so, what mechanisms should or should not be considered, and why? NZCL would like to resubmit to the MED on this issue, once a more certain spectrum environment has been cemented in New Zealand.

TSO Role in Improving Broadband Connectively

9d What role do you think the TSO framework should have in accelerating the uptake of broadband access for New Zealand homes? Careful consideration should be given to the additional requirements on the TSO because a large broadband requirement further entrenches Telecom NZ as the only supplier of TSO services. Broadband access should only be added to the TSO after a 7 year build period. The MED should case study Sweden, Finland, and Denmark to review broadband deployment in rural areas.

9e How are these rules above for considering a broadband USO relevant to New Zealand? It will highlight the difference in network conditions for new entrants and highlight the reasons why more competition has not come to NZ

There needs to be more competition in information provision, an industry practise needs to be set up.

9f Are there other factors that need to be considered for a Broadband TSO? Mobile market provision

9g Should for the TSO provider for any broadband TSO be selected on a contestable basis? Yes it must be contestable, but preference should be given to a new entrant who meets specific criterion in order to break up the existing monopoly

Design Principles for TSO Instruments

9h Do you agree with these suggested guiding principles? NO they need more competition focus

9i Are there other factors which need to be consideration in shaping TSO requirements?

Responsibility for TSO Change Determination

10a Should the Commerce Commission retain responsibility for calculating the TSO charges for TSO instruments containing charging rates of specified amount? Yes but due consideration should be given to the work load within the Commerce Commission and more international resources need to be added contextual to regulators of similar size such as ComReg in Ireland and the regulator in Finland.

10b What type of organisations should be considered to perform such a role going forward? It is inconceivable that this task should be passed to the TCF. The TCF represents incumbents interests and does not have the structure or the vested interest to facilitate aggressive competition for the benefit of end telecommunications user

10c Should responsibility for making TSO determinations which calculate TSO charges of specified amount be separated from the Commerce Commission? Yes it should go to a specialist department within the Commerce Commission. However the tendering process should there be a competitive tender for TSO provision should be handled by an outside government agency.

10d Should responsibility for allocating TSO charges over the industry be separated from the Commerce Commission? No they should remain with the ComCom for another 7 years. However the Com Com must be resourced appropriately. Complete with an engineering team

More network competition is required in NZ.

10e Does a trust fund arrangement have merit? Who would be appropriate to operate such a trust fund? The Commerce Commission

Payment of TSO Levies by Liable Persons

10f Should an interim TSO levy be applied for compensating TSO Providers in advance of reconciliation and final payments? No because it is an unnecessary use of capital by new entrants and smaller players

10g Should such an interim payment arrangement for TSO levies be on a similar basis to the industry levy for recovering the Commerce Commission telecommunications regulatory cost? No

Extension, Expiry and Review of TSO instruments

More competition accelerates take up

10h Should a standard practice apply for extending the duration of TSO instruments? A 7 year review period should exist

10i Should TSO instruments automatically expire after a specific

Empty networks accelerates innovation and penetration

period? Yes , after 7 years

10j How frequently should TSO instruments be reviewed? 7 years

Ironically the failure to facilitate co location of cell sites will slow down broadband penetration .

Accountability for Local Service TSO Compliance

10k Should a single organisational unit of Telecom have accountability for all TSO functions? What Telecom business unit should this be? Telecom should be completely removed from managing TSO. The history of Telecom and the TSO are a national disgrace. The forthcoming structural separation of Telecom is an opportunity to clear up the infrastructure mess.

10l How should responsibility for the various TSO functions identified be allocated across the Telecom Group? The TSO should be removed from Telecom.

10m How should costs and revenues for TSO service requirements, which Telecom fulfils as TSO Provider, be allocated across the Telecom Group? The TSO needs to be removed from Telecom and made contestable.

10n How should the cost of TSO levies paid by the Telecom Group be allocated across Telecom business units? This need to be removed from Telecom and re-allocated by a market process.

Standard TSO Instruments

10o Should provision be made in the TSO regulatory framework for establishing a "Standard TSO Instrument" to save multiple determinations against the same general TSO terms and conditions?

There is currently a large workstream of analysis in the Ministry for the Environment creating a national policy for roadside cabinets and telecommunications antennas. A successful outcome will impact competition and then impact a further reduction in pricing of local service.

The value and competitive impact of WIMAX licenses is materially affected by the outcome of this workstream. NZCL urge the MED to work with the MFE to ensure the best outcome for the country and co-ordinate all the work stream

We refer to our appendix photos whereby there are three antenna towers on one hilltop. Should there be a successful outcome of WIMAX development, there would need to be an extra four towers on this hilltop.

CONCULSION

NZ policy makers have traditionally been held to ransom by rural service providers , however the aggressive drops in equipment costs have now meant that alternative network deployments are possible once spectrum settings are fixed

The Ministry for Environment is currently working on a project to improve access to council roadside reserves for telecommunications companies .This could have more impact on TSO local service than this report

There needs to be more co-ordination among government agencies to deliver a better policy outcome

It's the Interplay of a wide range of network construction and operational inputs that need to be considered in this TSO review . These are

- Co location
- Spectrum
- Abuse of SMP
- Roaming
- ,Interconnection pricing
- Facilities deployment

NZCL believes that

- **The Local TSO –** the local line calling market is best served by vigorous mobile competition, which will deliver not only lower prices but also improved utility and innovation for consumers – as aggressive fixed to mobile substitution lowers prices and improves services.

- **The Rural TSO –** this has been a legacy regulatory benefit which has entrenched a monopoly. This must be opened for tender with preference to qualified new operators who would benefit from the immediate scalability that such a large supply contract brings. The last 15 years the TSO has merely cemented an incumbent's position and has done little to prompt the use of wireless technology or in-fact reduce costs as cheaper deployment technologies have become available

It's time to remove the TSO from Telecom.

NZCL applaud the MED's willingness to review the TSO policy , our organisation urges a competitive tender as the outcome of the TSO and another review of competition in the mobile market in 12 mths time in conjunction with the Commerce commission.

APPENDIX

1. Co-location practices in NZ and the relevant impact on the TSO in New Zealand
2. The current impact of mobile pricing on TSO local service in New Zealand
3. Profile of “NZCL” NZ Communications Limited

1. Co-location practices in NZ and relevant impact on the Local TSO service in NZ

There is no multi access co-location regime in NZ, with out a pre determined co-location policy there will not be mobile market competition which will impact local TSO service

Above is a picture of 3 cell sites in Cole Rd, Pokeno. It is a strategic countryside hill top on a main arterial route between the cities of Auckland and Hamilton. . This is a significant contributory factor to a lack of competition in local service.

2. The current impact of mobile pricing on TSO local service in New Zealand

The set pricing of free local calling accompanied by a lack of co location and regulatory framework for new mobile entrants has created some unusual statistics

The TSO has created a benefit of legitimising high cost benefit for the incumbent but has created a barrier to entry for a new entrant. The incumbent has a subsidy to maintain a rural network and has fixed pricing on a land line network which has been traditionally used as a fortress to fend off competition.

Because aggressive mobile competition never developed in NZ the land line has never been challenged by mobile competition.

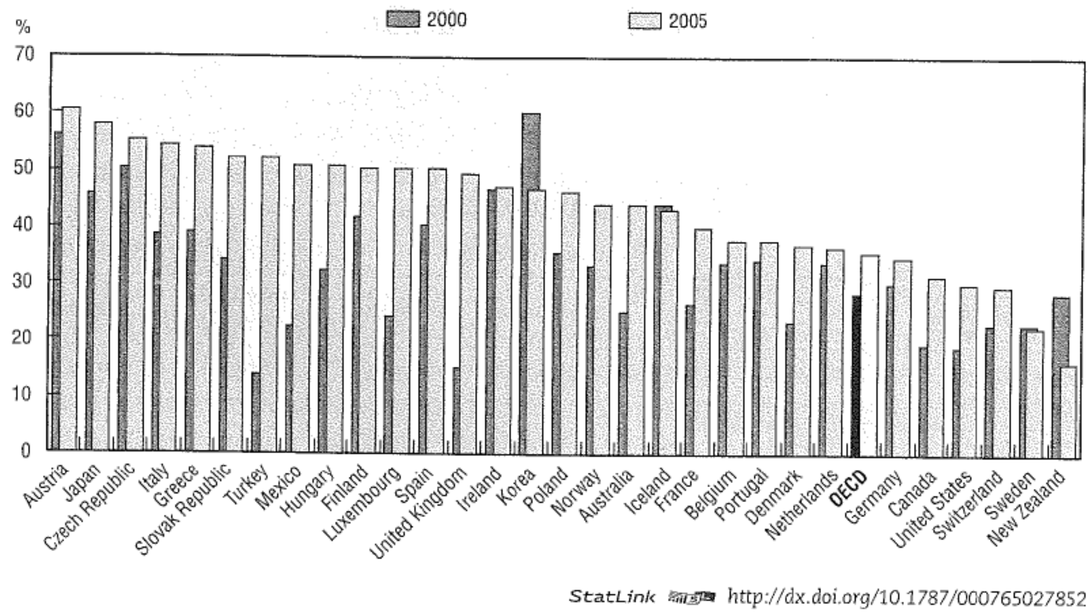
Referring to figure 3.6 from the 2007 OECD telecommunications review it illustrates the NZ consumer preference for land line verus mobile. This is because of the following

1) mobile pricing in NZ is very expensive
2) a very profitable land line network has meant there has been no reason for telecom to aggressively compete in the mobile market
3) different technologies CDMA versus GSM has meant reduced competition and consumer costs have risen to the CDMA costs – damaging utility of mobile

NZ has pretended to be technology neutral but he TSO is a subsidy of old Analogue landlines in preference to digital 3g mobile phones

Incontestability – is shameful, NZ lauded itself in the late 1980s and the 90s as a free market pro competition environment but the impact of a lack of rules in the telecommunications business meant that the significant market power of the incumbent prevented any other operator from commencing business .

Figure 3.6. **Share of mobile revenue in total telecommunication revenue**



3 Profile of "NZCL" NZ Communications Limited

NZ Communications is a mobile telecommunications company. The company owns several blocks of spectrum which it is developing into a mobile phone network to compete on a like for like basis with Vodafone NZ and Telecom NZ. NZCL was formed as a response to the New Zealand Government passing the 2006 Telecommunications Amendment Act, to stimulate more competition. The company's objective is to build a new NZ institution to own and operate a nationwide mobile phone network.

NZCL is owned and controlled by two private equity companies who specialise in investing and building mobile phone networks. General Enterprise Management (GEMS) and Communication Venture Partners (CVP) have built and invested in over 20 networks over the last ten years. They have injected cash and a management team into the company. The Maori-controlled Hautaki Trust owns 20% of the company. The Chairman of NZCL is Bill Osborne, CEO of Quotable NZ, ex All Black, Board member of SPARC, Positively Wellington Business and the NZ Maori Rugby Union Board.

NZCL has announced plans to commence business in NZ using Huawei Technologies as its technology partner. Huawei Technologies have supplied equipment on 32 GSM/WCDMA networks worldwide and are the fastest growing network equipment supplier in the world. They are on track to supply 20% of all new mobile phone networks by 2010.

NZCL is headquartered in Auckland with offices in Wellington and Christchurch. The company is in the process of deploying an initial 840 cell sites to cover 60% of the NZ population. The company currently employs 58 people and 20 consultants. It is in negotiations for multiple co-location sites with Telecom and has filed XX RMA applications for cell site tower erection in Auckland, Wellington and Christchurch.

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