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Shelley Grey
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TSO Review
Information Technology & Telecommunications Policy
Ministry of Economic Development
PO Box 1473
WELLINGTON

Dear Reg

Telecom's comments on *Telecommunications Service Obligations Regulatory Framework Discussion Document*, August 2007

Please find attached Telecom's comments in respect of the Ministry's Telecommunications Service Obligations Regulatory Framework Discussion Document.

If you have any queries or wish to discuss this further, please contact me on 09 362 8193.

There is no confidential information in our submission.

Yours sincerely

Shelley Grey
GM Public Affairs

Telecom's comments on *Telecommunications Service Obligations Regulatory Framework Discussion Document*, August 2007

1 Telecommunications in New Zealand is entering a new phase. Amongst other things, the introduction of local loop unbundling, unbundled bitstream access including naked DSL, operational separation, fixed/mobile substitution and convergence, and the move towards all IP service delivery are going to transform the industry in New Zealand. In light of these changes this review of the TSO is essential: the TSO cannot continue as it is. Reform of the TSO regime is key to aligning the TSO with the Government's broader telecommunications objectives.

2 The discussion paper sets out the Government's policy objectives for telecommunications, including transformation, innovation and economic growth. These economic goals, however, need to be balanced against Government's social objective, set out in the Telecommunications Act, to ensure the widespread availability of telecommunications services at an affordable price.

3 Telecom recognises that consumers can reasonably expect a minimum level of service as part of any first-world telecommunications system. Customers can potentially use a variety of fixed and wireless devices for local calls, for which minimum service standards need to be available in future. For example, people should expect to be able to make free 111 calls and to expect them to be connected with a reasonable level of reliability; customers should expect a basic minimum level of telecommunications service no matter where they are in the country (within some reasonable limits) and who their provider is.

4 The Telecommunications Carriers Forum (TCF) is approaching the current Emergency Services Calling Review in this spirit. We cannot talk for the Forum, but Telecom is confident that the outcome of this process will be very positive for customers, for emergency services agencies, for the country and for the industry and consumers in general. This too represents a turning point in the way the industry is working together and working with the Government. Telecom strongly believes that this is an approach that should be built on.

5 For our part, we want to ensure that consumers' reasonable expectations are delivered by a responsible industry in a way that supports the Government's objectives — economic and social. This can only be achieved with a set of obligations that apply to the industry as a whole, and not to any single player in that industry.

6 The TCF is ideally placed to achieve this. In our view the way forward is for the Minister to request that the TCF resolve this issue.

The TCF brief

7 A number of issues set out in the discussion paper are already being considered by the industry. The TCF is developing Emergency Services Calling and Disconnection codes. The Commerce Commission has been tasked with monitoring and reviewing the industry and analysis of innovation and investment will clearly be a key part of that review. There is no need to replicate this work.

8 We suggest that the Minister supplement current initiatives by asking the TCF to investigate and report back on:

a. Recommended minimum industry standards for voice services. In addition to emergency service calling capability, this could include the availability of number portability and non-code access, and service performance where calls traverse different networks;

b. Options for increasing competition and innovation outside main urban areas by relaxing technical and price limitations;

c. Options for ensuring the continued widespread availability of voice services at realistic prices. The options should be technology and competitively neutral and minimise the impact on investment; and

d. An agreed way forward for transitioning to any new arrangements.

9 Whilst some of these issues look challenging, we are confident that the industry as a group can solve them.

The challenge for MED and the industry

10 The objective of the Telecommunications Act is the promotion of competition in telecommunications markets. The TSO is aimed at establishing minimum quality, affordability and availability standards for basic telephony. The central challenge for the MED is to recommend a TSO framework that better reflects the market we operate in, and advances both the objectives of the stocktake reforms and Telecommunications Act, and those underlying the TSO.

11 Alignment of these would complement the work that has been carried out in the telecommunications stocktake. This is important if we are to deliver the Government's goal of updating the regulatory regime for market developments and technology change.

Developments in competition

12 The perception of a lack of infrastructure competition in New Zealand is outdated. Telecom competes with a number of other providers who compete using their own network infrastructure. Customers already have options for voice services, and providers have announced plans to substantially grow their networks. More competitors will compete on the basis of UBA and UCLL, investing in their own assets in Telecom's exchanges.

13 Woosh Wireless currently offers a broadband and calling access service. Further, Vodafone uses its mobile network to provide calling and broadband services, and has announced new services based on local telephone numbers specifically intended to replace the current PSTN. There are already many mobile only households.

14 The market is developing rapidly. In its broadband wireless access discussion paper[1], the Ministry notes that wireless operators compete with and, under favourable conditions, replace existing telephony networks, and there is an increasing number of wireless based service providers. In its TSO Draft Determination for 2005/2006, the Commerce

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[1] http://www.rsm.govt.nz/cms/policy-and-planning/current-projects/radiocommunications/spectrum-allocations-for-broadband-wireless-access/discussion-paper

Commission surveys a number of wireless technologies capable of providing a TSO voice service[2].

15 While this is a very positive picture overall, infrastructure based competition is occurring in main centres and on current policy settings we are unlikely to see such competition outside main urban centres.

16 While Telecom acknowledges there are alternative service offerings in some rural areas, this does not change the conclusion that it is difficult to see competition evolving in rural areas on current policy settings.

17 The choice for MED is whether it forgoes the promotion of competition and innovation outside the main centres.

18 There is the potential for competition – changes in the cost and functionality of technologies has made alternative business models possible, alternative providers have already entered urban markets, and UCLL will shortly be available. Not all rural areas are prohibitively costly to serve. A key reason why these factors do not translate to competition in rural areas is the policy settings, and in particular the current TSO.

Minimum industry standards would support the new regulatory environment and the Government's competition objectives

19 Several developments require the current TSO to be reviewed if the objectives of appropriate minimum quality, affordability and availability standards for basic telephony are to be met.

20 Developments in competition mean that Telecom is not necessarily the provider controlling the quality of service experienced by a particular customer. This may be for a number of reasons – the provider is using its own network, the provider is using Telecom's NGN to provide voice services, or is simply using a Telecom access service. In some areas, access to homes will be provided solely by an alternative provider and a Telecom access service will not be an option.

21 This trend is likely to continue. To update the TSO, minimum quality standards that are technology neutral need to be identified, and applied to all voice service providers. In other words, a pan-industry set of service obligations that establishes the minimum level of service customers can expect.

22 The proposed UCLL pricing illustrates a market distortion that is created by the TSO. The Commerce Commission is proposing deaveraged UCLL prices. If this is finalised by the Commission, it will flow through to rural retail prices. Rural customers will face higher prices for non-TSO price capped services.

23 More broadly, an urban/rural price structure will be entrenched. This has the potential to change the appropriate focus of a TSO. The issue will be less about maintaining parity between urban and rural prices, and more about identifying an appropriate level of affordability in rural areas. This is quite a different question. In this environment, it is appropriate to ask whether the TSO price cap could set a better balance between competition and affordability in rural areas.

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2 http://www.comcom.govt.nz/IndustryRegulation/Telecommunications/TelecommunicationsServiceObligations/20052006tsodetermination.aspx

Updating the TSO for investment and innovation

24 The TSO needs to change to reflect the market we operate in: better balancing objectives of widespread availability of telecommunications services at an affordable price, with competition and innovation. This would complement the work that has been carried out in the telecommunications stocktake. This is important if the Government's goal of updating the regulatory regime to optimise market developments and technology change is to be realised.

25 We support the TCF submission and believe the Government should direct the telecommunications industry, via the TCF, to work out how to provide essential services to New Zealanders without undermining the economics of the NGN.

26 An industry-based solution would enable the market to make key technology and investment decisions, and ultimately benefit end users of telecommunications services. This would be in contrast to a situation where the TSO regulatory framework pre-determined who could invest and what they can invest in.

27 The current TSO commitments and funding would continue until the new arrangements are implemented.

Broadband TSO

28 We see no need for a broadband TSO at this stage. New Zealand already has over 95% coverage of broadband, one of the highest in the OECD. This view is supported by the European Commission who considered the need for a broadband universal service obligation (USO) and concluded that, given the uptake of broadband, a broadband USO was unlikely to be necessary to meet social objectives[3].

29 There may be economic benefits to increased broadband up take or speed. However, the industry cannot be expected to develop and fund economic objectives of this sort. Ultimately, the costs of a broadband TSO would be born by all consumers. These are objectives best addressed directly by the Government.

[3] http://eur-lex.europa.eu/LexUriServ/site/en/com/2005/com2005_0203en01.pdf