

# **Terms of Reference for Telecommunications Service Obligations (TSO) Review**

## **Background**

- 1 The Telecommunications Act 2001 focuses on facilitating competitive markets for telecommunications services in New Zealand and mandates a regulatory regime for the telecommunications industry.
- 2 The Telecommunications Act prescribes the Telecommunications Service Obligations (TSO) regulatory framework to enable the supply of services which otherwise would not be available to consumers.
- 3 The subsidy cost for TSO services is levied against telecommunications service providers in proportion to their market share. The Commerce Commission calculates the TSO charge for each TSO instrument and allocates this charge through a levy on liable service providers.
- 4 The Local Service TSO agreed with Telecom enables the supply of local residential telephone service, and superseded the original Kiwi Share obligations for telephone service established at the time Telecom was privatised.

## **Purpose and Regulation to be reviewed**

- 5 The TSO review shall investigate TSO arrangements to ensure that they are efficiently and effectively focused on long term benefits to end users.
- 6 This review shall consider the TSO provisions (Part 3) of the Telecommunications Act 2001 and the Local Service TSO (TSO Deed) established under those provisions.

## **Lead agency**

- 7 The Ministry of Economic Development is the lead agency for this review.

## **Problem definition**

- 8 The existing methodology applied by the Commerce Commission for setting the TSO charge to Telecom for cross subsidisation of TSO Local Service is cumbersome to administer, and results in determinations which are prone to dispute.
- 9 The methodology setting the compensation to Telecom also does not adequately recognise the actual competitiveness of relevant markets and the actual level of investment by Telecom in facilities for delivering service.
- 10 The review will give special attention to how the TSO framework should support rural telecommunications, including the question of whether the TSO should adopt a focus on improving the availability of broadband services to rural communities. The review will consider how the Local Service TSO could be optimised for achieving service availability and service affordability goals for rural areas in a way that would be compatible with competition goals.

### Scope and Specific objectives for the review

- 11 The review is expected to:
- a assess whether the Local Service TSO aligns with the Government's telecommunications objectives and broader competition goals;
  - b identify areas of the TSO regulatory framework, especially process requirements, which could be improved to generate savings for both the government and industry;
  - c in developing recommendations, assess the costs and benefits of key options by reference to the Government's objectives.
  - d in making this assessment, take due regard of:
    - i the current process of telecommunications regulation in New Zealand and telecommunications market performance;
    - ii the Government's broadband investment initiatives;
    - iii any factors specific to the New Zealand regulatory framework;
    - iv regulatory developments and examples in other countries, notably Australia, the UK, Canada and the US.
  - e identify the necessary legislative changes and other legal instruments needed to implement new TSO policy.
- 12 The review includes considering what form of licence and levy framework for the telecommunications industry would be appropriate as a replacement if the TSO framework was abandoned in whole or part.

### Quality assurance mechanism

- 13 MED will engage with industry players to ensure that their perspectives are taken into account. Such players will likely include Telecom, Vodafone, TelstraClear together with the Telecommunications Carriers' Forum and Telecommunications Industry Group. Bodies representing telecommunications consumers, including the Telecommunications Users Association of New Zealand and the Internet Society, will also be invited to input to the review.

### Linkages and Timeframes

- 14 There are interdependencies between this review and the Kiwi Share Obligations (KSO) review, due to the KSO service requirements becoming active if the Local Service TSO terminates.
- 15 Initial advice on TSO reform options would be presented to the Minister for Communications in June 2009, with final advice pending development of a rural telecommunications strategy and findings from the emergency call services review which is scheduled to report in September 2009.

**Statement of Support**

- 16 I expect that this review will deliver a feasible set of options for regulatory reforms and recommendations (if reform is required) that will:
- a be the minimum necessary to achieve its objectives, having assessed costs, benefits and risks;
  - b be as generic and as simple as the sector allows;
  - c use self-regulatory approaches where appropriate;
  - d be appropriately durable, predictable and adaptable;
  - e where appropriate, accord with international best practice, being mindful of our commitment to a single economic market with Australia and our relevant international treaty obligations;
  - f minimise compliance costs imposed; and
  - g aim to minimise adverse impacts on:
    - i innovation and investments;
    - ii competition;
    - iii individual responsibility (with appropriate risk balance); and
    - iv property rights.

Steven Joyce  
**Minister for Communications and Information Technology**

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