



Telecommunications Users Association of New Zealand Inc.

(TUANZ)

Review of the Telecommunications Act 2001 - TUANZ comments paper

3rd November 2015

TUANZ

1. The Telecommunications Users Association of New Zealand (TUANZ) has been in existence for over 28 years, advocating for the continued improvement of the use and supply of telecommunications technology and services to all end users of such services. We have always advocated that connectivity, and fast connectivity, will enable businesses to improve productivity and to deal far more efficiently with well-connected customers. Families, wherever they live, will become far better connected. Smart young Kiwis will be much more attracted to living here rather than overseas. The world's capitals will be on our electronic doorstep, while we will become earlier adopters of leading-edge services like fibre-powered television on demand and the widespread use of cloud services for businesses such as on-demand accounting and file storage.
2. TUANZ is a not-for-profit membership association with over 150 members, predominantly large organisations with a strong dependency on telecommunications technology as well as small enterprises and individual members. These small businesses and residential users are the customers of our large corporate members, who are just as focused on the quality of their customers' connectivity as their own.
3. During 2015, we undertook a full review of the strategic direction of TUANZ. We hosted three workshops around the country, which involved 30 individuals from our membership base discussing about what they wanted from TUANZ, and what they thought our purpose was in the era of digital technology.
4. We found that while our purpose may have changed, TUANZ is still as relevant and important as ever.

Our purpose is to ensure that New Zealand can make the most of a digitally connected world.

5. Our vision, which is the outworking of our purpose, provides a readily measurable target for us to aim for. It reflects our focus on businesses and their use of the technologies rather than the technologies themselves.
6. We propose to use the World Economic Forum's Network Readiness Index as the key measure of our success. New Zealand is currently ranked 17 out of 143 nations on the overall index but we propose to use the Business Usage pillar. We are currently ranked 19th in the index for business usage.
7. Our new 5 year vision is as follows:
By 2020 New Zealand will be in the top 10 countries for business usage.

This will be measured by using the WEF Global Network Readiness Index.
8. TUANZ further developed its strategic goals and the concepts and issues around "convergence" are important areas for the organisation to be involved with.

Our Principles

9. As part of our strategic review, we identified our key principles that would guide what TUANZ would say in regards to matters such as this discussion paper. It is pertinent to point out that our answers contained within this submission should be seen in the light of these principles.
 - **We desire to see a lift in the digital competency within the NZ economy.**
 - **We will listen and have brave face to face conversations.**
 - **We will promote fair and sustainable competition.**
 - **We will focus on outcomes.**
 - **We want our members to be successful.**

Our Paper

10. TUANZ appreciates the opportunity to provide the Ministry for Business Innovation and Employment (MBIE) with our questions raised in their discussion paper released on the 8th September. Our submissions are always based on our values of positive leadership, credibility and collaboration.
11. In this brief paper, we highlight a small number of key issues that we believe are significant. We also provide brief comments to the questions raised in the discussion paper and then cover several issues we believe also need to be addressed at some point. We look forward to being involved further in the discussions around the review.

General Approach

12. In an earlier paper provided to MBIE, we outlined twelve issues we believed needed to be addressed as part of the review. These were:
 - a. We should have an aim of an on-going world class communications network supporting our economic growth and social development
 - b. Our services must be competitive with like nations
 - c. Funding of user groups is required to enable credible input and consumer feedback
 - d. The need for a TSO and the services included post 2020 should be debated
 - e. Urban and Rural planners need to consider Telecommunications as a basic infrastructure along with roads and water
 - f. Fair and sustainable competition at the service level should be the focus to encourage continued investment in infrastructure and innovation
 - g. The costs of civil works needs to be reviewed to ensure efficient deployment
 - h. Access to private property, particularly multi-occupied premises should be significantly easier and quicker

- i. The continued convergence of delivery over telecommunications infrastructure should lead to a review of the alignment of regulation and regulator of the sectors
 - j. The question of de-commissioning the urban copper networks
 - k. The Product disclosure regime needs to be tightened up
 - l. Independent dispute resolution should be mandated or at least heavily encouraged
13. The majority of these issues have been picked up in either this Discussion paper or earlier papers and our answers below reflect those. Where they have not been included we have restated them in the final section of this submission.

Overriding principles and objective

14. TUANZ position has been consistent and clear: The availability of competitively priced, good quality connectivity in all parts of NZ is a critical economic enabler for the future of the NZ economy. In our submission on the Rural Broadband Initiative Phase 2, we stated that New Zealand should have the vision of meeting the aspiration that the rural connectivity experience is the same as the urban connectivity experience.
15. We generally support the Government's long term policy goal of 50 Mbps to 99% of New Zealand and 10 Mbps to the remaining 1% by 2025. The vision contained in the act must support this policy goal.
16. We desire to continue to lift the digital competency of our economy. We need to have a national goal to maintain our world leading communications infrastructure. One of the key planks of any regulatory framework must be to balance the requirement to deliver fair competition for end users, but also to ensure the investment engine is sustained.
17. New Zealand businesses now compete in a global market and it should be the Government's aim that the basic telecommunications services available here should be at least competitive and if not better than like nations and key trading partners. We have been consistent with the vision that we articulated in the earlier section.

18. We recognise that it is difficult to legislate for “awesome” outcomes. Our view though is that the definition of the Act's purpose needs to maintain its current emphasis on long term benefit to end users. Significant debate and work has gone into understanding and applying the current purpose and so any amendment needs to be well thought out and debated. Our concern would be to ensure that competition which provides the long term benefits for end users continues to be the key element within the purpose.

Regulation vs non regulation

19. The significant positive of the market structure instigated by the structural separation of Telecom and Chorus and (now) Spark and the creation of the Local Fibre Companies is that a significant amount of these assets are in clearly defined organisations. However a downside is that any change in the price that is able to be charged by the network owners, is most likely to flow directly through to end users.
20. It is with this in mind that TUANZ members support the Government's proposal that regulation of the Telecommunications sector is still required, and agree that it should be targeted at the bottleneck access assets. Members are also clear that the future pricing of these access services must be settled by the time the current arrangements expire in 2020.

Building block model

21. The current pricing modelling approach in the Act was instigated in quite a different time in the telecommunications market. It was aimed at pricing within a vertically integrated incumbent. This is not the case anymore. TUANZ members support the investigation of alternative approaches that may be more suitable today and into the future.
22. Given the new market structure, there is a case for a more utility market approach to the regulation of services, including the use of a Building Block model rather than the TSLRIC currently within the Act.

23. However, we are not modelling experts, nor do we have the resources to engage with experts, and so would look to receive further detail on how this approach would be implemented before commenting further.

Mobile Competition

24. Since the Act was originally passed we have seen continued investment by the two major mobile networks in initially extending coverage, and more latterly in the upgrading of the networks for greater speeds. The two major players have continued to compete with one another, but we suggest it has generally been head to head competition with each other.
25. We have also seen the arrival of a third mobile network operator, but that only came about after significant challenges around gaining spectrum and a workable roaming agreement were overcome. They also lacked the capability to be a full service player until they recently purchased a well-established fixed line broadband provider.
26. In our view, we have seen no successful Mobile Virtual Network Operators develop within the New Zealand marketplace.
27. During our consultation with members, it was expressed that we are unlikely to see the investment in a fourth mobile network. To see increased innovation within this mobile marketplace, New Zealand needs more than three MNOs - it needs a fully functioning MVNO environment with the competition that will bring.
28. We believe that, for the long term benefits for end users, there should be an independent review of the wholesale mobile market around all aspects, from roaming to MVNOs, through all forms of infrastructure sharing. The aim should be to ensure that the right access and incentives are in place and could be undertaken by the Commerce Commission similar to other investigations it has undertaken.
29. This would also have hopefully a positive impact of the continued improvement in mobile coverage for rural New Zealand through ensuring all forms of infrastructure sharing are available where needed.

Member Consultation

30. Over the period intervening between the release of the Discussion Document and the completion of this submission, TUANZ has held several consultation rounds with members. These included two workshops co-hosted with InternetNZ where interested members were invited to hear presentations from speakers on the building blocks model and how it might be applied to the Telecommunications sector. The workshops also included time for discussion and debate.
31. We also held further meetings of a small group of users (not including telecommunications companies) to refine the answers contained within this submission.

Answers to Questions

Issue/Question	TUANZ Comments - Initial
Chapter 1: Goals for this Review	
Do you have any comments on the Government's: <ul style="list-style-type: none">• long-term vision for communications markets; and• regulatory principles?	We have been consistent with the vision that we articulated in the earlier section. We generally support the Government's long term policy goal of 50 Mbps to 99% of New Zealand and 10 Mbps to the remaining 1% by 2025. The vision contained in the act must support this policy goal. It's hard to legislate for "awesome" outcomes. Our view is that the definition needs to maintain its current emphasis on long term benefit to end users.
Chapter 3: Is the regulatory framework fit for purpose?	
What is your view on creating an overarching 'Communications Act' to consolidate economic regulation across the communications sector?	We agree that targeted regulation is still applicable but generally we do not support increased regulation if not required. TUANZ is supportive of the current market structure and keen to see it allow such things as structural separation to fully bed in. We support incremental change to this structure, as required, in the next period of review. We also agree that convergence leads to the

	suggestion of consolidation - we have no view on the actual mechanism yet.
Have we identified the main challenges facing communications regulation as we move beyond 2020?	At a high level these capture the issues – one further caveat is that we need to ensure that regulation is only in place where needed and does not stifle innovation.
Chapter 4: Pricing for fixed line access services	
Do you agree with our policy objectives for the price regulation of fixed line infrastructure?	Our principle that we have stated is that we support the notion of fair and sustainable competition so a regulatory framework based on that we would generally support. We are in general agreement around the need for price regulation as the last thing that any users (business and consumer) appreciate is unanticipated price increases. The critical element then is to have an answer to the post 2020 pricing for fibre services by the end of the current CFH contracts no matter what process is finally settled on. Our concern is that any process must be focused on ensuring the right outcomes for users.
Is it feasible to move to technology neutral service descriptions? How would this work in practice?	The move to agnostic service descriptions would enable flexibility to both the network provider and the regulator. But if it was in place the quality of the service description would be critical to get right. It might still be the case that some services would need to be specified to ensure the right incentives are in place – for example it might be that UCLL and Unbundled layer 1 fibre access would be specified access services in the fixed market, and Roaming and Co-location in the mobile market.
Do you consider utility-style regulation may now be more appropriate for fixed line communications services? If so, what elements would be most effective?	We are not experts at the specific modelling approaches but until we see further detail on how it would work we are unable to comment further other than to say the current mechanisms were not developed at a time of the current market structure and may not therefore be fit for purpose anymore.
Would maintaining the status quo for UFB services be effective post-2020?	We agree with the Government - pricing of the UFB networks should be subject to regulatory oversight.
If the Government was to specify the pricing methodology that would eventually apply to UFB services, what methodology would be preferable?	NZ is unusual in that it specifies the pricing principle to apply within legislation. In other territories that decision is left to the regulator (as it is here in other industries under Part 4). There might be a case for not including the model to apply in law but to leave to the independent regulator. We think it is precipitous to decide on a particular model and more work needs to be done on the way it might be applied and the implementation

	<p>process. However, if the BBM is to be considered we would make the following comments:</p> <ol style="list-style-type: none"> 1. Telecommunications services are generally more complex than other industries and the issue of cost allocation will be a significant one. 2. There would be significant issues around determining the Regulated Asset Base and given both the experience within the electricity industry, and the amounts of money involved, there is a likelihood of drawn out litigation. 3. BBM relies heavily in the demand forecast which is difficult in the fast moving telecommunications markets. 4. However, we support the general direction of investigating alternative mechanisms to the current TSLRIC model.
<p>What is your view on UFB access services being regulated immediately from 1 January 2020, compared to a backstop regime whose application would be triggered by a Commerce Commission recommendation?</p>	<p>Our earlier comments apply here – we believe pricing need to be in place by 1 Jan 2020 irrespective of the process we finally settle on.</p>
<p>If the Government were to legislate for the price regulation of UFB services from 1 January 2020, do you have any initial thoughts on the scope of such regulation? Should a different approach be taken in LFC areas?</p>	<p>Retailers want to be able to offer a national service - TUANZ is not keen to see regional differences. Our position would be that Chorus and the LFC's should be subject to the same regulatory approach for the same access services.</p>
<p>If the Government were to introduce a backstop regime for UFB services, do you have any initial thoughts on:</p> <ul style="list-style-type: none"> • tailoring the traditional Schedule 3 investigation into whether UFB services should be regulated? • the need for transitional measures that might apply prior to the possible price regulation of UFB services? 	<p>Not at this point.</p>
<p>Is there a case for change to the regulated copper access services pricing methodology? If so, what pricing methodology should apply post-2020?</p>	<p>We support the general approach of simplicity and consistency. And so, if a different model from the current one is used for pricing fibre access services, then it would appear sensible to at least investigate if the same model should be applied to the copper network. The copper network will remain in place for many years given the likelihood of its continued use in delivering rural and urban services.</p>
<p>If a BBM pricing methodology were put in place for UFB services, how would that impact the choice of</p>	<p>As above we support the notion of consistent approaches across the access networks, whether fibre or copper.</p>

<p>a copper pricing regime? Should consistency be an important consideration?</p>	
<p>If BBM were introduced for UFB and/or copper services, should this be done under Part 4 of the Commerce Act or through a similar model under the Telecommunications Act? What would be the costs and benefits of each option?</p>	<p>Should be implemented in the same manner as whatever is decided for fibre services.</p>
<p>What is the right balance between providing predictability through legislated pricing requirements and ensuring the Commission has flexibility to respond to a changing environment? How might this be achieved?</p>	
<p>Please comment on the implementation issues we have identified for moving to BBM for UFB and/or copper access services, including identifying any other material issues that you think would need to be addressed.</p>	
<p>Chapter 5: Mobile competition and radio spectrum</p>	
<p>Is the current regulatory framework for mobile services effective? Will it continue to support both coverage and competition objectives in the future?</p>	<p>We recognize that in a country the size of New Zealand it is unlikely that a fourth MNO would build a network. However international research seems to show that at least four significant operators leads to real change. We remain to be convinced that the MVNO market in New Zealand has been successful and therefore we believe there is a real need to review the current process and incentives on players to encourage vigorous and innovative competition at the retail level. The lack of Global MVNO players for example Lebara and Lyca who are present in Australia amongst 30+ others indicates that there is further investigation required</p>
<p>If changes are needed to regulation of mobile services, what should we consider? For example, is it worth actively promoting infrastructure sharing?</p>	<p>The ability to innovate requires that the cost of accessing the networks is not a barrier. This means continued transparency on the wholesale pricing of access given the monopoly nature of that element of the network. We believe the framework should encourage competition at the deepest level in the network where it is efficient and sustainable to do so. Given the size of the country and the investment capital available, the issue of network sharing beyond the point in the network identified above should be a guiding principle.</p>
<p>What are your views on the options for reform in spectrum allocation?</p>	<p>In our submission to the Radiocommunications Act review we stated that the issues around allocation</p>

<ul style="list-style-type: none"> • How could the overlap between spectrum assignment by government and consideration under the Commerce Act be managed? • Should there be any requirements on government to consult or establish objectives for spectrum assignments in legislation? 	<p>and spectrum squatting give rise to serious questions around the limitation of competition.</p> <p>Under the Telecommunications Act it is clear that competition issues are best left to the Commerce Commission that is the government organization charged with overseeing the competitive environment in New Zealand with a view to the long term benefit of New Zealanders.</p> <p>Previous experiences have shown that the allocation of spectrum can be less than transparent and while TUANZ is completely unaware of any issue, the combination of both vendor and rule setter within MBIE when it comes to spectrum allocation, could be seen as a lack of independence. Both the Telecommunications Act and the Commerce Act recognise the Commerce Commission as the right government organisation to oversee competition issues - and so should the Radio Communications Act.</p>
<p>Is an undertakings regime needed to set and enforce spectrum assignment terms and conditions? Where would this sit within the existing legislative framework?</p>	
<p>Should the Ministry of Business, Innovation and Employment or an independent agency monitor and enforce assignment conditions?</p>	
<p>Chapter 6: The regulatory toolkit</p>	
<p>Is there a need to update the current purpose statement in the Telecommunications Act for the communications access regime? What are your views on the suggested changes?</p>	<p>Significant debate and work has gone into understanding and applying the current purpose and so any amendment needs to be well thought out and debated. Our concern would be to ensure that competition which provides the long term benefits for end users continues to be the key objective of the purpose.</p>
<p>Are there any other barriers to withdrawal or switch-off of copper services which are not addressed here? For example, are there any services based on the legacy copper network for which a replacement product is required, and is not available in New Zealand?</p>	<p>Connection charges could be an issue once the install bucket runs out.</p> <p>The copper network is a “powered” network which provides certain emergency situation benefits and so should not be turned off lightly. The outcome is also dependent on what will be the rural infrastructure of choice?</p> <p>There isn’t a commercial imperative like digital TV turnoff.</p> <p>We believe there still remains a place for a revised TSO - it should be technology neutral (may be difficult to define but should be tried).</p>

<p>In your view, should Chorus have to meet any requirements to protect consumers prior to withdrawing copper services or switching off the copper network within the UFB footprint?</p> <ul style="list-style-type: none"> • What requirements should be met? • How should these requirements be given legal effect? 	<p>The removal of copper in LFC areas removes competition. Every LFC connection is new revenue to the LFC, but for Chorus it is rev loss - in a Chorus area it's just revenue substitution. We recognize there is a long tail of PSTN services but that over time as users migrate to new services or relinquish services this will dissipate.</p> <p>We do believe that at some point there is no sense in maintaining two networks and so there will be a market driven outcome at some point as the price of maintaining the network becomes prohibitive. However, it would be useful to have mechanisms around ensuring there are equivalent services available over alternative technologies and even to encourage the network owner to signal very early on the sunset period.</p>
<p>Is there a need for a mandatory codes system for providers of telecommunications services in New Zealand? How would this work in practice?</p>	<p>We believe that there should continue to be mandatory code process in New Zealand under the auspices of the Commerce Commission. Our preference is for the Commission to be more proactive in developing required codes that will apply to all service providers rather than leaving it to the TCF, which by its nature is not fully representative of all relevant stakeholders, including users. These should include as a minimum, product disclosure, and a customer complaints and disputes processes.</p>
<p>Do you think there are current net neutrality issues in New Zealand?</p>	<p>Not at present given existence of LFCs and CHORUS at access layer.</p> <p>But with the convergence happening there could exist an opportunity for companies with market power to project into adjacent markets.</p>
<p>Do you think the regulatory regime is capable of addressing net neutrality issues if they arise in New Zealand? If not, what approach should we consider?</p>	<p>We believe that the Commerce Act may apply here.</p>
<p>Are there elements of the rules and expectations introduced in the European Union and United States that would be useful to have in the New Zealand regime?</p>	
<p>What do you consider is acceptable traffic management and what is not acceptable? Please provide specific and realistic examples. For example, should telecommunications providers:</p> <ul style="list-style-type: none"> • be able to block or deprioritise lawful content, applications, or services? • be able to enter into commercial agreements with content providers to prioritise certain traffic? 	<p>We believe that clearer product disclosure would be necessary and include greater detail if RSPs choose to block or deprioritise traffic. We are not generally supportive of an "edited" internet.</p> <p>We do however expect that the RSP community will innovate and use technology to try and enhance the customer experience. Tuanz would be concerned if exclusive traffic</p>

<ul style="list-style-type: none"> • be able to prioritise certain types of traffic when their network is congested (such as voice traffic or emergency services calls)? 	arrangements with content providers.
<p>Are there other net neutrality matters you consider should be considered in a regulatory context (for example, peering or certain content distribution practices)?</p>	
<p>Do you have any suggestions for encouraging deregulation as part of the regulatory process?</p>	
<p>Do you support the Commerce Commission having the flexibility to:</p> <ul style="list-style-type: none"> • implement price-only regulation? • adopt either a one- or two-stage pricing process? 	<p>We support the Commission having flexibility but are strongly in favour of moving away from the current two stage pricing process. We believe any new process should have one pricing model step.</p>
<p>Do you have any comments on the current arrangements for consumer representation?</p>	<p>Ensuring credible and fact based submissions on important issues around telecommunications is critical to the robust debate on the issues. The resources that the current user bodies represent pale in comparison to those available to the large telecommunication companies.</p> <p>In Australia the peak body, the Australian Communications Consumer Action Network (ACCAN) undertakes advocacy and representation for consumers of telecommunications services. It is funded by the Commonwealth Government under the Telecommunications Act 1997. This funding is received from charges on telecommunications carriers as part of the overall industry levy.</p> <p>We believe that this model could be implemented in some form within New Zealand to ensure a strong and credible voice for users. It may be appropriate to include this within the current Telecommunications Development Levy.</p>
<p>In your view, is there justification for the Government to make it clear in legislation whether or not backdating will occur?</p>	<p>No - unless it is to make right any error that is considered to be in the legislation.</p>
<p>In your view, is there still a need for a separate Telecommunications Commissioner (rather than using the general Commissioners)?</p>	<p>Yes - the telecommunications space is a quick moving area that requires dedicated resource to focus on the area.</p>
<p>Would the increased accountability created by a merits review process outweigh the risk of increased uncertainty and length added into regulatory processes?</p>	
<p>Do you have any suggestions for the most effective way to transition to a new regulatory framework,</p>	

and to ensure any updated framework remains fit for purpose over time?	
Do you have any comments on the potential removal of the 'broadcasting exclusion' in the Telecommunications Act?	It should be removed given the convergence occurring in the market place.
Are you aware of any barriers to trans-Tasman trade in communications markets that the Government should address, or areas where closer harmonisation with Australia would be beneficial?	
Please outline any other modifications you propose should be made to the regulatory framework, explaining how these would align with section 157AA(a) of the Telecommunications Act.	

Other Issues

32. As part of our membership consultation over the issues raised in the discussion paper, a small number of other issues arose. Whilst not in the original paper, members were keen to see the addressed.
33. **SIP Standards:** TUANZ members expressed the need for a technical panel to work on a set of SIP standards to ensure that all new services (e.g. SIP) work together. Of particular concern to members was the need to ensure that not only could 111 calls be delivered in a timely manner but also include location information for the use by Emergency Service teams.
34. **Land Access:** TUANZ members remain concerned over the issues around access to private land for telecommunications services and in particular the issues that have been identified with Multi Unit Complexes (or MDU's) and shared driveways. Members are keenly awaiting a positive outcome from earlier discussions. This issue may be the single largest impediment to UFB uptake, and therefore the collective goals of this body and its members.
35. **Email Porting:** TUANZ was instrumental in calling for the launch of full number portability in New Zealand which has proven to be successful in

assisting with competition in both mobile and fixed line markets. Now, our members consider it is time to investigate the feasibility and technical barriers to implementing full email address porting. We consider that even with the growth of non-RSP specific email services, that this remains a barrier to switching internet service providers, particularly for users who are not technically savvy.

36. Two other issues were raised in our earlier paper to MBIE that we still believe to be pertinent and were not covered in the discussion paper:
 - a. **Telecommunications as an essential service** - a requirement on urban and rural planners to consider telecommunications as basic infrastructure along with roads and water; and
 - b. **Deployment costs** - The costs of civils needs to be reviewed to ensure efficient deployment.

Concluding comments

37. TUANZ welcomes the opportunity to provide MBIE with this submission in regards to the questions raised in the discussion paper regarding the review of the Telecommunications Act 2001. This paper provides a summary of feedback from actual users of telecommunications. We have attempted to provide a succinct and clear enunciation of the views of our members.
38. We look forward to being part of the discussion going forward.

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