



The Telecommunications Users Association of New Zealand Inc.

Our purpose is to help New Zealand make the most of a digitally connected world.

Telecommunications (New Regulatory Framework) Bill

TUANZ submission to the Economic Development, Science and Innovation Committee

2nd February 2018

Submission

1. This is the Telecommunications Users Association of New Zealand (TUANZ) submission on the **Telecommunications (New Regulatory Framework) Bill**.
2. Our address is PO Box 302 469, North Harbour, Auckland 0751 or Level 7, 62 Victoria Street West, Auckland Central. Our email address is office@tuanz.org.nz and our website can be found at <https://www.tuanz.org.nz>.
3. If given the opportunity, TUANZ wishes to appear before the Economic Development, Science and Innovation Committee to discuss this submission.

TUANZ

4. TUANZ is unique - **there is no other group or organisation that is representative of the people and organisations that are the end users of digital technologies in the manner that TUANZ is.**
5. TUANZ has been in existence for more than 30 years, advocating for the continued improvement of the use and supply of communications technology 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.
6. TUANZ is a not-for-profit membership association with more than 170 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.

7. TUANZ is governed by a Board elected at large by the members of the organisation. The current Chair of the Board is Liz Gosling, CIO of AUT University.
8. It is pertinent to point out that our submission should be seen in the light of TUANZ' stated 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.

9. Our members want to see a lift in the digital economy along with the continued development of a strong market providing real choice for end users – whether corporations or consumers. We seek a national drive to leverage the opportunities that we have with our world leading digital networks. **TUANZ has the vision where New Zealand is one of the top 10 countries for business usage of ICT by 2020.**
10. TUANZ' position is consistent and clear: **The availability of competitively priced, good quality, fast connectivity in all parts of NZ is a critical economic enabler for the future of the NZ economy.**

The Bill

11. We recognise that in this rapidly changing technology environment it is increasingly difficult to provide regulatory frameworks that are able to provide flexibility over the long term and we recognise that it is difficult to legislate for “awesome” outcomes. Our view is that the Act's purpose needs to maintain

its emphasis on long term benefits to end users and to ensure that competition for users' benefits continues to be the key element within the purpose. It is also critically important that any regulation is flexible enough to which keep pace with technology, the market and changing needs of users. Otherwise the Act acts as an anchor to progress which will ultimately result in New Zealand falling behind.

12. We have been involved in the majority of the consultation by the Government prior to the bill's introduction. We support the general approach of the bill and the overall aims to amend the Telecommunications Act 2001 (the Act) to establish a stable and predictable regulatory framework for information communication services in New Zealand in as much as it is possible in this environment.
13. We would like to comment on the following specific topics which are covered by the Bill:
 - The Pricing Model
 - Unbundling Fibre
 - Withdrawal of Fibre
 - Service Quality Monitoring
 - Consumer Disputes
 - Line of Business Restriction
 - End User Involvement in Advocacy

Pricing Model

14. We are by definition a pro-competition organisation. We also understand the notion of sustainable competition but we will always support a regulatory framework that gives the best possible outcomes to those we represent.

15. We believe that the last thing any user appreciates is unanticipated price shock. A critical element for us will be to ensure that the new framework is in place in time before the current pricing arrangements expire.
16. We support the general Utility Pricing Model approach to future fibre network regulation. This framework is well understood in the New Zealand environment although it will present unique challenges when applying it to the more dynamic telecommunications environment. We recognise that much of the detailed work to implement the model will be over the next few years in front of the Commerce Commission and we are committed to speaking for users through that process.
17. We have previously expressed our concern that the current definitions being proposed for the anchor product set are set too low and will act as a constraint. Our preferred approach is to have technology agnostic service descriptions that provide for a dynamic approach to the definition of such things as topline speed. There are a number of ways to achieve this, ranging from significantly more regular reviews of the definition than proposed, through to a mechanism to ensure the network is always at the front edge of development.
18. Technology continues to be subject to incremental and disruptive changes which means that users are continually working at finding new ways to use technology in new and, at times, unexpected ways. Any unhelpful constraints placed on the underlying connectivity by way of a service definition of the regulated products that are set at too low a level, will dampen the ability of businesses to innovate.

Unbundling Fibre

19. We have always supported the notion that networks should be able to be unbundled at the layer 1 level. This view provides the incentives to all players to make the right investment decisions. This could include the provision by the network provider of attractive services which take the place of unbundling, or lead to service providers investing in their own layer 2 equipment. We

recognise there are serious technical (and thereby commercial) issues with unbundling in a GPON environment, the area is a fast moving one, and by the time this regulation comes into force there may be new and easier methods to unbundling on these types of networks (eg. Wavelength unbundling).

20. We are aware that the requirement should consider the right incentives are in place to ensure the best outcome for end-users. These outcomes must include the continued emergence of innovative services, at a price which is competitive. However, we also recognize that we do not want to provide incentives for over investment in network which can lead to higher prices and so there is a crucial balance to reach in this issue.
21. We therefore support the notion at this time that layer 1 fibre services are not a regulated anchor product, but there should be a fast-track option available to the Commission to bring in a defined service if required. The test, however, should always be focused on the needs of end-users of services – if unbundling would lead to the long term benefit of end-users then it should be mandated

Withdrawal of Copper

22. In earlier submissions on proposed changes, we expressed concern that the withdrawal of any current regulation should be done with extreme caution given the work undertaken to secure that regulation in the first place. We remain cautious about the proposal to deregulate copper in areas where UFB is ubiquitously available but recognise the constraints proposed to be put in place.
23. We have already alluded to the importance of the anchor product service description above, and getting that right is also critical to ensuring the availability of affordable and quality connectivity within those areas that become deregulated. The ease of which users are able to switch from a copper service to a like-for-like fibre service will be critical to our support of de-regulation.

24. Key to this is the implementation of a robust and high quality Copper Withdrawal Code as proposed in the Bill which has strong incentives on the fibre providers to deliver a quality experience to users.
25. TUANZ has long been a vocal advocate for the continual improvement of rural connectivity and it remains one of our key focus areas. We will continue to encourage investment into rural connectivity while it does not meet our goal of the same experience wherever you live work or play in New Zealand. This submission is predicated on the idea that nothing should hinder the ongoing improvement of rural connectivity.

Service Quality Monitoring

26. TUANZ strongly supports the move to require the Commerce Commission to monitor the performance within the telecommunications market and specifically the requirement to report on retail service quality. This ongoing, independent focus on the retail service performance will allow organisations such as ours, who represent the users of such service, to take informed positions rather than rely on others views of performance.
27. TUANZ strongly supports the application of strict information disclosure rules. This enables the Commission to ascertain if competitive type outcomes are occurring in non-competitive markets. We believe that these must be in place from 2020 and apply to all providers who are subject to this regulation.
28. We also strongly support the notion of as much public disclosure of the information provided by the regulated providers through the process. This not only ensures transparency around the process, but also encourages fact-based discussions over performance and the efficacy of the regulatory framework.
29. We support granting the Commission the ability to establish regulated codes in the area of service quality. We would strongly suggest that one of the tests that the Commission should use in identifying whether the industry fails to

establish codes of sufficient standard is the level of consultation with user and groups such as ourselves when developing any such code.

Consumer Dispute Processes

30. The current consumer dispute process is an industry defined solution which is subject to a code that is mandatory for all members of the Telecommunications Forum (TCF). Membership of the TCF is not mandatory in New Zealand for providers of telecommunication services though. This means that not all providers are members of a disputes process - though they may choose to join the Telecommunications Disputes Resolution Service even if not members of the TCF.
31. It is generally thought that the TDRS provides a relatively successful process within the scope and processes set up under the industry defined code. It is managed by an independent body contracted by the industry (Fairway Resolution Ltd). It also has a council that is made up of both industry and consumer representatives.
32. We consider that ongoing monitoring by the Commission of the TDRS is a good step in ensuring that the scheme is adequately addressing users' issues. We have previously proposed this outcome and so support the proposal.
33. However, the issue around the membership of the scheme and applicability of an industry-developed code to TCF members only remains an issue for us. We continue to advocate that there should be a requirement for all providers of telecommunications services in New Zealand to end users to be part of an approved disputes service such as the TDRS.
34. We agree that the currently dormant section in the Telecommunications Amendment Act (No.2) 2006 (Part 4B) should remain in place. We support the requirement for the Commissioner to review the industry scheme against the purpose set out in s 156U and the objectives set out in s156X on a regular basis to identify whether Part 4B should be activated. This has been a consistent position of our organisation for some time.

Line of Business Restrictions

35. The last options paper that was issued prior to the bill being introduced to the house, included a new proposal around altering the line of business restriction on Chorus. Our view remains that Chorus should be prohibited in participating at the retail level and are unsure whether this change proposed significantly weakens that prohibition.
36. We will continue to consider whether this change is in the long term interests of users.

End User Involvement

37. The Bill in its present form does nothing to assist end users to have a voice on issues that ultimately affect them through applying the Telecommunications Act and Regulations. We have been consistent in our position that ensuring credible and fact-based submissions on important issues around communications technology is critical to robust debate on the relevant issues.
38. Within the current environment there exists a strong information and resource asymmetry among the parties in these processes. Not for profit, membership-based organisations which represents the users of these services, unless they have an independent commercial revenue stream, lack the human and financial resources to contribute fully.
39. We urge the committee to look to Australia where this asymmetry was recognised by the Government. This led to the creation with the Australian Communications Consumer Action Network (ACCAN) undertaking advocacy and representation for consumers of telecommunications services. It is funded under long term contracts with the Federal Government, with performance criteria and defined deliverables.
40. We believe that this model could be implemented in a cost effective way in the New Zealand environment to ensure a strong and credible voice for end users. It may be appropriate to include this within the current Telecommunications Development Levy and would be a very small amount of the levy collected each year.

Concluding comments

41. TUANZ welcomes the opportunity to provide this submission to the Committee regarding the current Bill. This submission provides a summary of feedback from our organisation that represents actual users of telecommunications. We have attempted to provide a succinct and clear enunciation of the views of our members.
42. We look forward to appearing before the committee to discuss these issues further.

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