

21 December 2018

Commerce Commission
44 The Terrace
PO Box 2351
Wellington 6140

Dear Dr Gale,

Re: Fibre input methodologies submission

- 1.1 InternetNZ welcomes this opportunity to submit on input methodologies for the regulation of fixed-line fibre services.
- 1.2 We would welcome the chance for further conversations as this process continues. Please contact James Ting-Edwards on james@internetnz.net.nz.

InternetNZ supports the benefits of the Internet

- 1.3 InternetNZ is an independent, membership-based charity, that works to support the benefits of the Internet to New Zealanders. We are the proud home of .nz for New Zealand, operating the register for these domain names and providing them through our network of registrar customers.
- 1.4 We engage in processes like this one as a voice for the overall Internet ecosystem, and New Zealand's local Internet Community.

Summary of submission

- 1.5 The input methodologies process sets out key assumptions and criteria which will guide the process for regulating fixed-line fibre Internet.
- 1.6 The point of this process is realise good outcomes. Our submission focuses on the key outcomes and principles which we think should guide fibre regulation.
- 1.7 In our view, a key outcome is to realise the potential benefits of UFB fibre. Rolled out with Government support, UFB fibre is intended to benefit New Zealanders through access to high-quality and future-proof connectivity at fair prices.
- 1.8 We recommend that:
 - a) This process considers the potential of fixed-line fibre services to benefit end-users both as an access mode and as an input to other access modes;
 - b) This process considers the role of better and improving service quality as well as efficient and improving service prices in benefitting end-users;
 - c) The Commerce Commission seek targeted input throughout this process, to ensure meaningful input including from less well-resourced parties;
 - d) Regulation allows for meaningful responses over time to ensure ongoing incentives for efficient operation, as well as being calibrated for efficiency up-front;
 - e) The role of anchor products as a potential driver of quality, price, and efficiency improvements is considered at an early stage of this process.

Delivering the long-term benefit of end-users

- 1.9 Under sections 162 and 166(2)(b), fibre regulation must promote the long-term benefit of end-users.
- 1.10 Below we offer our high-level summary of what this outcome would mean for participants across the telecommunications sector:

Stakeholder group	What a good outcome in this process would mean
Network builders	Fair returns for operating efficiently and making high-quality investments in better services.
ISPs	Predictable paths for improving fibre performance and prices. Fair and efficient pricing of wholesale fibre as both an access mode and an input to other modes.
End-users	A choice of great access modes at fair prices, underpinned by a fibre network delivering to its full potential: Fibre as an access mode delivers world-class speeds and high reliability at reasonable prices. Fibre as an input enables consumers to benefit from great choices for mobility and coverage, underpinned by fast and efficiently priced fibre.
New Zealand	Deliver high-quality connectivity at fair prices, and a fair return on high-quality investments.

Support the potential of UFB fibre to benefit New Zealand

- 1.11 We are seeing substantial uptake of fibre as an access mode. The 668,000 fibre connections reported at 30 September represents a 45% increase in one year. At the same time, fewer New Zealanders are using copper connections.¹
- 1.12 Fibre regulation is a result of our Government supporting the rollout of UFB fibre. That investment was made to serve a policy goal of unlocking high-quality and future-proof Internet connectivity to benefit New Zealanders.
- 1.13 The only way to achieve those benefits is to deliver the potential of UFB fibre, in the form of high-quality and fair prices for Internet services consumed by end-users. Quality matters, but so does efficient investment and pricing.
- 1.14 Fair pricing that delivers fibre's benefits will be depend on careful scrutiny of the size and allocation of shared costs and investments. Price-quality regulation should aim firstly at delivering the benefits of the UFB fibre network. The scope of regulated activity and assets should be carefully drawn.

¹ Commerce Commission, *12th Annual Telecommunications Monitoring Report*, (December 2018, Wellington).

Deliver the benefits of fibre efficiently across access modes

- 1.15 The benefits of fibre are real and important across different access modes. We want an outcome where fibre underpins great connectivity choices for New Zealanders, with the fibre access mode delivering world-class speeds at reasonable prices, and with efficiently priced fibre supporting great speeds, mobility, and coverage on other access modes.
- 1.16 To deliver those benefits, we need regulation which supports efficient investments, efficient operation of networks, and efficient allocation of resources, through workable competition where possible, and otherwise through workable-competition-like incentives and constraints.

Gather information from a broad range of perspectives

- 1.17 It is important that regulation is informed by effective consultation, with breadth of input from voices across the telecommunications sector, including consumer voices. This process will see substantial and detailed input from fibre operators. That input, though welcome, will not be matched by equal and opposite engagement from other parts of the industry. For large ISPs, fibre presents a more complex mix of interests than the historic tug-of-war over copper pricing.
- 1.18 To achieve the required breadth of input, it will be important for the Commission to coordinate with smaller players, and offer realistically timed and scaled opportunities to engage on key issues.

Allow effective regulation over time – don't set and forget

- 1.19 The goal of regulation is to ensure the efficient, workable-competition-like operation of regulated fibre. Under the proposed building-blocks model, initial settings such as asset valuation will have a large and continuing impact on how fibre regulation operates over time.
- 1.20 It is important that there is adequate scope to effectively intervene if resulting regulation does not deliver the intended outcomes. There is a risk that even carefully devised initial settings become miscalibrated and hard to correct over time, for example, in a scenario where unreached revenue caps are continually washed-up across multiple periods, providing no constraint to encourage workable-competition-like outcomes or pricing.

Consider the quality and price improvement role of anchors

- 1.21 We wish to highlight the role of regulated anchor products within the overall framework of fixed-line fibre regulation. Requiring specified services to be offered at set prices, anchor services are a key part of fibre regulation.
- 1.22 Regulated anchor services have two purposes,² firstly requiring that equivalents of voice and basic broadband services are offered at reasonable prices, and secondly “to act as an appropriate constraint on the price and quality of other fibre fixed line access services”.
- 1.23 We see this second purpose as a vital part of regulation that delivers to the long-term benefit of end-users. A prescribed anchor product set is the most concrete element of price-quality regulation, and can be tailored to play a key

² S 208(7).

role in driving quality and price improvements in the services offered to end-users.

- 1.24 We would welcome consideration of how to maintain anchors as a driver of beneficial price and quality outcomes for end-users of fibre services. As set out below, our view is that fast and improving anchors are required to realise the benefits of fibre to end-users over time.

Realising fibre's benefits requires fast and improving anchors

- 1.25 There is a risk that, over time, one-off scheduled reviews of anchor services will fail to realise the potential of fibre to benefit end-users.

- 1.26 Over time and on average, expected network performance and use grows exponentially. In an earlier submission on the regulatory framework for fibre, we said:

Speeds of 100mb/s down were first announced in 2011, alongside UFB. By last September, when we filed our last submission, users could already buy services at Gigabit level - ten times faster. In February 2017, Northpower fibre successfully tested a 10 Gigabit connection on UFB, between a home and a business in Whangarei - another ten times faster.³ That is 100 times the 100/20 service proposed as an anchor for 2020-2023.

By the time the present review of the Telecommunications Act began, in 2015, 100/20 fibre was a well-established in the market. Nielsen's law confirms a bandwidth growth rate of 50% per year over the past three decades.^{4,5} Over the 5 years to 2020, that growth rate would mean a baseline of 750/150 Mb/s.

- 1.27 The trend in bandwidth growth continues. In 2018, average broadband data usage is up almost 50% on the previous year.⁶ At the same time, the first report from Measuring Broadband New Zealand indicates that fibre connections are not delivering their full potential to end-users.⁷
- 1.28 To serve their role, anchors need to be set relative to current and anticipated services that exist, or that would exist in a market with workable competition in service quality.

³ Northpower, "Northpower Fibre and Calix showcase NG-PON2", (15 Feb 2017), at <http://northpower.com/news/2017/northpower-fibre-and-calix-showcase-ng-pon2>, accessed 28 Feb 2017.

⁴ Critchley T, *High-Performance IT Services* (CRC Press, 2016), pp 144-5.

⁵ Nielsen J. "Nielsen's Law of Internet Bandwidth", (April 5, 1998 - updated for 2016) at <https://www.nggroup.com/articles/law-of-bandwidth/>, accessed 28 Feb 2017.

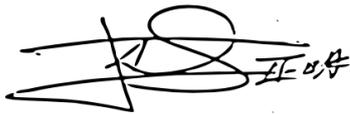
⁶ Commerce Commission, *12th Annual Telecommunications Monitoring Report*, above n 1.

⁷ Measuring Broadband New Zealand, *Initial Findings Report*, (21 Dec 2018) at comcom.govt.nz.

- 1.29 We favour an anchor set with a defined path for performance improvement over time and by default. We think this approach will help to:
- a) Realise the potential of fibre to benefit end-users over time;
 - b) Better meet current and anticipated end-user demands;
 - c) Offer predictability for fibre operators and ISPs;
 - d) Effectively constrain pricing and quality of fixed-line fibre services over time, particularly as expectations shift within a single regulatory period.
- 1.30 As with other regulatory settings, the performance path for anchors should be set based on market data and submissions, ensuring that progress paths for the next few years are “just right”: not too fast, not too slow, not too expensive, not too cheap.
- 1.31 In our view, regular tuning of an anchor set which improves by default will be relatively efficient for all players, and will mitigate the risk that up-front, set-and-forget regulation under a BBM fails to fully benefit end-users over time.

We support the Commerce Commission’s work in this process

- 1.32 InternetNZ supports the Commerce Commission in its work to deliver the new regulatory framework for fixed-line fibre.
- 1.33 We welcome the chance to engage, and would particularly welcome targeted opportunities to speak to particular issues as they arise through the process.



James Ting-Edwards
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