VOCUS

Submission on the 2022 Review of the Measuring Broadband New Zealand programme

PUBLIC VERSION

16 March 2022

INTRODUCTION & OVERVIEW

1. Thank you for the opportunity to submit on the Commission's 2022 review of the Measuring Broadband New Zealand (**MBNZ**) programme. We welcome the review and look forward to seeing improvements to the programme for the benefit of both providers and our customers.

2. As you know, in November 2021 the Commission issued its "marketing alternative services" guidelines and instructed the telecommunications industry to turn those guidelines into an industry RSQ code within 60 working days. TCF and its members have since developed a (draft) Broadband Marketing Code under which the **MBNZ testing programme will be the default source of data for all broadband speed claims**. It is therefore imperative that the MBNZ testing programme is "fit for purpose", both now and in the future to reflect emerging industry trends (e.g. the movement to BYO modem). In particular, the programme needs to be both **comprehensive** (i.e. covering **all relevant providers** and **all readily available technologies and plans**) and **responsive** (i.e. able to **quickly expand** to cover new providers, technologies and plans). The Commission's goal should be for the MBNZ testing programme to be a "one stop shop" for both industry and consumers.

3. Vocus has seen and endorses the TCF's submission on the review. This submission is to confirm our support for the review, we provide some additional perspectives, and respond to each of the Commission's specific questions below

4. If you would like any further information or have any queries about this submission, please contact:

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RESPONSES TO SPECIFIC QUESTIONS

Q1. What providers, broadband plans, performance metrics and services should we consider removing or adding to the testing programme?

To be truly "fit for purpose", the MBNZ programme needs to include **all relevant providers** and **all readily available technologies and plans**. Obvious gaps based on the most recent MBNZ report include:

- **Providers**: Sky, Contact, Nova.
- **Technologies/plans**: Hyperfibre, 5G FWA, satellite.

Providers should only be removed from the testing programme to the extent they have exited the market altogether, or otherwise withdrawn the relevant technology or plan. Technologies or plans that are "in decline" could first move from provider-specific reporting to industry averages, before finally being removed completely from the testing programme once the total number of active connections (across all providers) falls below a certain threshold.

Q2. How should we approach onboarding or adding new providers, products and technologies?

The MBNZ provider should be **contractually required** to ensure that its testing programme (and reports) cover **all relevant providers** and **all readily available technologies and plans**.

In addition to its own market monitoring, the MBNZ provider should be **regularly engaging and collaborating with both retail and wholesale providers (e.g. LFCs)** to ensure there isn't a significant lag between when new providers, technologies or plans are launched and when they are included in the testing programme (and reports).

Any expansion of the testing programme should fall within the contract between the Commission and MBNZ provider (as opposed to providers being required to enter separate commercial negotiations with the MBNZ provider to ensure the Commission's testing programme is up to date).

The MBNZ provider should consider a set threshold of base customers bases – say 5,000 – and report all providers above this.

Q3. Should we encourage greater collaboration between the testing provider and the broadband providers to facilitate the testing of new products?

Yes. The MBNZ provider should be required to **collaborate with both retail and wholesale providers**:

- to ensure the testing technology and methodology utilised (e.g. the white box, or embedded software) is functioning properly and the results are accurate (e.g. by conducting lab testing); and
- Collaboration would help all parties identify issues between Wholesale Network (LFC), ISP Network (retail), testing infrastructure (White box) and test servers (Speed testing servers)
- when notified about a new provider, technology or plan, to ensure that the new provider, technology or plan can be included in the testing programme as soon as possible after being launched

Q4. What options should we consider, to recruit and maintain volunteers to support greater coverage of products, providers and plans?

The **Commission should be primarily (and ultimately) responsible for ensuring the MBNZ programme is successful**, which includes ensuring volunteers are willing to participate. However, providers also have a role in promoting and supporting the programme and should not be restricted from incentivising their customers to become volunteers (subject to the MBNZ Code of Conduct).

Q5. What level of support should providers offer to the programme and to volunteers to promote the programme?

While the Commission should be primarily (and ultimately) responsible for ensuring the MBNZ programme is successful, providers also have a role in promoting and supporting the programme and **should not be restricted from incentivising their customers to become volunteers** (subject to the MBNZ Code of Conduct). It is generally in providers' interest that the programme is supported and utilised (including because providers will be required to default to MBNZ data under the proposed TCF Broadband Marketing Code). We do not consider a regulated requirement for providers to support the programme is either necessary (including for the reasons noted about the TCF Broadband Marketing Code) or appropriate.

Q6. Should we consider applying different reporting thresholds for some testing, for example smaller sample sizes, where it has been difficult to get enough volunteers?

Yes. Where the technology or plan is newly launched and/or adoption is relatively low (e.g. for Hyperfibre, satellite broadband, rural broadband) a **smaller minimum sample size should be considered** to ensure that technology or plan can be included in reporting. The fact of the smaller sample size and related margin of error should be made clear.

Q7. How often do you think we should report test results? Why?

Generally **quarterly**. This gives service providers enough time to update website and collateral with speed results, along with ISP verification process. More frequent reports could be a lot of effort and cost, for relatively little benefit.

It's unlikely there is any real consumer benefit from more regular reporting.

However, the MBNZ provider should be contractually required to publish a **supplementary report** as soon as possible after the introduction of any new provider, technology or plan, so

that industry and consumers do not have to wait up to three months for that new provider, technology or plan data to be available.

Ensure the testing programme includes all relevant providers, and all readily available technologies and plans.

There are inherent limitations with customers owning their own equipment (there is a clear **movement towards BYO modem, and third party Wi-Fi mesh solutions**), as well as **limitations and cost with modem vendors** allowing or implementing embedded software into modems. Embedded speed test software requires modem vendor co-operation, and some vendors do not allow third party software on their device. There are also potential issues with retrospectively trying to update speed test firmware on modems.

There is also technical constraints around chipset processing speed, for achieving speeds tests above 200Mbps.

We are currently experiencing a worldwide shortage in modem chipsets and components for 2022/23, an embedded software may have significant implications for ISPs in NZ, with limited options available.

Wi-Fi performance is something that is extremely hard to measure accurately, as every customers environment is different. Measuring an ISPs Modems Wi-Fi via an Internet performance App has limitations around constancies on reporting, including, performance of the mobile device used for the test, distance from modem, walls, interference from neighbours. The customer could also be using their own modem. We would prefer a consistent approach to Wi-Fi testing, with using the same environment for testing different ISP modems.

See response to question 9. An embedded software-based testing approach requires **modem vendor co-operation –** while we are able to implement a connection-based speed

test on some of our modems, not all vendors are happy to do this. To run the software, the CPE does need a fast processor and it does take up valuable RAM, with memory and processing capacity a consideration for overall performance on modems. Implementation of this would be difficult as each modem would need to be tested and may require software modification.

Q11. What implications does this approach have for privacy and trust for consumers and providers? What safeguards would need to be in place to ensure the privacy of consumer data including cybersecurity and privacy of consumer details?

Clearly privacy issues should be considered. The risk would seem relatively low if the software is only doing speed and latency testing, but relatively higher if the software is looking inside the customer's network (as this could *potentially* create a security vulnerability and raises other privacy considerations around how data is collected and stored). We would generally expect privacy issues of the programme to be worked through (and contractually agreed) between the Commission the MBNZ provider.