

Wolfgang Faber

23.June 2020

Te Aroha 3320

Revised by submitter  
On 27.June 2020

The Commerce Commission  
44 The Terrace, Wellington 6011

My Submission on:

Commission Copper Withdrawal Code (draft)  
Commission 111 Contact Code (draft)

I am a 74year-old private citizen, a pensioner with no commercial interests in the matter. When back in April this year I had made an OIA-request to the Commission, I did so, because my feeling was that there was something going on, which I did not like, and were not really informed about, nor being offered a democratic participation in.

That certainly was not the Commerce Commission's, who has been very helpful since.

But it was and is the flaw and deficient way public media in New Zealand inform the citizenry; and the political climate and consequently the lack of a meaningful public discourse.

So it was rather by chance that I heard something vague over the public radio about the matter of change to telecommunication, and realized what common and private impact the matter had, what then under the previous government(Mr.Key) was called and hailed as the "ULTRA-FAST-BROADBAND" roll-out would mean.

It is a disenfranchising of the private citizen in favour of the business sector of society under the guise of so-called progress.

And that to the extent of giving people more opportunities to gamble/play on –line, or to consume films rather than engage in a thinking process.

**The minister of August 2007: There is a crucial importance for the New Zealand household of the local telephone service(!) and therefore a revised KIWISHARE (KSO) was adopted.**

And even considering the use of broadband, the Commission's own publication on the use and effectiveness of the copper-based broadband came to this conclusion----(verbatim)----

"Chorus and other providers reported record levels of online activity. But despite that increase, the latest report from our independent testing partner, SamKnows, shows that copper and Fibre 100 plans continued to perform well, with average download speeds unaffected.

So why the change-----? In my opinion only for political expediency .

Why should I as common citizen give up my existing use of the (landline) fixed line telephone and the well performing broadband use in favour of some businesses?

Such businesses can have their own type of broadband, if they wish so and pay for it!

There is no good reason why the common citizen should help finance or somewhat help them!

The whole matter of this change of telecommunication legislation is so complicated--- (not just over time to follow), but in terminology and legal meaning, that even the Commission itself seems to struggle at times; e.g. the definition of equivalence (that term over time as well nearly got lost in meaning)~!

When in 1990 the telephone exchange service was privatized I was rightly told that there was no broadband, yet dial-up access and by 1999 broadband but then when in 2001 the current Telecommunications Act was passed, the then KSO was taken into a new TSO , and broadband was legally there.

While in general I found the Commerce Commission helpful, I noticed a certain mild bias in their wording-----and I am only referring to my subject matter of the two codes (see above): Words like “upgrade” or “old” are in my view not appropriate; say rather “switching to “ and “current”; or “more reliable” that is bias and proven wrong during the COVID-19 lockdown.(Commission media release No.92 of 4.March 2020).

I make reference to the following publicly available documents for my submission:

- A) My own OIA-request to the Commerce Commission ( The Commission) of 6.April 2020
- B) The Commission’s publication 4.March 2020 called “Equivalence and Non-Discrimination-Guidance on the Commission’s Approach for Telecommunication Regulation”
- C) Prof.Ingo Vogelsang’s report of 16.October 2019
- D) Communications Minister David Cunliffe’s discussion paper of August 2007 titled “ Telecommunications Service Obligations Regulatory Framework”
- E) Chorus Limited – Deed of Open Access – Undertakings for Copper Services of 6.October 2011
- F) The Commission’s Draft 111 Contact Code, i.e. its leaflet, and the text itself
- G) The Commission’s draft of its Copper Withdrawal Code, and its text.
- F) The Commission’s Reports from Measuring Broadband New Zealand

**The whole matter of fibre (UFB) versus copper hinges on and is relevant in the context of equivalence. The Commission very early on did seem that to be the real area of need(equivalence) to make a transition to fibre legally possible in the context for both the end consumer (access seeker) as well as the service provider (circuit owner) and their wholesale customers.**

**Therefore the Commission engaged for instance professor Vogelsang. ( Whose report just touches on the technical side of equivalence (EoI), and mainly deals with the Equivalence of Prices (EoP) in the context (his brief) “Non-Discrimination(ND)”.**

**Therefore I will make my main argumentation towards the question: Is the envisaged change from copper to fibre (UFB) equivalent .**

**Here is already my conclusion:**

***There is no equivalence!***

**Here is some evidence from the various publications of the Commission and other documents (see my points above A-F ):**

**(B) under section 2.37 a clear definition of equivalence is given; figure 2.1 on page 17 shows that the envisaged service falls under the equivalence obligation; (under 2.37 quote: for me “relevant services” can only mean----THE TELEPHONE SERVICE PLUS BROADBAND).**

(E) Under section 6 Equivalence gives a clear and concise definition of equivalence, with 6.3 being especially relevant. ----“ the same means exactly the same” !

In the context of the above:

(G) Says (leaflet) that the new connection (fibre) must deliver the same (sic) services; but it clearly does not!

The code itself (draft) introduces under its section 18. (as a quote from an explanatory note to the Amendment Bill) an new term----“comparable alternative fibre services---“: The term ”comparable” *must be rejected* as it is not covered by the otherwise used (in a binding way) term in all legislation and deeds “Equivalent/Equivalence” , meaning exactly the same. Therefore the term “comparable” must not be used in any way (even as so-to-speak) justification to write a CODE !

I reject the use of the term “COMPARABLE”, AS WORDS DO HAVE MEANING, even statutes always have introductory section called “Interpretation”!

**I reject the Draft Code as it stands, because it does not offer anything near to EQUIVALENCE.**

The existing copper network first delivered telephony (fixed line/landline), and the KIWI-SHARE regime was introduced (on privatization) to protect the ordinary consumer/citizen, as the telephone now and then was considered to be a basic right of communication like the post service itself); then as broadband/internet came along its use was loaded onto the copper network (without being in the Kiwishare); but already in Dec.2001 the so-called TSO contained broadband and telephony.

The present proposal reverses the original arrangement, i.e. first broadband was hooked onto the telephone copper network, and now the reverse is proposed---the telephone service is hooked on the broadband-----very wrong !

Why should the use of a landline telephone be made dependent on the use of fibre in broadband(sic), as the proposed arrangement does not deliver equivalent services.

For instance:

- a) The telephone would have to be connected through a router/modem, which no longer would work during an electric power loss/failure, with the consequence of the loss of a functioning of the telephone! **This is unacceptable!**
- b) When you have (as we do) have more than one working telephone sockets, you no longer could use those sockets to plug in another telephone independently of the internet modem. **This is unacceptable!**
- c)The possibility on offer seems to be as well a connection to consumers over so-called WiFi----such an option as the sole connection mechanism is unacceptable for the radiation involved----!
- d) The loss of so-called legacy services (e.g. fax machines----we have one; **plus our overseas connections**) is also unacceptable.

Unbundling should mean that the consumer could choose between a basic telephone service, and let’s say a basic broadband service over the existing copper network. The word used by the commission “intent” does not mean a mandatory change—and that only in the name of so-called competition, a concept which in its outcome seems to deliver inequality, undemocratic practices, and the disenfranchising of the common citizen. We are not all here to make money for the sake of it.

To maintain the existing copper network parallel to new UFB would not mean a very big investment/expense; (a little more in monthly fees for the consumer might be worth the investigation); and technically there is no problem anyway!

Now my short submission of the Commission's draft "111 Contact Code"

This should be read in conjunction with my other submission (see above).

The whole Code is (in my view anyway) against Natural Justice as practised in this country/Nation:

First you have a service (the copper network with its availability during electric power outages (the system supplies in direct current 42-44 volts).

Then someone comes and takes that basic functionality (the independently working condition) away from you, and suddenly you as the citizen/consumer have to prove that you consider yourself a so-called vulnerable person, only to get back something(e.g. a cell phone), which is neither equivalent nor equally reliable.

That is unacceptable!

Here again on the Commission' leaflet there is bias in the use of words like "old" , "new".

The reversal of "prove of innocence" (innocent until proven guilty) in this case is not only undemocratic , but violates the rights of common people (who by-the-way usually have contract with the supplier as well as the STATE), in that reversal of prove/innocence.

Therefore I consider the whole code wrong and reject it; and will not make any comments on any detail of the code.

The Commission should rather strive to find a way to keep the necessary functionality of landline telephones over the copper network working.

**This way the** unbundling of the network and the non-discrimination aspects would **possibly** not be affected and could probably come into effect.

I wonder anyway why Prof. Vogelsang's report mainly concentrates on and deals with the so-called EoP's and ND in the commercial sense and not the aspects of the technical consequences of the proposed fibre network. Perhaps it was his brief, but as an academic he could well have considered the social consequences as well.

It seems we as citizens are still far too much in the hands of technocrats and self-appointed(or otherwise) so-called experts.

Would you please read and consider my submission and make changes to the extend that "copper" stays and the "111 Contact Code" is withdrawn.

Thank you very much,

Wolfgang Faber

Te Aroha 3320