New Zealand Telecommunications Forum Submission on

the Commerce Commission's Funding for Regulation of Telecommunications and Fibre Services

The New Zealand Telecommunications Forum, (TCF) welcomes the opportunity to provide a submission on the Commerce Commission's (the Commission) consultation paper *Review of the Commerce Commission's funding for the regulation of Telecommunications and Fibre under the Telecommunications Act 2001* dated 10 December 2020 (the consultation paper).

The TCF is the telecommunications sector's industry body, it plays a vital role in bringing together the telecommunications industry and key stakeholders to resolve regulatory, technical and policy issues for the benefit of the sector and consumers. Its members represent 95% of the sector[1].

The TCF does not doubt that the Commission's fixed costs have expanded as it has grown, and it accepts that all appropriations are required to contribute to this cost. Likewise, the TCF understands the 2018 changes to the Act, particularly the expanded Commission responsibilities and powers under the new Part 7 of the Act relating Retail Service Quality require additional funding. However, the TCF is concerned about the very large proposed increase in funding for this expanded responsibility. The TCF therefore questions why the Commission requires such a large increase in funding to carry out its telecommunications-specific regulatory functions.

Our sector is a heavily regulated sectors in New Zealand, and has been for the better part of the last 15 years. Throughout this period, successive legislative amendments have added to or have changed the Commission's telecommunications regulatory responsibilities. Similarly, the telecommunications sector has, from time to time, appeared on the Commission's publicly-discussed annual priorities or focus areas, with the Commission spending more resources and time on telecommunications matters as a result. The

[1] Chorus, Enable Networks, Northpower, Trustpower and UFF have abstained from this submission and will submit separately to the Commission.

Commission has managed these fluctuations in workload well, without significant increases in funding being required, and we expect the same should be true of its Part 7 responsibilities.

The TCF has always interpreted the provisions of Part 7 as being a requirement for the industry to respond to particular consumer concerns, with the Commission acting as a backstop in the event that industry fails to respond, or does not respond appropriately. The Commission, on the other hand, appears to be making an assumption that it needs to actively intervene in retail markets, without first identifying clear problems requiring Commission designed solutions and interventions.

The Commission has a range of processes and solutions available to it to resolve what it identifies as consumer issues, including access to alternative legislation such as the Fair Trading Act and the Commerce Act which are not funded directly by the industry. However, there is no recognition of these options or any indication of how it will prioritise its interventions and appears to be seeking funding for all of the activities it may wish to undertake.

The Consultation Paper assumes a pass-through of the increased funding costs to New Zealand households (cl. 174), however it does not identify a mechanism to do this. The Commission does not provide enough substance in the perceived benefits to consumers to justify the increase under any of the options outlined in its Consultation Paper. In contrast we see the risks described in cl. 197.1 and 197.2 as been valid and likely to occur. That is, consumer confusion about products and plan, and the industry being overwhelmed with regulatory and compliance costs.

As a result of changes in market structure, and the regulatory environment, telecommunications retail markets remain competitive. It will be challenging in today's environment for Retail Operators to pass the additional cost on to consumers or for the Retail Operators to bear the costs as a tax. The increased costs will likely result in the reduction of consumer benefits in other areas such as innovation and network investment, with the regulatory intervention having unintended consequences on the digital transformation of New Zealand. The New Zealand Infrastructure Commission considers this in its State of Play Report and concludes that the sector is well placed to deal with the future and makes no recommendation that stronger regulation is required.

The industry has demonstrated that it is willing to cooperate with the Commission to resolve consumer issues where a problem has been clearly defined. Such an approach would be lower cost for the Commission and the industry, and result in more sustainable solutions. Larger regulatory 'infrastructure' could lead to teams of people looking for projects that justify their roles, and operators having to ramp up regulatory FTE to respond; increasing operational costs further.

The industry responded strongly to consumers during Covid-19 lockdown in 2020 and continues to innovate to deliver better solutions to telecommunications customers as they adapt to their changing home and work environments. On the flipside, operators have not been immune to the economic impacts of Covid-19 with many having to reduce staff numbers to ensure their operations would survive. The experts within businesses (not just regulatory teams but the operational teams that power the various working groups) are busier than ever making sure their companies continue to deliver in 2021. Considering this economic backdrop, it is unclear how the industry will be able to engage in more regulatory activity in the short to medium term. The Commission should be cognisant of this and recommend funding more closely aligned to its scope as set out in statutory obligations.

Consequently, the proposed increase in funding for the ‘competition and consumer’ areas of its work in the telecommunications industry is considered excessive and – in appearing to assume heavy Commission intervention under Part 7 of the Act - threatens to undermine the TCF’s ability to successfully pursue self-regulatory initiatives to address retail service quality matters.

The proposed increase in funding for the Commission’s telecommunications competition and consumer activities exceeds what might reasonably be expected to allow the Commission to perform its functions and duties under the Act.

The Commission should focus first on clearly prioritising consumer issues which require resolution, clearly defining them, and exploring the range of options it has for developing low-cost solutions. The proposed increase could be justified only if the Commission were to become more involved in retail market design. Such an approach however, will increase the costs of the industry further and may not necessarily be in the interests of consumers in the long run.

The TCF will continue to engage with the Commission during its consultation process, and is available to answer any questions regarding the information provided and the views set out in this submission.

Yours sincerely

Geoff Thorn

Chief Executive Officer

New Zealand Telecommunications Forum (TCF)