



**MINISTRY OF BUSINESS,
INNOVATION & EMPLOYMENT**
HĪKINA WHAKATUTUKI



CONVERGENCE



Announcements on the future of communications regulation

Review of the Telecommunications Act 2001

Announcements on the future of communications regulation

The New Zealand communications market has undergone fundamental change since the Telecommunications Act was introduced in 2001. We need to make sure our laws are fit for the future.

This fact sheet provides more information on the new regulatory framework proposed for communications services as part of the Review of the Telecommunications Act.

The announcements

From 2020, the Government will move to a framework for regulating copper and fibre services that is similar to the one used for utilities like electricity lines.

The Government is also:

1. retaining the current fibre 'unbundling' requirements to promote innovation on the UFB network from 2020
2. considering ways to better support competition in the mobile market; and
3. ruling out any changes to the current arrangements for regulating broadcasting infrastructure.

In this fact sheet, we provide more detail on these announcements.

What next?

We will consult further on detailed design and implementation issues later this year. We are encouraging anyone interested in these matters to contribute to that conversation.

After that consultation, we expect to move to putting these settings in legislation. More information and updates will be provided on MBIE's website at www.mbie.govt.nz/telcoreview.

Regulation of fixed line (UFB and copper) services

Last year, the Minister for Communications, Hon Amy Adams, consulted on how communications services should be regulated after 2020. It is clear that we need a new approach to fixed line communications services, following the structural separation of Telecom and once Ultra-Fast Broadband (UFB) is rolled out to most of the country.

Government investment has already significantly improved New Zealanders' access to high quality connectivity through the UFB and Rural Broadband Initiative (RBI) programmes. It is important to get the regulatory settings right to build on these opportunities and support growth across the economy.

Our goal is to develop a stable and predictable regulatory framework that supports competition, innovation, and efficient investment for consumers.

High Level decisions

The Minister has announced that the Government will move towards a utility-style regulatory framework with 'building blocks model' (BBM) pricing for fixed line services (copper and UFB).

The key aspects of a utility-style framework that we are considering for fixed line communications are:

- using a 'building blocks methodology' to value assets;
- considering caps on the overall revenues of regulated businesses, as well as price caps for individual services;
- information disclosure requirements; and
- setting methodologies for determining the various inputs into the calculation of regulated prices in advance to provide greater certainty.

Why change?

Under the current system, we don't know if, when or how UFB services will be regulated after 2019. This uncertainty could delay investment in broadband networks and delay the benefits of better broadband for consumers.

Following the structural separation of Telecom and the creation of Chorus, wholesale-only fixed line providers increasingly resemble utilities (in particular electricity lines businesses). There is a case for more consistency with traditional utilities, by moving fixed line communications services to a utility-style regulatory framework like that in Part 4 of the Commerce Act 1986, which applies to industries such as electricity lines and gas networks.

A change to the way we regulate fixed line communications services was overwhelmingly supported by submitters to last year's consultation.

What do these decisions mean for consumers?

Consumers are relying more and more on high-quality broadband. Over 20 per cent of those who can connect to UFB have chosen to do so – and we expect that number to have increased significantly by 2020. Making these changes will help support investment in new and better services that consumers need.

We are making sure consumers are protected in the transition. The Government will work to ensure that if prices were to change under the new model there would be no sudden increase in prices for “anchor products” - basic phone and broadband services.

Consumers will have another opportunity to contribute when we consult on the design of the new system later this year.

What do these decisions mean for industry?

These changes are designed to put in place a more stable and predictable regulatory environment for both Retail Service Providers (RSPs) and network owners. Industry will know what to expect after 2020, and will have the confidence to invest and plan for the future.

There will be another opportunity for industry to feed back on the details of policy decisions, later this year.

About BBM pricing

The BBM is a method of regulated pricing that is already used in utility-style regulation in New Zealand, and for telecommunications in Australia. With the rollout of UFB, and with structural separation, this methodology is more suitable for our fixed line telecommunications networks.

- Under BBM a ‘revenue cap’ is usually set for the regulated entity (and/or price caps are set for its services), which should cover all of its efficiently incurred costs but avoid monopoly profits.
- This revenue cap is worked out after valuing the network using various ‘building blocks’.
- The process is much more of a ‘crank-the-handle’ approach, so that there are not big changes in assumptions every time the cap is re-set.
- Suppliers can get ‘pre-approval’ of future investment, with some regulatory oversight to avoid gold plating.

This will be a move away from the Total Service Long Run Incremental Cost methodology (TSLRIC), which is currently used for setting the price of copper services in New Zealand. TSLRIC is designed to promote infrastructure competition, which is no longer our primary goal – vibrant retail competition is now happening over the top of our wholesale-only UFB networks.

Another key advantage of BBM is that it is more widely understood than TSLRIC, including in common capital markets.

A move to BBM pricing was overwhelmingly supported in last year’s consultation.

Features of the new framework

Price stability

It is important that consumers not be disadvantaged in the transition. Government will support a policy objective of promoting price stability in the transition to the new regime. We are particularly concerned that consumers on basic products are not unfairly disadvantaged in the transition. We will consult on options to achieve this, including the use of ‘anchor products’.

Legislative vehicle

We are proposing that the new regime for fixed line services be introduced as part of the Telecommunications Act, rather than the Commerce Act. This approach allows for a consistent approach across fixed and mobile communications markets, which would otherwise be dealt with in different pieces of legislation. Stakeholders will have an opportunity to comment on this proposal later this year.

Even if we use the Telecommunications Act as the vehicle, we will be looking to replicate the settings for other utilities (in Part 4 of the Commerce Act) wherever appropriate.

How will prices be set?

The main methodologies for the new regulatory framework would be developed in the run-up to 2020, to give an early indication how revenue and/or price caps might be set. These would include such things as the methodologies for setting the cost of capital and for valuing the network. We will be testing with the industry how this process can be structured to provide them with a degree of regulatory predictability. One important question is how price-quality regulation would be managed by the Commerce Commission under the new framework.

Government will consult on the idea of using ‘anchor products’ as a way to manage the transition to a new regulatory framework. For example, prices could initially be set for basic voice and broadband services with reference to entry-level prices already in the market. Anchor products are especially useful in a time of transition, which is appropriate as we move to UFB services in large parts of the country.

Who would this new regime apply to?

We think that, if BBM price control is implemented for Chorus’ UFB services, it should also be implemented for Chorus’ copper services. It makes sense for all of Chorus’ fixed line services to be subject to the same regime. Adopting one methodology for fixed line services also acknowledges the practical reality that the networks share a significant proportion of assets and costs, that investment decisions are not made on a stand-alone basis for each network, and that users are focused on services and not technology.

We also intend to apply the utility-style system to the three Local Fibre Companies, and any future UFB providers under the extension to the UFB programme. There is the option to treat these providers differently – that is, Local Fibre Companies, which face more competition than Chorus, might only be subject to information disclosure. We will be asking for views on this question.

We aren’t proposing that the new system would apply to the regulation of other (vertically-integrated) networks, like mobile, wireless, and commercial fixed line networks like Vodafone’s cable network. We consider that the current provisions in the Act are appropriate for these services.

Implementation

Later this year, we will consult on the timing of implementing the new price regulation for fixed line services.

Moving to BBM price regulation from 2020 will provide a high degree of certainty that UFB providers will not make monopoly profits, and that consumer interests will be addressed.

However, there is also the option for a more light-handed 'backstop' regime. The threat of regulation combined with requirements to release financial and cost information could work as an effective incentive to keep prices at reasonable levels. While this isn't the Government's preferred approach at this time, we will be interested in discussion on this point.

Unbundling

UFB providers already offer 'unbundled' access to their point-to-point services (generally for corporate and enterprise services, and for backhaul for mobile services). These UFB providers are already required to start commercially offering 'unbundled' access to their point-to-multipoint fibre services (which generally serve residential and SME customers) from 1 January 2020.

We are proposing that these unbundling requirements stay in place – so no change from the status quo. Unbundling will support the development of innovative new services for consumers.

What is unbundling?

'Unbundling' refers to the requirement on UFB suppliers to provide access to the basic infrastructure layer of the fibre network (also known as 'dark fibre').

Access to dark fibre enables an RSP to install their own equipment onto the cable and develop their own UFB services, having greater control over the quality and features of the particular service.

Mobile competition

Price, quality and choice for mobile services have improved in the past decade, thanks to both competition and regulation. However, this competition is still vulnerable - new entrants still face limited choices when looking for commercial agreements for roaming and co-location on mobile towers. There is some regulation in place to support competition, but this does not put controls on price.

We are focusing on ways to support the sharing of infrastructure through roaming and co-location, to bring more services and competition to the whole country. For example, we will consider whether national roaming services should be price regulated.

Broadcasting

The Telecommunications Act exempts broadcasting infrastructure from regulation, and last year we asked whether we should make changes to this exemption. We asked whether digital convergence had made 'siloed' regulation ineffective.

We have decided that there is no case to impose additional regulation for broadcasting infrastructure. Digital convergence is increasing competition, with content providers able to distribute online as well as through traditional means.

As part of the convergence work programme, the Government is considering reforms to the regulation of broadcasting content to make it fit for purpose for a digital age.