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NZCID Submission on the Telco Review Options Paper

The New Zealand Council for Infrastructure Development (NZCID) is the peak industry body for the infrastructure sector and promotes best practice in national infrastructure development through research, advocacy and public and private sector collaboration. NZCID members come from diverse sectors across New Zealand and include infrastructure service providers, investors and operators.[1]

We consider telecommunications to be a critical component of the national economy and an essential social service in the modern world and welcome this opportunity to provide feedback to the Ministry of Business, Innovation and Employment (MBIE) on the Telco Review Options Paper (the Paper).

By reducing New Zealand's effective distance from major markets and connecting labour with employment, telecommunications services represent perhaps the single greatest opportunity to enhance national prosperity, increase incomes and grow employment across the country.

It is therefore of the highest importance that the regulatory environment governing telecommunications investment and operation is optimal.

Recent changes within the telecommunications sector, including the structural separation of Telecom and ongoing growth in the demand for digital connectivity, are material. They therefore warrant a review of the way in which fixed line services in particular are regulated, to ensure the regulatory environment remains fit for purpose.

We support the Review.

While we support the Review, we remain cautious of any changes to infrastructure regulation. New Zealand generally, and our telecommunications sector in particular, have a mixed history in the revision of regulatory systems. It is of the utmost importance that new systems are carefully conceived and introduced with strong industry support.

We must not, as a nation, repeat the same mistakes which recently led to a collapse of the Chorus share price following one regulatory pricing decision and its rapid increase following another.

Unpredictable regulation increases the risk of investment and the cost of borrowing and disincentivises infrastructure investment, resulting in either a higher cost of delivered services or lower level of service, both of which are bad for consumers.

[1] This submission represents the views of NZCID as a collective whole, and may not necessarily represent the views of individual member organisations.

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In order to deliver services at the lowest long term cost for consumers, changes to telecommunications legislation must achieve two things.

1. An optimum balance between the immediate desire of consumers to receive services at a low cost and the ongoing need of investors to derive an appropriate return on investment for a given level of risk; and
2. Arriving at, or maintaining, this balance in a clear, predictable and evidence-based manner.

A regulatory approach which results in service providers deferring or avoiding essential investment will reduce the potential for telecommunications services to deliver value to New Zealand.

Likewise, an approach which provides an inappropriately high return on investment for service providers, given the risk of investment, will increase service costs and disincentivise telecommunications consumption, leading to lower overall welfare.

Because investment risk plays such a significant role in the cost of capital for infrastructure providers and the willingness of investors to support long term investment, a clear and predictable regulatory environment presents an opportunity to lower overall costs to both service providers and consumers.

In this regard, we are pleased that MBIE has undertaken a review of the Telecommunications Act at this time, noting that implementation of new pricing models and mechanisms will be required by 2020.

The 3-4 year intervening period should provide enough time for detailed sector analysis, industry engagement and testing of the new regulatory environment to avoid unpredictable market outcomes.

That said, we have been observing for a number of years the protracted and to date unresolved review of the transmission pricing methodology for the electricity sector.

Should the Telco Review suffer similar challenges, it is unlikely that a new regulatory approach for the telco sector will be operational by 2020.

As a means to reduce the risk of stretched timeframes, officials should provide clear, agreed guidance to the Commerce Commission in regard to the process it should undertake when reviewing regulated assets.

One such piece of guidance could include, in our view, a similar regulatory approach to that undertaken in Australia.

Specifically, the Commerce Commission should ask regulated asset providers, notably Chorus, to identify in the first instance the regulatory model and price settings it considers appropriate.

Chorus would, under this approach, submit its recommendations to the Commerce Commission for review and public consultation.

Following appropriate engagement particularly with the wider sector, the Commerce Commission would re-engage Chorus to resolve any differences. A subsequent round of engagement may then follow.

Under this approach, the Commerce Commission would still determine how fixed line services are regulated. The difference would be that the terms under which that regulation takes place would initially be set by the service provider, not the regulator.

In our view, such an approach would ensure the review is from the outset focused on the most important aspects, mitigating against protracted and potentially litigious appeals.

We thank MBIE for this opportunity to submit.