

## Regulatory Impact Statement

### ULTRA-FAST BROADBAND INITIATIVE: AMENDMENT TO MODEL

#### AGENCY DISCLOSURE STATEMENT

This Regulatory Impact Statement (**RIS**) has been prepared by the Ministry of Economic Development (**MED**).

It provides an analysis of options [*section withheld under s9(2)(j) of the Official Information Act 1982*].

The government's model for the ultra-fast broadband (**UFB**) initiative was set out in an Invitation to Participate dated October 2009 (the **ITP**).

#### Problem definition

[*section withheld under s9(2)(j) of the Official Information Act 1982*].

#### Background

[*section withheld under s9(2)(g)(i) of the Official Information Act 1982*].

A full RIS will be included in the paper to be presented to Cabinet later this year proposing the implementation of the proposals in this paper.

At the heart of this Cabinet paper is a proposal which is designed to increase the amount of co-investment which will be forthcoming in a revised tender round under the ITP.

[*section withheld under s9(2)(j) of the Official Information Act 1982*].

In addition, open access will be required to a "non-discrimination" standard, and will be embodied in binding deeds of undertaking given to the Crown and enforced by the Commerce Commission. There will also be an information disclosure regime applying to the fibre businesses for the duration of the regulatory forbearance period, so that the Commission will have a transparent view of the fibre business' behaviour.

It is also important to note the proposal for regulatory forbearance is for a limited time frame. It will not be permanent, and this is signalled clearly to investors at the outset.

#### Options considered

[*section withheld under s9(2)(j) of the Official Information Act 1982*].

#### Nature and extent of analysis undertaken

CFH has carried out significant analysis of proposals received in the first round of the ITP process. CFH has carried out cost modelling on the proposals to enable it to estimate the level of coverage likely to be achieved under the current proposals.

**[section withheld under s9(2)(j) of the Official Information Act 1982].**

**Effects that would require a strong case before regulation is considered**

The proposal in this paper would not have any of the effects that would require a particularly strong case before regulation is considered. It will not impose additional costs on businesses, impair private property rights or the incentives on businesses to innovate and invest. In fact it will do the opposite.

**[section withheld under s9(2)(g)(i) of the Official Information Act 1982].**

Bruce Parkes  
Deputy Secretary  
Energy and Communications Branch  
**Ministry of Economic Development**

[Signature of person]

[Date]

## STATUS QUO AND PROBLEM DEFINITION

- 1 In October 2009, an Invitation to Participate (**ITP**) set out the process, and terms and conditions for the selection of Government partner(s) in the UFB Initiative. In December 2009 a Crown-owned company, Crown Fibre Holdings Limited (**CFH**), was established to manage the selection of partner(s).
- 2 The ITP required bidders to submit proposals for co-investment in, and deployment and operation of, fibre-optic network businesses (called 'local fibre companies' or **LFCs**)<sup>1</sup>.
- 3 Based on the first round of proposals under the current ITP model, [**section withheld under s9(2)(j) of the Official Information Act 1982**].

## OBJECTIVES

- 4 The Government's Ultra-fast Broadband (**UFB**) Initiative objective is as follows:

To accelerate the roll-out of ultra-fast broadband to 75 percent of New Zealanders over ten years, concentrating in the first six years on 'priority users' such as businesses, schools and health services, plus greenfield developments and certain tranches of residential areas.

- 5 In support of the objective, the Government will provide up to \$1.35 billion in co-investment in open-access fibre-optic network infrastructure.

## REGULATORY IMPACT ANALYSIS

- 6 CFH developed several proposed changes to the model aimed at improving the economics of the fibre rollout, which were in turn refined in consultation with officials. A greater degree of certainty over how Government would approach fibre regulation is also proposed. This package of proposals is intended to make the UFB model more attractive to potential investors so as to increase the likelihood of achieving the Government's broadband objectives, while at the same time ensuring long term competitive objectives are met.
- 7 The proposal is that the LFC:
  - a *must* offer layer 2 fibre access services; and
  - b *must* also offer certain layer 1 fibre access services .
- 8 This differs from the Current ITP Model in that:
  - a Layer 2 services become mandatory for LFCs rather than optional; and

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<sup>1</sup> The ITP allows either regional or national proposals, so there may be one or many LFCs.

- b the LFC will not be required to offer layer 1 services on an equivalent basis for an initial period.
- 9 The proposed changes provide for a period during which the LFCs are not subject to the full scope of regulatory oversight, and are not subject to the maximum level of regulatory safeguards. Until 31 December 2020, the LFCs are not:
- Subject to the threat of unbundling for a key input service (the “equivalent” layer 1 service);
  - Subject to the threat of regulatory price control;
  - Obligated to provide services to the “equivalence of inputs” standard
- 10 However, the LFCs are still subject to the following safeguards during that period:
- A requirement to provide services on an open access, non-discriminatory basis;
  - Prices will be set through commercial negotiations with CFH following a competitive tender process;
  - Enforceable undertakings on open access and information disclosure;
- 11 In addition, the LFCs will face competition from copper based services, which are and will be subject to regulation.
- 12 At the end of that period, the following additional safeguards will also apply:
- An obligation that the LFCs networks and systems must be capable of providing layer 1 services on an EOI basis
  - An obligation to provide the “equivalent” layer 1 service;
  - The Commerce Commission can recommend that the terms and conditions (including the price) of services offered by the LFCs be regulated

## CONSULTATION

- 13 MED consulted with The Treasury, the Commission, the Department of the Prime Minister and Cabinet and CFH on the recommended amendments.
- 14 ***[section withheld under s9(2)(j) of the Official Information Act 1982].***

## CONCLUSIONS AND RECOMMENDATIONS

- 15 The changes represent a balancing of the risks of deterring investment which will contribute to New Zealand’s economic growth against the risks of reducing

the level of competition which will ensure that investment is efficient and brings long term benefits to consumers.

- 16 The Ministry of Economic Development supports the proposed amendments to the ITP model. The changes will promote additional investment, while retaining safeguards to deal with problems that may arise in the future.

## **IMPLEMENTATION**

- 17 A subsequent Cabinet paper will describe the precise changes to legislation necessary to implement the decisions in this paper.

## **MONITORING, EVALUATION AND REVIEW**

- 18 The Ministry of Economic Development will review the impact of the changes on investment and competition on an ongoing basis. The Ministry also has an oversight role in relation to CFH, and will use that to assess the effectiveness of CFH in constraining the pricing power of the LFCs.
- 19 The Commerce Commission will be able to monitor and report on the effectiveness of their role in enforcing non discrimination, and on the implications of the information disclosed by LFCs.