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# Communications Portfolio

## BRIEFING FOR THE INCOMING MINISTER

December 2016

### ***Purpose***

*This initial briefing has been prepared by the Ministry of Business, Innovation and Employment (MBIE). Its purpose is to give the incoming Minister for Communications sufficient information to meet initial requirements. It is not intended to be a detailed analysis of the portfolio or the policy issues. The initial briefing is part of wider process, which enables ministers to call for a fuller briefing or briefings on issues of interest.*

*We suggest you read this paper in conjunction with the MBIE's overarching briefing, and note that you will receive a separate briefing on the broadcasting elements of the Communications Portfolio.*

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# 1. Portfolio overview

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As Minister for Communications you have the opportunity to improve New Zealand's economic performance, and the lives of New Zealanders, through high quality communication infrastructure and services.

The portfolio includes telecommunications, radio communications and postal policy. One of the biggest challenges is meeting growing expectations for high speed broadband. A major review of the Telecommunications Act is also underway.

The portfolio provides a range of opportunities to work with other ministers to deliver broader outcomes. These include improved productivity through business uptake of information and communications technology (ICT), and ensuring that New Zealanders of all ages have the skills they need to make the most of an increasingly digital world.

An introduction to the key areas in the portfolio is provided below.

## Digital economy

The cross-government Digital Economy Programme was announced in late 2015 as part of the innovation chapter of the Business Growth Agenda. The aim is to position New Zealand as a leading digital nation, with four goals:

- A thriving **digital sector** – where digital technology firms make up a larger part of the economy, and partner with other sectors to create new products and services and ways of doing things.
- **Digital businesses** – New Zealand businesses across all sectors of the economy using digital technology to improve their productivity, add value and become more competitive.
- Connected and confident **digital New Zealanders** – who can function safely in the digital world, access the benefits of digital technology, and create with it.
- A **digital government** – where the public sector is using digital technology to work smarter, make better decisions, generate value from New Zealand's information, and transform the way services are delivered.

The Communications Portfolio makes a major contribution to growing New Zealand's digital economy, by investing in high-speed, reliable and affordable broadband for businesses and individuals. There are also cross-overs into your Economic Development portfolio, which supports New Zealand's tech sector. Improved connectivity is also an important element of the Regional Growth Programme. Other portfolios with a strong interest in the digital economy work include: Education, Tertiary Education Skills and Employment, Small Business, Science and Innovation, Transport, and Internal Affairs (responsible for the ICT strategy for government agencies).

## **Telecommunications regulatory review**

The Government is currently undertaking a review of the Telecommunications Act 2001. Changes to regulation are intended to provide investors with certainty and ensure consumers are protected once the UFB build contracts expire in 2020.

The Minister for Communications announced in April 2016 that the Government was moving towards a utility-style regulatory framework for regulating wholesale services on the copper and UFB networks. Under the framework, a “building blocks model” (BBM) will be used to regulate these services, as is the case for electricity, gas and airport services under Part 4 of the Commerce Act. The Government has consulted extensively on the proposed changes.

*[Information withheld consistent with s9(2)(f)(iv) of the Official Information Act 1982]*

## **Broadband roll out**

Ultra-Fast Broadband (UFB) is being rolled out across New Zealand through partnership between Crown Fibre Holdings (CFH), the Crown-owned company established to manage the Government’s investment in UFB infrastructure, and several different local fibre companies.

Under the first phase of the UFB initiative, all schools and hospitals, and 90 percent of businesses, had access to UFB by the end of 2015, and 75 percent of New Zealanders will have access by 2020. The initiative is being extended to increase the percentage of New Zealanders able to access UFB to at least 80 percent by 2022. The additional towns to receive investment from the extension will be determined following the completion of a competitive bid process being led by CFH.

Because UFB is not feasible for every rural community, the Rural Broadband Initiative (RBI) is providing broadband internet with peak speeds of at least 5 megabits per second to more than 90 percent of homes and businesses outside UFB areas. In partnership with service providers, over 1000 rural telecommunications cabinets were upgraded and 154 new towers providing fixed wireless broadband were built by June 2016, and 387 existing towers are being upgraded by June 2017 providing improved broadband to over 300,000 rural homes and businesses.

The RBI is being extended in conjunction with a new Mobile Black Spot Fund (MBSF), which will improve the availability of mobile services to support safety on state highways and enhance visitor experience at key tourist destinations which do not currently have coverage from any mobile

operator. A request for proposals was released for these programmes in October 2016 by CFH, which will manage the process and the awarding of contracts.

### **Property access for telecommunications**

The Telecommunications (Property Access and Other Matters) Amendment Bill (the Bill) is intended to reduce the time taken to install fibre broadband connections in situations where the consent of multiple parties is required for access to shared property. The Bill was introduced in response to the large number of UFB orders that were facing delays obtaining consent and on occasion being cancelled as a result.

The Bill will implement a streamlined regime, reducing the need for multiple parties to provide consent. Through regulations, installation methods will be classified into one of two categories, depending on their impact on shared property:

- Category One installations will have no substantial enduring impacts on shared property, and will be able to proceed by right, provided that no fewer than five working days' notice has been provided to all interested parties.
- Category Two installations have a greater level of impact and invasiveness, and will be subject to a deemed consent regime where an interested party will be provided with a high-level design plan, and will have 15 working days to object.

The Bill was reported back to the House by the Commerce Committee on 13 December 2016. Regulations need to be made to classify installation methods into the two categories, and to put a dispute resolution scheme in place. Network operators using the new rights will be required to become members of the scheme.

### **National Environmental Standards for Telecommunications Facilities 2016**

The Government has recently taken steps to further facilitate the deployment of telecommunications infrastructure, through the introduction of the new National Environmental Standards for Telecommunications Facilities 2016 (NESTF 2016) under the Resource Management Act 1991 (RMA).

A joint initiative with the Minister for the Environment, the NESTF 2016 will come into force on 1 January 2017 and will provide greater national consistency in the rules surrounding the deployment of telecommunications infrastructure across New Zealand, while ensuring environmental effects are minimised and managed appropriately.

*[Information withheld consistent with s9(2)(f)(iv) of the Official Information Act 1982]*

*[Information withheld consistent with s9(2)(f)(iv) of the Official Information Act 1982]*

*[Information withheld consistent with sections 9(2)(ba)(i) and 9(2)(f)(iv) of the Official Information Act 1982]*

### **Mobile caller location**

MBIE is leading a project on mobile caller location, and you are the lead minister. The aim is for the best available probable caller location information to be sent to an emergency service provider (Police, Fire, St John and Wellington Free Ambulance) when a 111 call is made. All the caller will have to do is dial 111 on the standard keypad of their smartphone. This will decrease the time taken to accept and verify the location of 111 mobile callers and will improve public safety.

*[Information withheld consistent with sections 9(2)(b)(ii), 9(2)(i) and 9(2)(j) of the Official Information Act 1982]*

### **Radio Spectrum Management**

Wireless technologies (using radio spectrum) are now a ubiquitous part of modern life. Uses for these technologies include broadcasting, cellular mobile, wifi, other communications, aviation, intelligent transport systems, “short range devices” and defence.

We regulate the use of wireless technologies to minimise interference and to ensure best use of a finite resource. This is primarily through the Radiocommunications Act 1989, which is currently under review.

Allocation of particular frequencies for particular uses is subject to international treaty, availability of technology and local demand. Frequencies that are highly sought after (for example, cellular mobile and broadcasting) are usually allocated initially by contestable mechanisms, with the allocation parameters subject to Cabinet approval.

For frequencies where supply exceeds demand, licences are granted by MBIE on a first-come-first-served basis. MBIE maintains the licensing database and undertakes compliance functions, such as identifying sources of interference and, where appropriate, issuing infringement fines or initiating prosecutions.

In addition to any initial amount paid to win the licensing rights for frequencies, all licences incur an annual registration fee (set in the Radiocommunications Regulations 2001) that is used to cover MBIE's costs of administering the legislation. We have been over-recovering licence fees for several years and fees for most licensees can now be significantly reduced. A review of licence fees is in its final stages and a draft Cabinet paper will be provided for your consideration.

No substantial contestable allocations of radio spectrum are planned in the next year. However, there are several sets of rights that will be subject to renewal having reached the end of their initial allocation period. These "renewals" include rights for cellular mobile (frequencies used for 3G and 4G services) and local commercial sound broadcasting licences.

### **Computer Emergency Response Team (CERT)**

The establishment of a national Computer Emergency Response Team (CERT) is a key element of New Zealand's Cyber Security Strategy 2015 and will contribute to the delivery of the Strategy's vision of '*a secure, resilient and prosperous online New Zealand*'.

A CERT is an organisation that receives cyber incident reports, tracks cyber security incidents or attacks, and provides advice and alerts to its customers on how to respond and prevent further attacks. CERT NZ is being established as a branded business unit within MBIE, and will report to the Minister for Communications.

The previous Minister for Communications announced in May 2016 that she expects the CERT will be in operation by the first quarter of 2017. Cabinet has invited the Minister for Communications to provide further advice on the CERT's longer-term form *[Information withheld consistent with s9(2)(f)(iv) of the Official Information Act 1982]*

The lead agency for cyber security policy is the National Cyber Policy Office (a business unit of the Department of Prime Minister and Cabinet), and the cyber security policy portfolio reports to the Prime Minister. This role has previously been delegated to the Minister for Communications.

## 2. Portfolio responsibilities

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In this section we provide an overview of your responsibilities as Minister for Communications. There are three types:

- Legislative and statutory functions
- Maintaining or reviewing existing government policies and programmes
- Overseeing Crown entities and other boards.

### Portfolio functions and responsibilities

Your key areas of responsibility are as follows:

- Management of the legislation listed below (and detailed in Annex 1), including monitoring the impact of regulatory change, and changes in industry structure
- Decisions on Commerce Commission recommendations to regulate or deregulate services
- Scheduled reviews of core elements of the Telecommunications Act 2001
- Monitoring of the performance of the Commerce Commission in performing its telecommunications regulatory functions
- Administration of the registration of postal operators in New Zealand
- Administration of the registration of telecommunications network operators in New Zealand
- Administration of information disclosure for postal policy
- Administering the NZ Post Deed of Undertaking, which sets minimum standards for postal services
- Administration of the Radiocommunications Act 1989
- Administration of the Telecommunications Service Obligations and the Telecommunications Development Levy.
- Functions from the former Broadcasting portfolio (to be confirmed).

### Legislative responsibilities

You are responsible for the following Acts:

- Telecommunications Act 2001
- Radiocommunications Act 1989
- Postal Services Act 1998
- Telecommunications (Residual Provisions) Act 1987

- Electronic Transactions Act 2002
- Unsolicited Electronic Messages Act 2007
- Telecommunications (Interception Capability and Security) Act 2013.

## **Crown entities**

There are two Crown entities with relevance to the Communications Portfolio:

- Crown Fibre Holdings
- Commerce Commission (telecommunications functions).

More information on these entities is provided in Annex 2.

## **Other State agencies**

You are responsible for regulatory issues in relation to:

- New Zealand Post

### 3. Focus for the first 100 days

Area	Issue	Description	Decision Required	Timing
Broadband	Commercial negotiations to extend Ultra-Fast Broadband coverage	Crown Fibre Holdings is in commercial negotiations for the second phase of the Ultra-Fast Broadband programme (UFB2). This will expand UFB coverage to over 80 percent of New Zealanders by 2022.	A separate brief will be provided on the progress of the negotiations and next steps.	A briefing will be provided in January.
	Rural Broadband Initiative phase two and the Mobile Black Spot Fund	Crown Fibre Holdings has a Request for Proposals (RFP) out seeking responses from network operators to provide high speed broadband to currently under-served rural end users, and to provide mobile coverage in tourist areas and areas of State Highways that currently have no coverage from any network operator. The programmes are funded by the Telecommunications Development Levy (TDL).	<i>[Information withheld consistent with s9(2)(f)(iv) of the Official Information Act 1982]</i>	Responses to the RFP are due in April 2017; <i>[Information withheld consistent with s9(2)(f)(iv) of the Official Information Act 1982]</i>

	Property access for telecommunications	The Telecommunications (Property Access and Other Matters) Amendment Bill streamlines the process for gaining access to land owned by multiple parties to install UFB connections. The Bill was reported back to the House by the Commerce Committee on 13 December 2016. In addition to progressing the Bill through the House, in order for the property access regime to take effect regulations need to be made to prescribe installation methods into categories and a dispute resolution scheme provider must be appointed.	A separate brief will be provided recommending the appointment of a dispute resolution scheme provider following the close of an application process.  Regulations will need to be approved by Cabinet and Executive Council following commencement of the legislation.	February 2017
<i>[Information withheld consistent with s9(2)(f)(iv) of the Official Information Act 1982]</i>				

*[Information withheld consistent with sections 9(2)(ba)(i) and 9(2)(f)(iv) of the Official Information Act 1982]*

Telecommunications regulation

Telecommunications Review

While the Review does not need to be completed until 2019, it needs to be progressed rapidly to allow the Commerce Commission time to apply any changes by 2020.

*[Information withheld consistent with s9(2)(f)(iv) of the Official Information Act 1982]*

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*[Information withheld consistent with s9(2)(f)(iv) of the Official Information Act 1982]*

approval will be sought to introduce legislation to implement a reform package for the Telecommunications Act 2001.

*[Information withheld consistent with s9(2)(f)(iv) of the Official Information Act 1982]*

	<i>[Information withheld consistent with s9(2)(f)(iv) of the Official Information Act 1982]</i>			
	Regulated services under the Telecommunications Act	Commerce Commission will recommend deferring deregulation of the resale of Spark basic voice services for two years.	Approval (or not) of the Commission's recommendation.	March 2017
	Transition away from sharing of IT services between Chorus and Spark	Chorus provide an annual update of its progress in moving away from sharing IT systems with Spark.	Approval (or not) of Chorus' plan.	February 2017

Radio Spectrum Management	Radiocommunications Act Review	<p>Initial stakeholder feedback on the Radio Communications Act Review indicated that the Act is considered generally fit for purpose but would benefit from attention to some specific issues.</p> <p><i>[Information withheld consistent with s9(2)(f)(iv) of the Official Information Act 1982]</i></p>	<p><i>[Information withheld consistent with s9(2)(f)(iv) of the Official Information Act 1982]</i></p>	<p><i>[Information withheld consistent with s9(2)(f)(iv) of the Official Information Act 1982]</i></p>
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	Radiocommunications Licence Fees review	<p>A proposal to reduce licensing fees and simplify the fee structure has been subject to public consultation. The proposals were generally well received and have now been modified to take into account the feedback received.</p> <p><i>[Information withheld consistent with s9(2)(f)(iv) of the OIA 1982]</i></p> <p>We will provide a draft Cabinet paper and regulatory impact statement to confirm these policy decisions early in the New Year.</p>	Approval of draft Cabinet paper	<i>[Information withheld consistent with s9(2)(f)(iv) of the Official Information Act 1982]</i>
	Local Commercial FM licence renewal	<p>There are 13 Local Commercial FM (sound broadcasting) licences that expire in July 2018. A proposal for renewal of these licences has been consulted on with the licensees and the Radio Broadcasters Association. We will provide you with a summary of submissions and our final recommendations.</p>	Approval for MBIE to make the renewal offer to existing licensees.	<i>[Information withheld consistent with s9(2)(f)(iv) of the Official Information Act 1982]</i>

	1800 & 2100 MHz renewals	These bands are currently used for cellular mobile services (4G and 3G) respectively. The frequency rights are due to expire in 2021. Current practise is to make renewal offers for such rights well in advance of expiry to ensure that network investments are not delayed due to uncertainty. Rights holders have been consulted on the renewal terms and MBIE has commissioned an expert advisor to provide advice about the value of these bands. Cabinet approval is required before formal renewal offers are made.	Parameters of the Renewal offers to be recommended to Cabinet.	<i>[Information withheld consistent with s9(2)(f) (iv) of the Official Information Act 1982]</i>
	Reallocation of 174-320 MHz band	This band has been vacant since the turn off of analogue television. MBIE has run a public consultation on future use of the band. We will provide you with a summary of submissions and our final recommendations.	Decision on future use of the 174-320 MHz band. Cabinet paper if competitive allocation is the preference.	<i>[Information withheld consistent with s9(2)(f)(iv) of the Official Information Act 1982]</i>
	Spectrum Outlook 2017-2021	This document is a tool we use to ensure that our work programme is matched to industry/fee payer needs. It identifies wireless technology pressures and trends, and summarises our intended five year work programme. The draft 2017-2021 Outlook is currently out for consultation.	Confirmation of final Outlook/work programme following consultation.	<i>[Information withheld consistent with s9(2)(f) (iv) of the Official Information Act 1982]</i>

Digital economy	<i>[Information withheld consistent with s9(2)(f)(iv) of the Official Information Act 1982]</i>			
	<i>[Information withheld consistent with s9(2)(f)(iv) of the Official Information Act 1982]</i>			
CERT	Launch of CERT services	MBIE will be providing you with advice on the status of the CERT Establishment Project, including proposed timing for the launch of CERT services.	A separate briefing will be provided to you outlining proposed options and timing for the launch.	<i>[Information withheld consistent with s9(2)(f)(iv) of the Official Information Act 1982]</i>

Appropriations	<i>[Information withheld consistent with s9(2)(f)(iv) of the Official Information Act 1982]</i>			
Legislation Programme	Request for priority on the 2017 Legislation Programme	Submit 2017 Legislation Programme bids and associated covering letter to Cabinet Office by 10am Friday 27 January 2017.	A separate brief will be provided.	January 2017
Appointments	Telecommunications Commissioner appointment	The term of the current Telecommunications Commissioner expires in 2017.	A separate brief will be provided	<i>[Information withheld consistent with s9(2)(f)(iv) of the OIA 1982]</i>

## Announcements

Topic	Description	Decision Required	Timing
Launch of CERT NZ	Announcement of the opening of CERT NZ.	<i>[Information withheld consistent with s9(2)(f)(iv) of the Official Information Act 1982]</i>	

## 4. Key MBIE Officials

Contact	Role	Contact details
David Smol	Chief Executive, Ministry of Business, Innovation and Employment	E David.Smol@mbie.govt.nz <i>[Information withheld consistent with s9(2)(a) of the Official Information Act 1982]</i>
Chris Bunny	Acting Deputy Chief Executive, Building and Resource Markets Group	E Chris.Bunny@mbie.govt.nz <i>[Information withheld consistent with s9(2)(a) of the Official Information Act 1982]</i>
Brad Ward	General Manager, Commerce, Consumers and Communications	E Bradley.Ward@mbie.govt.nz <i>[Information withheld consistent with s9(2)(a) of the Official Information Act 1982]</i>
Elisabeth Numan	Policy Director, Commerce, Consumers and Communications	E Elisabeth.Numan@mbie.govt.nz <i>[Information withheld consistent with s9(2)(a) of the Official Information Act 1982]</i>
Kim Connolly-Stone	Policy Director, Digital Economy	E Kim.Connolly-Stone@mbie.govt.nz <i>[Information withheld consistent with s9(2)(a) of the Official Information Act 1982]</i>
Len Starling	Manager, Radio Spectrum Management Policy & Planning	E Len.Starling@mbie.govt.nz <i>[Information withheld consistent with s9(2)(a) of the Official Information Act 1982]</i>
Jeff Hicks	Manager, Radio Spectrum Management Licensing	E Jeff.Hicks@mbie.govt.nz <i>[Information withheld consistent with s9(2)(a) of the Official Information Act 1982]</i>
Fadia Mudafar	Acting Manager, Radio Spectrum Management Compliance	E Fadia.Mudafar@mbie.govt.nz <i>[Information withheld consistent with s9(2)(a) of the Official Information Act 1982]</i>
Jane Tier	Manager, ICT Policy & Programmes	E Jane.Tier@mbie.govt.nz <i>[Information withheld consistent with s9(2)(a) of the Official Information Act 1982]</i>
Osmond Borthwick	Manager, Communications Policy	E Osmond.Borthwick@mbie.govt.nz <i>[Information withheld consistent with s9(2)(a) of the Official Information Act 1982]</i>

<b>Contacts regarding CERT</b>		
Greg Patchell	Deputy Chief Executive, Market Services	E Greg.Patchell@mbie.govt.nz <i>[Information withheld consistent with s9(2)(a) of the Official Information Act 1982]</i>
Vanessa Horn	Acting General Manager, Service Support & Design	E Vanessa.Horne@mbie.govt.nz <i>[Information withheld consistent with s9(2)(a) of the Official Information Act 1982]</i>

## Annex 1: Appropriations

The Communications Portfolio appropriations are as follows:

<b>Vote Business, Science and Innovation - Communications Portfolio</b>					
<b>Communications Portfolio Departmental</b>	<b>Total 2016/17</b>	<b>Total 2017/18</b>	<b>Total 2018/19</b>	<b>Total 2019/20</b>	<b>Total 2020/21</b>
	<b>\$000</b>	<b>\$000</b>	<b>\$000</b>	<b>\$000</b>	<b>\$000</b>
Management and Enforcement of the Radiocommunications Act 1989	9,626	9,626	9,626	9,626	9,626
Management of Emergency Telecommunications Services	1,250	531	133	133	133
<b>Communications Portfolio Multi- Category Department Output Expenses</b>	<b>Total 2016/17</b>	<b>Total 2017/18</b>	<b>Total 2018/19</b>	<b>Total 2019/20</b>	<b>Total 2020/21</b>
	<b>\$000</b>	<b>\$000</b>	<b>\$000</b>	<b>\$000</b>	<b>\$000</b>
Related Services to Ministers - Communications	62	62	62	62	62
Policy Advice - Communications	5,982	5,882	5,182	4,182	4,182

<b>Communications Portfolio Non-Departmental</b>	<b>Total 2016/17 \$000</b>	<b>Total 2017/18 \$000</b>	<b>Total 2018/19 \$000</b>	<b>Total 2019/20 \$000</b>	<b>Total 2020/21 \$000</b>
Enforcement of Telecommunications Sector Regulation	6,000	6,000	6,000	6,000	6,000
Administrative Support for Telecommunications Relay Equipment and Services	1,519	1,519	1,519	1,519	1,519
Emergency Telecommunications Services	4,444	2,631	4,294	4,294	4,294
Telecommunications Development Levy Funded Procurement - Non-Urban Infrastructure	1,162	312	52	-	-
Telecommunications Development Levy Funded Procurement - Deaf Relay Service TSO	3,000	3,000	3,000	3,000	3,000
Contributions to International Telecommunications Organisations	970	970	970	970	970
Acquisition of Textphone Equipment	165	165	165	165	165
Broadband Investment (Crown Fibre Holdings Capital Costs) 2016 - 2021 MYA	-	140,000	100,000	102,500	75,000
Broadband Investment (Crown Fibre Holdings Capital Costs (UFB2)) 2016 - 2020 MYA	42,000	50,000	50,000	50,000	18,000
<b>Communications Portfolio Multi-Category Non-Department Output Expenses</b>	<b>Total 2016/17 \$000</b>	<b>Total 2017/18 \$000</b>	<b>Total 2018/19 \$000</b>	<b>Total 2019/20 \$000</b>	<b>Total 2020/21 \$000</b>
Mobile Black Spots Fund (MBSF)	5,000	10,000	15,000	10,000	10,000
Rural Broadband Initiative 2 (RBI2)	10,000	30,000	30,000	20,000	10,000

## **Annex 2: Relevant Legislation and Regulations**

### **Telecommunications Act 2001**

#### *Promotion of competition*

The Act promotes competition in the telecommunication services market, by regulating the supply of key wholesale services where this will deliver long term benefits to end-users of those services.

To this end, the Act empowers the Telecommunications Commissioner, either alone or with other Commissioners, to set comprehensive terms and conditions of supply for regulated services, including price. The Commerce Commission initially sets prices based on benchmarking of prices for similar services in comparable jurisdictions overseas. However, if parties are not happy with these benchmarked prices, the Commission is able to review them, and to set new prices based on more thorough cost modelling of “forward-looking, cost based” prices.

The Act also provides for the Telecommunications Commissioner to investigate whether additional services should be regulated and to make recommendations to the Minister. The Commission can also recommend the removal of regulation if markets become more competitive.

The Commission’s decisions are subject to review on procedural grounds, or points of law, but are not open to merits review.

#### *Telecommunications Service Obligations (TSOs)*

The Act provides for TSOs. The main TSO obliges Spark (formerly Telecom) to provide local residential voice and internet services and requires Chorus to provide supporting network services. A deaf relay TSO enables hearing-impaired and speech-impaired customers to communicate over telecommunications networks.

The Act also provides for a Telecommunications Development Levy on liable telecommunications providers. Levy revenues are currently used to fund the deaf relay TSO and the RBI.

#### *UFB and RBI Undertakings*

The Act provides for access providers to lodge open access undertakings for approval by the Minister. Undertakings have been approved for:

- Chorus, in relation to UFB fibre networks, its legacy copper network, and RBI networks
- Whangarei Local Fibre Company, UltraFast Broadband Limited and Enable Networks, in relation to their UFB fibre networks
- Vodafone, in relation to its RBI networks.

The Commission monitors compliance with the undertakings and can take enforcement action.

### *Monitoring*

The Commission must monitor and report on market performance. It has extensive information disclosure powers in relation to UFB fibre networks.

### **Radiocommunications Act 1989**

The Radiocommunications Act provides the legislative framework for managing radio spectrum in New Zealand. It provides for privately-held, tradable, long-term rights to spectrum (either nationwide management rights or geographically-specific spectrum licences). Frequencies not transferred to the tradable rights regime are managed under a system of administrative licensing set out in regulations. The Act also sets up procedures for dealing with interference and managing disputes between spectrum users.

### *Spectrum management and enforcement*

The Radio Spectrum Management (RSM) team within the Ministry administers the issuing of licences and the online Register of Radio Frequencies. It also undertakes compliance and enforcement actions to ensure that radio devices are operating within the terms of their licences.

RSM works to ensure that licence administration is fast, simple and effective, and that the use of online services is maximised wherever possible. Almost all technical engineering required to issue licences is carried out by accredited private sector engineers, enabling RSM to focus on core regulatory functions.

The costs associated with radio spectrum planning, licensing, registration, compliance and interference investigation are funded by annual administration fees levied on licensees.

### *Crown Spectrum Asset Management*

The Crown has reserved the right to manage particular bands of frequencies for a mixture of social, economic and technical reasons.

Within the management rights used for AM and FM radio broadcasting, the Crown has reserved licences for national Māori and Pacific programmes, Radio NZ National and Concert, and iwi radio, as well as for community and youth purposes.

The Crown also holds management rights at 2.5 GHz (the 'Managed Spectrum Park'), 3.5 GHz for local or regional wireless services and the VHF and UHF television bands.

The main issues which arise under Crown management rights relate to implementation requirements, sharing requirements, spectrum caps, renewal terms and conditions at the expiry of licences and management rights – including valuation matters, and whether spectrum should be auctioned (for new rights), or re-auctioned (for expiring rights).

### **Postal Services Act 1998**

This Act came into force on 1 April 1998 and deregulated the New Zealand postal market by removing New Zealand Post's monopoly on letter delivery. Under the Act, anyone can process and deliver mail as long as they registered as a postal operator with the Ministry.

The Act requires registered postal operators to identify the mail they carry by marking items with a 'postal identifier' – a stamp, marking or impression that is unique to each operator and clearly represents to the public which operator has carried the item. The Act also grants registered postal operators the right to install post-boxes in public places, and subjects them to obligations regarding the detention and delivery of postal articles.

The Act permits New Zealand Post to retain certain minor exclusive privileges, including the sole right to represent New Zealand as a postal administration internationally and to issue postage stamps with the words "New Zealand" on them.

### **Telecommunications (Residual Provisions) Act 1987**

This Act was formerly the Telecommunications Act 1987, and now contains residual provisions from that Act that were not replaced by the Telecommunications Act 2001. This Act contains the power for police or customs officers to obtain call data warrants.

### **Electronic Transactions Act 2002**

The Act's objective is to confirm the legality of electronic transactions and facilitate the use of electronic technology to meet statutory requirements for information to be in writing, signed, retained or produced. The Act contains a list of statutory requirements which are exempt from the Act's provisions allowing requirements to be met by electronic means. This list of exemptions has been reduced since the Act came into force and it is intended that it will continue to be reduced over time.

The Electronic Transactions Act will be repealed and re-enacted in an up to date and accessible format in the Contract and Commercial Law Bill. Minister Finlayson is in charge of the Bill, which is currently at the Second Reading stage in Parliament.

### **Unsolicited Electronic Messages Act 2007**

This Act regulates the sending of electronic messages. The Act prohibits the sending of unsolicited commercial electronic messages for marketing or promotional purposes using email, text, fax or instant messaging services and imposes certain requirements on the sending of commercial electronic messages. The Act establishes a civil penalty regime for non-compliance and is enforced by the Department of Internal Affairs.

### **Telecommunications (Interception Capability and Security) Act 2013**

This Act establishes obligations for New Zealand's telecommunications network operators in two key areas – interception capability and network security.

The Act enables authorised government agencies to investigate, respond to and enforce national security matters and serious criminal offences, by interception communications where there is a warrant or other lawful authority to do so.

The Act does this by requiring all telecommunications providers to help fulfil interception warrants (or use on-going statutory authority), and requires a smaller group – ‘network operators’ – to pre-invest in the equipment and technical resources necessary to carry out interceptions over their networks. The Act does not provide the surveillance agencies with the authority to intercept communications. These powers and processes are provided for in other pieces of legislation.

The Act also sets out a path to identify and address, prevent, mitigate, or remove network security risks which may arise. Part 3 of the Act, which relates to network security, establishes a framework under which network operators are required to engage with the GCSB about changes and developments with their networks where these intersect with national security.

The Government Communications Security Bureau (GCSB) is responsible for administering the network security provisions of the TICSA.

## **Annex 3: Crown Entities and Statutory Bodies**

### **Telecommunications Commissioner**

The Telecommunications Act 2001 establishes a Telecommunications Commissioner, who is a member of the Commerce Commission and is appointed by the Minister responsible for the Act.

The Commerce Commission as a whole is monitored by Vote Commerce and the Minister of Commerce. However, you play the key role in the appointment of the Telecommunications Commissioner and are the key ministerial contact for the Telecommunications Commissioner. The current Telecommunications Commissioner term will finish in 2017.

### **Crown Fibre Holdings**

Crown Fibre Holdings (CFH) is a Public Schedule 4 company under the State-Owned Enterprises Act 1986 responsible for managing the Government's investment in UFB until the end of the build period, 31 December 2019. To address any perceived conflict with your role as policy Minister, the shareholding ministers are the Minister of Finance and the Minister for State Owned Enterprises, and the Treasury is the monitoring agency. However, in relation to delivering UFB policy you and the Ministry are the key stakeholders CFH interacts with. The Ministry also work closely with the Treasury on monitoring CFH.

### **New Zealand Post**

New Zealand Post is an SOE. Its shareholding Ministers are the Minister of Finance and the Minister for State Owned Enterprises. The Minister for Communications is responsible for the administration of the Postal Services Act 1998 and postal policy generally. The key responsibility the Minister holds is to consider any request from New Zealand Post to amend the provisions of the Deed of Understanding, which sets out the minimum standards New Zealand Post must meet, and to consult with the Minister for State-owned Enterprises prior to agreeing to any amendment.

## Annex 4: Key Stakeholders

The Ministry consults key stakeholders to understand the strategic issues underpinning decision-making within the Communications portfolio. In particular we consult with:

- Other Ministers with an interest in the Communications portfolio and their relevant government agencies: for instance, the Prime Minister, Ministers of Finance, Education, Tertiary Education and Skills, Health, Science and Innovation, Foreign Affairs, Internal Affairs, Disability Issues, and Māori Development. There are also synergies between this portfolio and your roles as the Minister for Economic Development and Minister of Transport.
- Crown entities: the Telecommunications Commissioner, Commerce Commission, Crown Fibre Holdings, REANNZ<sup>1</sup>, Callaghan Innovation and NZTE.
- ICT sector service providers, for instance: telecommunications companies, digital content companies, software and service companies (e.g. IBM and Google), postal operators, broadcasters, commercial and non-commercial radio spectrum users.
- Representative bodies, for instance, the Telecommunications Forum, the New Zealand Technology Industry Association (NZTech), NZRise representing NZ-owned digital technology businesses, the Institute of IT Professionals (IITP), the Radio Frequency Users Association of New Zealand and the New Zealand Association of Radio Transmitters (radio Amateurs).
- Consumer organisations, for instance, Internet New Zealand, Consumers' Institute, and the Telecommunications Users Association of New Zealand (TUANZ).
- Other business representative and stakeholder bodies with an interest in communications issues, for instance, Business New Zealand, the Innovation Partnership, and Federated Farmers.
- International bodies as described in Annex 4.
- Local bodies, for instance: Local Government NZ, and Regional and Local Councils.

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<sup>1</sup> Research and Education Advanced Network New Zealand

## **Annex 5: Summary of Relevant International Agreements and Relationships**

### **World Trade Organisation (WTO)**

As a member of the WTO and a signatory to the General Agreement on Trade in Services, New Zealand has made binding commitments in both basic and value-added telecommunications and IT services to maintain New Zealand's open market in telecommunications and IT.

### **The Organisation for Economic Cooperation and Development (OECD)**

The OECD provides annual reports on major economic sectors, including telecommunications, which compare New Zealand performance with other OECD countries. These include comparative statistics which are widely read and commented on.

In the ICT area, the way many statistics are collected is based on measures chosen by the OECD in order to provide international comparability as far as possible. The Ministry is principally involved in checking relevant statistics and working with Statistics New Zealand to ensure that appropriate questions are included in surveys of the telecommunications industry, the Census, and the Household Economic Survey so that the OECD statistics reflect reality in New Zealand.

Ministry officials occasionally attend relevant OECD working group meetings. Officials will continue to monitor and attend working groups where required.

### **The relationship with Australia**

Under Closer Economic Relations, New Zealand and Australia have agreed to maintain an open market for telecommunications and IT. We are also undertaking some more detailed work with Australia in the telecommunications area. In collaboration with our Australian counterpart – the Department of Communications – the Ministry has worked on an analysis of the level of competition in the trans-Tasman roaming market.

We work closely and cooperatively with the Australian spectrum regulator, the Australian Communications and Media Authority (ACMA), and endeavour to align our regulatory frameworks and international actions wherever possible. For example, Australia has recently agreed to recognise New Zealand certified radio engineers, following a similar New Zealand initiative for Australian engineers several years ago. We will also liaise on their upcoming legislative changes to determine if there are further opportunities for alignment of legislative provisions.

### **Bilateral and multilateral agreements**

Telecommunications chapters relating to market access issues are often included in other bilateral trade agreements New Zealand has with other countries. We are currently providing support for the Trade in Services Agreement (TISA) and the Regional Comprehensive Economic Partnership (RCEP).

We are also providing occasional input into the scoping work for the refresh of the China FTA and the EU-NZ FTA.

### **Korea Australia New Zealand Ministerial Broadband Summit (KANZ)**

KANZ is held roughly every 18 months between relevant Ministers, officials and business people from Korea, Australia and New Zealand. The lead agency for New Zealand is New Zealand Trade and Enterprise, with the Ministry dealing with policy issues and liaison with our Minister and the Ministry of Foreign Affairs and Trade. The next meeting is to be hosted by Australia sometime in 2017 and it is anticipated that you will attend.

### **International Telecommunication Union (ITU)**

The ITU is the United Nations specialised agency for information and communication technologies and is the forum through which parties work towards consensus on a wide range of issues affecting the future direction of the industry. New Zealand is a long-standing member of the ITU and participates in the organisation in a number of different areas including technical studies concerning standardisation, radio spectrum allocation and management, and overall policy direction. New Zealand is a signatory to the Constitution and Convention of the ITU. These treaties are reviewed on a four-year basis at the ITU Plenipotentiary Meeting. The next ITU Plenipotentiary Meeting will be held in 2018.

The ITU Administrative Regulations, which include the Radio Regulations and International Telecommunication Regulations, complement the Constitution and Convention. These documents also form binding treaties. World Radiocommunication Conferences are held every 3-4 years to review and revise the Radio Regulations. These Regulations form the basis of worldwide use of the radio frequency spectrum. The next World Radiocommunication Conference is in 2019.

The International Telecommunication Regulations are revised at World Conferences on International Telecommunications, which are held on an ad-hoc basis. They were last revised in 2012, and resulted in a clear division of views between states on the role of the ITU in internet governance. New Zealand is not a signatory to the 2012 revisions. In recent years, the ITU has become one of the main fora where the role of states in internet governance has been discussed.

### **Internet Corporation for Assigned Names and Numbers (ICANN) Governmental Advisory Committee (GAC)**

ICANN is an international non-profit organisation, which has responsibility for coordinating critical internet resources, namely IP addresses and the domain name system. The GAC provides advice to the ICANN Board on public policy issues affecting critical internet resources. New Zealand is represented at most GAC meetings, supported by InternetNZ.

### **Asia Pacific Economic Cooperation (APEC)**

The APEC Telecommunications and Information Working Group (TEL) is one of the more active of the APEC working groups. APEC TEL meets twice yearly and has an extensive work programme spread over three Steering Groups: Development Cooperation, Security and Prosperity, and Liberalisation. The work of APEC TEL is governed by two yearly meetings of APEC Economy Ministers of Communications (TELMIN).

### **Universal Postal Convention**

The Universal Postal Convention, established by the Universal Postal Union, sets out the internationally-agreed rules that countries use to charge each other for the exchange of international mail. New Zealand is a member of the Union.

### **Asia-Pacific Telecommunity**

The Asia-Pacific Telecommunity is an intergovernmental organisation that coordinates government viewpoints on issues and promotes the role of telecommunications in the region. It is particularly active in radio spectrum management matters.

### **International Mobile Satellite Organisation (IMSO)**

The IMSO is a small intergovernmental organisation that manages public service obligations relating to communications for distress and safety on the high seas. New Zealand is a signatory to this treaty-level organisation. The associated satellite operator, Inmarsat plc, is a listed company based in the United Kingdom.

### **International Telecommunications Satellite Organisation (ITSO)**

The ITSO is a small intergovernmental organisation that exists to ensure public service obligations relating to satellite communications for small and developing countries (for example, Pacific Island states) are maintained. New Zealand is a member of this treaty-level organisation. The associated satellite operator, Intelsat, is now wholly privately owned by a United States investment fund. Other satellite operators also provide competitive services.

### **Mutual Recognition Agreements, Memoranda of Understanding and Cooperation Agreements**

There are number of bilateral agreements that do not have the status of treaty obligations which relate to standards, mutual recognition and general cooperation between the signatories. Two significant examples are mutual recognition arrangements with Australia and China relating to the regulation of radio interference from electrical products (known as 'EMC').