Ubique Asset Management Pty Ltd
ABN 36 150 100 557
PO Box R805
ROYAL EXCHANGE NSW 1225

19 August 2016

Telecommunications Review Team,

Communications Policy,

Ministry of Business, Innovation & Employment,

PO Box 1473,

Wellington, New Zealand 6140.

To whom it may concern;

Having reviewed the New Zealand Telecommunication Act Review Options Paper released in July 2016, Ubique Asset Management Pty Ltd (Ubique or we) would like to put forward the following submission.

Ubique is an institutional equity investor based in Sydney and we are a shareholder in Chorus Limited (CNU), a company that will be substantially impacted by the Telecommunications Act Review.

Ubique invests in infrastructure companies such as CNU with the expectation that regulated assets will generate fair and reasonable returns on the real capital that has been employed, and that appropriate frameworks exist to allow the same fair outcomes on future investment.

Ubique are encouraged by the initial NZ Government positioning regarding the regulation of fixed line telecommunication services, namely:

- That the new regulatory framework needs to provide clarity and certainty to the telecommunications industry;
- The document's commitment to "price stability in the transition" and "minimising revenue volatility for the transition to the new framework"
- The intention to adopt a RAB / Building Block approach, as it is a methodology that we are familiar with in Australia. Regulated assets such as utilities and rail infrastructure in Australia use a RAB based methodology and we note that a Building Block approach has been adopted in relation to Australia's National Broadband Network (NBN);
- The adoption of a merits review process, as opposed to existing regulation where the Commerce Commission decision is final; and
- That companies such as CNU be afforded discretion in relation to migration of fixed line services from copper to fibre.

In regards to determining the initial RAB value the Options Paper considers various alternatives. The line in the sand approach proposed by CNU seems like a reasonable starting point and Ubique is supportive of this methodology. In our view, this approach removes the risk of a price-shock event post-2020. Ubique notes that in Australia, when setting the regulatory asset base for the Telstra fixed network, a line in the sand approach was similarly adopted.

In relation to the expected returns on capital expenditure, we believe that greater clarity is urgently required on how this will be determined. CNU investors, both debt and equity alike, are being asked to fund long term decisions in relation to further investments in UFB2, as well as Rural Broadband Initiative investments. These decisions will need to be made before 2020, yet it is currently unclear as to the expected returns on this potential expenditure. We are of the view that the legislation needs to provide clear guidance on how the Commission should implement the new framework, given that principles provided by Government in the past about investment were not followed when it came to the copper pricing process and that led to a four-year period of uncertainty (with consequences for both investors and consumers).

The WACC calculation is clearly an important element under the RAB approach and if this is left entirely to the Commerce Commission a reasonable rate of return needs to be guaranteed. Our concern here is that when the Commerce Commission was responsible for determining a WACC under the previous methodology they decided that a WACC of 5.56% was an acceptable rate of return. Despite the current record low yields on Risk Free Rate proxies, we do not believe that this sort of return is a sufficient 'through the cycle return' to encourage new capital investment to the sector. Long term assets require long term funding and we therefore encourage the creation of a mechanism that recognises that providers of capital have choices as to where in the world they wish to invest.

In relation to the Commerce Commission approving future capital expenditure on the network by CNU, Ubique are of the view that Retail Service Providers (RSPs) should be excluded from having input into this process. This would remove perceived conflicts of interest and the risk that RSPs would try to influence or game decision making for their own agenda.

In our review of the Telecommunication Act Review Options Paper it was surprising to see some fixed service provider assets being excluded from the Telecommunications Act Review, such as Vodafone's cable network. Ubique notes that in Australia, on the 29th of July this year, the Australian Competition and Consumer Commission decided to regulate access to all wholesale superfast broadband services, including the fibre-to-the-basement (FTTB) network operated by TPG subsidiary AAPT, as well as the Telstra fibre network. Ubique is in favour of New Zealand taking a similar approach, in order to level the playing field amongst network owners.

In terms of payments made to CNU, Ubique is concerned that if CNU over-recover on payments in a period then this will get adjusted in the following period through an adjustment mechanism, but a similar mechanism does not exist in periods where CNU under-recovers. This mismatch seems unreasonable and in our view unfairly treats CNU and providers of capital. The framework design also needs to ensure CNU can earn a reasonable return in the way anchor and commercial products are defined and treated.

Ubique appreciates the opportunity to be able to make a submission to the Telecommunication Review Team and we look forward to a fair and reasonable outcome for all industry participants.

Yours sincerely;

John Harbot

Director

Martin Kleindyk

Director