Discussion Feedback for Enhancing telecommunications regulatory and funding framework

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BAINZ Consulting

Broadband & Internet New Zealand Ltd

INTRODUCTION

We are grateful to MBIE for providing BAINZ Consulting Limited and Broadband & Internet New Zealand Limited the opportunity to respond to its discussion document for Enhancing Telecommunications Regulatory and Funding Framework (dated May 2024).

Our submission represented from two distinct business entities:

- **BAINZ Consulting Limited**: Established in 2017 providing telecommunications consulting and strategic professional services to industry and professional bodies. Our experience spans industry standards and forums, specialising in telecommunications.
- **Broadband and Internet New Zealand Limited (BAINZ):** BAINZ was established in May 2023, a new startup after successfully acquired Crown radio spectrum rights for regional services (in the 3.3GHz frequency). Our mission is to develop fixed fibre and wireless communications capabilities, allowing us to trend in future ways of business by empowering communities, bringing sustainable innovation, and providing a value proposition for our customers to enjoy.

We have focused our response in this consultation in alignment with the **Scope for feedback** (clause 6) and the **Objectives and criteria** (clause 20). We have also included additional feedback on Other Matters.

Responses to discussion paper questions

1	Do you have any feedback about the proposed criteria to assess the options in the next phase of this work? Are there other criteria that we should consider?

There are numerous topics that this discussion paper has not addressed adequately and need to be included in the next phase of this work, these being:

1. **Innovation & Research** – we question whether the regulatory regime has any significant content to support innovation or research for New Zealand's telecommunications industry,
2. **Uplift Skills gap** – There is no appetite for any technology industry to uplift the skills gap we currently have or for emerging technologies in the telecommunications industry.
3. **Role of industry forums & groups** – There are numerous New Zealand technology and telecommunications groups/forums who represent the industry and/or interests of members who do not participate or have influence in these settings. We want to ensure that these parties correctly represent their members' voices and not just self-developing policies for their own interests or influencing undue policies.
4. **Commerce Commission's Role**: The dual mandate of the Commerce Commission to protect consumers and support competition poses challenges. This balancing act can inadvertently disadvantage new startups, suggesting a need for leniencies that encourage innovation and ease of market entry.
5. **Government Investment and Ownership**: The government's investment and asset ownership (directly or indirectly owned) in telecommunication service providers and infrastructure companies raises questions about its impact on fair competition and opportunities. There are concerns that such ownership and advantages create an uneven playing field, hindering the entry and growth of new market participants and better competition.
6. **Bias in Government Tenders**: The process of government tenders for communication contracts has been criticised for favouritism and violation of Probity rules, which have led to suboptimal technology solutions for New Zealanders. We would like future discussions to identify how tender compliances can be correctly audited. We also raise the question if these investment business cases are being assessed correctly by experienced and qualified persons so they result in the best outcomes for the country's future.

Section 1: Consumer access to disputes resolution

2	Do you consider that the lack of a mandatory requirement for telecommunications service providers to belong to an industry dispute resolution scheme is a problem that needs to be addressed?

We agree with the question and do not support the mandatory requirement for all telecommunications services providers to join the industry disputes resolution scheme (i.e. TDR). The primary reason is that many small and new startups are striving to introduce competition and innovation within the industry; imposing mandatory obligations on them will introduce additional costs that may be difficult for them to absorb and benefit from. The cost of a dispute being raised is greater than the service provided to consumers, and it encourages compensation being paid prior to the dispute being formally addressed due to the high costs of raising a formal dispute, which results in poor consumer behaviours. These high costs will hinder start-ups like our ability to offer competitive advantages, innovate, and allocate resources to attend and contribute to the dispute's resolution scheme.

While the industry dispute resolution scheme is important for consumer protection and industry accountability, mandating membership for all service providers, particularly smaller or newer startups, could stifle the very innovation and competition that the industry needs to grow and evolve. It is crucial to strike a balance that protects consumers and ensures fair practices without placing undue burdens on those driving the industry forward with innovation and competition.

Whilst addressing the disputes resolution scheme, it is important to address the role of the TCF and its participation, members, and scope in this response also.

The TCF has established numerous mandatory codes (such as the Customer Care Code and the 111 Contact Code, etc), which set forth "minimum provisions" that are both practical and straightforward to apply and support for an established company. Nevertheless, for small and startup companies, introducing complex compliance requirements could become burdensome and lead to detrimental impacts in providing workable competition in the early setup of these companies and should ideally be avoided.

It is imperative to create provisions for small and emerging startups, allowing them a gradual development path to build up their full operational capabilities. Such a framework enables these businesses to scale their operations effectively as they expand and align to any mandatory industry codes. Without these measures, being members of the TCF can be detrimental to our business and growth.

The current structure of the TCF appears to be skewed in favour of Tier 1 participants. Many small service providers and non-participants are Tier 3 members with little to no representation at the TCF meetings or TCF governance structure. This imbalance leads to practices within the TCF that do not favour the entire industry, particularly the Tier 3 members. For instance, the TCF Product Forum is dominated by a handful of Tier 1 service providers who dictate the direction that TCF members must take, which is detrimental to the introduction of competitive and innovative practices in New Zealand's telecommunications industry. The revised TCF Product Forum Terms & Conditions have also seen the creation of a lobbying group model, which places a considerable disadvantage on the introduction of new and competitive advantages to the industry. This same skewed membership structure is also represented in the industry disputes resolution (i.e. TDR) scheme.

3	For telecommunications service providers who are not members of the Telecommunications Dispute Resolution scheme, why have you chosen not to be a member? Are you a member of another scheme, why or why not?

As a small startup telecommunications company, our current stage of development, maturity, and financial considerations preclude us from joining TDR or TCF. The costs associated with participation and compliance are prohibitive, given the state of our business model and maturity.

Membership in the TDR scheme represents a financial burden that could detract from our ability to achieve our principal goals. As a company in its infancy, we must prioritise investments that directly contribute to our growth and innovation.

Our alignment and compliance with TCF mandatory obligations have a high potential of disadvantaging the maturing of our business and leading to non-compliance on issues unrelated to the dispute at hand with the dispute's resolution scheme.

As mentioned above, the TDR is setting poor consumer behaviour, where all disputes incur financial costs that far outweigh the dispute at hand, and results in early settlements to avoid the costs of taking invalid disputes to TDR.

4	For consumers who have had issues with their telecommunications service providers, what were your options for dispute resolution, and what was your experience?

No comment.

5	What are your views on the options we have identified? Do you have a preference, if so, why? Are there any options we have not identified?

Considering the options presented, we prefer **Option 1: Status quo**. This allows us to align with the principles of flexibility and autonomy that are crucial in allowing our business to become established and grow, allowing us to foster innovation and competition within the industry.

The advantages we see with Option 1 are:

- **Flexibility for Startups**: It allows new and small startups to operate without the financial burden of mandatory scheme membership, which can be significant and potentially stifle their growth.
- **Encourages Innovation**: By not imposing additional regulatory costs, service providers can focus their resources on innovation and improving customer service.
- **Better Competition**: This allows better competition to flourish without hindrance from regulations imposed under the disputes resolution scheme.
- **Natural Disputes scheme emergence**: With the introduction of new competition and as technology and behaviours change, we will see a natural and better disputes resolution behaviour emerging that aligns with and is better than the current guidelines (under the mandatory code developed by TCF and assessed under the TDR scheme).
- **Industry Diversity**: Maintains a diverse industry landscape by not disadvantaging smaller players who may not have the resources to comply with a mandatory scheme.

Concerns with Option 2:

- **Financial Impact**: Mandatory membership could impose financial strains on smaller providers, potentially leading to higher costs for consumers.
- **Reduced Competition**: It could lead to a less competitive market, as the increased costs and compliance requirements may deter new entrants.
- **One-Size-Fits-All Approach**: A mandatory scheme may not account for different providers' unique challenges and operational models, especially smaller or niche operators.

While consistent access to dispute resolution is important, it is also essential to balance this with the need for a dynamic and competitive telecommunications sector. Option 1 supports this balance, allowing companies the discretion to join dispute resolution schemes while encouraging them to develop robust internal customer service processes. This approach not only nurtures a competitive environment but also promotes a customer-centric industry where service providers are motivated to resolve issues efficiently to maintain their reputation and customer base.

Section 2: Accessing shared property for fibre installations

Issue 1: Expiry of statutory rights for fibre installations

6	What are your views on the options we have identified? Do you have a preference, if so, why? Are there any options we have not identified?

In response to the options presented regarding the statutory rights for new fibre installations, our preference is firmly with **Option 2: Reinstate the rights for access to shared property for new fibre**

installs after the rights expire. This preference is rooted in the practical needs of the telecommunications landscape and the ongoing expansion and maintenance of fibre connectivity as the optimal and sustainable standard for current and future communication access services.

There remains a significant number of premises (in specified fibre coverage areas) that are still not connected to fibre, including premises that have been partially approved under the current statutory rights but are not currently connected to fibre services. Ensuring that all premises within a right-of-way (ROW) or multi-dwelling-unit (MDU) have access to fibre is crucial for the uniformity and reliability of services. Option 2 provides the necessary security so that these properties can complete their fibre connections.

A considerable portion of services in fibre areas are still reliant on copper connections. To facilitate the copper withdrawal transition to fibre (or alternative access types), for these premises, it is essential to have a framework in place that supports this move to fibre where relevant. Option 2 offers a pathway to ensure these upgrades can continue without interruption.

The current liability and penalties associated with the statutory right are recognised as being burdensome and excessive. It is proposed that these risks should be reduced to better align with the penalties of the Telecommunications Dispute Resolution (TDR) scheme, making it more manageable for LFCs to comply with the statutory requirements. With this approach, the dispute for fibre connections can be moved to a single industry-focused scheme provider (i.e. TDR) rather than under the Utilities Disputes scheme.

Option 2 aligns with the practical needs for ongoing fibre installations and acknowledges the importance of supporting the industry's growth and the equitable treatment of service providers in terms of liability. This approach will help ensure that the telecommunications infrastructure in New Zealand continues to evolve and meet the demands of consumers and businesses alike.

7	If you are a fibre provider who uses these rights, what are the implications of these options on your business? Please provide data and evidence to support your submission where possible.

No comment.

8	If the statutory rights were reinstated, what do you think is an appropriate expiry date (if any)?

Regarding an appropriate expiry date for reinstated statutory rights for fibre access services, extending the scheme for a further five years seems reasonable. This extension would provide ample time to complete existing installations and for new developments to secure fibre connectivity. This will also support the rollout of fibre to remote/rural areas where fibre is not available – with modifications to address easements across farm/open land.

Alongside the extension, reducing the liability to a manageable level for the local fibre companies is essential. This adjustment would encourage rollout of fibre services with reduced risk that prove to be costly.

Considering the fundamental role that fibre access services play in communication infrastructure, it is reasonable to propose that the right to access these services should be made permanently available. Fibre connectivity is increasingly becoming a basic utility, much like water or electricity, and ensuring its availability is crucial for the socio-economic development of communities.

Investing in infrastructure is closely linked to enhancing the productivity of New Zealand's population. Therefore, it is advocated that fibre connectivity be acknowledged as a vital service for all citizens, contributing to the advancement and increased productivity across the nation.

Therefore, a five-year extension with reduced liability, coupled with the option to make these rights permanent, would align with the recognition of fibre access services as a fundamental utility and right for communication services.

Issue 2: Invoking statutory rights for high impact installations

9	What are your views on the options we have identified? Do you have a preference, if so, why?

The extension of fibre connectivity to high-impact sites/premises is important in providing homogeneous services to all communities. Nonetheless, this expansion comes with considerable costs (related to the provision of access and support) and risk. This will inevitably affect the pricing of fibre services, and consideration should be given to how the current fibre pricing model is maintained.

The high cost of fibre lead-in was notably apparent under the 'Remote User Scheme', which left many remote premises without viable fibre services due to the prohibitive costs associated with long lead-in costs that can amount to tens of thousands of dollars for a single fibre lead-in.

To mitigate this, it is proposed that the government should intervene by providing grants rather than relying solely on the UFB Public-Private Partnership (PPP) program model for providing fibre connectivity for sites/premises that require long lead-in connections. Such grants would enable Local Fibre Companies (LFCs) to offer extended lead-in distances at a standard service price rather than imposing higher costs for extended lead-ins. This approach would prevent the undue financial burden on individual users or the unfair distribution of costs across all users.

10	If the statutory rights were expanded to cover some high impact installs, what type of 'high impact' installs should be permitted? If you are a fibre provider, please provide examples of what changes to the rights would make a significant difference to enabling more fibre connections.

The types of high-impact installs that should be permitted may include:

- **Excessive Earth Excavation Sites**: Installations requiring significant digging, such as laying fibre cables under large driveways or across extensive stretches of private land.
- **Elevated Installations**: Situations where fibre needs to be installed above or below standard vertical distances that are not easily accessible or cost-effective.
- **Using existing easements**: where fibre needs to be installed along existing easements where other utility lines and access are available, either underground or overhead lines.
- **Complex Building Integrations**: In MDUs or commercial properties where internal wiring is complex and requires substantial modification to accommodate fibre.
- **Long Lead-in**: premises with long lead-in extending beyond the standard fibre lead-in over 200 meters.
- **Lead-in to remote/rural premises**: where fibre is being deployed to rural/remote premises with a lead in as much as 1km.

Where easements are available to access the premises/site, these should also be considered for long lead-ins where they are practical. In addition to easements, where premises are being served by

power or communication services using easements or private/public poles or overhead connections, these should also be allowed to offer cost-effective access to the premises.

It is important to realise that high-impact sites will have a significantly higher cost of setup, installation, and support as opposed to low and medium-impact sites. For this reason, we recommend:

- **Simplified Consent Processes**: Streamlining the consent process for high-impact installations to reduce delays and cancellations when unanimous owner agreement is hard to achieve.
- **Cost-Sharing Mechanisms**: Introducing cost-sharing frameworks that distribute the financial burden of high-impact installations among beneficiaries and the government, making it more feasible for providers to undertake extensive work.
- **Enhanced Mediation Services**: Providing robust and meaningful mediation services to resolve disputes between property owners and fibre access providers, facilitating smoother installation processes.

The rights to access pre-installations of high-impact sites must also be provided to ensure that the fibre access providers can maintain and upgrade their equipment and network as part of their natural business support model.

Issue 3: Involving the statutory rights without a retail connection order from an internet service provider.

11	What are your views on the options we have identified? Do you have a preference, if so, why? Please provide data and evidence to support your submission where possible.

According to the LFC Wholesale Services Agreement (WSA), fibre installation is contingent on a service order by the property owner. Ideally, fibre lead-in should be installed during the communal fibre network rollout to minimise costs. The installation involves three stages:

1. Communal fibre at the street to the External Termination Point (ETP) at the property boundary,
2. ETP fibre leading internal to the property to the Internal Termination Point (ITP), and
3. ITP to the Optical Termination Point (ONT), where internet service is accessible.

The property owner should have the autonomy to decide on fibre installation without a service order. Economically, installing the fibre lead-in to the ETP is best during the communal rollout. The connection from the ETP to the ITP and ONT can be completed upon service request. This approach ensures cost-effective 'fibre ready' properties and respects the owner's choice, catering to individual and market needs for fibre services.

A potential issue with installing fibre lead-in without a service order is the implication for Early Termination Charges (ETC). LFCs apply these ETC charges within the first year of fibre installation. Therefore, if a property's fibre service is discontinued before completing the initial 12-month period of active service, these charges would be payable by the customer via the Service Provider.

Section 3: Telecommunications Levy Settings

Issue 1: Identifying liable persons

12	Do you agree that our levy liability settings need to be adjusted to ensure all satellite broadband providers providing services to New Zealanders are captured (where they meet the revenue threshold)?

We agree that adjustments are necessary to ensure all satellite broadband providers serving New Zealanders are included within the tax framework, and satellite operators avoid any tax-avoidance or high charge regimes, provided they meet the established revenue threshold.

The New Zealand government must improve its investment strategy in earth-to-satellite gateways (or earth satellite stations). This will bolster the security of satellite-originated traffic, safeguarding it from international interception and ensuring that traffic originating or terminating in New Zealand is routed through local channels. Furthermore, satellite traffic should be managed by New Zealand-based communications companies, including Mobile Network Operators (MNOs) and those registered to offer mobile roaming services through the ITU mobile network code and country code (MCC+MNC). Such measures will guarantee that revenue is collected domestically and taxes are paid within New Zealand, contributing to the local economy.

An exception could be made for international roaming customers using satellite services, who may be connected through their network partners' roaming agreements with satellite providers. This approach would align with international standards and agreements, ensuring seamless connectivity for roaming users while maintaining tax integrity for services provided within New Zealand.

13	Do you agree adjustments to our levy liability settings are required to ensure our levy regime is flexible enough to respond to market changes (such as new market entrants)? If so, what changes do you consider would be appropriate in this regard?

The levy outlined in section 90 of the Telecommunications Act 2001, while designed to fund telecommunications development, may reflect investments that are not fully aligned with future-proofing New Zealand's telecommunications infrastructure. Recent investments, particularly in public safety, have raised concerns about their long-term viability and whether they represent the best use of resources for New Zealanders.

Additionally, allocating funds for addressing mobile coverage black spots and rural broadband initiatives has predominantly benefited incumbent Mobile Network Operators (MNOs). These operators have often been reluctant to share infrastructure or enable competitive access, hindering new competition within the New Zealand telecommunications market.

There is a sentiment that government funding and opportunities for competitive tenders have not been sufficiently open or accessible to new competitors or emerging service providers. This has sparked a dialogue about the need for a more equitable distribution of funds and opportunities to ensure a competitive and innovative telecommunications landscape in New Zealand.

For a robust and future-oriented telecommunications sector, it is crucial that investments are made in a manner that not only addresses current needs but also anticipates and facilitates future technological advancements and market dynamics.

14	Do you support MBIE's preferred option (option 2)? Why or why not? Are there any options we have not identified?

We support Option 2 as it advocates for an inclusive and adaptable legislative framework that captures all satellite service providers operating and collecting revenue for services provided in New Zealand. This option not only ensures that providers meeting the revenue threshold contribute fairly to the development of the telecommunications sector but also future-proofs the levy liability provisions against rapid technological advancements.

Moreover, it is essential to emphasise that revenue generated from satellite services within New Zealand should be collected domestically. This approach aligns with the principles of economic

fairness and supports the national economy. Ensuring that taxes and levies are collected within New Zealand for services rendered here contributes to the nation's ability to invest in further infrastructure development and public services, ultimately benefiting all New Zealanders.

By adopting Option 2, New Zealand can maintain a competitive edge in the global telecommunications landscape, fostering innovation and ensuring all service providers operate on a level playing field. This proactive measure will cater to the current market and accommodate future growth and changes within the industry.

15	What advantages and disadvantages do you consider could arise from introducing flexibility into the way telecommunications operators might become liable for the levy, for example the ability to be made liable through regulation?

Introducing flexibility into the levy liability for telecommunications operators, such as through regulation, presents both advantages and disadvantages:

Advantages:

- **Adaptability**: It allows the levy system to adapt to the evolving telecommunications landscape, including new technologies and service models.
- **Inclusivity**: Ensures that all operators contributing to the market, like satellite providers, are fairly included in the levy framework.
- **Future-proofing**: Creates a mechanism to address future scenarios, preventing outdated regulations from hindering industry growth.

Disadvantages:

- **Uncertainty of change**: Adding flexibility also adds variation to the way levies may be applied in the future, and there needs to be some certainty on costs that service providers can predict.
- **Complexity**: This may increase the regulatory framework's complexity, leading to potential administrative burdens for operators and regulators.
- **Uncertainty**: Operators might face uncertainty regarding their future liabilities, which could impact their financial planning and investment strategies.
- **Compliance Costs**: This could result in higher compliance costs for operators, especially smaller ones, as they navigate the changing levy landscape.

Moreover, there is a concern that satellite operators may impose higher costs for services in New Zealand, potentially making the collection of domestic satellite services more expensive. This could disadvantage the availability and affordability. Ensuring that revenue from satellite services is collected domestically is crucial to maintain affordability and support the local economy.

Additionally, it is important that satellite services are made available through registered New Zealand companies that are registered with the Mobile Country Code and Mobile Network Code (MCC+MNC) under the International Telecommunications Union (ITU) and approved by MBIE. This ensures that the services are provided by entities accountable under New Zealand law and contribute to the national tax base.

Overall, while the flexibility could bring about a more responsive and equitable system, it is crucial to balance these benefits against the potential for increased complexity and uncertainty for telecommunications operators. The goal should be to create a regulatory environment that supports innovation and growth while ensuring a fair contribution from all market participants.

Issue 2: Regulatory process to set the total Telecommunications Development Levy amount

16	How well do you consider the process for setting the amount of the Telecommunications Development Levy (in the Act) works? What are the implications of having the amount set in the Act, in terms of consultation, timing, and flexibility for changing needs?

The TDL is a crucial component for funding New Zealand's communication infrastructure. It is essential that the TDL strengthens and supports communities with appropriate and quality communications capabilities that are not only relevant today but will also stand the test of time over the next 10-15 years.

The levy should be guided by a comprehensive strategy that details the government's investment plans over the medium (5-15 years) and long-term (15-50 years) horizons.

A mere 10-year flexible plan suggests a lack of vision for New Zealand's innovative potential and its place in a technology-rich future. The need for such flexibility points to a deficiency in the government's long-term planning for communication infrastructure, which is vital for the nation's productivity and cost-efficiency and for being a viable global partner for businesses of the future.

The Rural Broadband Initiative (RBI) and the Next Generation Critical Communications (public safety network) infrastructure exemplify suboptimal investments, where funds were directed towards technology solutions that were already outdated at the time of investment. In contrast, the Ultra-Fast Broadband (UFB) initiative, structured as a public-private partnership (PPP), stands out for its contrasting approach, aiming for tangible returns and outcomes.

The telecommunications sector is at the forefront of technological innovation, with advancements in Artificial Intelligence (AI), quantum technologies, cloud, edge computing, and security playing a pivotal role. This industry offers a unique opportunity to engage with the technologies that will define our future communities and societies.

This strategy must include rigorous audits of government communication tenders conducted by professionals with deep insights into future technologies and innovation. Such measures will help prevent bias and ensure the selection of the most effective technology solutions for New Zealand's future, thereby fostering a competitive and innovative telecommunications landscape.

17	Do you agree with MBIE's preferred option (option 2)? Why or why not? Are there any options we have not identified?

We do not agree with MBIE's preferred option (option 2). The rationale for maintaining the Status Quo (option 1) is based on the need for a clear and long-term strategic vision for telecommunications investment. A flexible approach, as proposed in option 2, lacks the necessary foresight and may lead to decisions that could disrupt the industry's progress. Additionally, the current funding model under option 1 requires an amendment to the Act to increase the levy amount, which safeguards against unjustified increases and ensures that any changes promote competition and are not influenced by biased or suboptimal technology investments.

18	What measures would you consider necessary to accompany any new regulation making power under MBIE's preferred option? For example, clarifying when relevant stakeholders should be consulted and what considerations should be taken into account.

Should new regulation-making power be granted under MBIE's preferred option (option 2), it is essential to implement measures that ensure transparency and stakeholder engagement. This includes:

- **Clear Consultation Timelines**: Defining when stakeholders should be consulted, with sufficient lead time for them to prepare and provide meaningful input.
- **Consideration Criteria**: Outlining specific considerations that must be taken into account, such as the impact on competition, innovation, and investment in the telecommunications sector.
- **Audit and Review Processes**: Establishing processes for auditing the use of funds to ensure they are allocated effectively and in line with the intended purposes of promoting competition and technological advancement.
- **Strategic Alignment**: Ensuring that any regulatory changes align with a long-term strategic vision for New Zealand's telecommunications infrastructure and services.

These measures would accompany the new regulation-making power to maintain industry stability and foster a competitive and innovative telecommunications landscape.

We suggest that MBIE consider adopting best practices from the UK's Office of Communications (OFCOM) regarding their consultative processes for developing future technology decisions and defining strategic directions in telecommunications that account for community considerations and impacts. Additionally, it would be beneficial for MBIE to integrate the United Nations Sustainable Development Goals (SDGs) and the principles of the United Nations Office for Disaster Risk Reduction (UNDRR) into their future strategic planning. This approach would ensure a holistic and sustainable framework for advancing New Zealand's telecommunications sector.

Section 4: Identifying participants in the market

19	Do you consider there is a need for a registration requirement for telecommunications providers operating in New Zealand (when entering the market, as well as updating contact and other business details over time)? Why or why not?

We are supportive of registering all telecommunications service providers who provide communications services in New Zealand; this will provide:

- **Community Trust**: Allow communities to do business with confidence by knowing that service providers are registered to provide communication services in New Zealand and comply with regulations and obligations.
- **Viability**: It ensures that all market participants are known to the Commerce Commission and other government agencies (including MBIE & GCSB).
- **Accountability**: A registration system holds providers accountable for maintaining up-to-date contact and business details, which is crucial for effective monitoring and enforcement.
- **Market Monitoring**: Facilitates better market monitoring by the Commerce Commission, allowing for more informed policy and regulatory decisions that reflect the current market landscape.

20	What are your views on the options we have identified? Do you have a preference, if so, why? Are there any options we have not identified?

We support MBIE's position for Option 2, which calls for a mandatory registration requirement for telecommunications market participants in New Zealand.

While we advocate for this registration requirement, we also emphasise the importance of incorporating flexibility in the onboarding process for new service providers. This flexibility is critical to:

- **Encourage Innovation**: Allow new entrants to develop their businesses without being hindered by overly rigid regulatory frameworks.
- **Promote Competition**: Provide opportunities for new, competitive, and innovative businesses to emerge and challenge incumbent service providers.
- **Business Development Opportunities**: New startups should be given leniency whilst they establish their business operations and mature their processes during their first five years of operations.
- **Support Growth**: Ensure that the regulatory environment is conducive to the growth and development of all telecommunications businesses, particularly startups and SMEs.

We are supportive of Option 2, which introduces a mandatory registration requirement for telecommunications market participants. This option, if implemented with a flexible onboarding process, promises to develop new participants in the New Zealand telecommunications industry with dynamic competition and innovation.

However, it is crucial to ensure new startups are not hindered by excessive compliance costs or the threat of prosecution. Such burdens could impede the emergence of new competition and the introduction of innovative services. A balanced approach that supports regulatory compliance while nurturing startup growth is essential for a thriving and competitive market landscape in New Zealand.

21	What would be the implications of a registration requirement for your business?

Navigating the registration requirements for our business presented significant hurdles. We recommend that MBIE provides a milestone checklist that allows service providers a mechanism to become registered.

22	Do you see any benefits or problems with information provided for registration being released/disclosed publicly? If so, what types of information should or should not be disclosed?

While we are open to disclosure of information in confidence during our startup phase, it's noteworthy that major Tier 1 operators often choose not to reveal their subscriber counts and revenue figures for certain high-value and highly competitive services. To safeguard our startup from potential competitive targeting by these established operators, we believe it is prudent to maintain confidentiality regarding our strategic information and subscriber details. As an emerging company, we prefer to keep details about our business confidential to ensure our strategies and competitive edge remain secure and that we can compete without being targeted by stronger participants in the industry.

Section 5: Enhancing information flow to the Emergency Location Information System

23	Do you agree with the potential risks relating to the provision of information into the Emergency Location Information System that we have identified? Why or why not?

No comment.

24	Do you agree with MBIE's preferred option (option 2), to regulate the provision of emergency location information? Why or why not?

No comment.

25	If option 2 were progressed, which types of entities (eg mobile network operators, or other providers that hold information derived from mobile devices) should be captured by new regulatory requirements?

No comment.

26	What is your view on the potential impacts of progressing option 2, including on providers that would be in scope, and on the system as a whole?

No comment.

Section 6: Governance settings in 'other' local fibre company constitutions

Issue 1: Governance of permitted business activities

27	Do you agree that it is appropriate to consider changes to the constitutional settings that govern the other LFCs? Why or why not?

Regarding the appropriateness of revising the constitutional settings for other Local Fibre Companies (LFCs), we hold reservations. Changes should be cautiously approached to ensure they don't inadvertently disadvantage new market entrants or compromise the existing service quality.

28	Do you agree with MBIE's preferred option (option 2), which would allow the other LFCs to operate in any market, with a restriction on supplying telecommunications services to end users? Why or why not?

We do not favour the MBIE's preferred option (option 2). While the proposition allows LFCs to operate across markets without directly serving end-users, we advocate for confining this liberty strictly to wholesale services. This exclusion should extend to wireless services to prevent competition with our Crown-acquired radio spectrum and our investment in 5G Fixed Wireless Services.

Further, our reservations stem from the observable shortfall in some LFCs' ability to deliver satisfactory connectivity (particularly when compared with Chorus's more comprehensive tail extension service).

The paper implies that other LFCs do not provide Data Centre services under their current terms. The LFCs do offer Co-Location services, which are essentially basic Data Centre facilities, but the exorbitant backhaul costs and complexity render them inaccessible for service providers, especially in less-served areas where fibre uptake and availability of services providers in these areas is limited.

This response articulates our clear position on the proposed options, emphasising the need for careful consideration of market dynamics and the potential impact on service providers. It also corrects a misconception in the document regarding the services offered by LFCs.

29	What impact would there be on competition in other markets if the other LFCs were able to operate in those markets? Do you consider that this needs to be mitigated in some way?

We **strongly oppose** the LFCs' ambition to venture into wireless services. Such a move would directly clash with the Crown radio spectrum rights we acquired and undermine our substantial investments in 5G Fixed Wireless Services. The LFCs have shown minimal foresight in leveraging their own fibre

assets beyond the access network and lack of investment to allow service providers to easily connect (backhaul) to their networks, including the inferior & costly co-location facilities they offer.

We recommend that the LFCs jointly establish a Tail-Extension service that will better support service providers in connecting only their networks to support simpler backhaul connectivity onto their networks.

30	If you are one of the three 'other' local fibre companies, do you have any feedback about the current process? How does the process impact your decisions to seek consent (or not) to operate at layer 3 or 4?

No comment.

Issue 2: Process to seek agreement to operate at layer 3 or 4

31	Do you support any of the options described above? Why or why not? Are there any other options that we should consider?

We support Option 2, which proposes to amend the current restrictions on other LFCs, enabling them to provide services at both the Network Layer (Layer 3) and the Transport Layer (Layer 4).

Our support for this option is contingent upon the LFCs extending their offerings beyond Layer 2 to encompass additional wholesale services, which should also include Layer 4 and above. These services should include:

- **Transit/Local Peering Services**: Facilitating direct data exchange between ISPs at Layer 3, which is crucial for efficient routing and forwarding in interconnecting with other ISPs and content providers.
- **Voice SIP Trunking Services**: Operating at Layer 7, these services are essential for establishing, modifying, and terminating voice and video communication sessions over the Internet.
- **Clock Synchronisation**: Ensuring accurate timekeeping across network devices and supporting low latency and time-critical communication solutions – such as vehicle-to-vehicle communication services and 5G cellular services.
- **Prepaid Fibre Services**: Offering flexible payment options for fibre connectivity.
- **Content Delivery Networks (CDNs)**: While CDNs operate across multiple layers, their primary functions are situated at Layer 7, focusing on delivering content to end-users in a manner that optimises bandwidth usage and expedites access.
- **Data Centre Connection Services**: In the absence of proper terms and affordable co-location services, the other LFCs should provide handover connection points to predominate Data Centres where it is easy for service providers to connect their services to the data networks.

Section 7: Other matters

Issue 1: Considering non-regulated fibre networks in specified fibre areas

32	Can you provide examples of where non-regulated fibre service providers are deploying fibre, and what type of specifications this fibre is being built to (ie is it openly available or built for private use, is it wholesaled, or sold directly to consumers)?

No comment.

33	What are your views on the options we have identified? Do you have a preference, if so, why? Are there any options we have not identified?

We are open to considering Option 2, where fibre built by non-regulated service providers is included in the determination of specified fibre areas, especially if these companies provide wholesale services that allow equal access to their fibre networks at a price point that aligns with or is better than the LFCs pricing models.

We would not be in favour of Option 2 if these non-regulated fibre companies were overbuilding existing LFC fibre infrastructure, as this will present a poor user experience in fibre installation and multiple lead-in complications.

34	What provisions or minimum standards would need to be in place if fibre built by non-regulated fibre service providers were considered as part of the specified fibre area assessment?

A minimum standard we would expect from fibre companies that non-regulated fibre service providers built would be alignment with the following:

- **TCF Fibre Installation Code**: This code ensures that the fibre is being installed in accordance with set principles and best practices.
- **Consistent UFB Product offering**: This will ensure service providers can consume services and interconnect with these fibre service providers in a consistent manner nationwide.
- **Customer Transfer Code for Fibre Services**: to ensure they can correctly support the transfer of services between service providers.

Issue 2: Other minor changes and clarifications

This discussion paper focuses on specific topics that do not cover New Zealand's telecommunications industry's strategic future in detail or provide any strategic vision for future investment and technology opportunities. As a result, it has inadvertently highlighted legacy services and the potential impact of levies from emerging satellite service providers. We believe that MBIE should comprehensively evaluate the telecommunications industry's future (similar to that done by OFCOM in the UK and NIST in the USA), including emerging and strategic technologies and trends that will shape New Zealand's future directions.

Future discussions should also address the current shortfall in technology innovation (including R&D funding for technology innovators) in New Zealand and create programs to support companies aiming to develop and research groundbreaking technologies, similar to the MBIE Endeavour Fund or specialised industry-focused funding.

We are also concerned about the government's suboptimal investment decisions in future telecommunications infrastructure, which has led to short-term solutions requiring ongoing investments to maintain and upgrade these technologies from its onset. The vision for future government investment in telecommunications infrastructure should be to ***"invest in the future, not to be in the past"***.