STARLINK

**Ted Price**
Senior Counsel
+1.585.455.6672
ted.price@spacex.com

19 June 2024

*By Electronic Submission*

Communications Policy
Building, Resource and Markets
Ministry of Business, Innovation & Employment
PO Box 1473
Wellington 6140
New Zealand

**Re: Submission of Starlink Internet Services Pte. Ltd. regarding Discussion Document: Enhancing Telecommunications Regulatory and Funding Frameworks**

Starlink Internet Services Pte. Ltd. (**Starlink**) welcomes the opportunity to comment on the May 2024 Discussion Document: Enhancing Telecommunications Regulatory and Funding Frameworks (**Discussion Document**). Below is a general overview of Starlink and its services in New Zealand, together with a summary of Starlink's position on the Discussion Document and our specific comments on the issues raised in the Discussion Document.

**BACKGROUND ON STARLINK**

Starlink and its affiliated entities, which are wholly owned subsidiaries of Space Exploration Technologies Corp. (**SpaceX**), have been providing non- geostationary, low-earth orbit satellite internet services — branded as "Starlink" — to residential, commercial and government customers globally since late 2020. Today, there are over 3 million Starlink customers across 100 different countries and on all seven continents using Starlink as a broadband connectivity solution for homes and offices, recreational vehicles, offshore and maritime vessels and private and commercial aircraft.

Starlink customer premises equipment, known as Starlink Kits, are simple to deploy, install and use, with no professional experience or formal training needed. Starlink's residential service plan has no data rate limits. For business and government use, Starlink also offers Priority service plans, which provide higher tiers of service intended for high-demand use cases that require in-motion use, open ocean coverage, network priority and priority support features. Starlink customers are not locked into a minimum contract term and may cancel their service at any time.

A full description of the Starlink service plans currently offered in New Zealand can be found at https://www.starlink.com/nz/service-plans.

Beyond satellite broadband, SpaceX announced its first direct-to-cell (**D2C**) partnerships with mobile operators to deliver mobile connectivity to subscribers at times and in areas when terrestrial capabilities are otherwise not available. D2C will deliver space-based connectivity to existing technically-capable mobile devices with no hardware modifications on its mobile partners' networks. This transformative service will offer consumers the safety and peace of mind of a phone call or SMS

message to loved ones or first responders during times of crisis or in remote locations. In New Zealand, One NZ and SpaceX look forward to delivering D2C SMS services to One NZ subscribers followed by voice and data services soon after.

A full description of SpaceX D2C services can be found at https://www.starlink.com/business/direct-to-cell.

**COMMENTS ON DISCUSSION DOCUMENT**

**General**

New Zealand's light-touch approach to regulation of telecommunications has had a range of positive outcomes for the industry and consumers by:

- reducing the barriers to market entry;
- encouraging innovation and investment in the industry; and
- reducing unnecessary compliance costs, which would otherwise be passed through to consumers in the form of higher charges.

Any change to this successful light-touch approach to introduce additional regulatory red tape should be avoided unless there is a clear and demonstrated justification for doing so. Starlink submits that there is no clear justification for making a number of the changes raised in the Discussion Document.

We have set out our specific comments in relation to the issues that are relevant to Starlink below.

**Section 1: Consumer access to dispute resolution**

Starlink supports the status quo. The current model allows telecommunications providers to choose whether to join the Telecommunications Dispute Resolution (**TDR**) scheme. This in turn allows consumers to choose how much weighting is placed on this in their choice of provider. Any change to make TDR membership mandatory would impose an additional operational burden and compliance costs on providers in circumstances where there is no identified failure that justifies such a change.

Starlink's priority is ensuring that high-speed, low-latency broadband services are accessible to people in areas that were previously unserved or underserved, both in New Zealand and globally. To achieve this objective, we have streamlined processes to improve the customer experience and to avoid incurring unnecessary overhead costs that would drive up the price of our service plans. This has included introducing an easy-to-use app that customers can use to log a trouble ticket without having to wait for hours to speak to a technician on the phone. In the event we are unable to meet customer expectations, customers can also easily make complaints through this app. Complaints are assessed and managed by Starlink's resolutions team, who are tasked with resolving complaints in a way that is fair, consistent with Starlink's emphasis on consumer satisfaction and compliant with applicable consumer protection and telecommunications laws.

Starlink understands that, for some telecommunications providers, it makes sense for them to use the TDR scheme to help them resolve customer complaints. For example, it may be an important aspect of their sales proposition to customers who are particularly concerned about access to external dispute resolution processes. It is a fundamental feature of a properly functioning competitive market that each customer is able to choose their provider based on the features that are important to them individually.

Starlink does not consider that there has been any demonstrated market failure that would justify

imposing additional regulation on telecommunications providers in New Zealand by requiring them to join the TDR scheme. The Discussion Document asserts that voluntary membership "potentially results in unfair or inadequate resolutions to disputes for consumers, and risks undermining confidence in our telecommunications markets," but it does not provide any evidence that this has occurred in the 17 years since the TDR scheme was implemented. Rather than helping consumers, mandating membership in the scheme will impose additional regulatory red tape and require providers such as Starlink to incur costs to manage their participation in the scheme. These costs will ultimately need to be passed through to consumers. This will make Starlink's transformational service less accessible to New Zealanders, particularly those in remote and regional areas who may be more cost-sensitive.

The Discussion Document asserts that "mandatory membership of an industry dispute resolution service is a common feature of telecommunications regulatory frameworks" in other countries. Starlink disagrees. Of the 100 countries in which Starlink operates, only three — the Discussion Document mentions two of them — require membership in an industry dispute resolution service. In these three countries, Starlink incurs membership and resolution costs paid to the scheme, and expends internal resources to navigate each scheme's bureaucracy, in excess of the costs of doing business in normal countries that do not have such a requirement. New Zealand is currently one of the normal countries, and we see no compelling reason to change that.

**Section 3: Telecommunications levy settings**

Issue 1: Identifying liable persons

Starlink supports Option 2, being MBIE's proposal to amend the Telecommunications Development Levy (**TDL**) liability provisions to capture satellite providers who facilitate the transmission of New Zealand telecommunications services wholly outside of New Zealand.

Starlink understands the intent of the TDL is that all providers should contribute (directly or indirectly) to the levy. This is ordinarily achieved by applying the levy to network operators, who then indirectly allocate the levy across other service providers by way of the levy being effectively incorporated into the wholesale charges paid by those service providers. However, this structure does not work as intended for satellite providers that supply services in New Zealand using network infrastructure that is located wholly outside of New Zealand. In those cases, the revenue received by those providers is not subject to the TDL at any point in the supply chain. Starlink supports closing this loophole.

Issue 2: Regulatory process to set the total TDL amount

Starlink supports the status quo that the TDL amount is fixed by legislation. The statutory process gives certainty to participants in the New Zealand telecommunications market regarding both the TDL amount and the process for consultation where an increase to the TDL amount is proposed. Starlink considers that this is appropriate for two reasons:

*First*, it provides consistency for telecommunications providers to enable them to make investment decisions. As an industry that traditionally has low margins, it is important that telecommunications providers have certainty regarding their anticipated costs, including taxes and other levies like the TDL. Increasing the flexibility for the TDL amount to be changed would take away some of that certainty and potentially discourage investment or lead to higher retail prices as providers factor in a premium to address the risk of TDL increases. It would also be inconsistent with the original design of the scheme, which expressly limited the delegated authority to change the amount of the TDL (under section 92 of the Telecommunications Act) only to reductions.

*Second*, the statutory process helps promote discipline regarding the use of TDL funds. Having a fixed

amount that cannot be easily changed discourages overspending and ensures that investment decisions are made within the funding envelope. Where there are circumstances that justify an increase to the TDL, it can and should be done by passage of legislation with its attendant parliamentary review and scrutiny. For example, this occurred with passage of the Telecommunications (Development Levy) Amendment Act 2015, which extended the $50 million levy to cover completion of the Rural Broadband Initiative.

**Section 4: Identifying participants in the market**

Starlink supports the status quo and opposes introduction of a new mandatory registration requirement for telecommunications providers or any ongoing obligation for providers to update their details for the purposes of any such register.

The telecommunications regulatory framework in New Zealand already provides for registration of telecommunications providers in the following circumstances:

- Network operators as defined under the Telecommunications (Interception Capability and Security) Act 2013 (**TICSA**) are required to register with the Commissioner of Police to facilitate monitoring of their compliance with associated interception and network security obligations.

- Separately, network operators under the Telecommunications Act may voluntarily register with MBIE to obtain associated rights to provide for access to and the maintenance of their network assets.

Through these registration processes, telecommunications providers already supply public sector agencies with a significant amount of business information. For example, under section 62 of the TICSA network operators are required to supply, among other things, the total number of customers/end-users of the provider's services, geographical coverage of the provider's services/networks and details of the types of services provided. Network operators are also subject to obligations under section 68 of the TICSA to notify key changes to the information that is on the register.

Any expansion of these registration obligations should not be made lightly, even if the proposed obligations (and associated costs) are intended to be reasonably modest. New Zealand's light-touch telecommunications regulatory regime is viewed favourably internationally, and any additional requirements should only be imposed where there is a clear justification for doing so. To the extent that the objective of registration is to ensure that providers are aware of their regulatory obligations, it is not clear that a registration obligation would achieve this objective. It is reasonable to assume that providers that are unaware of their regulatory obligations will be similarly unaware of an obligation to register themselves. This would be better addressed through the Commerce Commission's industry education function.

If a new registration requirement is introduced, the register should not be made public unless there is a clear justification for doing so. None of the reasons set out in the Discussion Document for introducing the registration obligation require the register to be made public. In particular, making the register public would not increase the ability of the Commerce Commission to monitor the industry or to assist industry participants to comply with their regulatory obligations.

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

The current regulatory settings for the Emergency Information System are appropriate. This provides for telecommunications providers to enter into contractual arrangements governing the supply of emergency location information. Given the obvious interest of consumers in being able to be located

by emergency services organisations in emergency situations, telecommunications providers similarly have a clear incentive to cooperate with emergency organisations to facilitate this capability. These incentives appear to have been borne out in practice. The Discussion Document states that these arrangements have been working well and, as far as we are aware, there have been no issues arising that would justify the introduction of additional regulatory obligations.

The flexibility afforded by the existing arrangements enables telecommunications providers to agree to arrangements that are most useful to emergency organisations, having regard to the technical capabilities of each service. The type of support that providers are capable of contributing to the Emergency Information System will depend, in some circumstances, on the technical capabilities of the relevant telecommunications network. For example, SpaceX's D2C service involves a partnership between a mobile terrestrial partner and SpaceX as the satellite service provider supplying service to the mobile partner's existing subscribers. The mobile terrestrial partner in this operational model maintains a relationship with the end user and is therefore capable and best positioned to manage, communicate and coordinate emergency access information and data. Further, the mobile terrestrial partner's existing infrastructure allows them to use device location in emergencies, a capability that D2C satellite services lack.

The existing contractual arrangements are therefore able to be properly tailored to reflect those capabilities and limitations, by setting clear and specific obligations that the relevant provider is capable of performing. By contrast, any blanket regulatory obligation imposed on providers across different network types will likely not be able to be customised in this same way and could lead to either uncertainty (if the obligation is expressed in general terms) or breach (if the obligation requires a technical capability that a particular type of network is incapable of delivering or ill-positioned to deliver).

* * *

Starlink appreciates the opportunity to provide these comments in response to the Discussion Document. Please do not hesitate to contact the undersigned with any questions.

Yours sincerely

*/s/ Ted Price*

Ted Price