INTERNET SERVICE PROVIDERS ASSOCIATION OF NEW ZEALAND

ISPANZ Submission on

Enhancing telecommunications regulatory and funding frameworks

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Your name and organisation

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Organisation	The Internet Service Providers Association of New Zealand (ISPANZ)

Responses to discussion document questions

Introduction

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?
	ISPANZ regards the proposed criteria as reasonable – so long as "Incentivising innovation and further investment in telecommunications" covers the ability to tackle Chorus' unreasonable penalisation of medium sized retail service providers (RSPs) through their unjustified insistence on imposing onerous security requirements under Clause 8.2 of the *Chorus UFB Services Agreement – General Terms.* We have no other criteria to add.

Section 1: Consumer access to dispute 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?
	No.
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?
	Those of our members that are not TDRS members have very good records of not getting into disputes, so they do not need resolution. Our members object in principle to funding a system that they do not use. Some of our members were TDRS members and have left the TDRS as they were paying the fee but never had disputes that needed resolution. Any

	disputes resolution system should be funded by its users, so the more disputes that an RSP has the bigger its bill would be. We have provided substantive input to both the Commerce Commission and to TCF on this subject. We are happy to discuss this issue in depth should you so wish.
4	For consumers who have had issues with their telecommunications service providers, what were your options for dispute resolution, and what was your experience?
	N/A
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?
	Option 1 is our preferred option. Option 2 would only be acceptable if the system was user pays, so no disputes would mean no bill. Charging a fee to pay for a service that is never used would be immoral and potentially illegal. Consumers who purchase their services from non-TDRS members are not cut off from a disputes resolution process. The Disputes Tribunal hears complaints made by consumers, including by ISPs' customers. It is simple for telecommunications consumers to make a claim against their ISP; ***https://forms.justice.govt.nz/forms/uicomponents/34006758*** There is a small fee, but this is refundable if the claim is successful and if the claim is not vexatious the claimant should be confident in being able to recoup this cost. Given the existence of this route for resolving disputes, one could question the benefit of having the TDRS in the first place.

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?
	ISPANZ is in favour of Option 2.
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)?

	I would take advice from regional LFCs and other fibre providers.
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?
	No comment.
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.
	No comment.
Issue 3: Invoking 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.
	No comment.

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)?
	Yes. Currently you have excluded satellite operators from being Liable Persons under the Act, citing *Commerce Commission v Kordia*, CIV 2020-485-748 [2021] NZHC 2777 at [88]-[108] to support that. ISPANZ believes that your interpretation is incorrect because *Commerce Commission v Kordia* was a judgement relating to a very specific and narrow set of circumstances. These circumstances do not apply to satellite telecommunications services of a type not referenced in the judgement and which did not exist at the time of that judgement. All satellite service providers should be included.

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?
	Yes. We would welcome the opportunity to comment on any specific proposals that you might have.
14	Do you support MBIE's preferred option (option 2)? Why or why not? Are there any options we have not identified?
	Yes. See box 12.
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 liability through regulation would be more flexible than having liability set by the Act.
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?
	Our members have reported no issues with the current process for setting the amount of the TDL.
17	Do you agree with MBIE's preferred option (option 2)? Why or why not? Are there any options we have not identified?
	No comment.
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.
	Whenever an increase is considered, all RSPs should be consulted.

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 philosophically opposed to any increase in compliance costs and requirements (and every requirement carries a cost). If, in the future, there is a change in the regulatory requirements that cannot be implemented without registration then this matter should be considered in that context, not just for regulators' convenience now.
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?
	Option 1 is our clear preference.
21	What would be the implications of a registration requirement for your business?
	Cost, effort and a loss of sense of humour.
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?
	Some of our members have had the experience of having their confidential information released by those they have provided it to. No information should be disclosed. The best protection for our members is not to provide their confidential information in the first place.

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?
	ISPANZ supports any improvements that could be made to protect individuals from harm and to locate them quickly if they are at risk.
24	Do you agree with MBIE's preferred option (option 2), to regulate the provision of emergency location information? Why or why not?
	Yes. Whilst ISPANZ is philosophically opposed to increased regulation, we support any improvements that could be made to protect individuals from harm and to locate them quickly if they are at risk.

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?
	All relevant entities.
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?
	Chorus is unique amongst LFCs in that they are allowed to build anywhere. The others are geographically limited. Either Chorus should be limited geographically, or the others should be allowed to compete anywhere. Many ISPANZ members connect their customers using wireless. Having their wholesale supplier being allowed to compete with them is counter-intuitive and could result in monopolistic conduct reducing competition.
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?
	To a degree. For fibre we agree. ISPANZ is cautious about allowing wider use of wireless connectivity by LFCs. We would prefer that no LFCs (including Chorus) use wireless to connect end customers. ISPANZ members are already providing this sort of connectivity.
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?
	See box 27 above. Any proposals to implement the changes outlined should be consulted on widely and with more detail on what would be proposed. Our members perceive that smaller LFCs are more competitive than Chorus when it comes to connecting new subdivisions. Competition in this area could improve outcomes for end customers.

Issue 2: Process to seek agreement to operate at layer 3 or 4	
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?
	N/A
31	Do you support any of the options described above? Why or why not? Are there any other options that we should consider?
	ISPANZ supports Option 1. Rather than thinking of allowing the smaller LFCs to operate in other markets, consideration should be given to restricting Chorus' activities to fibre and copper connections only. Many ISPANZ members connect their customer using wireless. Having their wholesale supplier being allowed to compete with them is counter-intuitive and could result in monopolistic conduct reducing competition.

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)?
	Many ISPANZ members have deployed and are deploying their own fibre. They are doing this at their own cost, without access to government funding. They are entitled to make a fair return on their investment. Different members have different policies over who can access their fibre and on what terms. At present, as ISPANZ members' fibre cannot be determined to be a specified fibre area, their existing fibre networks are being overbuilt by the LFCs. This is a ridiculous waste of the nation's resources.
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?
	Option 2 is our preferred option. If our members' fibre networks can be deemed to be specified fibre areas, then Chorus would be able to withdraw copper from those areas without having to build their own fibre there. That would be a win for Chorus, a win for our members and a win for the country,
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?

We are nervous that this change might result in a large regulatory and compliance burden. The economics of our members' smaller networks make open access problematic and/or expensive. Detailed consultation with non-LFC fibre network owners would be needed to establish appropriate standards and rules over when a fibre network should be required to be open access.