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Dr Ross Patterson  
Telecommunications Commissioner  
Commerce Commission  
44-52 The Terrace  
Wellington 6140

By email: [telco@comcom.govt.nz](mailto:telco@comcom.govt.nz)

Dear Commissioner

**Feedback on the Draft Terms of Reference  
– Study on Demand Side Issues**

1. Vector Communications ("Vector") welcomes the opportunity to provide feedback on the Commerce Commission's ("the Commission") Draft Terms of Reference – Study on Demand Side Issues.
2. Vector is a significant provider of fibre optic networks in Auckland and Wellington, delivering high speed broadband services to these regions. We are highly interested in issues of wide significance to the New Zealand telecommunications and related sectors.
3. This note expresses support for the proposed demand side study and proposes other areas that the Commission can further consider for research and analysis.

**Support for the demand side study**

4. The Commission seeks to identify factors that may impede the uptake of ultra-fast broadband in New Zealand through the proposed study.
5. Vector supports this study. The importance of stimulating the uptake of ultra-fast broadband cannot be overstated if New Zealand is to achieve a step change in productivity levels and catch up with its OECD peers in broadband performance.
6. Given the dearth of information on the barriers of ultra-fast broadband uptake in New Zealand, we believe this study will provide better information for market

participants and consumers in the telecommunications and related sectors, who will make appropriate decisions on ultra-fast broadband spending and investment.

7. We support the Commission's proposed approach and the specific areas for analysis and research identified in the Terms of Reference for this study.
8. In addition, we propose that the Commission take into account the barriers to ultra-fast broadband uptake within the context of the following:
  - the Government's UFB initiative;
  - net neutrality;
  - cloud computing;
  - the regulatory environment (content, copyright and data privacy);
  - consumer awareness; and
  - the wider market environment.
9. We outline these issues below.

#### **The Government's UFB initiative**

10. A study on demand side issues would not be meaningful without looking at the supply side. This study would be a timely opportunity for the Commission to assess the regulatory settings governing the Government's Ultra-Fast Broadband ("UFB") initiative, which will significantly shape incentives for market participants in the next few years, if not, decade.
11. In its oral submission to the Finance and Expenditure Select Committee on the Telecommunications Amendment Bill on 16 March 2011, Vector proposed the development of regulatory principles up front to provide certainty for market participants in the telecommunications sector, akin to the approach adopted for the electricity and gas sectors.
12. Fibre infrastructure providers under the UFB initiative have locked-in contracts and pre-determined price paths for a considerable period of time. We propose that this study assess whether this 'inflexible' arrangement could be a barrier to UFB providers taking advantage of emerging market opportunities, hence limiting the array of services that consumers can choose from in the future.
13. An analysis of the strengths, weaknesses, opportunities and threats (SWOT analysis) of the ensuing regulatory regime, guided by regulatory principles, would be highly informative and useful for market participants.

#### **Net neutrality**

14. As part of the assessment of UFB arrangements proposed above, the study could look into the extent to which Layer 3 should be open access and its impact on net

neutrality. At Layer 3, major market interests are expected to eventually come into play. Restrictions on 'over-the-top' internet services at this layer by traditional retail service providers could potentially be anti-competitive and compromise net neutrality.

15. In addition, by constraining the international capacity delivered to consumers and protecting their traditional service model, retail service providers can contribute to 'over-the-top' consumer experience that is less than desirable. This is not a good outcome for consumers and could dampen future demand.

### **Cloud computing**

16. The study could look into the potential role of government, as a major consumer of ultra-fast broadband services, in taking the lead towards moving to a cloud computing environment. For example, current Inland Revenue policy suggests all financial data must be held in New Zealand, which is counter to the global world of cloud computing (e.g. Xero) and may mean that New Zealand is unable to reap the benefits of global scale.
17. Cloud computing enables New Zealand businesses and consumers to take advantage of economies of global scale, resulting to efficiency gains and cost reductions that could drive consumer demand. It will also provide the capability to process extremely demanding informational processing requirements, for example, during emergency situations like the recent earthquake in Christchurch.

### **The regulatory environment**

#### Content

18. In considering the barriers to uptake that may arise as a result of existing and evolving content arrangements, we propose that the Commission consider the regulatory implications of these arrangements (e.g. the need to separate the regulation of content from infrastructure provision).

#### Copyright

19. The traditional copyright model may no longer be fully applicable or relevant in a digital world. The study could assess how the protection of copyright, as embodied in existing legislation, impact on the accessibility of content in a world that is increasingly becoming digital, and how this, in turn, affects demand.

#### Data privacy

20. The Commission could consider the appropriateness of developing guidelines or a code of practice specifying different obligations (e.g. which all-IT data can be intercepted) and access rights/data privacy (e.g. access to central repositories of

data from anywhere such as in the health sector) at different levels of information.

21. While there is a balance to be maintained between privacy and instant data accessibility, New Zealand will not be able to realise the full potential of the digital age if we remain constrained under the old paradigm of data privacy.

### **Consumer awareness**

22. Consumers of ultra-fast broadband services benefit where markets efficiently reflect the true costs of products and services. Advertisements that could mislead consumers (e.g. using the word "fibre" when the service is not fibre-to-the-door) and onerous long-term contracts do not contribute to consumer awareness and readiness to harness the capabilities of ultra-fast broadband.
23. We propose that the Commission look into how the above could potentially discourage consumers from further taking advantage of the benefits that ultra-fast broadband delivers.
24. The study could further incorporate a 'value chain analysis' that illustrates the inherent properties of different technologies (e.g. copper and fibre) that support or inhibit ultra-fast broadband uptake, and the extent to which consumers distinguish or care about the differences.

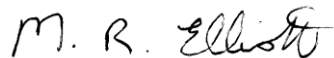
### **Wider market environment**

25. It would be helpful if a 'regulatory roadmap' for copper is developed as an offshoot of this study. Vector has indicated, in its submission on the Draft Regulatory Guidelines for the Telecommunications Sector in October 2009, that the Commission should focus on removing bottlenecks in connecting with incumbent interconnection points which impede market performance and competition.
26. We propose that the demand study include a 'competitive forces analysis' of the telecommunications and related industries. The analysis could identify the factors that drive industry profitability within the context of increasing consumer demand for new and innovative applications that run on fibre and other non-legacy networks.
27. The study could further consider what roles industry bodies, such as the Telecommunications Carriers Forum, could play in promoting the uptake of ultra-fast broadband across New Zealand (e.g. ensuring that the building industry adopt cabling standards to enable the wiring of homes and businesses for ultra-fast broadband services).

## Closing comments

28. A desirable outcome of this initiative would be a set of recommendations to develop regulatory principles, guidelines, or codes of practice on the key issues identified. This would ensure that the right regulatory settings, which provide certainty and the right incentives for market participants, and an appropriate legal framework for a digital world (copyright, data privacy) are in place as New Zealand transitions into a world increasingly enabled by ultra-fast broadband.
29. Thank you for considering Vector's feedback. We are happy to engage with the Commission to progress this study, including the issues we identified above. We look forward to making a submission on the discussion paper and participating in the conference later this year.
30. If Commission staff have any questions, or require further information, they should feel free to contact Luz Rose at 04 803 9051 or [Luz.Rose@vector.co.nz](mailto:Luz.Rose@vector.co.nz).

Kind regards



**Maxine Elliott**

General Manager

Vector Communications