

27 November 2009

Reg Hammond  
Manager  
ICT Regulatory Group  
Ministry of Economic Development  
PO Box 1473  
Wellington 6140



**Via email**

Dear Reg

**Facilitating the Deployment of Broadband Infrastructure**

The Telecommunications Industry Group (TIG) was formed in May 2009 to act as the voice of the industry for telecommunications in New Zealand and to increase the contribution of telecommunications to the society and economy. The purpose of this letter is to provide some industry views in response to the MED Discussion Paper Facilitating the Deployment of Broadband Infrastructure released in October of this year.

The TIG provides a focal point for consolidated industry efforts, including communication between the Telecommunications Industry and other stakeholders, and acts as a central resource for industry led research and data. The TIG includes members from Telecom, Vodafone, Vector Communications, Kordia, Baycity Communications, CallPlus, Compass Communications, FXnetworks and WorldxChange Communications. With all of these members either providing fibre services, broadband services or both, the TIG is well placed to provide expert feedback to the MED Discussion Paper.

Firstly, we applaud the MED's efforts to consult as widely as possible on potential measures for facilitating the deployment of Ultra-Fast Broadband (UFB). The Discussion Document rightly identifies many of the current issues that utilities operators face when accessing land or supporting structures to deploy telecommunications infrastructure across the nation. While some of our members will be taking the opportunity to present individual submissions to the Ministry, a number of the issues covered warranted further emphasis in an industry-based response. It should at this point be noted that Vector Communications, who are a member of the

TIG, are not part of this submission, and we understand may provide their own independent submission to the MED.

Therefore rather than attempting to respond to all of the questions and issues raised in the Discussion Document, this letter takes the opportunity to highlight to the MED a number of issues that are of particular importance to the industry as a whole.

We do not believe that any measures adopted out of this exercise should be limited to the rolling out of UFB infrastructure. Rather, any efficiencies they introduce should be available to all future telecommunications infrastructure roll outs, and we strongly urge the MED to consider the wider issues surrounding such deployments, with particular focus on land access and the RMA.

The TIG strongly supports the principle of negotiated access to land and structures, be they Crown, Council or privately owned. However, we recognise that for this principle to work effectively, it must be underpinned by an effective legislative regime which incentivises commercial negotiation, and provides an appropriate backstop which prevents delaying tactics and gaming by parties. While we do not support regulating access to structures or land, we do support some amendments to the overall legislative regime which we believe would serve to greatly improve consistency in providing access.

It is on this basis that we recommend the MED should consider supporting the following measures which the TIG believes would serve to greatly improve access to land for utilities operators, and therefore introduce significant efficiencies towards achieving the Government's objective, and any future telecommunications infrastructure deployments.

#### **Amendment to Section 120 of the Telecommunications Act**

The TIG believes the current section 120 of the Act is weighted too heavily towards enabling land owners to deny access to their land with relative ease by employing some of the conditions available. In particular, the requirement that telecommunications operators must satisfy that "no practical alternative route exists" is problematic, as in nearly all instances it is easy for land owners to demonstrate to the court that alternative routes do exist. Equally, the requirement that "all reasonable steps" be taken to negotiate entry provides relatively easy grounds for land owners to argue against court orders. We believe that section 120 in its current form presents the single biggest impediment for telecommunications operators to gain access to land in infrastructure deployments. As such the TIG asks the MED to support amendments to section 120 which lessen the currently onerous requirements placed on telecommunications operators.

#### **Access to Public Land**

The TIG would like to take the opportunity to highlight the importance of access to Public Land in telecommunications infrastructure roll outs. Communities often see the use of Public Land and reserves as appropriate places for the deployment of telecommunications infrastructure. As such we have a number of recommendations that we believe would facilitate enhanced access to Public Land, and therefore would significantly expedite achieving the Government's objective.

Experience of the members of the TIG shows that the degrees of success in gaining access to Public Land can vary considerably depending on the Crown agency or local authority being engaged. Improving consistency in the treatment of Public Land (both Crown and Council), and reducing the number of restrictions available would improve clarity and provide operators with greater confidence when seeking to access the land. This would reduce the number of delays in a deployment associated with denied access to Public Land where providers are forced to seek alternative routes.

To achieve these aims, the TIG believes that the Government should explore treating Public land access in a similar manner to the current regime used for granting utility operators access to the road corridor. The benefit of such an approach would be to reduce the requirements for licenses, leases, easements or concessions for the installation and maintenance of utility infrastructure.

Members of the TIG have also consistently highlighted to Government the importance of access to the rail corridor, which traverses large parts of the country and therefore is difficult for telecommunications operators to avoid. Many operators have had limited success in negotiating access to the rail corridor with OnTrack. The TIG encourages the MED to support amendments to the Railways Act which align provisions to access with that of other transport corridors such as roads and motorways.

We also believe that an emphasis should be placed on the Public good when the Crown or Council are considering granting access to utility operators to Public Land. Public Land is there to serve the Public good, and essential infrastructure such as telecommunications benefit society as a whole. Therefore we believe that rather than seeing such deployments as an opportunity to enhance revenues, operators of Public Land would be better placed to recognise the benefits that such infrastructure bring to their local communities. It is important to note that the TIG recognises that not all Public Land is always going to lend itself to placing telecommunications infrastructure. However, where Public Land is appropriate, a greater balance between local community concerns and the overall benefit to society the infrastructure brings is sought.

### **Low-impact facilities regime**

Lastly, with regard to accessing both Public and Private Land, we note that telecommunications operators can often encounter difficulties introducing minor infrastructure to both existing and new sites. For the reasons outlined above, rolling out even low-impact telecommunications infrastructure can be impeded by onerous land access restrictions. We would like to draw the MED's attention to the "low-impact facilities" regime introduced in the Australian Telecommunications Act. This legislation allows telecommunications operators the right to install a limited range of defined low-impact facilities without having to seek approval from government or private land owners, albeit within certain limitations. Adopting such a regime here would certainly enhance the speed of roll out of UFB infrastructure.

Additionally, we believe that the following measures would facilitate the deployment of telecommunications infrastructure:

- the introduction of a new National Environmental Standard (NES) which allows the addition of low-impact telecommunications infrastructure to existing sites without requiring further approvals
- an adjustment to the RMA height standards for masts which would free up height restrictions for masts in rural areas, which we believe would assist the Government's objectives for the Rural Broadband Initiative.

We would like to thank the MED for the opportunity to comment on this Discussion Paper, and hope and trust you will find this information useful. We look forward to further opportunities to work together to support the delivery of world class telecommunications to New Zealand.

If you have any queries or would like further information, please contact Anna Hadfield on [anna.hadfield@tig.org.nz](mailto:anna.hadfield@tig.org.nz) or ph: 09 4750208, or myself by email: [robspray@tig.org.nz](mailto:robspray@tig.org.nz) or ph: 021 648 715.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Rob Spray'.

Rob Spray  
**Chief Executive Officer**  
**Telecommunications Industry Group**