

TSO Review – who will be the winners and losers?

Very likely there will be huge changes as to who supplies the TSO services, and how, and who funds them.

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Like the broad telecommunications review, the legislation calls for a wide ranging review of New Zealand's Universal Service Obligation (USO) regime (usually called TSO but we'll use USO to put this into international context). The two reviews, although theoretically separate, ideally are treated as inter-dependent now they are being run in parallel. Policy choices in each review have cross-impacts. See our other article today on the *Telco Review*².

Like the Telco review, there's a long list of factors the Ministry² must take into account. Things such as new technologies, the marketplace, investment incentives, the usual requirement of considering the long term interests of end-users, etc. Changing the USO supply and funding approach is in the list to be considered too. In short, pretty well everything is up for grabs and must be considered by the Ministry. We think it is highly likely there will be radical change. Plus the USO has relevance to the current issues around the UFB and can be designed to better accommodate UFB investment.

Status Quo

The status quo has the USO based on copper, without broadband obligations. (There's also the relay services USO, not dealt with in this article.) The voice provider cross-subsidises and gets the benefit of network effects, so there is no payment made by other Telcos³. To use the lingo, there is no Universal Service Fund (USF) in place, to which the Telcos contribute, from which payments are made to USO providers. That changed in 2011. An OECD commentator describes that traditional USF/USO approach as a "blunt" approach.

Telcos continue to pay similar amounts by way of the Telecommunications Development Levy (TDL) as they paid before to the USF. But this now goes toward funding rural telecommunications such as RBI⁴. Flicking this money from the USF to the TDL was expedient, but it is based on decidedly unprincipled legislation.

Who will supply USO services?

Options now extend beyond the copper PSTN to fibre, wireless, etc. The RBI opens up options. Mobile is a realistic candidate for services in areas not readily served already (mostly rural but some urban too). Increasingly possible if not probable is a move from one USO provider to several, across different technologies. How is the approach decided? For example, does Government run a tender process? Who will be the winners and losers as USO suppliers?

What will be supplied?

Should the USO extend to broadband, as some other countries (such as Sweden and Finland) are doing? That's a policy issue that is hotly debated: is broadband a basic telecommunications requirement or a nice-to-have, beyond basic voice and dial up speeds? And much of importance can be buried in loose use of "broadband" words, given the massive difference in speeds and QoS between different solutions. Issues around the so-called digital divide will be important in this discussion.

It might be argued that the Act reads such that the review is limited in scope to the level of current services such as voice and dial-up, and

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therefore the Ministry doesn't have to deal with the option of broadband USO. Whatever the legal answer, in practice, limiting the review in that way would be unrealistic in the context of industry developments and the broad Telco review. The Ministry can and should elect to cover broadband USO issues. That's not to say there should be a broadband USO: just that this is an important issue.

However, the TSO review must – as things stand – be completed by the end of this year. This may mean doing the voice and dial-up issues this year and broadband next year.

Because the TSO review timeline is so tight, some TSO decisions will likely have to be made before broader Telco review decisions, although the Ministry's work comprises a report to the Minister. The Ministry can set out options for the Minister to consider depending on the broader choices. The Minister's role can then flow on from this, of course using the same Ministry staff. Or the statutory reporting date can be pushed out.

Funding the USO

How should the USO be funded? There are plenty of options here, ranging from the traditional sort of USF (such as the regime NZ had for years) through to general funding out of tax, cross-subsidisation by carriers (increasingly harder as the market conditions change including reducing voice revenues and the prospect of multiple USO carriers), and a levy on each customer's phone bill.

A big issue, if there is a traditional sort of USF, or some variation on that, will be how Telcos share in this. The TDL debate in the Commission shows how hard it is to get it right as between mobile and fixed line operators, including upstream

providers such as Chorus. And that's even before there's discussion about who should be paying toward the USF. Should content providers and other over the top providers be contributing? Where's the line drawn? These are not easy issues. There are hard policy calls and hard calls to make around implementing the policy at the regulatory level.

What happens to the TDL?

Should there even be a USO at all? OECD has raised that as a question to be considered.

Talking about the traditional sort of USF/USO approach, the OECD commentator notes:

"But- at least at this early stage of broadband penetration- there are strong reasons to be wary of using a 'blunt' blanket USO approach that could distort competition and investment incentives. However, this review may require regular reconsideration because universal service is an evolving concept."

And behind all this is the recently fired-up rhetoric around the UFB. Will the approach to USO end up being good policy and good for the country? The expedient TDL decision sets a precedent here.

1. <http://www.wigleylaw.com/assets/Uploads/Telecommunications-industry-review-across-the-board.pdf>

2. The Ministry does this review: the Minister runs the Telco review. In practice, that can be done in integrated fashion

3. There is some ability to get a contribution from the Telcos but in practice this is unlikely

4. The Act includes discretion to use that levy for other purposes but more likely is the rural use

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