

Digital Broadcasting: Review of Regulation

QUESTION RESPONSE FORM

This form relates to the questions asked in the Discussion Paper. You may wish to use this form to respond to the questions.

Please return to the Ministry for Culture and Heritage by **Friday 4 April 2008**, either by email to **broadcastingregulation@mch.govt.nz** or by post to: Review of Regulation Paper, Broadcasting Unit, Ministry for Culture and Heritage, PO Box 5364, WELLINGTON.

Please see page 50 of the Discussion Paper for further information about submissions.

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QUESTION RESPONSE FORM: Digital Broadcasting: Review of Regulation

<i>Discussion Paper page reference</i>	<i>Question from Discussion Paper</i>	<i>Submitter's response (please enter)</i>
Page 5	<p>Q1.1 Do you agree with the objectives and principles set out for the review? Please give reasons for any proposed additions or amendments to the principles and objectives.</p>	<p>1.1 My main concern is that not all the objectives and principles are or should be equal or accorded the same priority. There may be conflict between some. For example, "ensuring accessibility and affordability" may conflict with being "technology neutral" as it may assume some solution as a winner when, over time, a different result may occur. I am aware that the stated objectives are like "motherhood and apple pie" and to argue against them would seem unreasonable. In a perfect world, ensuring diverse platforms, world class infrastructure and effective markets would almost take care of everything else so they should have some priority. As protection, ensuring good standards, personal security, and protecting property rights are important to our society. Our small market will require some intervention to achieve the desired diversity of content. The public and social value expressions are very subjective and open to many irreconcilable interpretations. To some, this is all about serving minorities or</p>

		<p>providing “worthy” programmes but to most people, there is real value in popular and entertaining programs, the best of which may also carry valuable social and moral messages. In summary then, this is a big topic. I have a qualified agreement with the objectives and principles so long as their application is appropriate and not a “one size fits all” approach.</p>
Page 7	<p>Q2.1 Do you agree that the diversity scenario summarised above is a desirable state for New Zealand to work towards achieving?</p>	<p>A dash of reality is needed here. Rather than the wording of the question, I prefer the question in 7.2.4 of Volume 1 which says “what if any, measures might be required to encourage the market to develop towards scenario A, diversity”. The reality is that a full or perfect diversity scenario is at odds with NZ’s small market size and there will be practical limits on the number of fullscale national operators, the range of services offered and the reach of other niche operators. But setting up an environment which tries to encourage a diverse outcome is good.</p>
Page 7	<p>Q2.2 Do you agree with the threats and issues identified in the above table? Please identify any threats or issues with which you do not agree, and provide reasons.</p>	<p>I agree that Threats 1,2,3,4 and 7 are real in achieving the diversity goal. While cyber crime, and protection of minors etc are real issues, they could exist in almost any scenario. Digital illiteracy is a non threat and non-issue. People will become</p>

		<p>as informed in this area as is necessary to meet their own self interest. Service providers will obviously market and "educate" to build their businesses. Community groups like Senionet will show "oldies" how to send digital photos of their grandkids to all and sundry. Sports clubs will and do send out their newsletters on email, word of mouth seems to have done a lot of education about Trade Me. At the same time people are and will remain technophobes and trying to educate them to be different beyond their own self interest would be expensive and non productive.</p>
Page 8	<p>Q2.3 Are there any further threats and issues for consideration that you believe have not been identified?</p>	<p>2.3 Investment needs. Although lack of investment has been identified, it is worth considering more fully. TV and Telecommunications are capital intensive, high technology businesses. The desirability of "world class infrastructure" especially for broadband is clear. How to fund? There are only two options. Either private funders are encouraged by prospects of better returns than they can get elsewhere in the world or in other investment opportunities OR government funds a national network open to all. Assuming private funding is the goal, the regulatory environment</p>

		<p>needs to be very encouraging to such investors. To the extent that "new" operators are investing to compete with incumbents thereby bringing more diversity, some incentive as well as clarity and consistency of regulation is necessary. Incentives can range from tax holidays during start up, to a mechanism to resolve disputes with incumbents in an accelerated fashion. The protracted disputes with Telecom over interconnect, local loop access etc may have been good for Telecom shareholders but have done damage to NZ's reputation amongst those who may have been once interested in investing in this country and resulted in our falling behind in the provision of new services. In the post deregulatory period in the early 90's, NZ was seen as a good small market, almost test market, in which to trial various solutions. With policy and regulatory tools that encourage the provision of new services and offer good potential returns, we could expand the number of parties who might be interested in investing here beyond the mainly Australian based groups currently involved.</p>
Page 8	<p>Q2.4 Which of the threats and issues (identified in the table or in your response to Q2.3) do you consider to be the top three priorities for action?</p>	<p>2.4 Threats 1 and 3 are the priorities. Lack of competition is a consequence of these and the small market. See answer to 2.3.</p>

Page 12	<p>Q3.1 Should New Zealand maintain the <i>status quo</i> in all respects? If so, why? If not, what are the priority areas for change?</p>	<p>3.1 Status quo in all respects??? Is this really the question? After all the talk about new technologies, new methods of delivery etc etc, clearly you cannot maintain the status quo in all respects. However, I believe the provision of and access to networks is substantially different from the management of content and that the regulation of these areas should be kept separate.</p>
Page 12	<p>Q3.2 If some change is necessary, should this generally be at the level of (a) updating existing arrangements, (b) restructuring the regime in line with market developments, or (c) reforming the regime? Please give reasons for your views.</p>	<p>Mainly updating existing arrangements. For content, from a regulatory viewpoint, the principles in the current Act have evolved from a long experience and dialogue between all stakeholders in the industry. They are applied more rigorously to "free-to air" broadcasters who are serving people in the "lean back" mode who do not necessarily make active choices on what they will receive and are therefore entitled to a somewhat greater degree of protection from content that clearly or marginally stretches these principles. Obviously "good taste and decency" for example is not a fixed standard and what is acceptable today is clearly different from say, 20 years ago. I think it is essential to retain the ability to interpret the principles according to current "mores" in society and believe the current processes do serve and can</p>

		<p>continue to serve society and the industry well. A move to a more determinate form of regulation at this stage, based on concerns about the worst outcomes from new technologies and products, is in no stakeholder's interest.</p> <p>For networks, the diversity of ownership and competition represented by the current status needs to be maintained. The main regulatory failure in the recent past surrounds the resistance of Telecom to reaching fair interconnect, numbering arrangements, and sharing local loop facilities. In other words, fair network access and control. While this now seems to be resolved, it has led, up to now, to unwillingness by other parties to invest in network, especially local loop, facilities and the very slow development and provision of broadband. Certainty and strong "policing" of Telecom in this area, and the role of the Commissioner is essential to further investment by all stakeholders and the best outcomes for consumers.</p>
Page 15	Q4.1 Should New Zealand consider one of the three options for revised institutional arrangements (reflecting	We should take approach A. See responses above. I have the following brief comments on other regulators around the world -

	<p>different levels of change along the regulatory spectrum)? If so, which one, and why?</p>	<ul style="list-style-type: none"> • Europe developments in Europe have been fairly slow, in part because of a tendency to heavy regulation. Altho Volume 1 describes Europe as moving to a single regulator, there are differences at each country level and I believe they are in catch up mode as far as the rest of the world and NZ with its well established "light touch" approach. • UK Ofcom is a serious regulator, perhaps appropriate to a market of the size of the UK. However, I do not think the outcomes they have produced are significantly better than the results here and, on the basis of their operations, am not persuaded that there is a case for change here. • Australia - tends to very Australian solutions. Past performance does not show a strong case for change here. Their media ownership rules etc seem to be more about politics and power than policy and principle. • Japan. The Ministry of Posts and Telecom etc is all powerful. Its policies are linked with Japan Inc and manufacturing interests but I found their role to be supportive of new media and surprisingly helpful to foreign owners who took the time to study their policies and put forward proposals backed with proper market or technical
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		<p>evidence.</p> <ul style="list-style-type: none"> USA- Once again, the US is a unique large market The FCC is always interesting but the model does not travel easily. It has built up a long series of rules using a legal/political process unique to the US. While the results are interesting, indeed sometimes revolutionary, it is not a model suited to NZ.
Page 16	Q4.2 Which of the above roles would fit appropriately within the responsibilities of <i>converged</i> regulators? Of a <i>single</i> regulator?	4.2 I do not think there should be a "converged regulator"
Page 16	Q4.3 Would it be appropriate for a <i>single</i> regulator to have both economic (e.g. competition) and cultural (e.g. standards) responsibilities?	4.3 Not appropriate
Page 16	Q4.4 If Approach A were adopted in preference to a converged or single regulator, should an extended Broadcasting Standards Authority and Telecommunications Commissioner have any additional roles and responsibilities? Should the Commissioner, for example, include regular market reviews as input to competition determinations made by the Commerce Commission?	4.4 In overall terms we should maintain a "light touch" regime. However, in the area of network management specific outcomes for broadband availability, treatment of various providers, cost sharing etc have been or are being set. These need to be monitored closely with any delays or obstructions being addressed quickly and separately by the Telecomms Commissioner and not confused by the establishment of any other "new" regime. The Telecoms Commissioner should have sufficient power to impose meaningful penalties for

	<p>lack of performance in the implementation of agreed network access and sharing arrangements.</p> <p>The Broadcasting Standards Authority should be expanded to become a Contents Standards Authority administering a hierarchy of codes ranging from "free to air", the most restrictive, to pay per view or pay per transaction being the most permissive but all formed according to the general principles.</p> <p>A definite statement of the philosophy and principles guiding regulation for all components of the converging telecommunications, broadcasting and internet industries should be made by each of the Telecom Commissioner and the Content Standards Authority in their respective areas. In the case of the Contents Authority the principles to initially be based on those in the current Broadcasting Act.</p> <p>They should then be required to review their respective regulatory regimes against these principles on a regular (3-5 years) basis with a working group from the industry appointed by the Minister. The date of the review to be set now and at each review so there is certainty. This</p>
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		<p>process should encourage most industry players to "make it work" but to the extent that fundamental problems arise there is clarity as to the process for resolution.</p> <p>The other key requirement is that the regulatory framework must encourage and preserve diversity of ownership amongst the major providers. If necessary to achieve this outcome, the Commerce Act should be strengthened but I believe questions of ownership should be left with the Commerce Commission and treated similarly to all other industry sectors. To the extent that experience in one sector has cross-over implications to another I believe the national interest is better served by this experience and knowledge residing in one body. For example, treatments of so called "natural monopoly networks" or access to networks in the telecoms and the energy sectors.</p>
Page 17	<p>Q4.5 How could the relationship between a single regulator and the Commerce Commission best be defined and managed? For example, should the regulator have primacy and then 'refer' issues to the Commerce Commission? Would the two be</p>	Do not favour single regulator

	required to work together on all competition matters? Or, would they each be free to investigate potential issues / breaches as they saw fit?	
Page 17	Q4.6 Some overlap of responsibilities does exist in other countries, such as the US and the UK. Should such overlap be contemplated if a single regulator were established? If so, how might it be made workable?	n/a
Page 19	Q4.7 Which of the options for dealing with market definitions should be considered in New Zealand? Please give reasons for your views.	In a democracy, it is widely held that diversity of news sources is essential. With convergence, news content can be delivered in many ways and this should be allowed. Any news owner should be able to provide their news service by any delivery system. For example, an organisation like NewsCorp should be allowed to hold a significant, even controlling, interest in a national or near national print, TV and online news content provider. However, they should not be permitted to hold a significant interest in more than one news content provider on each delivery platform. I believe it should also be required that the editorial control on each platform be separate. In the case of TV and online, news service providers should be encouraged (required?) to allow their branded service to be carried by competing network providers.

Page 19	Q4.8 Should changes to media ownership (including cross-platform or foreign investment) rules be considered to ensure plurality of news/key genre provision?	see 4.7
Page 21	Q4.9 Should New Zealand establish a national, coordinated media literacy programme? If so, what form should it take, and who should be responsible for its implementation?	There is no need for a "national coordinated media literacy programme". Establishing such a programme may appear worthy and satisfy some lobby groups but would have little real impact on most people. Digital illiteracy is a non threat and non-issue. People will become as informed in this area as is necessary to meet their own self interest. Service providers and manufacturers will obviously market and "educate" to build their businesses. Community groups like Seniornet will show "oldies" how to send digital photos of their grandkids to all and sundry. Sports clubs will and do send out their newsletters on email, word of mouth seems to have done a lot of education about Trade Me. At the same time people are and will remain technophobes and trying to educate them to be different beyond their own self interest would be expensive and non productive. Where a product is compelling, people will become literate. There has been no need for a "national coordinated mobile phone and texting literacy programme"!! If they

		remain "illiterate", whatever that might mean, it suggests the product or service is less than compelling as far as they are concerned
Page 21	Q4.10 To what extent would it be appropriate for a media literacy programme to address issues of internet safety?	Internet safety The problems of viruses etc are wellknown. Protecting minors is a moving target. While the problems of internet pornography are well known, the downsides of sites like Facebook are more problematic to deal with. In the first instance, word of mouth, random news stories and magazine comment, perhaps from celebrities will play the major role in creating awareness and giving advice. A literacy program would have to study and review etc etc and by the time it said anything substantive it would be closing the stable door after the horse has bolted. So, worthy but ineffective.
Page 22	Q5.1 To what extent would it be appropriate for administration of the separate content standards functions of the Broadcasting Standards Authority, the Advertising Standards Authority, the Office of Film and Literature Classification and the Press Council, as they relate to broadcasting-like content, to be amalgamated within a single body?	It would not be appropriate. The existing system has the great benefit of generally working well. It has emerged as a result of trial and error since the beginning of radio,television as we know it, and the movie world. It works in our culture and society. It can be adapted for the "brave new world" relatively easily. In essence "it ain't broke so don't fix it".
Page 25	Q5.2 Which of the above options for	I find the structure of questions 5.2 thru 5.5 a little

	<p>change do you consider would best ensure diversity and visibility of local content in a digital age? Please give reasons for your views.</p>	<p>too directive and prefer to address this area in a single statement. Although this section is called content diversity, it is actually about local content. To start by restating the obvious, it is a truism around the world, confirmed by many studies, that in EVERY COUNTRY, viewers prefer local content. In many countries of larger size, it is often cheaper to produce locally than purchase from elsewhere. In NZ, given our small market, the opposite is true. However, the market will support some local content. Government policy over many years has stated that the local content produced commercially is not sufficient in quantity or diversity, hence public funding via the NZ on Air mechanism. To the extent that emerging new media pose threats to this the simple and obvious answer, the "elephant in the room" so to speak, is to increase public funding. One could argue that the level of public funding is a reflection of the real concern held by government and policy makers as opposed to the rhetoric. In fact, the level of funding is relatively low so ?????????????? The rest of the proposals about structures and reforms are essentially "rearranging the deckchairs". Having said all this, I tend to favour continuing the existing arrangements but making public funding</p>
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		available to any producer making content for delivery by any distributor reaching a "significant" audience. I suggest the interpretation of "significant" in this sense be left to NZ on Air, taking account of its enabling legislation but not focussing just on the size of the audience but the value of the proposed programme to the target audience. I also believe any operator such as Sky, with a customer base in excess of 10-20% of NZ homes for "broadcasting like" content should have some programming obligations put on them but think this is best addressed under "must carry" provisions.
Page 25	Q5.3 Do funding bodies require any mechanisms (e.g. incentive-based or obligation-based) not currently available to them to promote diversity, maximum visibility and accessibility of funded programmes?	see 5.2
Page 25	Q5.4 To what extent would the blurring of boundaries between different segments of the audio-visual sector justify changes to the current structure of funding bodies (e.g. to avoid the risk of gaps or duplication)? If a converged funding body were established, what might its role be?	see5.2
Page 25	Q5.5 What would be the implications	see 5.2

	<p>of the changes you support for the amount of funding required? How could a significant commitment to private investment in local and other content of public value also be encouraged?</p>	
<p>Page 28</p>	<p>Q5.6 Which of the options for supporting and promoting public service broadcasting in a digital age do you support, and why?</p>	<p>There are two instruments in NZ providing for the public interest in the broadcasting industry, ownership and public funding. Taken together, these are the form of public service broadcasting in NZ. Ownership achieves two main objectives, the supply of a service which the market could not sustain but which is considered important to NZ eg Maori TV or ensuring diversity in news and providing a benchmark in terms of programming quality which competitors need to match eg TVNZ, the RNZ National programme. The direct public funding is to ensure more diversity in programming and historically, has subsidised the transmission of services to remote areas. Looking at the four "cornerstone principles", it seems to me that while historically, PSB was needed to deliver on these, in the emerging media world with new delivery options and a swing to more direct control and selection of content by users, this is not necessarily the case. Considering each principle</p> <p>-</p>

		<ul style="list-style-type: none">• Universality - delivery is now more easily and efficiently provided to the whole country by satellite. While services need to be available, I do not believe they need to be free of charge. Electricity and telephone services also should be universally available but there has always been a charge for them. The cost of a Sky subscription is similar to a monthly telephone line rental and Freeview is a one off charge. Sky and freeview, at what are very reasonable charges are socio-economically and culturally accessible to all. Universality is done. Discontinue subsidies for remote transmission as soon as possible. The provision of broadband to remote areas may be another matter but is not part of the PSB mandate.• Diversity - to my mind there are two distinct issues, diversity in news and other diversity. In a small country like NZ, public ownership is perhaps a good way to ensure some diversity in ownership of news suppliers. New media will probably bring a lot more diversity in content although most from external sources. Ensuring diversity in local content is the main PSB function.• Independence - this should be part of the industry in NZ, not just PSB. Certainly PSB operators should be independent.
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		<ul style="list-style-type: none"> • Quality - once again, this is not a PSB function as such but as noted above, ownership of some key operators may provide a useful benchmark in this area. <p>Overall, I support the status quo. I think there is a good case to increase the level of public funding to ensure diversity in local content. PSB operators will attract an increasingly smaller part of the audience in the larger, more diverse and fragmented media industry. For the foreseeable future however, TVNZ in particular will remain an important part of the media scene in NZ and should be encouraged to participate in the new media, to find other ways to distribute its content, and to innovate. For TVNZ to be innovative and deliver on the Quality principle will require good support from its owner, acknowledging that there are risks in participation in these emerging media.</p>
Page 28	<p>Q5.7 Would a greater focus on the role of public broadcasters be a more effective means of ensuring the continued accessibility of public service content than spreading resources and content across numerous providers? If so, how might this be achieved?</p>	<p>I do not believe there should be greater focus on the role of PSB operators. I do think there is a case for greater public funding of programming. Moving in this direction could also mean there is a good case for example for a NZ Childrens Channel, operating for say, six hours a day on a time share basis with some other channel. This may need to</p>

		<p>be fully funded in its initial phase but should become a desirable property to most network operators and could become more self sustaining if it received either subscription revenues or some level of sponsorship and advertising or both. Or it may be a new PSB operator, independent of all existing operators.</p>
Page 29	<p>Q5.8 If an independent body were commissioned, what mechanisms might be needed to measure and monitor the quality and diversity of public service broadcasting in the digital age?</p>	<p>I believe the Broadcasting Commission should be required to carry out a periodic and independent review, say at five yearly intervals, involving all stakeholders to advise the Minister on the recommended level of funding and the priorities for its use for the next period. The staff of the Ministry should support the Commission for this review while NZ on Air staff should be participants and make their own submission. If there are other concerns about possible conflicts of interest for Commission members, perhaps an independent chairman should be appointed for the review.</p>
Page 29	<p>Q5.9 As viewing patterns change with the proliferation of platforms, and access is often conditional (pay per view or subscription), what expectations should there be for the delivery of publicly-funded content through pay platforms?</p>	<p>Any channel with a "significant" level of publicly funded programming should be "must carry" on pay platforms. The only exception that occurs to me is some geographically local channel which has obtained funding for something of significant local interest or reaching a</p>

		significant group in their area.
Page 30	Q5.10 Which of the above options for dealing with advertising issues in a digital age do you support? Please give reasons for your views.	Keep the ASA and expand their role to embrace new media. Advertisers and their agents have always looked at the most suitable media for their campaigns and often run multimedia campaigns. New media is just an extension of this.
Page 33	Q6.1 Which of the above options for ensuring the accessibility of content for disadvantaged audiences do you support? Please give reasons for your views.	no comment
Page 33	Q6.2 If funded captioning of programmes was extended, should this cover all delivery platforms, or are some considered priorities?	no comment
Page 33	Q6.3 Should the option of introducing requirements on broadcasters and platform operators to provide some captioning be considered as an alternative, or in addition, to funding?	no comment
Page 33	Q6.4 Should funding and/or requirements be introduced to provide audio-described programmes for the blind or sight-impaired? If so, what would be the implications, in terms of technology and cost?	no comment
Page 36	Q6.5 Which of the options for ensuring the availability of certain types of content and services across	Retain the status quo. Program rights purchases have long been established as contestable, market

	<p>platforms do you support? Please give reasons for your views.</p>	<p>activities. Considerable investment has been made in building up relationships, programme libraries, co production ventures etc. While there is agonising from time to time about unintended consequences such as some people not getting free live coverage of major sporting events, this cuts both ways. When professional sport arrived in NZ the need to sell broadcast rights was seen but perhaps not fully understood. Now the broadcaster has major input and involvement in the format of the sports competitions as is seen in the Super 14 and more recently, the new transTasman netball competition, and needs to invest in equipment and people to cover such events. It is too late to try to turn the clock back and try to set up these activities on a different basis.</p> <p>The business model for Pay TV allows them to pay more for attractive sports rights and to provide far more coverage of the sport on dedicated sports channels. The most a free to air operator will show is highlights or the final or limited coverage as they do not have sufficient time in their program schedule to provide to the full coverage that a sports channel can provide. In other words, they only want to skim off the cream. Fundamentally, there is nothing to prevent a free to air operator</p>
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		<p>from setting up a dedicated pay TV sports channel and managing the rights as they wish. That is a commercial decision for them to make.</p> <p>For non sports programming, including rights to movies, there is no merit and would be strong resistance from rights holders to any interference in the market. Given this, and a probable similar reaction from sports rights holders, sports should be treated the same.</p>
Page 36	Q6.6 If brokered terms of trade were developed, what should be their scope? What criteria might be relevant?	Don't go there
Page 36	Q6.7 If broadcasters or platform providers were required to carry a minimum percentage/amount of certain service types or genres, what services or genres should be prioritised? How would such a requirement be workable in a multi-channel environment?	Not worth pursuing in this way but come back to "must carry"
Page 36	Q6.8 If some form of anti-siphoning were introduced, how might this be limited in the New Zealand environment? How might the effect on sports bodies be mitigated?	There should not be anti-siphoning as such. For a select few "traditional" sports events, where a pay TV operator wins the rights, there may be a case to require a same day delayed re-run of the event on a free to air channel. To me,

		<p>this is some All Black tests and perhaps Olympic highlights only. Often sports bodies themselves will require this or at least encourage this to extend the reach of particular events. Overall, the sports channel operator will do a far better job for the sports enthusiast, who is almost certainly a subscriber, than the FTA channels both in the extent of coverage and analysis and review. It is life and death to them and just another program, even if an important one to the FTA operator. For example, a sports channel with which I was associated in Japan, gained significant numbers of subscribers for its baseball coverage (the no.1 sport in Japan) because it followed all games to the end even if extra innings were required. The FTA operators, both NHK and commercial, usually chopped the game at the scheduled time for schedule requirements, news etc or advertising commitments to other programmes. Historically, TVNZ has also sometimes done this when some event has unexpectedly run into news time.</p>
Page 38	<p>Q6.9 Which of the options for dealing with consumer understanding of the copyright framework do you support? Please give reasons for your views.</p>	no comment
Page 38	<p>Q6.10 In addition to criminal</p>	As already stated, there is no need for the State to

	penalties, do you favour a stronger role for the state in promoting media literacy as a means of promoting internet safety? What other interventions would be practical, given the overseas origin of much of the material in question?	become involved in this area
Page 40	Q6.11 Which of the options for dealing with “orphan works” do you support? Please give reasons for your views.	no comment
Page 40	Q6.12 Would the establishment of a collection agency as an aspect of the regime be workable in New Zealand?	no comment
Page 43	Q7.1 Which of the options for ensuring fair access for service providers to digital platforms do you support? Please give reasons for your views.	I note that Sky NZ has taken an enlightened approach to this topic in that it carries all FTA and PSB operators as well as the Parliamentary Channel without any regulatory requirement as far as I am aware. This is a good outcome and an argument for no intervention. However, to provide certainty going forward and ensure the PSB outcomes for program diversity are achieved , I believe any network operator serving more than 5% of homes should be required to carry the national FTA channels and the PSB operators.
Page 43	Q7.2 If an open access regime was introduced to ensure fair access for service providers to digital platforms,	A completely open access regime could be counterproductive in NZ. Network operators should be encouraged to offer wide access to

	what would be its scope? What sort of criteria should apply?	content providers and to offer content diversity.
Page 43	Q7.3 If “must-carry” provisions were introduced, to which platforms would the obligations to carry services apply (e.g. all pay, cable, satellite, IPTV)? What services should qualify for must-carry status (e.g. public service broadcasters, regional channels)?	3 ‘Must carry’ of national FTA and PSB operators should apply to all platforms offering multi channel services by the time they serve 5% of households nationwide or have been operating for 3 years, whichever comes first.
Page 43	Q7.4 Should “must pay” obligations be introduced, either in addition to, or instead of, “must-carry”? If so, how might this work? Which services would it apply to? Would the Canadian version of “must pay” be appropriate to New Zealand?	4 “Must pay” for “must carry” is a vexed question. My observation is that while most of the FTA and PSB audience is via FTA delivery, the carriage on a pay platform is as a convenience to the platform subscriber while helping achieve the PSB diversity policy goal. I believe most current Sky subscribers probably spend more time watching the FTA and PSB channels than the rest of the channels on Sky and do not want to have to switch between antennas. If the majority of the FTA and PSB operator audience were via pay platforms there is a power shift between these players. The pay platform is obviously stronger. However, if in this situation the FTA and PSB operators were to abandon the pay platform for some reason, this could drag many subscribers away. There seems to be some case for the pay platform to pay the FTA and PSB for their content which overall is

		probably highly valued by their subscribers. On balance, at the moment it is best to leave this to the market but signal that it will be reviewed, especially if any problems arise, at the time of the next regulatory review (3-5 years)
Page 43	Q7.5 If a “must list” requirement for electronic programme guides were introduced, should this be in addition to or as an alternative to “must-carry”? How would such a requirement work in a multi-platform and multi-channel environment?	“Must list” should go with “must carry”. I assume this would occur on a platform by platform basis.
Page 44	Q7.6 Which of the options for ensuring minimum agreed technical standards do you support? Please give reasons for your views.	Of necessity, NZ is a technology follower. Operators will choose technologies on the basis of availability, performance in other markets, compatibility with existing technology etc. In other words , on what they judge will be best for their business taking all risks into account. Technology is always changing, even more quickly in this new media environment. It is therefore in appropriate to introduce technical standards which almost means picking winners and losers and interfering with proper business decisions. Keep the status quo and encourage industry parties to consult and work together as far as is practicable.
Page 45	Q7.7 Would the interests of audiences	see 7.6

	and industry be best served by industry-wide adoption of agreed technical standards?	
Page 45	Q7.8 Is government encouragement sufficient to ensure industry-wide agreement is reached in New Zealand? If not, what other measures might be warranted?	see 7.6
Page 47	Q7.9 What principles and priorities do you consider should guide the development of a post-analogue switch-off spectrum allocation framework?	no comment
Page 47	Q7.10 If any new regulatory measures (such as an open access regime) were introduced, would the option of licensing broadcasters, multiplex and/or other platform operators be an appropriate means of monitoring compliance?	no comment
Page 49	Q7.11 Which of the options to encourage investment in digital content and infrastructure, and to ensure the digital broadcasting industries are yielding an optimal economic return to New Zealand, do you support? Please give reasons for your views.	See comments under 2.3 Digital content and digital infrastructure are vastly different in both the form and scale of investment and it is unhelpful to wrap them together. If the infrastructure existed, the content would take care of itself through market forces and the public funding already discussed. What is needed is the open access broadband network or networks. For all the various applications which may come along,

		<p>there are only limited technical options for the provision of a broadband network. It will most likely be fibre optic, or satellite or a combination of both, perhaps supplemented by some other wireless local loop technology in some areas. To accomplish this there are only two options. Either private funders are encouraged by prospects of better returns than they can get elsewhere in the world or in other investment opportunities OR government funds a national network open to all. Assuming private funding is the goal, the regulatory environment needs to be very encouraging to such investors and as minimums would need to offer tax breaks, a fast track disputes resolution process for interconnecting with incumbents, and strong policy signals that this is a key strategic development and that government is prepared to change legislation if necessary to facilitate achieving the overall goal. Even with all this, the provision of a nationwide world class broadband network is doubtful. Main population centres may be well served but unless satellite and wireless technologies can be utilised will not be so well served if at all.</p> <p>The best solution may be a public/private partnership to build and operate the national</p>
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		broadband network as soon as possible. Whether Telecoms Networks division should be rolled into this or whether it stays as a potential customer needs consideration.
Page 49	Q7.12 If government intervenes to encourage investment in infrastructure, how can it ensure that it does not make <i>de facto</i> technology choices that preclude innovation in other areas?	If government confines its intervention to the establishment of the broadband network this should not preclude other innovations and choices at the applications or usage level.
Page 49	Q7.13 If a “build” obligation were placed on media platforms to ensure a minimum roll-out, how could such a requirement best be designed (e.g. the provision of incentives to encourage cooperation)? To which networks should it apply?	Perhaps the TSO subsidy paid to Telecom could now be diverted to the provision of the broadband network in the more rural and remote areas.
Page 49	Q7.14 If a media-funded pool were established to ensure broad geographic service availability of networks, who should be levied, and how should such a fund be administered?	Broadcasting like material is already available everywhere via free and pay satellite services. The issue comes back to broadband for other delivery platforms and on line services. This is a networks rather than media issue and levies on media would be inappropriate.
Page 49	Q8.1 Are there any alternatives, beyond the illustrative measures identified in this discussion paper, that you would recommend policy-makers	Although the new technologies and media seem to offer a myriad of possibilities it is important to keep the regulatory review focussed on the key but more simple and intrinsic issues rather than

	<p>consider as mechanisms to deal with issues across the value chain, or under the headings of “content”, “distribution” and “networks”?</p>	<p>become buried in the complexity of detail. When the continuum of content /distribution/ networks is considered the key observation is that the content issues are distinctly different from the network issues. While some operators may operate right across this continuum and while the activities of some distributors may appear to have elements of content and network it is much clearer to consider these areas and the issues arising separately. This is aided by having a separate regulatory structure for content and networks. When considered in this way, it is clear that content is best handled by adapting the current structure to the extent necessary to cover any new media. The intrinsic issues of good taste and decency, maintenance of law and order, privacy etc remain the same in new and old media but their impact varies according to the degree of control that the individual has over the selection of the content. In the networks area, achieving access on fair and reasonable terms is the intrinsic issue but the detail varies according to the type of service to be carried on the network.</p>
<p>Page 49</p>	<p>Q8.2 Are there any other general comments you would like to make about the digital broadcasting review of regulation?</p>	<p>When considering the review of regulation it is instructive to consider aspects of technological change and the NZ market. First, about</p>

		<p>technological change -</p> <ol style="list-style-type: none"><li data-bbox="953 277 1761 829">1. It is ongoing. Whatever the situation today, it will change moving on into the future. This means there is no absolute "right time" to carry out policy and regulatory change and there will never be an absolutely "right" policy and regulatory solution. Better to deal with what we know, and recognise the need to modify or change more as we come to "know " more rather than attempt a full and final solution. This is not to say that our regulatory philosophy and principles need change but the detailed application will need review against these principles from time to time as is currently going on.<li data-bbox="953 878 1761 1325">2. It takes longer than you think. Big screen HDTV has been a potentially attractive product for over 20 years. I remember seeing a knock out demonstration of this by NHK in 1985. However, the development of digital compression techniques and the manufacturing techniques to successfully turn this into a consumer product have really only come together in the last five years. Similar times will be needed to get many technologies causing excitement today beyond enthusiasts and into mainstream markets.
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		<p>coming a long way from its introduction 15 or so years ago. The main point of this is that consumers will decide what they want, what will be successful and take their time about it.</p> <p>The smallness of the NZ market and the shortage of capital in this sector are well known. The obvious outcome is a limit on the potential number of operators in both television and telecommunications and the volume of locally produced television content. The major operators that have emerged in both television and telecommunications were established 15-20 years ago soon after these industries were deregulated. It is difficult to see any significant change to this in the medium term future although all these players will "converge" onto each others business area to some extent. Niche players will emerge in various areas. To the extent that they are successful, either one or more of the "established players" will provide a similar service in competition or in some cases may take them over. There is no "killer application" emerging from the new technologies that will see a new major player quickly emerge in NZ to the extent that Vodafone or Sky have in the past.</p>
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