

9th October 2014

Hon. Amy Adams
4.5L Executive Wing
Parliament Buildings
Wellington (Freepost)

Dear Minister

Briefing to the Minister of Communications

Congratulations on being re-appointed as Minister of Communications. I am particularly pleased that over the course of the election campaign the Government committed to extend the many initiatives in our sector that it commenced in 2008 and built upon in 2011 - most notably the extensions to the UFB and RBI projects.

I am also pleased that we will benefit from the continuity of having you in the ministerial hot-seat. Continuity is important in this fast-changing sector and I look forward to continuing our good working relationship with you over the next three years.

With that in mind I am keen to meet with you as soon as possible to discuss the following.

1. During the election campaign InternetNZ discussed what we thought were the seven major policy issues (see attachment) for the next three years with all parties. The issues are on your current agenda and we would like to meet to discuss how InternetNZ might be able to assist you in addressing them. In some cases the issues fall within the responsibilities of other ministerial portfolios (including your new Justice portfolio) but are of significant importance to the Internet sector and your Communications portfolio. We would like to understand how we can jointly influence, for the best, decisions in these areas.
2. During the election campaign you made exciting announcements about the RBI &UFB. We were very pleased to see these new commitments and said so publicly at the time. We think that the implementation of the extended RBI programme may be difficult. As it is not due for implementation before 2016 there is time to consult widely with affected parties beyond the current RBI suppliers. Such suppliers will naturally be seeking to have their existing RBI contracts extended. While that may ultimately prove to be the best solution it is unlikely to meet with widespread support without a prior, robust, consultation process - we are willing and eager to assist in that consultation process, and there is ample time to get this right.
3. Important decisions affecting the whole sector are scheduled to occur in December this year and April next year when the Commerce Commission issues its draft and final decisions in the copper broadband final pricing principle (FPP) determination process. Chorus has already clearly signalled its likely strategy - to put pressure on the Commission to arrive at a high price or alternatively challenge the Commission's processes through the courts if it doesn't come up with a price that suits them. They have a plan B which is to say the regulatory environment is confusing and misunderstood by the Commission and by other parties - code for saying the legislation needs to be amended to override the Commission. As we all know Chorus has played this card once before and appealed to the Government to step in over the top of the Commission, something we and many others were strongly opposed to without seeing very good evidence. On the last occasion the Government subsequently contracted Ernst Young to provide that independent evidence. In that regard we were pleased to see Steven Joyce's statement during the election campaign that a future National Government would not seek to over-rule the Commission.

We fear that in its efforts to head off a legal challenge from Chorus, the Commission will run an FPP process that opens itself up to legal challenge from other parties. The Government at such a point could feel pressured to step in to resolve the issue.

Our view remains consistent: that without independent evidence showing there truly is a major problem, that the government should let any legal action run its course. If there is any FPP error made on the part of the Commission a court process is most likely to find it. In the meantime the initial pricing principle (IPP) price will be in place – it is generally agreed that it is about right, there was leeway built into it to compensate Chorus for any potential error and the EY report you commissioned showed that the impact on Chorus could be managed. The renegotiated contract between CFH and Chorus has helped Chorus, as has their renegotiation of banking covenants. There is no financial problem that will arise from the current regulatory process, and so statutory intervention remains unnecessary. In addition, your announcement that the UFB will be extended via a competitive process will provide assurances for investors generally rather than Chorus investors specifically.

The key focus for the Government in this area should be on ensuring a sound policy environment post the UFB and RBI. We have already commenced work with the Ministry of Business Innovation and Employment in this area and with your support hope to continue that work into the future.

Besides these three top-priority matters, our focus in the broader environment is to work across the whole Internet community to maximise the gains this country can realise from the Internet. There is much government can do, in partnership with other parts of the community, to help maximise New Zealand's success.

We are conscious that with new portfolios to manage, that Communications matters may be of less immediate priority to you. We are very keen to continue to build upon the relationship we have developed with you during your tenure as Minister to date. We will also correspond with you separately about some matters in your Justice portfolio; in particular, the Harmful Digital Communications Bill, upon which we remain interested.

Once again, congratulations on your re-election and re-appointment and I would be keen to catch up and discuss these important issues as soon as you are available. .

Sincerely,



Jordan Carter
Chief Executive

Attached: Internet Issues for the next three years

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ISSUE	ACTIVITY
<p>Connectivity - The UltraFast Broadband and Rural Broadband Initiatives (UFB & RBI): we applaud the great leap forward that these initiatives represent and the Government's renewed commitment to them during the election.</p>	<p>We see need to start talking about how these exciting extensions will be implemented (particularly in rural New Zealand) and what comes next (particularly the regulatory environment) following the UFB.</p>
<p>Overseas connectivity & datacaps: Our main overseas connection with the world is the Southern Cross Cable. It is currently sufficient but in the longer term a new cable will provide significant benefits of security, long term competition and greater capacity.</p>	<p>We see the sense in this being private sector led and recognise the incentives that the Government can provide. Are there other incentives that the Government can provide?</p>
<p>Fair Intellectual Property Law: IP law is an area that needs further work, and in particular our copyright regime needs further attention to bring it in line with the new Internet era.</p>	<p>This is a cross-portfolio and cross-sector issue requiring coordination. Other countries are also struggling with the same issues in most cases unsuccessfully. A single informed New Zealand view is needed.</p>
<p>Surveillance & privacy: highly emotive subjects which the Internet amplifies.</p>	<p>This is also a cross-portfolio and cross-sector issue requiring co-ordination and constant attention. Our major concern is that other sectors do not fully understand the Internet – again, much clearer and informed views are needed – whether or not a single agreed view is achievable.</p>
<p>Government's role in the ICT industry: The Government wears many hats in the ICT industry – direct investor and network operator, regulator, trade negotiator, key user and demand stimulator, legislator, funder and provider. Many see greater potential to leverage this government involvement in ways that could produce better outcomes for New Zealand businesses and consumers.</p>	<p>Another cross-portfolio and cross sector issue – we believe that government responses to the issues of surveillance and privacy and business use of the Internet may provide vehicles to advance the Government's other roles such as regulator, trade negotiator and in procurement.</p>
<p>Business Use of the Internet & Productivity: New Zealand businesses are lagging in uptake and use of the Internet. This is restricting us in achieving the gains we hoped for from the investments in the UFB and RBI.</p>	<p>We consider this an area where there are opportunities for government intervention which may provide significant benefits for the NZ ICT sector as well as the wider commercial sector.</p>

ISSUE	ACTIVITY
<p>Human Rights online: As the use of the Internet grows, new questions are emerging about how human rights translate into the online world. This raises questions not only about what rights are relevant, but how they are enforced in a complex jurisdictional context and also in a conceptual way of determining what rights these are.</p>	<p>Another cross-portfolio issues that is also global in its nature. We believe with New Zealand's reputation in this area we can play a global leadership role here.</p>