

6 April 2011

Dear Prime Minister

Telecommunications (TSO Broadband and Other Matters) Amendment Bill

The Finance and Expenditure Select Committee is considering submissions on the Telecommunications (TSO, Broadband and Other Matters) Amendment Bill.

Labour has serious concerns about a number of issues contained in the Bill.

We believe ultrafast broadband will be a critical infrastructure investment for New Zealand in the next 40-50 years. Labour believes the Bill will cause a dramatic reduction in competition and investment in the New Zealand telecommunications market. It has become increasingly clear that if we are to have a durable ultrafast broadband network there needs to be cross-party consensus.

We cannot support the Bill in its current form, because we believe it has critical flaws. We are committed to legislation and policy that will support an effective telecommunications market and provide for high take up of broadband services in the digital age. Furthermore, I would like to propose a way forward with this Bill.

Specifically the key issues we are concerned with are:

- **The 10 year regulatory forbearance period** which locks the Commerce Commission out of reviewing the regulation of prices and access. This is not in the long term best interest of consumers;
- The requirement that the Commission determine a **geographically averaged price** for the copper local loop and unbundled access services. This could lead to increased prices for all urban consumers whose broadband is carried over copper telephone lines.
- The **structural separation of Telecom** raises another series of concerns which will set up a monopoly over the fibre network. This is not good for competition and for a flourishing market.

The Bill creates a risk to investors through political uncertainty. There is mounting concern by consumers and the telecommunications industry that this Bill needs to be improved.

The bill and Supplementary Order Paper is due to report back date to the House on 15 May. I reiterate that Labour is committed to the objective of achieving high speed broadband to New Zealanders.

However we believe we cannot support the Bill in its current form. We seek your engagement in discussing high level amendments in order to moderate aspects of the Bill to lower the long term risk to investors as a result of the uncertain industry environment which would result from the Bill being passed in its present form.

Yours sincerely

Phil Goff

Meeting with Joyce 12 April 2011
Joyce, Cunliffe, Curran, Kenny (Minister's adviser)

1. Regulatory holiday

Our position: Repeal it and replace it with a special access regime

Joyce: response He will look at the Special Access Regime, but makes no commitments around changing it. He says the benefit of the Reg Hol is to provide a \$400-\$600 million benefit to the Crown

We will ask the officials for the detailed analysis of these figures and how they were arrived at. We will ask the Commerce Commission to do this?

2. Mandatory averaging on copper pricing

Challenge Joyce's dismissal of 20%. It was in the Commerce Commission submission

We have asked for it to omit it from the SOP. We are in a transitional period from copper to fibre, why change the current investment incentives?

Joyce's response is that the Com Com analysis was on 4% of unbundled lines. The averaging will help drive competition between copper and fibre. He says the price rises wont flow through to retail

We will seek more advice from officials on this

3. Equivalence

Require equivalence of inputs for copper access services

We want to strengthen the undertakings to apply for fibre providers to require the same equivalence standards as is required for copper today

Joyce committed to changing the definition of Equivalence of Inputs

4. Access regime

SOP and Bill mean EOI standards will apply from point to point fibre from day 1, and mass market fibre from 2020. We want it strengthened and for all fibre to be compliant from day 1

Joyce response: He will strengthen it at the end of the reg hol regime. Says it needed to be like that to provide an incentive to the builders.

We oppose this: We want to toughen up undertakings on fibre at layer 1. What would be required?

If 8.5 years reg hol and \$400 -600m gain is the deal breakers, what subset of that would it take to be toughen up those undertakings earlier

Need more analysis. What did they base this on. We want an explanation of the descriptions around layer 1

5. WTO

We say the Bill and SOP (reg hol particularly) breaches WTO

Joyce says it doesn't

We want to hear from MFAT and TelstraClear

6. Commerce Act

Authorisations for UFB and RBI to conduct what would be otherwise anti-competitive deals under the Commerce Act

We want these deleted and to allow the Commission to fulfil its role

Joyce says no its necessary for competition and that the contracts will sort it out

We want clarification that the regulations will apply explicitly and not tacitly. We want to narrow the scope for the newly built fibre to be exempt

Joyce agreed to have Bruce Parkes before the cttee

Bottom line:

Message: Can't buy law in this country. Competition needs to happen. If the policy can't be delivered for the money then change the policy

Need substantial movement on all of these. Regulatory holiday is the most important. A review won't do.

Joyce has indicated that the RBI contracts will be signed shortly and that the UFB contract will be in place before the end of the year

We will continue to seek more advice from officials

Joyce agreed to explore all these areas and come back to us

We will meet with him again

If negotiation is possible we will look at the time frame for the Bill and possibly seek an extension on the report back date as he may need to take some matters back to Cabinet

28 April 2011
Hon Steven Joyce
Minister of Communications and Information Technology
Executive Wing
PARLIAMENT BUILDINGS

Dear Minister

We refer to our meeting with you on 12 April 2011 regarding possible changes to the Telecommunications Amendment Bill and the SOP. We note that events have moved quickly since then and that the industry has subsequently written to the select committee chair proposing a solution to the impasse on the regulatory forbearance period.

We ask that we receive an urgent response from you regarding our private conversation, which to date has been kept private in good faith.

We reiterate the points we made and the issues raised around a range of issues including:

- The regulatory forbearance period
- Mandatory averaging on copper pricing
- Equivalence of inputs definition
- Access regime
- Concerns around breaches of the WTO
- Implications for anti-competitive deals under the Commerce Act

We also note that you agreed to have Bruce Parkes appear before the select committee.

We seek your response at the earliest opportunity.

Yours sincerely

Hon David Cunliffe

A handwritten signature in black ink, reading "David Cunliffe", with a horizontal line underneath.

Clare Curran MP

A handwritten signature in blue ink, appearing to read "Clare Curran", with a large, sweeping flourish at the end.

5 May 9.50am

Email from Cunliffe to Joyce

Dear Minister

When you called me on Tuesday evening one of the agreements of that conversation was that you would work with officials to explore a range of possible alternatives around the construction of special access undertakings to see whether an appropriate balance could be found between investor certainty and general market confidence.

We agreed that you would immediately task officials with exploring options and you requested a further conversation "in 24 hours".

Given that the timetable for this Bill is extremely urgent with the Finance and Expenditure Committee due to deliberate next Wednesday, and given the need for us to consider any potential amendments that you might consider at our Caucus next Tuesday I would be very disappointed not to have the benefit of your feedback by at latest close of play today. I have appreciated your willingness to consult and have assumed good faith in that process.

Yours sincerely

David Cunliffe

Labour Spokesperson on Finance

5 May 3.35pm

Dear Clare

I want to report a conversation I just had with Steven Joyce in the House regarding the UFB regulatory holiday.

I asked him whether he had received my email of earlier today and whether he would be in a position to respond to the issues raised in it by the end of the day today.

He indicated he would not, that he had "work underway" but wouldn't be in a position to report "for a few days".

I indicated to him that we had been holding up our internal processes of consideration of the Bill pending hearing back from him and that our timelines could not be stretched for another "few days". I asked him whether he could get us a definitive response by tomorrow. He told me he could not and that it would be "early next week" at the earliest.

I indicated that this would be too late for our internal processes and that as a matter of good faith we could not now hold them up any longer. He said he accepted that and was sorry he could not get us a response any earlier.

David Cunliffe (via EA)