EXPLORING DIGITAL CONVERGENCE REVIEW SUBMISSION

1. Introduction

1.1 This submission on the Ministry for Culture and Heritage (MCH) and the Ministry of Business, Innovation & Employment (MBIE) Discussion Paper *Exploring Digital Convergence – Issues for Policy and Legislation* (Discussion Paper) is made on behalf of Maori Television, Media Works, New Zealand Media & Entertainment and Television New Zealand (collectively referred to in this submission as **Broadcasters**.)

1.2 This submission also addresses (where relevant) issues raised in the MBIE Discussion Paper *Regulating Communications for the Future – Review of the Telecommunications Act 2001* (Telecommunications Paper).

1.3 **Māori Television** is New Zealand's indigenous broadcaster, providing a wide range of local and international programmes for audiences across the country and online. Maori television's vision is for Māori language to be valued, embraced and spoken by all. Launched in 2004, Māori Television has two key long-term objectives:

(a) to significantly contribute to the revitalisation of the Māori language; and

(b) to be an independent Māori television service that is relevant, effective and widely accessible

1.4 **MediaWorks TV and Radio** (**MediaWorks**) is a cross-platform media company, providing news and entertainment content across TV, radio and digital properties. MediaWorks TV operates three free to air channels, TV3, FOUR and Edge TV. MediaWorks Radio has a large number of key commercial radio stations throughout New Zealand (prominent brands include The Rock, More FM, The Edge, Mai FM, George FM and Radio Live). MediaWorks also has a number of websites, including a news website, entertainment and music websites, and a video on-demand service.

1.5 **New Zealand Media and Entertainment (NZME**) brings together radio, publishing, digital and e-commerce brands that were once operated by APN New Zealand, TRN and GrabOne. NZME has over 30 websites and an extensive national digital audience. NZME Publishing publishes The New Zealand Herald, The Herald on Sunday and 30 regional and community titles throughout the New Zealand. NZME Radio operates the following networked radio brands - Newstalk ZB, The Hits, Coast, ZM, Hauraki, Flava and Radio Sport - in total it operates more than 130 stations in New Zealand. NZME also has an all-in-one digital radio service iHeartRadio. NZME is 100% owned by APN News & Media Limited.

1.6 **Television New Zealand (TVNZ)** is the country's leading free to air broadcaster. It reaches approximately 2.2 million New Zealanders every day, predominantly through its two main broadcast channels, TV ONE and TV2, as well as its TVNZ OnDemand and ONE News Now online services. TVNZ is owned by the Crown but operates as a self-sufficient, commercial entity by virtue of the Television New Zealand Act 2003, and is supported by advertising revenue.

1.7 In this submission we respond to question 1, and in part to question 2, set out in section 5 of the Discussion Paper.

2. Executive Summary

2.1 The definition of convergence has been overstated. There has been no convergence between telecommunications networks and services, and TV/radio broadcasting services.

2.2 Geographic boundaries are still integral aspects of local broadcast TV and radio markets.

2.3 There is no case to extend the scope of regulation of broadcasting content.

2.4 We will respond to the issue of whether there is a need to extend the access regime under telecommunications regulation to broadcasting transmission infrastructure providers in response to question 37 in the Telecommunications Paper.

3. Q1: Do you agree with the way this paper defines convergence?

3.1 The definition and discussion on convergence in the Discussion Paper is based on a telecommunications-centric view of convergence, which does not recognise the distinction that exists between telecommunications networks and broadcasting transmission infrastructure and operating procedures.

3.2 While convergence between telecommunications voice and data services over fixed and cellular networks may be a reality, no similar convergence has occurred between telecommunications networks and other services, and radio and TV broadcasting transmission services. Broadcasting involves one-to-many transmission, while telecommunications involves one-to-one communications. Broadcasting technologies, unlike telecommunications, have not undergone substantial change. Broadcasting technologies, and the infrastructure that enables over the airwaves transmission, remain constant, with no immediate future change likely.

3.3 While telecommunications services in NZ were traditionally supplied by a single provider in a bundle with the underlying access network service, broadcasting services (television and radio) have always had separated infrastructure. Providers of this broadcasting infrastructure license broadcasters (and others) to use the infrastructure; broadcaster ownership of transmission sites has reduced markedly over the last decade or so.

3.4 The Discussion Paper therefore somewhat overstates the effect of convergence (particularly as it applies to broadcasters), for instance when it is stated that *"traditional telecom voice providers are now providing voice content and high speed data, and traditional broadcasting providers are technically able to provide voice services and high speed data*". [7] It reaches this conclusion by confusing convergence of devices with convergence of access networks, citing as an example *"the use of third–party software to deliver video calls over smart televisions"* [4].

3.5 In fact the traditional broadcasting transmission facility providers do not have an ability to provide voice and high speed data services over their transmission networks, and do not, as the Discussion Paper suggests, provide these services in competition with data and voice providers. As a consequence, the commercialisation of voice and high speed data services does not feature as part of the future business strategies for broadcasters.

3.6 While it is correct that telecommunications providers are beginning to launch their own video services (or partner with video service operators), and increasingly bundle video services in "triple play" offers, this does not represent a convergence of broadcasting and telecommunications services. The bundling of video content is primarily designed to reduce churn rates for the telecommunications provider and increase the volume of network data traffic, not as a means of entering the broadcasting market.

3.7 The Discussion Paper also asserts that geographic barriers are becoming less relevant. On the demand side, it states that consumers *"expect to be able to access content and services from around the world instantly*" [14], and consequently *"jurisdictional boundaries are becoming increasingly unimportant to consumers"* [10].

3.8 The analysis ignores supply side considerations: broadcasters purchase and distribute copyrighted material from rights holders on terms set by the rights holders. Most, quite legitimately, sell rights on a jurisdiction by jurisdiction basis.

3.9 Jurisdictional boundaries are regarded as important in other aspects of the Government's convergence work programme; the IRD's consideration of the possible application of GST to the cross-border supply of services and intangibles is a good example.

3.10 The Discussion Paper is also wrong in its claim that *"distribution is no longer a significant barrier for content creators*" [4]. Distribution remains critically important to New Zealand content creators to successfully commercialise their work.

3.11 On the supply side, the Discussion Paper contends that providers "*can target a much larger global marketplace*". While broadcasters who create content for publication in New Zealand may be able to sell rights to that content on the global market, it represents a small opportunity. In addition, content and the associated broadcast rights are typically sold on a jurisdiction specific basis, to maximise the return to the content creator.

3.12 Local broadcasters could not continue to compete if regulatory policy settings ignore copyright obligations and any associated territorial restrictions. Regulation in New Zealand must not undermine the ability of local broadcasters to build and maintain a sustainable domestic business.

4. Q2: Do New Zealand's current regulations and policies need to change to account for convergence?

4.1 The Broadcasters agree with the basic principle underpinning the Discussion Paper that the regulatory system should '*treat likes alike'*. [13].

4.2 We also agree, as discussed in detail in the Telecommunications Paper, that regulation should only be imposed in markets with natural monopoly characteristics, where general competition law is insufficient to promote the long-term benefit of end-users. [15]

4.3 As the Telecommunications Paper explains, telecommunications and broadcasting infrastructure providers are natural monopolies, characterised by high barriers to entry because of the significant sunk investment involved. Yet while telecommunications networks are subject to access regulation under the Telecommunications Act (or in the case of the UFB fibre network, quasi-regulation by way of contract with Crown Fibre Holdings), broadcasting transmission and infrastructure networks are not subject to regulation at all.

4.4 The Telecommunications Paper proposes that broadcasting transmission networks and infrastructure should be subject to regulation, but content transmitted over broadcasting or telecommunications networks would remain excluded from such regulation. [110].

4.5 The Broadcasters agree with the proposal in relation to content (there is no case to extend existing broadcasting content regulation which already ensures appropriate standards are set for content available to the public) and are responding separately to the consultation on *Content Regulation in a Converged World*.

4.6 The Broadcasters will respond to the issue of whether there is a need to extend the access regime under telecommunications regulation to broadcasting transmission infrastructure providers in response to question 37 in the Telecommunications Paper.