

Message

From: John Gandy [John.Gandy@comcom.govt.nz]
Sent: 30/06/2023 4:01:58 p.m.
To: Hayden Simon [h@uber.nz]
CC: Trish Cleland [Trish.Cleland2@comcom.govt.nz]; chair@wispa.org.nz; Pauline Rose [p@uber.nz]; Thomas Biss [ThomasBiss@hendersonreeves.co.nz]; Ben Oakley [Ben.Oakley@comcom.govt.nz]
Subject: Re: Rural Connectivity Study

Hi Hayden

Sorry for the delay in replying – I lost control of my week!

My apologies for thinking you were a member of WISPA and had then opportunity to sit in on one of the background sessions I have run.

In designing this study we have taken the view that, unlike in urban areas, there is a wide variability in the telecommunications services, prices and quality available to rural customers which aggregation will tend to hide unless it is performed carefully and specifically for the matter under consideration. In the past we were a regulator of wholesale services with a very limited view of retail services and their providers, but the introduction of Part 7 of the Telecommunications Act in the 2018 amendment has seen us expand our focus to very much include retail services.

The move of focus to 2 relatively new areas for us, combined with the desirability of collecting data to use for various purposes* means that we are incentivised to collect the data we require in as granular form as possible. This, leads us to collection by land parcel. Counts of things (eg customers, or customers served on particular technologies) does not provide us with the level of information that we need to perform the functions the Act requires us to perform (in particular the review of regulated copper services, s 69AH of the Telecommunications Act).

Regarding benefitting from policy decisions and regulation, if you have purchased copper services from Telecom/Chorus, you have benefitted from policy and regulatory decisions.

The purpose of issuing a draft information request is to explore the data that is available and the best form to gather it in. I'm sure a number of smaller organisations will find it easiest to supply us with information they have supplied for the broadband map (and perhaps other third parties, like CIP), and that is fine. Third parties are, of course, reticent to pass on to us data they have received from other parties, and we for our part would rather receive it from the owners of the data, so in all cases it is more appropriate for you to send us the data you supplied to others rather than for us to source it from them.

The draft request process was designed to allow for participants to feed back to us what information they do not have available, so that we had the opportunity to explore other avenues to address the issue the unavailable data was intended to help us address. There are no moving targets since we are asking for data as at 30 June 2023.

Our assessment is that there are no Privacy Act issues raised by the data we are collecting.

I hope that satisfies more of your misgivings Hayden

Yours sincerely

John Gandy

- We are collecting data to inform our Annual Monitoring Report, the review of regulated copper services and advice to MBIE on subjects like the TSO review.



John Gandy (he/his) (Currently working at home)

Chief Adviser

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From: Hayden Simon <h@uber.nz>

Date: Friday, 23 June 2023 at 10:17

To: John Gandy <John.Gandy@comcom.govt.nz>

Cc: Trish Cleland <Trish.Cleland2@comcom.govt.nz>, chair@wispa.org.nz <chair@wispa.org.nz>, Pauline Rose <p@uber.nz>, Thomas Biss <ThomasBiss@hendersonreeves.co.nz>

Subject: RE: Rural Connectivity Study

Hi John,

Thanks for taking the time to reply with a comprehensive response. I've CC'd in our COO and the other Director so they are aware of the conversation we're having; I hope that's alright?

My responses:

We are not a member of WISPA, your conversations with them are unknown to me. Yesterday was the first real introduction to the degree of information the commission is likely to seek (which was given by WISPA); and it came as a surprise.

I take your point re: CIP; as we've received no funding from them (or Government at all, at any point in time) I can see how the data set would be incomplete. That said, plenty of others have and as such that information would broadly be there.

We are required to provide StatsNZ aggregated data along the lines the commission is requesting. This includes (if memory serves) the number and make up of subs, average plan speed and ARPU – What I can tell you is that it takes significant time to complete and at a high level the data you're looking for is there. On top of this we have to complete another survey which entails providing our financial accounts (every year) for them to dissect because frankly it is beyond our internal capability to complete accurately.

The coverage data the commission is requesting, for our part, is on the broadband map and is the same data we'd be happy to supply.

As I mentioned above; we've not been the beneficiary of positive policy decisions so far as I am aware. In fact, we have been overbuilt with taxpayer funds repeatedly – at least 3 separate sets of funding! (and while our presence in the market was made known – I have a letter from Stephen Joyce telling me we wouldn't be overbuilt by taxpayer money – yeah right). So, I don't agree that we stand to benefit; but if the commission can provide some examples of their thinking I'm prepared to review my position here.

As for storing sensitive information all you've done is tell me that the commission is experienced in storing said information and has experience thus far. What you might do is detail the systems and processes the commission has in place to secure and protect access to the information. If the commission were to accidentally release, get breached, or grant an OIA request which exposed the address points of all our subscribers, their ISP and selected plan along with all our tower locations you could imagine we'd be very upset. By this time the damage is done, experience tells me we'd have no recourse against the commission. Better to have these concerns addressed now.

As a side note; what other study has the commission done where it's requested (and is presently storing) this level of detail about individual subscribers, at a retail level? I can see it at a broad wholesale level...but retail?

I'm not sure that you're correct in that you're not asking for personal information; perhaps technically you are but.... requesting the address point and contract terms that a subscriber signed up for and presently has appears to be pretty personal to me – I'm certainly uncomfortable with the idea a government agency is collecting data like this, about my address, without my knowledge. Anyway, its only one step from there to cross reference that data with another dataset with address points (white pages?) and you'd know who has what service with what carrier at what address. Imagine the nightmare scenario where this data does make it into the wild – the scammers will have field day.

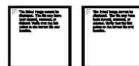
John, I am happy to participate if requested, but not at the level of granularity presently being proposed. Specifically, I object to having to provide details like backhaul capacity (it's a moving target); tower capacity (moving target) subscriber address points, plans, spend, hardware present at so on. I am happy to tell you we have ~X subscribers, that ~X are FWA, and what the make up of the plans across the userbase are; and what those plans are presently retailed for.

Similarly, there are questions we cannot answer as there is no system in place to measure them – some come at a performance penalty (in our platform) which would negatively impact the users experience, others require the development of new platforms to track them; along with the ability to export the data in a meaningful way.

If the commission were to choose to compel us to provide data we don't have systems to collect; or cannot provide in the granularity they're demanding; they should at least wear the cost of the development of those systems.

Thanks for reading.

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From: John Gandy <John.Gandy@comcom.govt.nz>

Sent: Friday, June 23, 2023 8:59 AM

To: Hayden Simon <h@uber.nz>

Cc: Trish Cleland <Trish.Cleland2@comcom.govt.nz>; chair@wispa.org.nz

Subject: Re: Rural Connectivity Study

I'm sorry, I didn't make myself clear Hayden. I was not making a threat. I was simply making you aware of the powers available to us, in event you choose not to respond. It would have been remiss of me not to do so, since I told attendees of the webinars the same thing (in answer to a direct question), and thought that you should have access to the same information.

My specific responses to the duplications you have identified are as follows:

1. Information collected by CIP is not complete, and is unavailable to us in any case (for confidentiality reasons). In the interests of accuracy, we want to source information from the owner of that information so that we know it hasn't been re-interpreted in some way.
2. Stats NZ does not collect the information that we are asking for here, so there is definitely no duplication. We will also be collecting different information from them.
3. The broadband map also does not collect much of the information we are asking for in relation to this project, and does not currently have a good reputation for accuracy. There are discussions taking place about the possibility of linking the broadband map with this project, but they are still preliminary in nature.

There is some overlap with our own AMR data collection, but we are asking for more granular information in this project, and it will replace much of the AMR data request. We also collect data for SFAs, and we are looking at how that requirement could be folded into this data collection.

The benefits of this project include ensuring that there is a factual basis for policy and regulatory decisions (like the copper review that we must complete by the end of 2025, and the TSO review that MBIE will undertake and that we will provide advice to). In our view, rural telecommunications users and telecommunications companies which are active in rural areas will benefit from this fact base and consequent decision-making, and it is therefore not inappropriate that they should contribute to the costs. Smaller telecommunications companies are often at risk of being overlooked in regulatory and policy decision making, so they stand to gain most from a fact base that takes their contribution into account.

We are fully cognisant of the sensitivity of this information. We now collect a great deal of commercially sensitive information, and have developed systems and processes that safeguard a great deal of cost information belonging to regulated parties in other industries as well as telecommunications. As I said in the WISPA webinars, the level of granularity we are looking for is so that we can 're-cut' the information in a numbers of ways to suit the multiple purposes we want it for without the need to re-collect it. We will not be releasing information at that level of granularity, it will always to aggregated in ways that remove the commercial sensitivity and no individual information will be proactively released – including to government departments.

Should there be an Official Information Act request, we note that the OIA provides for the potential to withhold information in certain circumstances, including where release would unreasonably prejudice the commercial position of the supplier or subject of the information. Whilst we must still consider the public interest in release, where practical we would not release anything without talking to consult the source of the information first before providing our response. We are subject to the OIA, so is CIP, who also hold a subset of the detailed information we are requesting.

Our legal advice is that there are no Privacy Act concerns with this information. We are not collecting personal information.

I hope this goes some way to allaying your fears Hayden. Please feel free to come back to me if you have any other concerns.



John Gandy (he/his) (Currently working at home)

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From: Hayden Simon <h@uber.nz>

Date: Thursday, 22 June 2023 at 10:34

To: John Gandy <John.Gandy@comcom.govt.nz>

Cc: Trish Cleland <Trish.Cleland2@comcom.govt.nz>, chair@wispa.org.nz <chair@wispa.org.nz>

Subject: RE: Rural Connectivity Study

You don't often get email from h@uber.nz. [Learn why this is important](#)

Thanks John,

I did expect the threat of compulsion.

For the record I note large parts of the dataset your requesting is already available from the likes of CIP (for CIP funded operators), Stats NZ (for financials, number of subscribers), IRD (for financials), Broadband Map (for availability and plans).

Why the duplication?

The cost of compliance (owing to the complexity of the information you're requesting) is going to be significant for complex operators – is there a budget available to meet your requirement; or is the expectation that the cost will be put back on the consumer?

There is a question around the sensitivity of the data you're asking for as well. Site locations, capacity, end user location, selected plan, plan spend, financial records, investment records – these are the keys to the kingdom; so to speak. I have a huge degree of discomfort with respect to the overreach here. How can we be certain the data will never, ever be shared, with anyone. How can we know you're storing it properly (data breaches happen every day in New Zealand). So does human error.

And how does all this gel with our obligations under the privacy act? I suspect some end users will not like it known the terms under which they've brought specific services is being revealed to a 3rd party under compulsion. How should we address that?

These are my initial questions. Suffice to say I don't feel comfortable with the commissions request as it stands.

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From: John Gandy <John.Gandy@comcom.govt.nz>

Sent: Thursday, June 22, 2023 10:25 AM

To: Hayden Simon <h@uber.nz>

Cc: Trish Cleland <Trish.Cleland2@comcom.govt.nz>; chair@wispa.org.nz

Subject: Re: Rural Connectivity Study

Hi Hayden

The information request is voluntary. I just ran a series of 3 webinars for WISPA members explaining why we believe that it is important for the industry that policy and regulatory decisions are made based on the best fact base we can assemble, and this is our project to do that. I also explained that the request is for an 'ideal' set of data – we are aware that not all of the data we are asking for is available from every provider. This is why the info request you have received is in draft – we are happy to discuss whether or not you can supply the data, and whether it would work better for you if we requested it in a different format (eg by site as opposed to by subscriber).

Should you opt not to provide the information voluntarily, we have the option to require you to provide the information under s 98 or the Commerce Act. If we exercised this option, it would be an offence not to comply. We would only issue a s 98 notice if we considered that the information that was not supplied was important for us to meet our purpose.

I have copied Mike into this reply because he might also get questions like this.

Happy to discuss (contact details in footer).

Cheers



John Gandy (he/his) (Currently working at home)

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From: Hayden Simon <h@uber.nz>
Date: Thursday, 22 June 2023 at 10:09
To: John Gandy <John.Gandy@comcom.govt.nz>
Subject: Rural Connectivity Study

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Hi John,

I've just been forwarded the final draft data request document from Mike at WISPA.

Can I ask; is this going to be mandatory, or optional?

Thanks,

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