



## COVERSHEET

<b>Minister</b>	Hon Kris Faafoi	<b>Portfolio</b>	Broadcasting Communications and Digital Media
<b>Title of Cabinet paper</b>	Fibre regulations under the Telecommunications Act 2001	<b>Date of release</b>	22/05/19

### List of documents that have been proactively released

<b>Date</b>	<b>Title</b>	<b>Author</b>
03/04/2019	Fibre regulations under the Telecommunications Act 2001	Minister of Broadcasting Communications and Digital Media
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**Information redacted**

**YES / NO** (please select) – N/A No redactions

In Confidence

Office of the Minister of Broadcasting, Communications and Digital Media

Chair, Cabinet Economic Development Committee

## **FIBRE REGULATIONS UNDER THE TELECOMMUNICATIONS ACT 2001**

### **Proposal**

1. This paper seeks Cabinet approval of the policy approach for regulations which need to be made under sections 226, 227 and 228 of the Telecommunications Act 2001.
2. It also seeks Cabinet agreement for me to:
  - 2.1. issue instructions to the Parliamentary Counsel Office to draft the required regulations.
  - 2.2. approve and release an exposure draft of the regulations, when available, for consultation with the telecommunication industry.

### **Executive summary**

3. The Telecommunications Act 2001, as amended in November 2018, creates a new framework for the regulation of wholesale fibre services.
4. Regulations are needed to implement the new framework, including regulations which:
  - 4.1. identify the wholesale fibre companies that will be regulated under the Act,
  - 4.2. specify the form of regulation that will apply to them, and
  - 4.3. specify particular wholesale fibre services that must be supplied, and which are price-capped, to protect consumers.
5. I propose to make UltraFast Fibre Limited, Enable Networks Limited, Northpower Fibre Limited, and Northpower LFC2 Limited subject to information disclosure regulation, a less intrusive form of regulation, given that they are more likely to have their pricing constrained by other competitors.
6. I propose to make Chorus Limited subject to both price-quality and information disclosure regulation. Price-quality regulation is a more comprehensive form of regulation which is appropriate for Chorus, given its level of market power.
7. Under this more comprehensive form of regulation, Chorus will be obliged to provide certain price-capped wholesale fibre services.

8. I propose to require Chorus to provide a voice service and an entry-level broadband service (100Mbps download speed/20Mbps upload speed). These will be “anchor services”, which will protect consumers from price shocks.
9. I also propose to require Chorus to provide price-capped Direct Fibre Access Services. These connect large commercial users to the fibre network and are used by retail service providers to connect mobile cell sites or fixed wireless sites. Because they can be used to compete with fibre networks, there may be an incentive for Chorus not to supply these services, or to set unreasonably high prices for them.
10. Under the legislation, the price and non-price terms for the anchor services and the Direct Fibre Access Services set out in these regulations will be based on existing contracts negotiated by the Crown as part of the Ultra Fast Broadband initiative.
11. I am also seeking Cabinet authorisation for me to instruct the Parliamentary Counsel Office to draft the regulations and to approve the release of an exposure draft of these regulations to enable the Ministry of Business, Innovation and Employment to consult with the telecommunications industry and members of the public.

## **Background**

12. In November 2018, after a comprehensive statutory review of the Telecommunications Act 2001 (the Act), Parliament passed the Telecommunications (New Regulatory Framework) Amendment Act.
13. The new regulatory framework is the result of many years of policy development and consultation. It aims to prevent excessive profits arising from monopoly services, protect consumers, and provide a stable, predictable regulatory environment to further encourage network investment and innovation.
14. To further these objectives, the amended Act allows the Governor-General to make regulations. The regulations will identify the wholesale fibre companies subject to regulation (and the type of regulation they will be subject to). The regulations will also require particular wholesale fibre services to be offered subject to a price cap.
15. The regulatory framework is tiered. Some wholesale fibre companies will be subject to more comprehensive regulation than others, as they face less competition.
16. The proposed regulations will come into force on the expected implementation date, 1 January 2022. They will then continue in force unless the Commerce Commission (the Commission), after a review, recommends changes to the Minister of Broadcasting, Communications and Digital Media.

## **Proposed content of regulations to support the implementation of amendments to the Act**

17. This section provides a more detailed explanation of the proposed content of the regulations to support the implementation of the new regulatory framework for wholesale fibre services.

18. I note that the proposals contained in this paper are consistent with policy decisions that were taken throughout the development of the Telecommunications (New Regulatory Framework) Amendment Bill [EGI-16-MIN-0361; CAB-17-MIN-0228.01; LEG-18-MIN-0101 refers].

*Companies and services subject to price-quality and information disclosure regulation*

19. The amendments to the Act provide that regulations may be made identifying the companies being regulated and the type of regulation to which they are subject. Companies which provide a fibre fixed line access service (a wholesale fibre service that “enables access to and interconnection with a regulated fibre service provider’s network”<sup>1</sup>) may be subjected to different levels of obligations. These obligations range from price and revenue caps (price-quality regulation) to financial reporting obligations (information disclosure regulation).
20. The purpose of price-quality regulation is to limit the ability of providers to earn excessive profits while providing incentives to innovate and invest in the network infrastructure. This type of regulation aims to ensure that providers deliver services efficiently and meet the quality standards expected by consumers.
21. Information disclosure regulation requires regulated wholesale fibre service providers to disclose certain information on their regulated business. It aims to ensure transparency, while allowing the regulated party to operate their business relatively freely outside the disclosure obligations.
22. The disclosure of relevant information enables both a regulated provider’s customers and the Commission to assess the performance and pricing of the provider’s services. It also enables the Commission to assess whether there are grounds to introduce price-quality regulation.
23. Currently five companies provide wholesale Ultra Fast Broadband (UFB) fibre services. These are:
- 23.1. Chorus Limited (Chorus), the largest wholesale fibre service provider. Crown Infrastructure Partners (CIP) has contracted Chorus to deploy and operate 69.4 per cent of the UFB network, covering about 1.3 million homes, businesses, schools and medical centres right across New Zealand (except in the areas contracted to other Local Fibre Companies) by 2022.
- 23.2. Other Local Fibre Companies (LFCs), who were contracted by CIP to deploy and operate UFB in specific geographic regions. These are: UltraFast Fibre Limited (13.7 per cent of the network), Enable Networks Limited (15.3 per cent of the network), and Northpower Fibre Limited and Northpower LFC2 Limited (together covering 1.6 per cent of the network).<sup>2</sup>

<sup>1</sup> Section 5 of the Telecommunications Act 2001, as amended in 2018.

<sup>2</sup> Northpower Fibre Limited, and Northpower LFC2 Limited are related companies which provide UFB services in Northland.

24. I intend to regulate Chorus and the other LFCs in relation to their existing fibre fixed line access services. Chorus will be subject to both price-quality and information disclosure regulation, given its predominant position in the wholesale market, and the fact that regulation of services on its copper network will be removed in areas with access to regulated fibre services. The other LFCs will only be subject to information disclosure regulation, given that they are more likely to have their pricing constrained by other competitors.
25. I acknowledge that the other LFCs face some competition (for example, from Chorus' copper network). However, I consider it appropriate that these companies be subject to information disclosure regulation, as it is still unclear whether other technologies will be able to match fibre's capabilities in the future and provide effective competition.

*Regulations declaring a wholesale fibre service to be an Anchor Service*

26. Providers who are subject to price-quality regulation (i.e. Chorus) can be required to offer certain wholesale fibre services, or "Anchor Services", within their networks. The purpose of Anchor Service regulation is to ensure that basic services are available at reasonable prices by providing an upper limit on pricing for a service that is attractive to a large number of people. This will also create a price and quality "anchor" for the other services provided.
27. As publicly signalled many times, I intend to declare as Anchor Services:
  - 27.1. a voice-only service, and
  - 27.2. a 100/20Mbps UFB broadband service.
28. To minimise transitional disruption during the first regulatory period, the Act requires that the prices and terms of the Anchor Services are based on existing commercial services.
29. The recommended maximum price for the Anchor Services will be based on the contract price for the equivalent commercial services, with an annual consumer price index adjustment mechanism thereafter.

*Regulations declaring a wholesale fibre service to be a Direct Fibre Access Service*

30. Providers subject to price-quality regulation (i.e. Chorus) can be required to offer Direct Fibre Access Services (DFAS) within their networks. DFAS is an important input used by retail service providers, that connects large commercial users, mobile cell sites or fixed wireless sites to the fibre network. It is not an Anchor Service. Since DFAS can be used to compete with fibre networks, there may be an incentive for Chorus not to supply these services, or to set unreasonably high prices for them.

31. Chorus currently supplies such a service under its UFB commercial agreements. I intend to declare this service to be a DFAS. The regulations will ensure that this service must be offered at a reasonable price, and will set out the description and conditions of the service during the first regulatory period.
32. To minimise transitional disruption during the first regulatory period, the Act requires that the prices and terms of the DFAS are based on existing commercial services.
33. The recommended maximum price for the DFAS will be based on the contract price for the equivalent commercial services, with an annual consumer price index adjustment mechanism thereafter.

### **Consultation**

34. The Treasury has been consulted in the development of this paper. The Department of the Prime Minister and Cabinet has been informed.
35. Once the Parliamentary Counsel Office (PCO) has drafted the regulations, the Ministry of Business, Innovation and Employment (MBIE) will publish an exposure draft on its website, and will also undertake consultation with the telecommunications industry. This consultation will inform the setting of final regulations that will be approved through Order in Council.

### **Financial Implications**

36. There are no financial implications resulting from these regulations. The Commission will be responsible for enforcing the regulations as part of its telecommunications regulatory functions, which are funded through the Telecommunications Regulatory Levy.

### **Legislative Implications**

37. The proposals in this paper will require the making of regulations under the Telecommunications Act 2001. PCO has been consulted on the legislative implications of this paper.

### **Impact Analysis**

38. No Impact Analysis is required. The policy and legislative decisions requiring the development of these regulations were made by Cabinet, as part of the process for enacting the Telecommunications (New Regulatory Framework) Amendment Act 2018.

### **Human Rights**

39. There are no human rights implications.

### **Gender Implications**

40. There are no gender implications.



## Disability Perspective

41. There are no disability implications.

## Publicity

42. The communications approach to these regulations will be managed by my Office, in consultation with other entities as appropriate. I expect a moderate level of business and media attention on MBIE's consultation.

## Proactive Release

43. I intend to publicly release a copy of this paper and associated decisions in accordance with Cabinet's proactive release policy.

## Recommendations

The Minister of Broadcasting, Communications and Digital Media recommends that the Committee:

1. note that the Telecommunications Act 2001 was amended in November 2018 to create a new framework for the regulation of wholesale fibre services,
2. note that, as part of this new regulatory framework, certain regulations need to be made to identify the wholesale fibre companies which are subject to price-quality and information disclosure regulations, and to declare certain fibre fixed line access services to be Anchor Services or Direct Fibre Access Services,
3. agree that the regulations should:
  - 3.1. prescribe that Chorus Limited will be subject to price-quality regulation and information disclosure regulation in relation to its existing fibre fixed line access services,
  - 3.2. prescribe that UltraFast Fibre Limited, Enable Networks Limited, Northpower Fibre Limited, and Northpower LFC2 Limited will be subject to information disclosure regulation in relation to their existing fibre fixed line access services,
  - 3.3. declare Chorus Limited's voice-only UFB service and 100Mbps/20Mbps UFB broadband service to be Anchor Services, ensuring that the prescribed description and conditions for these services will not be materially different from the services and conditions described in Chorus Limited's UFB contracts,
  - 3.4. declare Chorus Limited's UFB service that connects large commercial users, mobile cell sites or fixed wireless sites to the network to be a Direct Fibre Access Service, ensuring that the prescribed description and conditions will not be materially different from the services and conditions described in Chorus' UFB contracts,

4. authorise the Minister to:
  - 4.1. issue instructions to the Parliamentary Counsel Office so that these regulations may be drafted for consultation with the telecommunications industry,
  - 4.2. approve and release an exposure draft of the regulations when available and related commentary for consultation with the telecommunications industry,
5. agree to delegate to the Minister the power to make decisions consistent with proposals in this paper on minor issues that arise during the drafting process.

Authorised for lodgement

Hon Kris Faafoi

Minister of Broadcasting, Communications and Digital Media

PROACTIVELY RELEASED