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Communications Policy Team
Ministry of Business, Innovation & Employment
Wellington

LFC Submission on *Exposure draft of regulations to be made under section 226 of the Telecommunications Act 2001*

1. This submission is made jointly by Enable Networks Ltd and Ultrafast Fibre Ltd (**LFCs**).
2. We agree with the regulations with only one exception, and that is the definition of the services subject to regulation in clauses 5 and 6 of the draft regulations.
3. The regulated service should in our view be limited to the fibre-to-the-premises access network as defined in s156AB of the Telecommunications Act 2001 (**Act**). This was the network that was built by the LFCs and partly funded by the Crown, and, as confirmed by the New Zealand Commerce Commission (**NZCC**) in Decision 2018 NZCC 15¹, regulation under Part 4AA of the Act was limited to services delivered over that network.
4. The definition of FFLAS in Part 6 of the Act extends beyond the access network. It includes services delivered over the LFCs' fibre network which connect non-building access points such as wireless cell sites. These services fall within the definition of backhaul services adopted by the NZCC in its recent paper on backhaul services² (**Backhaul Paper**).
5. The principles underpinning the new Part 6 were set out in MBIE's initial consultation paper on these reforms: that "*regulation should **only** be imposed where it is clearly justified*". This principle is reflected in the Explanatory Note to the Amendment Bill which records that the new regime is designed "*to ensure that regulation is **only** applied to the extent necessary to address a lack of competition*".
6. The NZCC concluded in the Backhaul Paper that "*a number of suppliers in New Zealand operate significant backhaul networks*"³, there is no lack of competition in the backhaul market, and there was no case for further regulation.
7. That being the case, the extension of regulation under section 226 beyond the fibre-to-the-premises networks fails the test underpinning the regulation-making power in the Act that such regulation will only be applied to the extent necessary to address a lack of competition.
8. We therefore submit that column 2 of clauses 5 and 6 of the draft regulations be amended by substituting "*Fibre-to-the-premises access network as defined in section 156AB of the Act*" for "*All fibre fixed line access services*".

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¹ NZCC, Clarification of the Deeds of Open Access Undertakings for Fibre Services, Decision 2018 NZCC 15, 72

² NZCC, Section 9A Backhaul services study; our findings, 11 June 2019. Backhaul is defined in paragraph 1.8 as "*the intermediary link in a telecommunications network between the edge of the network (e.g. mobile sites) and the core network.*"

³ Above, 1.22