



31 March 2026

s 9(2)(a)

## Official information request

Our ref: R001385

Tēnā koe s 9(2)(a)

Thank you for your Official Information Act 1982 (OIA) request transferred to the Ministry for Regulation from the Ministry for the Environment on 15 January 2026:

*“Public consultation period (28 August to 25 September 2025), but I specifically seek to understand industry lobbying during this period, which includes informal correspondence.*

*Please provide:*

*1. All substantive correspondence from telecommunications companies and industry bodies, including:*

- Formal written submissions*
- Emails to Ministry officials containing policy positions, requests for regulatory changes, or advocacy for specific outcomes*
- Letters presenting industry positions*
- Any draft regulatory text or specific policy language proposed by external parties*

*2. For each piece of correspondence:*

- Date received*
- Submitting organisation/individual*
- Key positions advocated or regulatory changes requested*

*3. Ministerial briefings:*

- Any briefings analysing stakeholder positions or industry requests from this period*
- Communications proposing, advocating for, or opposing regulatory changes*
- Requests for exemptions, carve-outs, or special treatment*
- Industry positions on policy options under consultation*
- Lobbying for or against specific regulatory approaches*

*Exclusions to reduce scope:*

- Meeting scheduling emails*
- "Thank you for the meeting" follow-ups with no substantive content*
- Out-of-office replies and administrative housekeeping*
- Personal contact details of individual staff*
- Information already proactively released (provide links instead)”*

On 26 January 2026, you agreed to amend your request to cover information received during the public consultation period of the Telecommunications Review (Review), being 28 August 2025 to 25 September 2025.

On 29 January 2026, we partially transferred item 1 and 2 of your request to the Minister for Regulation.

*“Please provide:*

- 1. Emails to Minister, or ministerial staff containing policy positions, requests for regulatory changes, or advocacy for specific outcomes*
- 2. during the period from 28 August 2025 to 25 September 2025 from telecommunications companies and industry bodies*
- 3. For each piece of correspondence:*
  - Date received*
  - Submitting organisation/individual*
  - Key positions advocated or regulatory changes requested”*

On 24 February 2026, we notified you of the extension of time to make our decision to 31 March 2026.

## **Response**

The Ministry commenced public consultation for the Review on 28 August 2025. Information was gathered via an online questionnaire on CitizenSpace, written submissions, and email correspondence. The Review team invited stakeholders who had engaged with the Review to share their views on the proposed options.

Some stakeholders provided feedback through more than one channel, including by completing the CitizenSpace questionnaire and by making written submissions. The feedback received informed the Review’s key findings and provisional recommendations.

In total, 35 submissions were received, comprising 28 submissions from businesses and organisations and seven submissions from individuals.

## **Information released relating to parts 1 and 2 of your request**

I have decided to partially grant your request. The documents detailed in Tables 1, 2 and 3 are released to you. Please find this information enclosed as **Appendix A, B and C**.

Some information from released documents is withheld under the following sections of the OIA:

- Section 9(2)(a), to protect the privacy of natural persons
- Section 9(2)(b)(ii), to protect information where the making available would be likely unreasonably to prejudice the commercial position of the person who supplied or is the subject of the information
- Section 9(2)(ba)(i), to protect information subject to an obligation of confidence, where the making available of the information would be likely to prejudice the supply of similar information and it is in the public interest that such information should continue to be supplied

- Section 9(2)(f)(iv), to maintain the constitutional conventions for the time being which protect the confidentiality of advice tendered by Ministers and officials
- Section 9(2)(g)(i), to maintain the effective conduct of public affairs through the free and frank expression of opinions by Ministers, officials, and employees of any public service agency or organisation in the course of their duty.

As required by section 9(1) of the OIA, I have considered whether the grounds for withholding the information requested is outweighed by the public interest. In this instance, I do not believe the public interest reasons for releasing the information outweigh the reasons for withholding the information.

You also requested that specific key positions advocated or regulatory changes sought be clearly outlined. Please note that providing such details would necessitate the creation of new information, which is not required by the OIA. Where possible, we have supplied the relevant submissions from which you may draw conclusions regarding key positions or regulatory changes.

**Table 1. Correspondence with organisations – attached as Appendix A**

Organisation	Subject line	Date
Thryv NZ (Yellow)	Telecommunications Review	28/08/2025
Chorus	1. Telco sector review: Consultation timing 2. Engaging with TSO Customers	1. 28/08/2025 2. 10/09/2025
Spark NZ	1. Telecommunications sector review consultation question 2. Submission on telecommunications sector review	1. 10/09/2025 2. 25/09/2025
Enable	Have your say on the Telecommunications Sector Regulatory Review options	22/09/2025
Tū Ātea	Telecommunications Sector Regulatory Review - Consultation	24/09/2025
OneNZ	One NZ submission: telecommunications sector regulatory review	25/09/2025
Telecommunications Forum	TCF submission on the MFR consultation document – please read as well as the online contribution	25/09/2025

**Table 2. CitizenSpace submissions – attached as Appendix B**

Organisation	Subject line	Date
Signals	Submitted to Telecommunications Sector Regulatory Review – Consultation	30/08/2025
Thryv NZ (Yellow)	Submitted to Telecommunications Sector Regulatory Review – Consultation	02/09/2025
Farmside	Submitted to Telecommunications Sector Regulatory Review – Consultation	24/09/2025
Starlink	Submitted to Telecommunications Sector Regulatory Review – Consultation	24/09/2025
BAINZ Consulting	Submitted to Telecommunications Sector Regulatory Review – Consultation	25/09/2025
Chorus	Submitted to Telecommunications Sector Regulatory Review – Consultation	25/09/2025

Organisation	Subject line	Date
Devoli	Submitted to Telecommunications Sector Regulatory Review – Consultation	25/09/2025
Enable Networks	Submitted to Telecommunications Sector Regulatory Review – Consultation	25/09/2025
EonFibre	Submitted to Telecommunications Sector Regulatory Review – Consultation	25/09/2025
Internet Service Providers Association	Submitted to Telecommunications Sector Regulatory Review – Consultation	25/09/2025
OneNZ	Submitted to Telecommunications Sector Regulatory Review – Consultation	25/09/2025
Spark NZ	Submitted to Telecommunications Sector Regulatory Review – Consultation	25/09/2025
Telecommunications Dispute Resolution Ltd	Submitted to Telecommunications Sector Regulatory Review – Consultation	25/09/2025
Telecommunications Forum	Submitted to Telecommunications Sector Regulatory Review – Consultation	25/09/2025
Tuatahi First Fibre	Submitted to Telecommunications Sector Regulatory Review – Consultation	25/09/2025
2degrees	Submitted to Telecommunications Sector Regulatory Review – Consultation	25/09/2025
Utilities disputes	Submitted to Telecommunications Sector Regulatory Review – Consultation	25/09/2025
Vetta online	Submitted to Telecommunications Sector Regulatory Review – Consultation	25/09/2025
Wireless Dynamics	Submitted to Telecommunications Sector Regulatory Review – Consultation	25/09/2025

**Table 3. Written submissions – attached as Appendix C**

Organisation	Subject line	Date
Commerce Commission	Commerce Commission New Zealand Te Komihana Tauhokohoko: Fibre unbundling price	04/06/2025
Google	Telecommunications Review Team	24/09/2025
Tū Ātea	Tū Ātea Telecommunications Sector Regulatory Review Submission	24/09/2025
One NZ	One NZ submission: telecommunications sector regulatory review	25/09/2025
Spark NZ	Ministry for Regulation telecommunications Act review recommendations	25/09/2025
Telecommunications Forum	Submission on the Ministry for Regulation consultation paper for the regulatory review of the telecommunications sector	25/09/2025
Enable Networks	Consultation on inclusion of wholesale telecommunications providers in “Consumer Protection Code”	07/10/2025
Northpower	North power Fibre Limited Submission on Ministry for Regulation consultation on: Telecommunications Sector regulatory Review	7/10/2025

Organisation	Subject line	Date
Tuatahi First Fibre	Tuatahi First Fibre Limited feedback on the proposed expansion to the consumer protection proposal contained in the Telecommunications Sector regulatory Review consultation	7/10/2025
Chorus	RE: Additional information – Layer 1 unbundling – in confidence	09/10/2025

### Information soon to be made publicly available relating to part 3 of your request

The items detailed in Table 4 are key advice papers on the Review, which will soon be proactively released on the Ministry for Regulation website. Your request for this information is therefore refused under section 18(d) of the OIA as the information will soon be made publicly available. Some of these documents are outside the scope of your refined request but are included for transparency.

We intend to publish this information on our website by the end of April 2026. Some information may be withheld from published documents under specified provisions of the OIA. Where this is the case, the grounds for withholding the information will be outlined in the published document.

**Table 4. Key advice papers**

Date	Reference	Title
07/04/2025	MFR2025-089	Talking points for Meeting with Min Goldsmith on 9 April
02/05/2025	MFR2025-086	Updated draft Terms of Reference and draft Cabinet paper for Telecommunications sector review
22/05/2025	MFR2025-116	Talking points for Cabinet paper and Terms of Reference - Telecommunications Regulatory Review
06/06/2025	MFR2025-119	Forward plan for the telecommunications regulatory review
10/07/2025	MFR2025-147	Results of targeted engagement for telecommunications regulatory review
07/08/2025	MFR2025-148	Telecommunications Review Initial Options
10/10/2025	MFR2025-149	Telecommunications Review provisional findings and provisional recommendations
13/10/2025	MFR2025-273	Talking points for meeting with Hon Goldsmith on 15 October - Telecommunications Regulatory Review
06/11/2025	MFR2025-150	Briefing - Draft Cabinet Paper and Summary Report for the Telecommunications Regulatory Review
13/11/2025	MFR2025-308	Draft Final Report for the Telecommunications Sector Regulatory Review
22/01/2026	MFR2026-010	Briefing - Revised draft Cabinet paper for Telecommunications Regulatory Review (23 Jan 2026)

### Right of review


If you wish to discuss this decision with us, please contact [hello@regulation.govt.nz](mailto:hello@regulation.govt.nz).

You have the right to seek an investigation and review by the Ombudsman of this decision. Information about how to make a complaint is available at [www.ombudsman.parliament.nz](http://www.ombudsman.parliament.nz) or freephone 0800 802 602.

Please note that we may publish this response (with your details removed) on the Ministry for Regulation website.

Ngā mihi

s 9(2)(a)

A large grey rectangular redaction box covers the majority of the text in this section, starting below the 's 9(2)(a)' label and extending to the right and down.

Patricia Canlas

**Acting Head of Ministerial and Strategic Services**  
**Ministry for Regulation**



## Appendix A – Correspondence with organisations

Organisation	Subject line	Date
<b>Thryv NZ (Yellow)</b>	Telecommunications Review	28/08/2025
<b>Chorus</b>	1. Telco sector review: Consultation timing	1. 28/08/2025
	2. Engaging with TSO Customers	2. 10/09/2025
<b>Spark NZ</b>	1. Telecommunications sector review consultation question	1. 10/09/2025
	2. Submission on telecommunications sector review	2. 25/09/2025
<b>Enable</b>	Have your say on the Telecommunications Sector Regulatory Review options	22/09/2025
<b>Tū Ātea</b>	Telecommunications Sector Regulatory Review - Consultation	24/09/2025
<b>OneNZ</b>	One NZ submission: telecommunications sector regulatory review	25/09/2025
<b>Telecommunications Forum</b>	TCF submission on the MFR consultation document – please read as well as the online contribution	25/09/2025



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**From Peter Clark Ministry for Regulation**

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**From** Telecommunications Review <TelcoReview@regulation.govt.nz>

**Date** Thu 8/28/2025 1:33 PM

**To** s 9(2)(a)@thryv.com s 9(2)(a)@thryv.com>

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Dear s 9(2)(a)

Thank you for your letter explaining the position of Thryv relation to TSO requirements for directory services, and I appreciate your patience with my response.

As part of the Review we are indeed considering the continued relevance of directory services going forward as part of the TSO. We would welcome your input to the consultation process that we have launched today, and which can be accessed at the following <https://consultation.regulation.govt.nz/telecommunications-sector-regulatory-review/consultation/>.

Regards

Cheers,

**Dr Peter Clark**  
**Manager, Regulatory Reviews**  
Ministry for Regulation



**Ministry for Regulation**  
**Te Manatū Waeture**



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**FW: Telco sector review: Consultation timing**

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Out of scope

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**From:** s 9(2)(a) <[redacted]@chorus.co.nz>  
**Sent:** Thursday, 28 August 2025 1:34 pm  
**To:** Peter Clark (REG) <Peter.Clark@regulation.govt.nz>  
**Cc:** Telecommunications Review <TelcoReview@regulation.govt.nz>  
**Subject:** RE: Telco sector review: Consultation timing

Hi Peter

Great to see the consultation has been released – there are some really interesting proposals and we look forward to making a submission (acknowledging you have a great deal of information on our views already!).

Can I just check that all the information on the options and proposals is contained in the 'engagement hub' online submission form and there is no separate consultation document? And is the online form the only/preferred way of making a submission on this consultation?

Thanks

s 9(2)(a)

**C H O R U S** s 9(2)(a)

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**From:** Peter Clark <Peter.Clark@regulation.govt.nz>  
**Sent:** Wednesday, 27 August 2025 1:14 PM  
**To:** s 9(2)(a) <[redacted]@chorus.co.nz>  
**Cc:** Telecommunications Review <TelcoReview@regulation.govt.nz>; Kerry Lamont <Kerry.Lamont@regulation.govt.nz>  
**Subject:** RE: Telco sector review: Consultation timing

Hi s 9(2)(a)

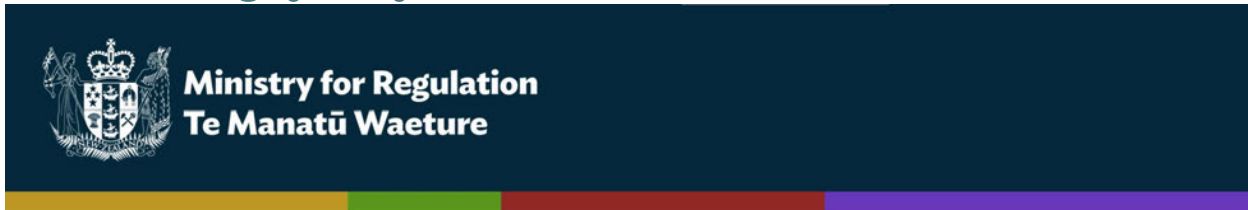
Yes the timing is unchanged with release intended tomorrow. As I'm sure Cherie mentioned, the timing hasn't been communicated publicly so please keep that in confidence.

We appreciate the offer but visibility before release is not necessary, however if you are able to send us a copy of your media release after it has gone live that would be useful. Kerry (ccd) would be the best person to send that to.

Cheers,

**Dr Peter Clark**  
**Manager, Regulatory Reviews**

Ministry for Regulation  
īmēra: [Peter.Clark@regulation.govt.nz](mailto:Peter.Clark@regulation.govt.nz)



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**From:** s 9(2)(a) <[s9\(2\)\(a\)@chorus.co.nz](mailto:s9(2)(a)@chorus.co.nz)>  
**Sent:** Wednesday, 27 August 2025 10:47 am  
**To:** Peter Clark <[Peter.Clark@regulation.govt.nz](mailto:Peter.Clark@regulation.govt.nz)>  
**Subject:** Telco sector review: Consultation timing

Hi Peter

Last week Cherie indicated that a consultation paper on the telco sector review is likely to be released tomorrow (28 August). It would be helpful for our resource planning if you could confirm whether this is still happening, or if the timing has been revised. I'd be very grateful if you could let me know.

We are likely to issue comms in response to a consultation paper. I would be happy to put your comms people in touch with ours to provide visibility if that would be useful.

Thank you

s 9(2)(a)

s 9(2)(a)

s 9(2)(a)

PO Box 632  
Wellington 6011  
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**FW: Engaging with TSO Customers**

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Out of scope

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**From:** Peter Clark (REG) <Peter.Clark@regulation.govt.nz>  
**Sent:** Wednesday, 10 September 2025 9:03 am  
**To:** s 9(2)(a) @chorus.co.nz  
**Cc:** Telecommunications Review <TelcoReview@regulation.govt.nz>; Liam Taylor <Liam.Taylor@regulation.govt.nz>; Cherie Engelbrecht <Cherie.Engelbrecht@regulation.govt.nz>  
**Subject:** RE: Engaging with TSO Customers

Kia ora s 9(2)(a)

I appreciate the fulsome and detailed response, including on what has been done before previous Cabinet decisions. We will have some internal conversations and let you know if anything further is needed.

Cheers

**Dr Peter Clark**

**Manager, Regulatory Reviews**

Ministry for Regulation

īmēra: [Peter.Clark@regulation.govt.nz](mailto:Peter.Clark@regulation.govt.nz) | waea pūkoro: s 9(2)(a)



**Ministry for Regulation**  
**Te Manatū Waeture**

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**From:** s 9(2)(a) @chorus.co.nz  
**Sent:** Wednesday, 10 September 2025 7:46 am  
**To:** Peter Clark <Peter.Clark@regulation.govt.nz>  
**Cc:** Telecommunications Review <TelcoReview@regulation.govt.nz>; Liam Taylor <Liam.Taylor@regulation.govt.nz>; Cherie Engelbrecht <Cherie.Engelbrecht@regulation.govt.nz>  
**Subject:** RE: Engaging with TSO Customers

Hi Peter

As I mentioned to Cherie when we spoke previously, Chorus strongly supports MfR's efforts to make sure its recommendations are robust and can be actioned without obstruction.

Having said that, we are concerned that a direct approach to consumers would need to be very carefully constructed and managed to avoid unnecessary confusion and unfounded distress. Where TSO does and

doesn't apply, and what it means when it does apply, are extremely difficult to explain. We have first-hand experience of this difficulty which we outline at paragraphs 50 to 52 of our submission of 11 July.

Please don't misconstrue this as us being obstructive, we are very mindful of the long legacy the copper network has in New Zealand, and the impact on consumers of its retirement. We are committed to making the transition to modern technologies as smooth as possible for all users. We are working with the Commerce Commission to provide consumer commitments, engaging with key interest groups and we are keen to offer any further assistance to MfR we can.

So, we're concerned at the potential that Cabinet may not make decisions changes to the TSO until after they are confident on this point. We note:

- The difficulty in identifying and contacting customers with services subject to TSO arises principally due to the age of the instrument and the historic cut-off date for application. This cut-off is a fundamental problem and source of unfairness arising from TSO and it would be perverse if this defect was used as a reason not to change it.
- Each TSO Deed is clear that it is an agreement between the Crown and Spark/Chorus respectively which is not intended to create any obligations enforceable by any party other than the Crown or Spark/Chorus (see clause 30 of the Spark Deed and clause 25 of the Chorus Deed). Neither the TSO Deeds, nor the TSO provisions of Part 3 of the Telecommunications Act, require consultation prior to terminating or varying a TSO instrument. In fact, [section 76](#) of the Telecommunications Act sets out the requirements for terminating a TSO instrument and it only requires the agreement of the service provider to whom the instrument applies.
- There was no attempt to proactively contact customers at TSO addresses before Cabinet took the decision to disapply the TSO for most of the country by amendment to the Telecommunications Act in 2018 (see para 67 of [Cabinet Minute EGI-16-MIN-0361](#) as enacted in [section 69AE](#)).

In response to your question, I can confirm it would be impractical for Chorus to contact customers at TSO addresses to inform them about the MfR consultation. In summary, the reasons for this are:

- Chorus is a wholesaler and does not have a billing relationship or contact details for end-users of the services supported by our networks.
- While we do know the locations at which our services are provided, this does not readily enable us to contact the end-user because the service location doesn't necessarily correspond to an address which can receive postal mail. We have found this to be a particular problem when we are required to contact end-users (for example under the Copper Withdrawal Code) and we generally rely on retailers to provide us contact details when we are required to contact end-users.
- As we explained in our submissions, it is not straightforward to identify the application of TSO to an address (see para 50 of our submission of 11 July, and our discussion of the costs of TSO provided on 14 August). To reiterate, the original TSO address footprint was fixed nearly a quarter of a century ago. Over that time:
  - changes to postal addressing systems in rural New Zealand have meant recorded addresses within the original TSO data set are no longer valid;
  - TSO address data has been migrated between platforms and reformatted several times to enable compatibility with new or updated systems; and
  - TSO address data has been used infrequently and not linked to any commercial or operational processes – Chorus has never distinguished between TSO and non-TSO addresses for service availability, pricing or support.

Repeated platform migration of rarely used data with negligible business impact has resulted in data integrity issues.

Identifying TSO application also involves matching this 2001 TSO address data with two other data sets: the record of current Chorus service locations, and the Commission's declared specified fibre

areas. The exercise takes significant work by our data and records staff. Importantly, TSO status is not used by Chorus in any service or operational processes, meaning we can confidently say that no end-users have received any different level of service because of any issues with TSO data.

In 2024 we undertook an exercise in contacting the subset of customers on our CMAR network whose services were subject to TSO to notify them about a potential variation to our TSO Deed. Even with a total of only ~1500 connections (of which ~600 were subject to TSO) this proved exceptionally difficult and resource intensive. It was through this process that we learned about the difficulties of identifying TSO addresses and contacting customers described above. Attempting the same with a connection base of ~68,000 would be a significant project even for Chorus.

If notice to persons with services subject to TSO is viewed as required before any changes to TSO can be made, then the most practical way we can think of would be for Spark to send a notice of the consultation to all its remaining copper voice customers at their preferred billing contact details. This would capture many services which are not subject to TSO (we believe only a minority of remaining copper voice services are subject to TSO), but it would ensure all those whose service is subject to TSO would be notified of the consultation and should avoid a complex data-matching exercise. However, as described above, this would need to be managed very carefully to avoid unnecessary distress.

Apologies for the long email, and again, we are keen to keep engaging on this and offer any assistance we can.

s 9(2)(a)

CHORUS

s 9(2)(a)

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**From:** s 9(2)(a)

**Sent:** Tuesday, 9 September 2025 2:16 pm

**To:** Peter Clark <[Peter.Clark@regulation.govt.nz](mailto:Peter.Clark@regulation.govt.nz)>

**Cc:** Telecommunications Review <[TelcoReview@regulation.govt.nz](mailto:TelcoReview@regulation.govt.nz)>; Liam Taylor <[Liam.Taylor@regulation.govt.nz](mailto:Liam.Taylor@regulation.govt.nz)>; Cherie Engelbrecht <[Cherie.Engelbrecht@regulation.govt.nz](mailto:Cherie.Engelbrecht@regulation.govt.nz)>

**Subject:** RE: Engaging with TSO Customers

Hi Peter – Acknowledging receipt. I expect our previously communicated position that it is impractical for us to signal the consultation to TSO customers still stands, but let me speak to a few people internally and come back to you in more detail. I appreciate the urgency so will confirm as soon as possible.

s 9(2)(a)

CHORUS

s 9(2)(a)

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**From:** Peter Clark <[Peter.Clark@regulation.govt.nz](mailto:Peter.Clark@regulation.govt.nz)>

**Sent:** Tuesday, 9 September 2025 12:56 pm

**To:** s 9(2)(a) <[s 9\(2\)\(a\)@chorus.co.nz](mailto:s 9(2)(a)@chorus.co.nz)>

**Cc:** Telecommunications Review <[TelcoReview@regulation.govt.nz](mailto:TelcoReview@regulation.govt.nz)>; Liam Taylor

<[Liam.Taylor@regulation.govt.nz](mailto:Liam.Taylor@regulation.govt.nz)>; Cherie Engelbrecht <[Cherie.Engelbrecht@regulation.govt.nz](mailto:Cherie.Engelbrecht@regulation.govt.nz)>

**Subject:** Engaging with TSO Customers

Kia ora s 9(2)(a)

I wanted to get in touch around the potential for Chorus to inform TSO customers about the current public submission process on the review. I apologise if you're not the right person to send this to/this is recanvassing issues – Cherie, who had the previous conversation with Chorus, is still on leave, returning Monday.

Given the potential for the review to lead to changes to the TSO, some agencies and Ministers may see it as important that individual customers who may be impacted are informed and have a chance to submit on the review. There is the potential that Cabinet may not make decisions on changes to the TSO until after they are confident on this point.

Towards contacting TSO customers, we reached out to Spark, the Commerce Commission and yourselves regarding your ability to support this. My understanding is that, in a phone call with Cherie, Chorus indicated it would be difficult to undertake this as you are not in direct contact with all TSO customers and as such would not be readily able to inform them of the consultation.

I just wanted to confirm with you Chorus' position that this is a task that you are unable to assist MfR with. Given time-critical element to this, I'm happy to take a phone call on the matter.

Cheers,

**Dr Peter Clark**  
**Manager, Regulatory Reviews**

Ministry for Regulation

īmēra: [Peter.Clark@regulation.govt.nz](mailto:Peter.Clark@regulation.govt.nz) | waea pūkoro: s 9(2)(a)



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**FW: Telecommunications sector review consultation question**

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**From:** § 9(2)(a) @spark.co.nz  
**Sent:** Wednesday, 10 September 2025 4:17 pm  
**To:** Liam Taylor <Liam.Taylor@regulation.govt.nz>  
**Cc:** Peter Clark (REG) <Peter.Clark@regulation.govt.nz>; Telecommunications Review <TelcoReview@regulation.govt.nz>  
**Subject:** RE: Telecommunications sector review consultation question

Thanks Liam, this is really helpful.

In terms of where we're heading, we'll probably support the approach but look for ways to preserve underlying co-regulatory principles (which delivers better interventions where technology is involved) and to ensure it's clear that anyone who undertakes broadband marketing activities is captured by the code.

Regards,  
§ 9(2)(a)

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**From:** Liam Taylor <Liam.Taylor@regulation.govt.nz>  
**Sent:** Wednesday, 10 September 2025 11:12 a.m.  
**To:** § 9(2)(a) @spark.co.nz  
**Cc:** Peter Clark <Peter.Clark@regulation.govt.nz>; Telecommunications Review <TelcoReview@regulation.govt.nz>  
**Subject:** RE: Telecommunications sector review consultation question

Hi § 9(2)(a)

Thanks for getting in touch.

The intention of the option would be for a single Commission code to replace the current framework rather than adding to it.

The TCF would not be prevented from still setting codes for its members if it chooses (as any industry body can) but under this option their formal role in the regulatory system would be removed. One reason for this is to remove the anomaly whereby wholesalers can influence codes that do not apply to them.

We are keen that what is included in the code is proportionate, so it's possible the scope of the code may be narrower than the current framework. We are not intending to specify what should and should not be included in the code but are instead consulting on adding an objective to the legislation around ensuring that benefits outweigh costs (this is covered in the costs and benefits section of the consultation – apologies if the link between these sections is not as clear as it could be).

I hope that helps clarify the option. Let me know if you have any further questions.

Thanks,  
Liam

**Liam Taylor**  
**Principal Advisor, Regulatory Reviews**  
Ministry for Regulation  
E-mail: [liam.taylor@regulation.govt.nz](mailto:liam.taylor@regulation.govt.nz)

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**From:** s 9(2)(a) <[REDACTED]@spark.co.nz>  
**Sent:** Tuesday, 9 September 2025 2:02 pm  
**To:** Liam Taylor <[Liam.Taylor@regulation.govt.nz](mailto:Liam.Taylor@regulation.govt.nz)>; Peter Clark <[Peter.Clark@regulation.govt.nz](mailto:Peter.Clark@regulation.govt.nz)>  
**Subject:** Telecommunications sector review consultation question

Hi Peter, Liam,

I'm just working through our submission and wonder whether you could clarify the scope of the Commerce Commission single, enforceable code for retail service quality proposal.

We've heard indirectly that the regulated code is intended to be in addition to the current arrangements (i.e., adding to rather than replacing the current framework). Is this correct? Is the proposal that the single, enforceable code would be in addition to the current approach?

Regards

s 9(2)(a)

---

 s 9(2)(a) [REDACTED]  
**Spark New Zealand Trading Limited**  
s 9(2)(a) [REDACTED]  
s 9(2)(a) [REDACTED] <[\[REDACTED\]@spark.co.nz](mailto:[REDACTED]@spark.co.nz)>  
Boulcott Tower, Level 12, Spark Central  
42-52 Willis Street  
P O Box 570, Wellington 6011  
[www.spark.co.nz](http://www.spark.co.nz)

---

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---

**FW: Submission on telecommunications sector review**

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Outside scope

■ 1 attachment (380 KB)

Spark submission on MfR draft 25 Sept 2025.pdf;

Hi Cherie, Liam,

Please find attached our submission on the telecommunications sector review.

This submission contains confidential information in the § 9(2)(f)(iv) section relating to § 9(2)(f)(iv) § 9(2)(f)(iv) I've marked the confidential section in the online form § 9(2)(f)(iv) § 9(2)(f)(iv) We would appreciate it if the Ministry would consult with us if it receives any request to release the submission, or any parts specifically marked as confidential.

We have also provided this feedback via the online form. The attached pdf version of our submission brings the related feedback together and provides more detail of our thinking that sits behind the recommendations in our submission.

Finally, the consultation raises issues fundamental to the regulatory framework - which we accept is complex – and we are keen to engage further on our submission, and how proposals could be implemented. I'll come back next week to hopefully arrange a time to catch up.

Regards

§ 9(2)(a)

---



**Spark<sup>nz</sup>**

§ 9(2)(a)

**Spark New Zealand Trading Limited**

§ 9(2)(a)

§ 9(2)(a) [@spark.co.nz](mailto:spark@spark.co.nz)

Boulcott Tower, Level 12, Spark Central  
42-52 Willis Street  
P O Box 570, Wellington 6011  
[www.spark.co.nz](http://www.spark.co.nz)

---

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ry Review options

Outside scope

s 9(2)(a)

To: Telecommunications Review <TelcoReview@regulation.govt.nz>  
Cc: Peter Clark (REG) <Peter.Clark@regulation.govt.nz>  
Subject: RE: Have your say on the Telecommunications Sector Regulatory Review options

Many thanks for getting back to me.

We decided that due to time constraints, that we'll just answer the survey as it's written. Many thanks for the offer for clarification by email – it was much appreciated.

Nga mihi,  
s 9(2)(a)

s 9(2)(a)  
s 9(2)(a) Enable Networks Limited  
[enable.net.nz](http://enable.net.nz)



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Save a tree or two. Please think before printing this email.

From: Telecommunications Review <TelcoReview@regulation.govt.nz>  
Sent: Monday, 8 September 2025 4:10 pm  
To: s 9(2)(a) <[redacted]@enable.net.nz>  
Cc: s 9(2)(a) <[redacted]@regulation.govt.nz>  
Subject: Re: Have your say on the Telecommunications Sector Regulatory Review options

**CAUTION:** This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Kia ora s 9(2)(a)

Thank you for getting in touch.

While we are running the public consultation process, in the interests of ensuring everyone has the same opportunities we are not meeting directly with providers or other regulated parties.

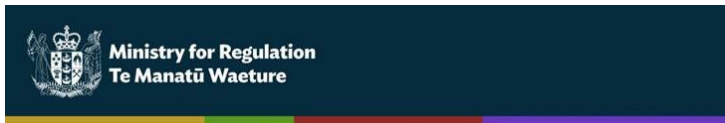
However, we are happy to provide further written information to clarify any of the options covered in the consultation. If you have questions you would like further clarification on please send them to [TelcoReview@regulation.govt.nz](mailto:TelcoReview@regulation.govt.nz).

Thank you,

**Telecommunications Review Team**

Ministry for Regulation

**Imēra:** [TelcoReview@regulation.govt.nz](mailto:TelcoReview@regulation.govt.nz)



[www.regulation.govt.nz](http://www.regulation.govt.nz)

---

**From:** s 9(2)(a) <[redacted]@enable.net.nz>  
**Sent:** Wednesday, 3 September 2025 4:32 pm  
**To:** Telecommunications Review <[TelcoReview@regulation.govt.nz](mailto:TelcoReview@regulation.govt.nz)>; Peter Clark <[Peter.Clark@regulation.govt.nz](mailto:Peter.Clark@regulation.govt.nz)>  
**Subject:** RE: Have your say on the Telecommunications Sector Regulatory Review options

Kia ora Peter,

Nga mihi nui for sending the information on the survey. We're impressed by how quickly the Ministry has digested all the information, and put it in an easy to understand format for the public.

In some areas we don't have enough detail to fully understand what the Ministry is proposing in some of its options.

Would the Ministry be open to having a meeting for us to better understand the detail?

Kind regards,

s 9(2)(a)

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**From:** Telecommunications Review <[TelcoReview@regulation.govt.nz](mailto:TelcoReview@regulation.govt.nz)>  
**Sent:** Thursday, 28 August 2025 1:30 pm  
**Subject:** Have your say on the Telecommunications Sector Regulatory Review options

**CAUTION:** This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Tēnā koe,

Thank you for your interest in and support of the Ministry for Regulation's Telecommunications Sector Regulatory Review. I am reaching out to let you know that we have opened a four-week online public consultation process to gather feedback on the Review's options.

Feedback should be submitted through our [engagement hub](#). Please feel free to share the link to the consultation.

The options have been developed through analysis of local and international regulatory systems and discussions with regulated parties, service providers and dispute resolution providers.

The information from this public process will inform our final report to the Ministers for Regulation and Media and Communications for their consideration before the end of the year.

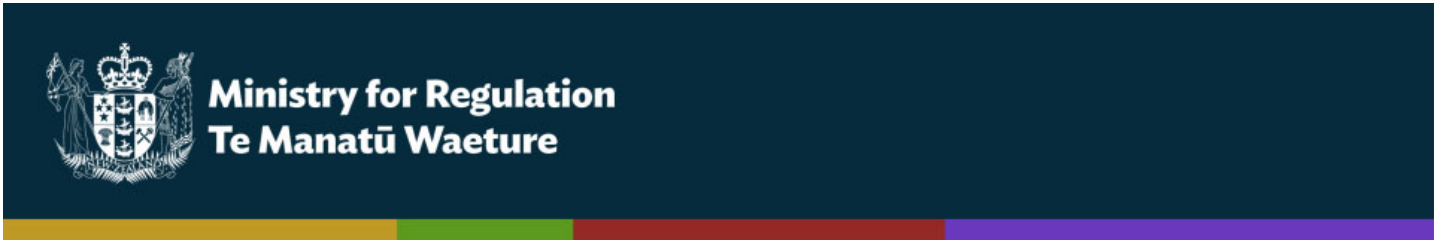
For more information about the Review, please visit the [review page](#) on the Ministry for Regulation website.

Ngā mihi,  
Peter

**Dr Peter Clark**

**Manager, Regulatory Reviews**

***If you would like to be removed from these updates in future, please reply to this email to let us know.***



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s 9(2)(a)  
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**FW: Telecommunications Sector Regulatory Review - Consultation**

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Outside scope



■ 1 attachment (443 KB)

Telecommunications Sector Regulatory Review Submission Tū Ātea Sept 2025 Submission .pdf;

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**From:** s 9(2)(a) <[redacted]@tuatea.nz>

**Sent:** Wednesday, 24 September 2025 3:15 pm

**To:** Telecommunications Review <TelcoReview@regulation.govt.nz>

**Cc:** Peter Clark (REG) <Peter.Clark@regulation.govt.nz>

**Subject:** re: Telecommunications Sector Regulatory Review - Consultation

Tēnā koutou,

Please find attached Tū Ātea's full submission to the current Telecommunications Sector Regulatory Review.

As the engagement hub does not support file attachments, we are providing our formal submission via this email.

If you have any questions, please contact myself in the first instance.

Ngā mihi maioha

s 9(2)(a)



s 9(2)(a)



[www.tuatea.nz](http://www.tuatea.nz)

Outside scope

s 9(2)(a)

**Sent:** Thursday, 25 September 2025 6:08 pm

**To:** Peter Clark (REG) <Peter.Clark@regulation.govt.nz>

**Cc:** Telecommunications Review <TelcoReview@regulation.govt.nz>; s 9(2)(a)@one.nz

**Subject:** One NZ submission: telecommunications sector regulatory review

Hi Peter and team,

Please find attached One NZ's submission on the telecommunications sector regulatory review – options. We have provided feedback via the online form but felt that this fuller submission was also required to articulate in detail the rationale behind One NZ's position and to highlight the risks with some of the proposed options. We have also attached supporting documents that we reference in our submission.

We'd welcome the opportunity to meet with you to discuss this further. Please let me know when would suit in the next few weeks.

Kind regards,

s 9(2)(a)



one.nz

s 9(2)(a)

s 9(2)(a)

@one.nz

One New Zealand Group Limited,  
Smales Farm, Cnr Northcote & Taharoto Roads,  
Private Bag 92143, Auckland 1142, New Zealand


C2 General

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se read as well as the online

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Outside scope



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s 9(2)(a)

**Sent:** Thursday, 25 September 2025 3:00 pm

**To:** Peter Clark (REG) <Peter.Clark@regulation.govt.nz>

**Subject:** TCF submission on the MFR consultation document - please read as well as the online contribution

Hi Peter

Please find attached the TCF submission on the MFR consultation document. While we used the online submission tool, we found the way the questions were structured made it difficult to explain the sector viewpoints in some areas. Can you please share the attached PDF with your team. The main difference is that it includes overall narrative on TDL issues and how they fit together.

Ngā mihi

s 9(2)(a)

**New Zealand Telecommunications Forum (TCF)**

M s 9(2)(a)

E

W [www.tcf.org.nz](http://www.tcf.org.nz) | F [@letstalktelco](https://twitter.com/letstalktelco) | T [@tcfnz](https://www.facebook.com/tcfnz)





## Appendix B – CitizenSpace submissions

Organisation	Subject line	Date
<b>Signals</b>	Submitted to Telecommunications Sector Regulatory Review – Consultation	30/08/2025
<b>Thryv NZ (Yellow)</b>	Submitted to Telecommunications Sector Regulatory Review – Consultation	02/09/2025
<b>Farmside</b>	Submitted to Telecommunications Sector Regulatory Review – Consultation	24/09/2025
<b>Starlink</b>	Submitted to Telecommunications Sector Regulatory Review – Consultation	24/09/2025
<b>BAINZ Consulting</b>	Submitted to Telecommunications Sector Regulatory Review – Consultation	25/09/2025
<b>Chorus</b>	Submitted to Telecommunications Sector Regulatory Review – Consultation	25/09/2025
<b>Devoli</b>	Submitted to Telecommunications Sector Regulatory Review – Consultation	25/09/2025
<b>Enable Networks</b>	Submitted to Telecommunications Sector Regulatory Review – Consultation	25/09/2025
<b>EonFibre</b>	Submitted to Telecommunications Sector Regulatory Review – Consultation	25/09/2025
<b>Internet Service Providers Association</b>	Submitted to Telecommunications Sector Regulatory Review – Consultation	25/09/2025
<b>OneNZ</b>	Submitted to Telecommunications Sector Regulatory Review – Consultation	25/09/2025
<b>Spark NZ</b>	Submitted to Telecommunications Sector Regulatory Review – Consultation	25/09/2025
<b>Telecommunications Dispute Resolution Ltd</b>	Submitted to Telecommunications Sector Regulatory Review – Consultation	25/09/2025
<b>Telecommunications Forum</b>	Submitted to Telecommunications Sector Regulatory Review – Consultation	25/09/2025
<b>Tuatahi First Fibre</b>	Submitted to Telecommunications Sector Regulatory Review – Consultation	25/09/2025
<b>2degrees</b>	Submitted to Telecommunications Sector Regulatory Review – Consultation	25/09/2025
<b>Utilities disputes</b>	Submitted to Telecommunications Sector Regulatory Review – Consultation	25/09/2025
<b>Vetta online</b>	Submitted to Telecommunications Sector Regulatory Review – Consultation	25/09/2025
<b>Wireless Dynamics</b>	Submitted to Telecommunications Sector Regulatory Review – Consultation	25/09/2025

## Response ID ANON-KAUD-75DJ-Y

Submitted to Telecommunications Sector Regulatory Review - Consultation  
Submitted on 2025-08-30 13:23:13

Have your say

Privacy notice

I consent to the Ministry for Regulation sharing my contact details with another government agency and I am happy to be contacted if required.

Yes

Demographic information

What is your email address?

Email Address:

s@signals.co.nz

9(2)

Are you making a submission on behalf of an organisation or as an individual?

Organisation

Organisation Submission

What is the name of your organisation?

Name of organisation:

Signals

I consent to my organisation's name being publicly released by the Ministry for Regulation as a submitter to the Review.

Yes

If no, please can you explain why: :

What best describes the nature of your organisation in relation to telecommunication services? (Please tick all that apply)

Mobile Virtual Network Operator (MVNO), Retail service provider, Equipment vendor

If other, please specify in the box below. :

Permission to Contact You About Your Submission

Are you happy for us to contact you if we have questions about your submission?

Yes

Consumer protection and customer service

Do you wish to skip this section?

No

Simplifying rules and strengthening consumer protection

Do you have a preferred option?

An option not included above

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages::

Existing legislation in consumer guarantees act should suffice

Could there be any unintended consequences (to consumers or industry) by creating a single enforceable Commerce Commission code for regulating retail service quality?

Yes

If you answered 'Yes', please provide your reason(s) below::

Likely any code or legislation will become quickly outdated and stifle innovation in the sector.

### Access to basic telecommunications services

Do you wish to skip to the next section?

No

### Future of the Telecommunications Service Obligations arrangement

Do you have any preferred option(s)? (Please select all that apply)

Phase out the requirement to provide home telephone service

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages::

This legislation is essentially redundant already. Satellite connectivity is available anywhere, mobile and 4G internet for VOIP calling also overwhelmingly accessible

If you included Option 3 'ensuring access to basic telecommunication services' as one of your preferred options, please indicate your preference between the following:

Not Answered

Are there any unintended consequences that might arise from phasing out or replacing the current TSO arrangement?

No

If you answered 'Yes', please provide your reason(s) below::

If you currently rely on a copper connection, is there anything that would make it difficult or impractical to switch to a different technology (e.g. cost or a medical alarm)?

Not applicable – I don't have a copper connection.

If you answered 'Yes', please provide your reason(s) below::

Which of these telecommunication services are critical for people to access?

Voice calling, Broadband

If other, please explain::

Do you have any concerns about the potential removal of directory services (white pages listing, print telephone book and directory assistance)?

No

If you answered 'Yes', please provide your reason(s) below::

### Geographically Consistent Pricing

Do you agree or disagree with our recommendation that the Commerce Commission review and assess the effectiveness of GCP.

Agree with the recommendation

Please explain the reason for your selection. If you identified an alternative, please explain.:

### Basic fibre services

Do you agree or disagree with our recommendation that the Commerce Commission should review anchor services and consider the option of a phased repeal as part of their next regulatory reset in 2027?

Agree with the recommendation

Please explain the reason for your selection. If you identified an alternative, please explain.:

## Fibre Regulation

Do you wish to skip this section?

No

## Governance settings in Local Fibre Company constitutions

Do you have any preferred option(s)?

Remove the Government Share and move line of business restrictions to legislation

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages::

Would there be any unintended consequences of removing the Government Share?

No

If you answered 'Yes', please provide your reason(s) below::

## Ownership restrictions in Local Fibre Company constitutions

Do you have a preferred option?

Remove ownership restrictions and rely on existing legislation

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages::

Would there be any unintended consequences of removing the ownership restrictions?

No

If you answered 'Yes', please provide your reason(s) below::

## Layer 1 unbundling

Do you have any preferred option(s)?

Consider repeal as part of the next regulatory reset in 2027

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages::

Would there be any unintended consequences of repealing all Layer 1 unbundling obligations?

No

If you answered 'Yes', please provide your reason(s) below::

## Exemption process for services above Layer 2

Do you have a preferred option?

Streamlined exemption process, fast-track for low-risk services

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages::

Would there be any unintended consequences of streamlining the exemption process?

No

If you answered 'Yes', please provide your reason(s) below::

## Fibre deregulation review process

Do you have a preferred option?

Single step streamlined process for deregulation reviews

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages::

Would there be any unintended consequences of adopting a single step process for deregulation reviews?

Unsure

If you answered 'Yes', please provide your reason(s) below::

#### Legacy regulatory obligations in telecommunications

Do you have a preferred option?

Streamline and modernise

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages: :

Would there be any unintended consequences of streamlining and modernising these Deeds?

No

If you answered 'Yes', please provide your reason(s) below::

#### Telecommunications Development Levy & Telecommunications Regulatory Levy methodology

Do you wish to skip this section?

Yes

#### Balancing the costs and benefits of regulation

Do you wish to skip this section?

No

#### Consideration of costs and benefits

Do you have a preferred option?

Overarching purpose statement to require consideration of costs and benefits

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages: :

If you prefer option 2, are there any unintended consequences to consumers or industry that might arise from having an overarching purpose statement:

No

If you answered 'Yes', please provide your reason(s) below::

If you prefer option 3, which parts of the Telecommunications Act 2001 should the sectional purpose statements apply to:

If you answered 'Other', what sections and why?:

Are there any unintended consequences to consumers and industry that might arise from having sectional purpose statements?

No

If you answered 'Yes', please provide your reason(s) below::

## Response ID ANON-KAUD-75D2-7

Submitted to Telecommunications Sector Regulatory Review - Consultation  
Submitted on 2025-09-02 15:18:27

### Have your say

#### Privacy notice

I consent to the Ministry for Regulation sharing my contact details with another government agency and I am happy to be contacted if required.

Yes

#### Demographic information

What is your email address?

Email Address:

s 9(2)(a) @yellow.co.nz

Are you making a submission on behalf of an organisation or as an individual?

Organisation

#### Organisation Submission

What is the name of your organisation?

Name of organisation:

Thryv New Zealand Ltd

I consent to my organisation's name being publicly released by the Ministry for Regulation as a submitter to the Review.

Yes

If no, please can you explain why: :

What best describes the nature of your organisation in relation to telecommunication services? (Please tick all that apply)

Industry group, Other

If other, please specify in the box below. :

Provider of White pages Residential directories and 018 Directory Assistance services on behalf of Spark, to meet Spark Telecommunications Services Obligations.

#### Permission to Contact You About Your Submission

Are you happy for us to contact you if we have questions about your submission?

Yes

#### Consumer protection and customer service

Do you wish to skip this section?

Yes

#### Access to basic telecommunications services

Do you wish to skip to the next section?

No

#### Future of the Telecommunications Service Obligations arrangement

Do you have any preferred option(s)? (Please select all that apply)

Phase out the requirement to provide home telephone service

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages::

Background

Yellow is subject to obligations to provide directory services to the New Zealand public pursuant to:

(a) the Telecommunications Service Obligations (TSO) Deed for Local Residential Telephone Service between the New Zealand Government (represented by MBIE) and Spark (TSO Deed); and

(b) the Integrated Directories Services Agreement between Spark and Yellow (IDSA). s 9 (2)(b)(ii)

Following our discussion with Spark, Yellow would like to formally request your consideration for the removal or amendment of the current TSO obligations that require the production and distribution of the White Pages Residential directories and the provision of Directory Assistance services.

This submission is based on significant shifts in consumer behaviour, technological advancements and broader government and industry initiatives which together render these specific TSO obligations increasingly outdated and inefficient. The following points outline the rationale for reviewing these requirements:

### 1. Changing Societal Norms and Demographics

Societal needs have evolved considerably and the way people access information has transformed. The natural attrition of the aging population – the main users of printed directories – has led to a decreasing user base for these services. Younger generations overwhelmingly prefer digital alternatives, making the production of printed directories increasingly redundant.

Available data suggests that only a very small fraction of the population still uses or requires the White Pages Residential directories – s 9 (2)(b)(ii). Note that people aged 50+ and 60+ represents 31.4% and 22.2% of New Zealand's total population respectively s 9 (2)(b)(ii). The majority of the population now relies on digital alternatives such as online directories, social media and mobile applications to find personal and business contact information.

Yellow in conjunction with Spark has had several amendments to the TSO requirements previously approved, to cater for evolving societal, environmental and technological needs. These have been:

- (a) White Pages Residential separate publication supplied on an 'on-demand' model for eight major markets (Auckland, Wellington, Canterbury, Bay of Plenty, Waikato, Northland, Hawke's Bay and Otago).
- (b) Implementation of an opt-out programme to allow households to exclude themselves from delivery.
- (c) Extension of book publication cycle from 12 to 18 months.
- (d) Change of distribution approach from universal distribution (with opt out) to targeted distribution (with opt out), focused on distribution to areas with greater likelihood of print users (60-79 year olds).

### 2. Declining Demand Due to Technological Advancements

With the widespread adoption of digital technologies and internet-based communication tools, the public's reliance on printed directories and voice-based directory assistance has markedly declined. Mobile phones, internet search engines and online directories offer faster, more accurate and more convenient means to access contact information.

In the ten (10) years between the 2013 and 2023 census:

- The percentage of households reporting access to a mobile phone has significantly increased from 80.6% of homes in 2013, to 86.5% of homes in 2023. This would imply that the remaining 13.5% of homes have landline access only.
- Conversely, the percentage of households reporting access to a landline telephone has dramatically reduced from 82.4% in 2013 to 28.6% of homes in 2023.
- Additionally, the percentage of households with internet access has jumped from 74% to 83.7% of homes.

As a result, demand for physical White Pages directories and traditional Directory Assistance has dropped significantly:

- In a recent year on year analysis, orders for White Pages printed directories dropped by 14%. s 9 (2)(b)(ii)
- Monthly average call volumes into Directory Assistance have declined 27% year on year and are now at levels nearly half that of two years ago.

Technological advancements continue to erode the relevancy of the TSO obligations to publish and distribute residential landline listings in White Pages. The need to create and maintain residential listings and to publish and distribute a White Pages residential directory are quickly becoming obsolete, irrelevant and increasingly onerous to maintain for an ever-reducing, small sector of the New Zealand population.

### 3. Decommissioning of the Copper Line Network and Designated Specified Fibre Areas

The TSO obligations are aligned to residential landline numbers and the traditional 'copper' network. Chorus is tasked with decommissioning the copper

line network, with the goal to complete this by 2030. Under the Telecommunications (New Regulatory Framework) Amendment Act 2018, the TSO instruments applying to Spark and Chorus cease to apply in areas which have fibre, designated as Specified Fibre Areas (SFAs), on the basis that consumers in these areas will have access to affordable fibre-based landline and broadband services. The intent of the SFA framework is to ensure a comparable alternative fibre service is available before Chorus can stop supplying a copper service in an area. The framework requires the Commerce Commission to undertake assessments to determine when a geographic area is serviced by fibre and to then declare it to be a 'specified fibre area'.

Chorus can withdraw its copper network in an SFA, and the TSO obligations under the TSO Deed cease to apply in areas that have fibre. On this basis, our understanding is that this could mean that there is no requirement to provide White Pages residential listings or Directory Assistance services for those customers in an SFA.

Census and NZ Post data indicates there are 1.93 million total deliverable households in New Zealand and as of 8 November 2024 (date of last assessment by the Commerce Commission), the total number of households within an SFA is 1.65 million. This represents 85% of households nationwide, which is an extremely high proportion of households within a designated SFA and that are outside the scope of the TSO. This percentage will continue to increase in line with the planned and ongoing decommissioning of the copper line network, further supporting the removal or amendment of the current TSO obligations that require the production and distribution of the White Pages Residential directories and provision of Directory Assistance. As this infrastructure is phased out, the associated services become harder to maintain and increasingly disconnected from the modern communications environment.

#### 4. Sustainability and Environmental Impact

There is an increasing importance for businesses to reduce environmental impacts. Phasing out and removing the TSO obligations for White Pages Residential directories would represent a meaningful step toward aligning with the present day needs for print directories and governmental initiatives to help reduce environmental impacts in paper use, freight and recycling efforts.

#### Conclusion and Recommendation

In light of the above considerations, I respectfully submit that the TSO obligations regarding the production and distribution of the White Pages Residential directories and the provision of Directory Assistance services are no longer justified in their current form. These obligations no longer reflect contemporary communication practices, place unnecessary environmental and economic burdens on service providers, and are at odds with the Government's commitment to digital advancement.

As Chorus continues to expand fibre and improve accessibility in rural areas and removing reliance on the copper line network, it is highly likely the number of areas and households accessing Directory Assistance and White Pages Residential directories will be extremely low by 2028. The areas that Yellow would be required to provide these services in will be very limited.

§ 9 (2)(b)(ii)

If you included Option 3 'ensuring access to basic telecommunication services' as one of your preferred options, please indicate your preference between the following:

Not Answered

Are there any unintended consequences that might arise from phasing out or replacing the current TSO arrangement?

No

If you answered 'Yes', please provide your reason(s) below::

If you currently rely on a copper connection, is there anything that would make it difficult or impractical to switch to a different technology (e.g. cost or a medical alarm)?

Not applicable – I don't have a copper connection.

If you answered 'Yes', please provide your reason(s) below::

Which of these telecommunication services are critical for people to access?

Voice calling, Broadband

If other, please explain::

Do you have any concerns about the potential removal of directory services (white pages listing, print telephone book and directory assistance)?

No

If you answered 'Yes', please provide your reason(s) below::

## Geographically Consistent Pricing

Do you agree or disagree with our recommendation that the Commerce Commission review and assess the effectiveness of GCP.

Not Answered

Please explain the reason for your selection. If you identified an alternative, please explain.:

## Basic fibre services

Do you agree or disagree with our recommendation that the Commerce Commission should review anchor services and consider the option of a phased repeal as part of their next regulatory reset in 2027?

Not Answered

Please explain the reason for your selection. If you identified an alternative, please explain.:

## Fibre Regulation

Do you wish to skip this section?

Yes

## Telecommunications Development Levy & Telecommunications Regulatory Levy methodology

Do you wish to skip this section?

Yes

## Balancing the costs and benefits of regulation

Do you wish to skip this section?

Yes

## Consideration of costs and benefits

Do you have a preferred option?

Not Answered

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages: :

If you prefer option 2, are there any unintended consequences to consumers or industry that might arise from having an overarching purpose statement:

Not Answered

If you answered 'Yes', please provide your reason(s) below::

If you prefer option 3, which parts of the Telecommunications Act 2001 should the sectional purpose statements apply to:

If you answered 'Other', what sections and why?:

Are there any unintended consequences to consumers and industry that might arise from having sectional purpose statements?

Not Answered

If you answered 'Yes', please provide your reason(s) below::

## Response ID ANON-KAUD-75QG-9

Submitted to Telecommunications Sector Regulatory Review - Consultation  
Submitted on 2025-09-24 15:52:41

Have your say

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Yes

Demographic information

What is your email address?

Email Address:

s 9(2)(a) @farmsideltd.co.nz

Are you making a submission on behalf of an organisation or as an individual?

Organisation

Organisation Submission

What is the name of your organisation?

Name of organisation:

Farmside

I consent to my organisation's name being publicly released by the Ministry for Regulation as a submitter to the Review.

Yes

If no, please can you explain why: :

What best describes the nature of your organisation in relation to telecommunication services? (Please tick all that apply)

Wireless Internet Service Provider (WISP), Mobile Virtual Network Operator (MVNO), Retail service provider

If other, please specify in the box below. :

Permission to Contact You About Your Submission

Are you happy for us to contact you if we have questions about your submission?

Yes

Consumer protection and customer service

Do you wish to skip this section?

No

Simplifying rules and strengthening consumer protection

Do you have a preferred option?

An option not included above

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages::

Farmside supports strong consumer protections so that rural New Zealanders can trust the services they buy and have clear rights no matter which provider or technology they use. We are a signatory to TCF retail service quality codes.

We do not support Option 2 in the consultation document. We are concerned that Option 2 — a single Commission-run consumer protection code —

would increase regulatory complexity and costs without solving the real gaps in the current framework. In other words, it would result in more regulation. As a result, Option 2 would be a worse outcome than the status quo. For a small operator like Farmside, extra compliance burdens mean fewer resources for actually serving our rural customers.

We propose an alternative option that builds on the current co-regulatory model rather than replacing it. This alternative should:

Amend the scope of current retail service quality regime: the retail service quality section in the Telecommunications Act should be replaced with a section on consumer protection to make it clear that consumer protection rules apply to any party engaging in activities that affect telecommunications end users, not just retailers.

Tighten the purpose and threshold for intervention: the Commission should first establish that competition and existing laws cannot deliver the desired outcomes before imposing new consumer protection requirements, supported by a cost-benefit test. Section 233 of the telecommunications act should be amended to give effect to this, as the current wording of the purpose of retail service quality interventions is too broad, open-ended and enables the Commission to focus on areas where there is limited consumer demand. The Act should set a clear frontier that must be crossed before regulatory intervention is considered.

Apply to all providers that influence end users: fibre wholesalers like Chorus and LFCs must also be bound by consumer protection/retail service quality rules, given their direct-to-consumer engagement. Chorus is financially enabled and has a clear objective of upselling higher value fibre plans to consumers through continuous, well-funded marketing campaigns. It is therefore critical that Chorus and other LFCs are captured by this consumer protection framework.

Retain industry involvement in consumer protection code design: co-developed codes are more practical and efficient, especially for smaller providers with limited compliance capacity. Industry-led code development is the approach used in Australia.

Create a new consolidated consumer protection code: this work should be led by the TCF and include consolidation of existing Commission's RSQ guidelines and TCF codes into a single draft document for Commission consideration, applying the cost benefit analysis.

Reduce duplication with existing consumer law: interventions should focus only on genuine gaps, not replicate obligations already covered under the Fair Trading Act or Consumer Guarantees Act.

Clean up related section of the Telecommunications Act: If a single consumer protection code is implemented, section 234 of the Act (which enables the Commission to issue guidelines to industry) should be removed, as should section 235 (which enables the Commission to review industry retail service quality codes). Retaining these provisions would continue to embed potential for overlapping and duplicative sources of regulation.

This alternative approach would deliver simpler, fairer rules that consumers can easily understand, while avoiding unnecessary compliance costs that ultimately get passed through in higher prices. For smaller rural providers, that balance is essential — every dollar spent on compliance is a dollar not spent on improving service for our customers.

#### Advantages

Provides one clear, consolidated set of consumer rules so customers and providers know exactly what applies.

Minimum standards would apply to everyone who engages with consumers — including fibre wholesalers — so rules are fair and consistent across the sector.

A proper cost-benefit test would ensure new rules are proportionate and focused on real problems, not minor issues.

Gives smaller providers like Farmside more certainty, reducing the risk of sudden or unclear new requirements which is key due to limited resourcing.

Keeps industry involved in designing the rules, making them more practical and less costly to apply.

Aligns with international best practice (e.g. Australia), where industry codes are developed with regulator approval, combining industry expertise with regulator oversight.

#### Disadvantages

May not capture every type of industry behaviour unless the law is carefully drafted to apply to all relevant parties.

If cost-benefit tests and thresholds are not clearly embedded, there is still a risk of extra compliance burden.

Potential for overlap with existing consumer laws unless drafting is clear, which could create confusion.

Could there be any unintended consequences (to consumers or industry) by creating a single enforceable Commerce Commission code for regulating retail service quality?

Yes

If you answered 'Yes', please provide your reason(s) below::

Extra regulatory costs for providers without delivering meaningful improvements for consumers, with those costs ultimately passed through in higher prices.

Overlap or inconsistency with existing consumer protection laws, creating confusion for both providers and consumers.

Risk of overly prescriptive rules that reduce providers' ability to innovate or tailor services, limiting competition and choice.

Higher compliance and reporting burdens, which fall hardest on smaller providers with limited resources.

Increased workload and cost for the Commission to enforce the new code, funded through higher levies on the industry and, ultimately, end-users.

Fibre wholesalers would remain outside the scope of the rules, leaving a major gap in consumer protection while retailers face stricter obligations.

## Access to basic telecommunications services

Do you wish to skip to the next section?

Yes

## Fibre Regulation

Do you wish to skip this section?

Yes

## Telecommunications Development Levy & Telecommunications Regulatory Levy methodology

Do you wish to skip this section?

Yes

## Balancing the costs and benefits of regulation

Do you wish to skip this section?

No

## Consideration of costs and benefits

Do you have a preferred option?

Sectional purpose statements to require consideration of costs and benefits

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages: :

As a small provider with a lean team, Farmside feels very directly the impact of new regulatory requirements. Every extra reporting obligation or information request takes time and resources away from the front line of serving rural customers. That's why we agree with MfR's view that while the Commission's oversight powers are important, the current rules are drafted too broadly and can lead to requirements that are disproportionate or unclear in scope.

MfR has said that "more consideration could be given to ensure the work the Commerce Commission undertakes, e.g. information gathering, is proportionate and transparent." We strongly agree. For smaller operators like Farmside, proportionality is not a theoretical issue — it can mean the difference between having staff focused on delivering better service to farmers and rural households or diverting scarce resources into compliance activities that may not deliver real benefits for customers.

Requiring the Commission to consider costs and benefits is good regulatory practice. But it needs to be applied in a targeted way. A blanket requirement for a full cost-benefit analysis on every action would only add bureaucracy and slow down decision-making. Instead, the obligation should apply when the Commission is going beyond what the law strictly requires, such as imposing new consumer protection codes, launching major monitoring programmes, or issuing extensive information requests. That is when there is the greatest risk of disproportionate burden, and when the discipline of a cost-benefit test is most valuable.

We recommend that the Act be amended so that when the Commission uses its discretionary powers around information collection, industry monitoring, or retail service quality, it must demonstrate that:

- the problem is clearly defined and evidenced,
- competition or existing consumer law cannot solve it,
- the expected benefits outweigh the direct and indirect costs (particularly for smaller providers), and
- the approach is proportionate.

A cost-benefit framework should also include strong stakeholder consultation to test the problem definition and the practicality of any proposed remedy.

Embedding these principles in legislation would improve accountability and provide greater certainty for providers like Farmside. It would give us confidence that new obligations are carefully justified and proportionate, not simply added on top of what already exists. That balance is crucial for smaller operators: it ensures resources can stay focused on connecting rural communities, rather than being absorbed by regulatory processes that add cost but little value for customers.

If you prefer option 2, are there any unintended consequences to consumers or industry that might arise from having an overarching purpose statement:

Unsure

If you answered 'Yes', please provide your reason(s) below::

If you prefer option 3, which parts of the Telecommunications Act 2001 should the sectional purpose statements apply to:

Retail service quality, Information and monitoring

If you answered 'Other', what sections and why?:

Are there any unintended consequences to consumers and industry that might arise from having sectional purpose statements?

No

If you answered 'Yes', please provide your reason(s) below::

## Response ID ANON-KAUD-75QY-U

Submitted to Telecommunications Sector Regulatory Review - Consultation  
Submitted on 2025-09-24 09:29:47

Have your say

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I consent to the Ministry for Regulation sharing my contact details with another government agency and I am happy to be contacted if required.

Yes

Demographic information

What is your email address?

Email Address:

s 9(2)(a)@spacex.com

Are you making a submission on behalf of an organisation or as an individual?

Organisation

Organisation Submission

What is the name of your organisation?

Name of organisation:

Starlink Internet Services Pte. Ltd.

I consent to my organisation's name being publicly released by the Ministry for Regulation as a submitter to the Review.

Yes

If no, please can you explain why: :

What best describes the nature of your organisation in relation to telecommunication services? (Please tick all that apply)

Satellite service provider, Retail service provider, Wholesale provider, Equipment vendor, Infrastructure deployment and operation

If other, please specify in the box below. :

Permission to Contact You About Your Submission

Are you happy for us to contact you if we have questions about your submission?

Yes

Consumer protection and customer service

Do you wish to skip this section?

No

Simplifying rules and strengthening consumer protection

Do you have a preferred option?

Status quo: maintain the voluntary Commerce Commission guidelines and the role of the New Zealand Telecommunications Forum (TCF) in making industry codes

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages::

Starlink supports the status quo. The current industry-led approach to regulation of telecommunications in New Zealand has had a range of positive outcomes for the industry and consumers. This approach:

- reduces barriers to market entry;

- encourages innovation and investment in the industry; and
- reduces unnecessary compliance costs, which might otherwise be passed through to consumers in the form of higher charges.

Starlink's experience, as a global telecommunications service provider with international products and systems, has been that New Zealand's current model allows Starlink to easily roll out its global products and provide ongoing support without unnecessary and costly local customisation. This benefits New Zealand customers.

While the current arrangements do permit both ComCom and the TCF to implement codes regulating retail service quality, there is no evidence of overlap or conflict between these different code-making powers. There is also no evidence of confusion among customers or the industry as to which codes should be preferred.

The current dual arrangements work as intended within a competitive New Zealand telecommunications service provider environment. A service provider can choose to join the TDR scheme, and choose to subscribe to additional codes and guidelines. This in turn allows consumers to choose how much weighting they place on that membership/code compliance in their choice of provider. Other service providers can choose not to participate, and to offer alternative mechanisms for meeting the needs of their intended customer base (such as Starlink's emphasis on streamlined processes to improve customer experience and avoid overhead costs which drive up prices). It is a fundamental feature of a properly functioning competitive market that each customer is able to choose their provider based on the features that are important to them individually. The availability of market competition ensures service quality, and to the extent this fails, the Commerce Commission is empowered to make binding codes/rules as a backstop.

Could there be any unintended consequences (to consumers or industry) by creating a single enforceable Commerce Commission code for regulating retail service quality?

Yes

If you answered 'Yes', please provide your reason(s) below::

Consistent with our above answers, the introduction of a mandatory Commerce Commission code for regulating retail service quality would have multiple unintended and negative consequences. These would include:

- increasing the barriers to market entry, particularly for global service providers;
- discouraging innovation and investment in the industry. For instance, providers are likely to rely less on new and emerging technologies and practices in their services, and services overall are likely to become more standardised, as a result of the requirements to ensure compliance with a mandatory code;
- making it more difficult for RSPs to amend the code. Currently, participating RSPs can (through the TCF) develop amendments to voluntary codes as and when the need arises. This may be in response to market or technical developments, or to resolve issues with existing codes. Under a mandatory model, the Commerce Commission would likely be the sole arbiter of whether to consider or implement any amendments; and
- increasing compliance costs, which would likely be passed through to consumers in the form of higher charges.

## Access to basic telecommunications services

Do you wish to skip to the next section?

No

## Future of the Telecommunications Service Obligations arrangement

Do you have any preferred option(s)? (Please select all that apply)

Ensuring access to basic telecommunications services, voice services at a minimum

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages::

The third options recognises that consumers having access to basic telecommunications services is as important as ever, while providing for a modern, flexible regime. We see this as an area where reform could have the biggest potential impact for New Zealand users, particularly those in remote and under-served areas.

Starlink considers that any updated scheme should not establish a single provider or a single network or technology to be funded. Instead, the scheme should facilitate consumers' right to choose services under the scheme that meet minimum standards, whether they be fixed line, mobile, fixed wireless or satellite broadband.

As Starlink has engaged in programmes designed to expand universal connectivity worldwide, it has found that the most successful incorporate a consumer-choice model that fosters competition, agnostic of technology, and expands the connectivity options for consumers, businesses, and government entities. This type of model provides a direct reimbursement to an eligible service provider that a household, business or community organisation selects for a service that meets the minimum standards.

To achieve this, the redesigned model should not appoint a single provider for the entirety of the country, or choose a single network to be subsidised for the purpose of supplying basic telecommunication services. Instead, the government should adopt a technology-neutral, consumer choice model involving a selected panel of telecommunications service providers, each of which must be capable of supplying services that meet minimum requirements on a non-exclusive basis within their respective network footprints. These competitive providers could include operators of a variety of different telecommunications networks that are capable of supplying qualifying services, including low-earth orbit satellite networks such as Starlink, fixed wireless networks and mobile networks, as well as new networks that may be launched in the future. As technology advances, the government can periodically increase standards.

A consumer-choice model such as this would promote access to affordable service plans by placing control in the hands of consumers and encouraging operators to compete for those consumers. This competition would drive operators to improve their networks to meet evolving consumer needs. And, if a particular service provider does not meet a household's broadband needs, the household would have the ability to change carriers to a more desirable service offering. Further, as consumer needs evolve, this model will foster ongoing competition between service providers to offer better network performance and pricing to maintain support for consumers in remote and regional areas.

Alternatively, the reformed scheme could take a tool kit approach to future projects allowing technologies to compete to serve unserved areas or community anchor institutions like schools, libraries, and health care facilities. Depending upon terrain, population density and other factors, certain technologies will be more cost-effective than others. This will arm the government with more options to best select connectivity solutions. For example, countries like Taiwan, India and Chile have universal service programs that fund projects from numerous providers depending upon several factors. Taiwan operates the Universal Service Fund that provides funding to make carriers whole for providing service at a loss in rural and remote areas. India administers the Universal Service Obligation Fund (USOF), which leverages innovative technology for fixed and mobile service to rural and remote areas. India's USOF provides funding for projects that offer non-discriminatory access to the supported network to all telecom providers to enable applications including e-health, e-education, and e-governance. And Chile oversees the Telecommunications Development fund that funds deployment projects from numerous providers.

If you included Option 3 'ensuring access to basic telecommunication services' as one of your preferred options, please indicate your preference between the following:

Providing financial support direct to people so they can afford to access to telecommunications services

Are there any unintended consequences that might arise from phasing out or replacing the current TSO arrangement?

No

If you answered 'Yes', please provide your reason(s) below::

If you currently rely on a copper connection, is there anything that would make it difficult or impractical to switch to a different technology (e.g. cost or a medical alarm)?

Not applicable – I don't have a copper connection.

If you answered 'Yes', please provide your reason(s) below::

Which of these telecommunication services are critical for people to access?

Voice calling, Broadband

If other, please explain::

It remains important for users to access telecommunications services capable of supporting voice functionality, including VoIP, in an effective way without excessive latency. The new scheme should be designed in a manner that recognises that the availability of reliable quality voice functionality is no longer limited to legacy technologies and can now be provided over a variety of different network technologies.

Any requirement to provide voice should explicitly include VoIP as part of the definition of voice. And while voice calling remains important, it has been overtaken by broadband in terms of day-to-day usage and importance. The new scheme should ensure that eligible services satisfy minimum broadband standards, with the potential for those standards to be revised over time as technologies and consumer expectations evolve.

Do you have any concerns about the potential removal of directory services (white pages listing, print telephone book and directory assistance)?

No

If you answered 'Yes', please provide your reason(s) below::

### Geographically Consistent Pricing

Do you agree or disagree with our recommendation that the Commerce Commission review and assess the effectiveness of GCP.

Not Answered

Please explain the reason for your selection. If you identified an alternative, please explain.:

### Basic fibre services

Do you agree or disagree with our recommendation that the Commerce Commission should review anchor services and consider the option of a phased repeal as part of their next regulatory reset in 2027?

Not Answered

Please explain the reason for your selection. If you identified an alternative, please explain.:

### Fibre Regulation

Do you wish to skip this section?

Yes

## Telecommunications Development Levy & Telecommunications Regulatory Levy methodology

Do you wish to skip this section?

No

### How revenue is defined

Do you have a preferred option?

Status quo – base the levies on qualified revenue

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages::

The status quo works well. It is relatively well-understood after more than a decade of operation, and the majority of ambiguities and edge cases have now been identified and resolved. We are concerned that a move to a new calculation approach could lose the body of understanding that has been up over time.

Basing the levies on qualified revenue is also justified on a principles-based level. The High Court has previously (in the REANNZ decision) noted that the purpose of the TDL is that “beneficiaries of the TDL funded services (who seem to have been regarded as synonymous with the users of telecommunications services) provide the funding of those services”. This is achieved because the “qualified revenue” concept links the revenue to a public telecommunications network. That is, there is a link between the use of a network by members of the public, and the fact that levy beneficiaries are also members of the public.

Moving to gross telecommunications revenue would capture revenue from private telecommunications networks and services that are far-removed from the beneficiaries of the levy schemes.

Are there any unintended consequences of moving from qualified revenue to gross telecommunications revenue?

Yes

If you answered ‘Yes’, please provide your reason(s) below::

As noted in the response to the previous question, moving to gross telecommunications revenue would capture revenue from private telecommunications networks and services that are unrelated from the beneficiaries of the levy schemes.

Should there be any adjustments to the levies to mitigate these (e.g. changes to the levy threshold, rates, should the levy be charged on gross telecommunications revenue from a Public Telecommunications Network etc)?

Yes

If you answered ‘Yes’, please provide your reason(s) below::

If the scheme moves from qualified revenue to gross telecommunications revenue (which Starlink does not support), then only revenue from a public telecommunications network should be captured. That would mean that, for example, revenue from the sale of hardware that is owned by end-users (and does not form part of the PTN) would be excluded.

### Method for calculating the levy

Which option(s) would you support?

Flat percentage

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages::

Starlink supports the simplicity and predictability of a flat percentage.

Could shifting from a revenue-based levy to a fixed-rate model lead to any unintended consequences? If so, what adjustments to the methodology could help address them?

Unsure

If you answered ‘Yes’, please provide your reason(s) below::

Could a tiered contribution structure help mitigate any unintended consequences of moving to a gross telecommunications revenue model?(E.g. would applying lower rates for smaller providers or differentiating rates between retailers and wholesalers support a more proportionate approach?)

Unsure

If you answered ‘Yes’ or ‘No’, please provide your reason(s) below::

A tiered contribution structure that differentiates between the largest providers and others could potentially support smaller providers and in doing so promote competition and market entry. However, this would be heavily dependent on the tiers set. These uncertainties mean that Starlink prefers the simplicity of a flat percentage.

## Auditing Requirements

Do you have a preferred option?

Remove the requirement for financial information to be externally audited

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages::

Starlink supports the removal of the requirement for financial information to be externally audited. This would reduce the administrative burden on providers in meeting their levy compliance requirements, whilst being unlikely to result in detriment to the overall scheme given the existence of regulatory investigative powers.

Are there any unintended consequences of removing the requirement for financial information to be externally audited every financial year?

No

If you answered 'Yes', please provide your reason(s) below::

## Should the levies be merged

Do you have a preferred option? (Select one)

Merge the TDL and TRL

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages::

For simplicity and administrative efficiency, we suggest merging the TDL and TRL.

Could there be any unintended consequences of merging the TDL and TRL?

Unsure

If you answered 'Yes', please provide your reason(s) below::

## Who is required to pay the levy

Do you have a preferred option?

Status quo - charge the levies to both retailers and wholesalers

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages::

Starlink supports the status quo. Charging the levy only on retailers would unduly place a disproportionately higher burden on retailers. And, as the Ministry has noted, this would affect different wholesalers in different ways -- reduced wholesaler costs would not necessarily be passed on to retailers, given some wholesalers operate local monopoly networks.

Would there be any unintended consequences of charging the levies on retailers and not wholesalers (for example, would it risk increasing costs for retailers and/or consumers)?

Yes

If you answered 'Yes', please provide your reason(s) below::

As noted above, charging the levy only on retailers would lead to increased retail prices and would not necessarily lead to lower wholesale prices.

## Balancing the costs and benefits of regulation

Do you wish to skip this section?

No

## Consideration of costs and benefits

Do you have a preferred option?

Overarching purpose statement to require consideration of costs and benefits

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages: :

Starlink considers that the Commerce Commission should, as a matter of course, be considering the costs/benefits of regulatory work in all of its activities in respect of the Telecommunications Act. A general purposive statement would:

- contribute to ensuring that regulatory interventions are proportionate, evidence-based, and directed at achieving net positive outcomes; and
- encourage transparency and accountability, compelling the Commerce Commission to articulate the rationale for its actions and the anticipated effects on stakeholders.

If you prefer option 2, are there any unintended consequences to consumers or industry that might arise from having an overarching purpose statement:

No

If you answered 'Yes', please provide your reason(s) below::

Starlink is not aware of any potential unintended consequences. The Commerce Commission's decision-making and regulatory activities should, as a matter of regulatory best practice, already entail some analysis of expected impacts (i.e. cost/benefit). Formalising this requirement simply creates clarity and consistency. A clear mandate to weigh costs and benefits can streamline regulatory processes by discouraging unnecessary or inefficient interventions, ultimately reducing wasted resources and litigation risks. Codifying this requirement may also result in an increase in activities and decisions being pursued that deliver genuine public value, and would provide increased consumer confidence in regulatory outcomes.

If you prefer option 3, which parts of the Telecommunications Act 2001 should the sectional purpose statements apply to:

If you answered 'Other', what sections and why?:

Are there any unintended consequences to consumers and industry that might arise from having sectional purpose statements?

Not Answered

If you answered 'Yes', please provide your reason(s) below::

## Response ID ANON-KAUD-75WR-T

Submitted to Telecommunications Sector Regulatory Review - Consultation  
Submitted on 2025-09-25 21:41:00

Have your say

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I consent to the Ministry for Regulation sharing my contact details with another government agency and I am happy to be contacted if required.

Yes

Demographic information

What is your email address?

Email Address:

s@bainz.co.nz  
9(

Are you making a submission on behalf of an organisation or as an individual?

Organisation

Organisation Submission

What is the name of your organisation?

Name of organisation:

BAINZ Consulting Limited & Broadband and Internet New Zealand Limited

I consent to my organisation's name being publicly released by the Ministry for Regulation as a submitter to the Review.

Yes

If no, please can you explain why: :

What best describes the nature of your organisation in relation to telecommunication services? (Please tick all that apply)

Mobile Network Operator (MNO), Retail service provider, Dispute Resolution Provider, Infrastructure deployment and operation, Industry group

If other, please specify in the box below. :

Permission to Contact You About Your Submission

Are you happy for us to contact you if we have questions about your submission?

Yes

Consumer protection and customer service

Do you wish to skip this section?

No

Simplifying rules and strengthening consumer protection

Do you have a preferred option?

An option not included above

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages::

We are not supportive of this proposal of the Commerce Commission's issued codes that are produced by the TCF to be imposed on non-TCF member Service Providers.

The Retail Quality Code is only one of many TCF codes (mandatory and voluntary codes), which is not enough justification for imposing this proposal. Our

argument for rejecting Option 1 and Option 2 is due to these codes being fundamentally flawed and not supporting small Service providers to effectively support services that are impacted by these codes. The following are some of the reasons to support our argument:

#### Retail Quality Code:

- The Retail Quality Code is only one of many codes from TCF. This argument to impose TCF membership for one code does not justify membership for TCF.
- The Retail Quality Code is not a complicated code (as indicated in this section) for any reasonable Service Providers to align to, as it is a minimum operational requirement for their business.
- Under the Customer Quality Code, consumers have the right to raise disputes, but the cost of engaging in disputes often exceeds the value of the disputed issue, resulting in encouraging early settlements and benefiting dispute resolution companies, end-consumers more than the Service Providers.

#### 111 Emergency Calling Code:

- Other TCF codes, such as the 111 Emergency Code, are poorly thought out, and their execution is difficult to apply for many small Service Providers.
- The code doesn't reflect modern consumer behaviour, especially with the rise of over-the-top (OTT) voice services.
- In this code, Service providers are required to supply battery backups to vulnerable customers, which is expensive and unrecoverable over the typical service lifecycle.
- Missed Opportunities for Shared Responsibility: Earlier proposals from the Local Fibre Companies (LFCs) proposed to supply power backups at the Service Providers' costs as part of their Customer Service Experience (CDE) offering, which was rejected, leaving smaller providers to bear the full cost and logistic nightmare of installing such devices consistently across the country.
- Lack of Government Support: Agencies like New Zealand Police, Ministry of Social Development (MSD), Ministry of Health, ACC, etc., do not maintain a register of vulnerable addresses accessible for Service Providers to verify vulnerable users, yet Service Providers are expected to identify and support them without clear guidance or qualifying addresses and funding.

#### Fibre Transfer Code:

- The Transfer Code relies heavily on end-user action and Service Provider correct execution of a transfer order, with limited oversight or support mechanisms.

#### Barriers to Fair Participation in TCF.

- TCF codes are primarily shaped by large Tier Service providers and Network Operators, which limits the ability of smaller operators to contribute meaningfully to code development. This creates rules that can act as barriers to effectively influence smaller Service Providers operating business models.
- Unbalanced Voting Structures: The TCF Product Forum allows voting syndicates, where absent members can still vote through proxies. This can lead to coordinated voting blocks that disadvantage smaller providers and reduce fair inputs to these codes to adjust to their relative size of operations and competition.
- Restricted Access to Codes: Voluntary and mandatory codes are not openly available to all Service Providers. Access is typically limited to TCF members, which reduces transparency and makes it harder for non-members to align with these industry codes.
- Structural Imbalance: The current framework lacks inclusive governance. Smaller providers often have limited representation in decision-making processes, making it challenging to influence outcomes that affect the entire industry.

In our submission, we propose the following alternative approach, which calls for a structural reform of the current telecommunications regulatory framework. Here is a summary of the key elements:

We proposed an Alternative Regulatory Approach: We recommend replacing the current TCF-led and Commerce Commission supported model with a new, independent framework that includes:

- Independent Code Repository: All codes should be voluntary for smaller Service Providers and should be publicly accessible through a neutral platform, which is not restricted to TCF members.
- Reformed Governance Structures: Ensure equal representation across all Tiers of Service Providers in code development and balanced voting rights.
- Introduce tiered adoption models for Codes, instead of blanket enforcement based on the size of the Service Provider.
- Open Consultation Process: Allow all Service Providers, regardless of TCF membership, to participate in open consultations in the development of codes, rather than the current model where TCF only provide final feedback on already drafted codes.
- New Independent Body for Code Development: Transfer oversight of code development to a new independent entity. The Commerce Commission should play a supporting role, not a leading one, due to its limited engagement with smaller Service Providers and perceived favouritism toward large-tier Service Providers and Network Operators.

Could there be any unintended consequences (to consumers or industry) by creating a single enforceable Commerce Commission code for regulating retail service quality?

Yes

If you answered 'Yes', please provide your reason(s) below::

Our proposed framework, led by an independent body with open access to codes and inclusive governance, would:

1. Ensure diverse industry input, especially from smaller and emerging Service Providers.
2. Promote fair competition and reduce barriers to market entry.

3. Support consumer choice by encouraging innovation across all tiers of Service Providers.

To avoid unintended consequences, we recommend:

1. A transparent, multi-stakeholder process for developing any enforceable code.
2. Phased adoption based on the Service Provider size and capability.
3. Clear accountability and support mechanisms for implementation from government funding.

This approach balances consumer protection with industry diversity and innovation.

## Access to basic telecommunications services

Do you wish to skip to the next section?

No

## Future of the Telecommunications Service Obligations arrangement

Do you have any preferred option(s)? (Please select all that apply)

An option not included above

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages::

Yes, there are clear indications that the current Telecommunications Service Obligations (TSO) framework is no longer appropriate with the phasing out of copper services.

We are pleased to see that this government regulation consultation recognises connectivity as a fundamental service, on par with essential (utility) services such as electricity and water. In today's digital society, internet and voice services are not luxuries; they are necessities. These services enable access to families to stay connected, education, employment, healthcare, and social connection, and must be recognised as a basic human right. Ensuring equitable access to connectivity is critical to building inclusive, resilient communities across Aotearoa New Zealand.

We supported the recent Digital Equity Fibre Internet trial that we ran for seven months (from December 2024 to July 2025) on the Broadband & Internet New Zealand Limited (BAINZ) network, focused on providing affordable and flexible open-term fibre internet services to residents at Kāinga Ora homes where fibre broadband was not actively used. The trial revealed significant affordability barriers, particularly among elderly residents, the unemployed, and young families with limited disposable income opportunities.

During this pilot, we encountered many households with disposable incomes under \$30 per month, where the choice between basic internet access and essential food items was a real and recurring dilemma. Our fibre Digital Equity service offering was priced as low as \$26/month with unlimited data downloads (normally costing over \$58/month), which demonstrated that affordable fibre connectivity is possible - but not currently available under the TSO framework.

As part of our findings during this trial, we discovered:

1. Fibre internet connectivity was declining among low-income families, who are resorting to Fixed-Wireless Access (FWA) Pay-As-You-Go services, with restricted download limits, which are pushing many communities into "digital darkness" and higher incremental cost services (over FWA).
2. Some elderly customers that we encountered during this trial had decided to disconnect from their communication services, resulting in being disconnected from their direct families due to the high costs of basic internet services.
3. The current TSO, focused on legacy copper voice services, does not reflect modern digital needs such as internet access for social connectivity, education, health, and employment opportunities.
4. Infrastructure gaps, basic technology requirements (e.g. W-Fi routers), digital literacy challenges, and systemic funding limitations further isolate vulnerable communities.

Our Proposed Alternative: Replace the TSO with a Basic Digital Fibre Service

We recommend replacing the legacy TSO with a Basic Fibre Connectivity Service that includes:

1. Free or subsidised fibre internet access for those in need, treated as a fundamental utility for all households.
2. Minimum guaranteed speeds (e.g., 2 Mbps) for free essential online activities.
3. Flexible, low-cost service (e.g., at or better than 30 Mbps) tailored for digital equity at subsidised costs.
4. Use of the Telecommunications Development Levy (TDL) to fund infrastructure, support services, and community digital connectivity programs.

We feel that a free TSO/TDL-funded, free digital connectivity incentive is best supported by the fibre companies as opposed to Service Providers, as this will further ensure their fibre network is maintained to an adequate level for future generations to enjoy. This will mean LFCs can operate at Layer 3 and

above to support such services.

A subsidised Digital Equity service offering (speeds of 30 Mbps or better) should be made available for Service Providers to on-sell to consumers at a cost below \$30 per month.

This approach would ensure that no household is left behind, and that fibre connectivity becomes a core part of New Zealand's social infrastructure, not a luxury.

Additionally, this approach will ensure that the fibre access network is fit-for-purpose (i.e. fibre cuts are repaired and maintained (under the statutory Fibre Access Rights) as it evolves in an uncertain future where fibre access is becoming less popular over alternative technologies such as 5G cellular, Fixed Wireless Access, Satellite or other emerging technology types.

If you included Option 3 'ensuring access to basic telecommunication services' as one of your preferred options, please indicate your preference between the following:

Not Answered

Are there any unintended consequences that might arise from phasing out or replacing the current TSO arrangement?

Yes

If you answered 'Yes', please provide your reason(s) below::

Potential Consequences of Phasing Out the TSO with no subsidised alternatives

1. Loss of Guaranteed Access, particularly for Vulnerable Communities: For communities that depend upon the TSO rights and, in particular, those communities that are in remote areas where reliable and consistent communication services are not available, they will be further disadvantaged by low-quality and/or high-cost basic services.
2. Market-Driven Gaps in Service: If the TSO is removed and not replaced with a socially focused alternative, service provision may become entirely market-driven. This could result in underserved areas being ignored for development or social support, especially where commercial returns are low.

If you currently rely on a copper connection, is there anything that would make it difficult or impractical to switch to a different technology (e.g. cost or a medical alarm)?

Not applicable – I don't have a copper connection.

If you answered 'Yes', please provide your reason(s) below::

Which of these telecommunication services are critical for people to access?

Voice calling, Broadband, Other

If other, please explain::

In addition to voice and broadband services, we also consider Messaging Services to be an essential form of communication, particularly for rural and remote communities with limited access to traditional connectivity options.

Messaging services can include platforms such as:

- SMS (Short Message Service): Still widely used for basic communication, especially in areas with limited internet access.
- Rich Communication Services (RCS): A modern upgrade to SMS that supports multimedia and group messaging, often integrated into mobile networks.
- Instant Messaging Apps: Services like WhatsApp, Signal, or Messenger that operate over data networks and are often more affordable and accessible than traditional voice calling services.
- Emergency Alert Systems: Government or civil defence messaging platforms that deliver critical updates via text or app-based notifications.

These services can become a minimal communications platform capability for remote and rural communities, and an essential business application for geospatial, tracking services and technologies such as Internet of Things (IoT).

Messaging allows for asynchronous communication, which is less resource-intensive than voice, video and real-time services, and can be used for healthcare reminders, education updates, job alerts, and community coordination.

We consider technologies such as 450 MHz 5G cellular services to be ideal for enabling these types of services due to their long-range radio coverage, deep building penetration, and support for low-bandwidth applications.

These services should be recognised as part of the essential digital infrastructure needed to ensure safety, inclusion, and resilience across all communities in Aotearoa New Zealand.

Broadband & Internet New Zealand Ltd (BAINZ) is a registered Mobile Network Operator (MNO) in New Zealand, approved by the Ministry of Business, Innovation and Employment (MBIE) and the International Telecommunication Union (ITU). As part of our ambition is to expand equitable access to essential communication services to all parts of Aotearoa, we intend to request access to the 450 MHz spectrum to deliver land mass coverage for basic voice, messaging, and geospatial tracking services. This was also requested in our submission to the Parliamentary Select Committee on 26 September

2024.

If granted access to this spectrum, we will deploy these services on our 5G Standalone Core Network, which is already tested (at 3.30 GHz) and designed to support 5G MNO, Private 5G and 5G Satellite-ready services, including low-bandwidth, high-reliability applications. This includes:

- Fixed-Wireless-Broadband Services,
- 5G Mobility Voice & Data Services,
- Roaming agreements,
- Public Emergency Service & Future Mobile Railway Services,
- Emergency messaging and alerts for civil defence and public safety, and
- Geolocation and tracking.

We believe 450 MHz for 5G is an ideal technology evolution to support these capabilities due to its long-range coverage and strong building penetration, making it especially suitable for critical communications and digital equity initiatives.

Do you have any concerns about the potential removal of directory services (white pages listing, print telephone book and directory assistance)?

Unsure

If you answered 'Yes', please provide your reason(s) below::

### Geographically Consistent Pricing

Do you agree or disagree with our recommendation that the Commerce Commission review and assess the effectiveness of GCP.

Alternative option

Please explain the reason for your selection. If you identified an alternative, please explain.:

Regional Price Disparity:

The cost of delivering fibre internet services to regions outside the Auckland area is significantly higher, primarily due to the higher backhaul transport costs. All international internet peering traffic for Aotearoa is generally routed through International Peering Gateway providers located in Auckland, meaning that traffic from regions outside Auckland is higher, especially those in the South Island.

Only Chorus offers a Tail Extension (backhaul on a per customer connection) service, which enables service providers to connect users to their handover links closer to their internet peering hubs. This Tail Extension service imposes an additional cost burden for Service Providers of approximately \$4-\$6 per connection per month compared to Auckland local-based services.

In contrast, other LFCs do not offer Tail Extension services, making it technically challenging and financially prohibitive for smaller providers to deliver cost-effective services over these other LFC networks. This lack of backhaul service offerings across the other LFCs exacerbates regional inequities in connectivity costs.

While the Geographically Consistent Pricing (GCP) model offers a transparent and uniform pricing framework across New Zealand (aligned with annual CPI adjustments) it does not account for the real and variable costs of backhaul transport.

Local Community Price Disparity:

From our experience delivering Fibre Digital Equity services, we have found that price discounting is essential to ensure affordable connectivity for underserved and disadvantaged communities, many of which are identifiable by low-decile schooling zones. Standardised pricing, though well-intentioned, can unintentionally act as a barrier to equitable access.

Recommendations

To address these challenges, we propose the following:

1. Introduce regional pricing flexibility based on actual backhaul and infrastructure costs.
2. Implement targeted affordability mechanisms for underserved and disadvantaged communities.
3. Review service parity across LFCs, including the availability of Tail Extension-like services to ensure fair competition and service delivery.

We welcome the review of the GCP framework and strongly advocate for the inclusion of affordability considerations for low-income communities. We encourage regulators to explore alternative tools that balance nationwide consistency with regional affordability and infrastructure realities.

### Basic fibre services

Do you agree or disagree with our recommendation that the Commerce Commission should review anchor services and consider the option of a phased repeal as part of their next regulatory reset in 2027?

Alternative option

Please explain the reason for your selection. If you identified an alternative, please explain.:

The anchor services are outdated and no longer reflect the needs of our communities. The anchor service model has evolved from a 30/10 Mbps plan to 50/10 Mbps, and now to a 100/20 Mbps plan. While these anchor plans may have once represented a fair entry-level service at a reasonable market price, they are now misaligned with the requirements of many consumers, particularly those with low or intermittent internet usage and looking for affordable services (comparable with other priced technologies such as cellular Fixed Wireless Services that are priced below \$40 per month).

Key points to consider as alternatives:

1. Anchor services do not support digital equity: These regulated anchor products are set at speeds and price points that do not address the needs of low-income or low-usage individuals. Many in our community require more affordable, lower-bandwidth options currently blocked by anchor product definitions. This regulatory constraint prevents the market from offering truly low-cost, basic fibre services that could help bridge the digital divide.
2. Anchor Products are subject to Predatory Pricing: In comparison with other higher fibre speed plans, the anchor product offers extremely low returns, which is partially due to predatory pricing by some Fixed Wireless Service providers, making them uncompetitive.
3. Market constraints: Regulation inadvertently stifles innovation and competition at the lower end of the market by mandating only these higher-speed anchor products. Providers are discouraged from developing and offering lower-speed, lower-cost plans that could better serve disadvantaged groups.
4. Fibre network maintenance and serviceability: We also highlight a critical issue that may not be addressed elsewhere in this consultation: the ongoing maintenance of the fibre access network. In our experience, some "fibre intact" addresses are unserviceable due to on-site missing or damaged infrastructure equipment (such as ONTs or damaged fibre). The cost to rectify these issues is often unaffordable for many end users, and if left unaddressed, this will undermine confidence in the fibre industry over time.
5. Fixed Wireless Access is not a substitute: We do not support a shift from fibre to Fixed Wireless Access (FWA) as a solution for basic connectivity. FWA does not provide the desired quality of services or reliability as fibre, and should not be considered an equivalent replacement for regulated fibre services.

We recommend that the Commerce Commission's review of anchor services in 2027 should:

1. Consider removing anchor service definitions to support lower-bandwidth, lower-cost fibre products that support digital equity.
2. Ensure that fibre network maintenance and serviceability are addressed, with clear accountability and affordable solutions for end users.
3. Maintain a focus on fibre as the gold standard for connectivity, and avoid policies that would encourage a shift to inferior technologies like FWA for basic services.

## Fibre Regulation

Do you wish to skip this section?

No

## Governance settings in Local Fibre Company constitutions

Do you have any preferred option(s)?

An option not included above

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages::

We support retaining the Government Share in Local Fibre Companies to ensure continued oversight of the fair and non-discriminatory operation of UFB wholesale services availability for all competitors (small and large). This oversight is essential not only for maintaining equitable access to wholesale services for today but also for safeguarding future market integrity. This is particularly more important if UFB fibre operators are permitted to operate at Layer 3 and above.

Government oversight should also be extended to Tier 1 and Tier 2 Network Operators (including MNOs, MVNOs) and Service Providers to ensure that anti-competitive and anti-social behaviours such as discriminatory access and predatory pricing are not occurring. Regulatory mechanisms must be in place to uphold fair competition and prevent market distortion.

In addition, service providers must be held accountable to ethical standards in their provision and access to content. This is especially important in the current environment, where large multinational investors and fake content dominate the communications, social media, and broadcast sectors. Without robust government oversight, there is a real risk that these entities could undermine democratic values, consumer rights, and digital equity. If direct oversight is not feasible, then the Government must ensure that no single entity is allowed to dominate New Zealand's communications, social media, and broadcast industries, and must be held accountable for providing factual and trustworthy services to its consumers.

We also recommend that the Line of Business Restrictions on UFB fibre companies be lifted to allow them to compete in two key sectors:

- 1) Wholesale Fixed Wireless Broadband Services: Many consumers are not satisfied with fibre lead-ins to their properties. Allowing UFB operators to offer wholesale Fixed Wireless Access (FWA) and mobility services would provide an alternative mechanism to support business growth and meet evolving consumer needs. This flexibility is vital for innovation and responsiveness in a changing technological landscape and supports the development of local

communications infrastructure.

2) Wholesale Content Delivery and Internet Connectivity Services: UFB operators should be allowed to extend their services to include wholesale content delivery (CDN), internet peering connectivity services, and support for regional service providers - especially in remote and underserved areas where fibre infrastructure or alternative quality access services are not readily or reliably available.

In summary, retaining the Government Share ensures accountability and fairness, while lifting Line of Business Restrictions enables innovation, competition, and broader service reach, both of which are essential for a growth and inclusive telecommunications sector.

Would there be any unintended consequences of removing the Government Share?

Yes

If you answered 'Yes', please provide your reason(s) below::

While removing the Government Share could streamline decision-making and reduce administrative overhead for UFB wholesale providers, it is important to consider several potential unintended consequences:

1. **Reduced Public Oversight and Accountability:** The Government Share currently provides a mechanism for public oversight, ensuring companies align with the broader interests of New Zealanders. Without this safeguard, there is a risk that decisions could be made with less transparency or consideration for long-term public benefit.
2. **Market Concentration and Reduced Competition:** The removal of the Government Share could make it easier for large investors or industry players to acquire significant stakes in LFCs. Over time, this could increase market concentration, potentially reducing competition and limiting consumer choice in the communications sector.
3. **Vulnerability to External Influence:** Without government oversight, LFCs could become more susceptible to influence from external parties, including social and economic international investors. This could impact the strategic direction of New Zealand's digital infrastructure and may not always align with national interests.
4. **Impact on Social and Economic Objectives:** The Government Share has helped ensure that LFCs support social and economic objectives, such as digital inclusion and equitable access to high-quality broadband. Removing this mechanism could make it more challenging to maintain a focus on these broader goals, especially in underserved or rural areas.
5. **Potential for Regulatory Gaps:** While legislation and Deeds provide important protections, the Government Share offers an additional layer of assurance. Its removal could create gaps in the regulatory framework, particularly in areas where rapid market or technology changes outpace legislative updates.

Importantly, with the recommendation to allow LFCs to extend their remit beyond Layer 2 and offer services at higher layers (Layers 3 to 7), the need for effective regulatory oversight becomes even more critical. Expanding the scope of LFCs' activities could reshape the competitive landscape, potentially impacting other industry participants and increasing the risk of market dominance. Robust oversight will be essential to ensure that competition is not constrained, innovation is encouraged, and the interests of consumers and the broader public continue to be protected.

As we consider the importance of ongoing government oversight, it is also essential to ensure that such oversight remains impartial and focused on the long-term interests of New Zealanders. In particular, care should be taken to avoid undue influence from competing technology service providers (e.g. MNOs, satellite, or other alternative technology platforms), who are not regulated by similar oversight and who may have commercial incentives to shape regulatory settings in ways that disadvantage fibre-based services. By maintaining a balanced and technology-neutral approach, government oversight can help foster healthy competition across all platforms, ensuring that consumers benefit from genuine choice, innovation, and high-quality services.

## Ownership restrictions in Local Fibre Company constitutions

Do you have a preferred option?

An option not included above

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages::

Given the current social and economic realities, we recognise the importance of maintaining appropriate government oversight to safeguard New Zealand's communications sector. This oversight should apply to all Network Operators (not exclusive to UFB only) and support transparency, diversity, and the long-term stability of our digital infrastructure and quality communication services that protect users from negative social influencers and dominating investors.

While we see the value in government oversight, we do not consider Crown Infrastructure Partners to be the most suitable body to perform this role. Our experience has shown that their approach to funding allocation and industry engagement has not always provided the level of fairness and opportunity needed to support effective evolution and investment across the sector. For this reason, we believe that oversight should be structured in a way that ensures impartiality and equal opportunity for all participants, enabling New Zealand's communications sector to thrive and adapt to future challenges.

Would there be any unintended consequences of removing the ownership restrictions?

Yes

If you answered 'Yes', please provide your reason(s) below::

Yes, removing ownership restrictions from Local Fibre Company (LFC) constitutions could have several unintended consequences, even with other legislative protections in place. Here are some reasons for our consideration:

1. **Increased Risk of Market Concentration:** Without ownership caps, there is a possibility that a small number of investors or large entities could acquire significant stakes in LFCs. This could reduce diversity in ownership and potentially lead to less competition, which may impact pricing, service quality, and innovation.
2. **Reduced Local Influence and Control:** Ownership restrictions have helped ensure that LFCs remain responsive to local needs and priorities. Removing these restrictions could make it easier for overseas or non-local investors to gain control, potentially shifting the focus away from community interests. Potential for Strategic Takeovers
3. **Impact on Public Trust:** The original ownership rules were designed to protect public investment and ensure transparency. Their removal could raise concerns among stakeholders about the ongoing oversight of critical infrastructure, especially if ownership becomes less transparent or more concentrated.
4. **Challenges for Smaller Providers:** If larger players are able to increase their ownership stakes, smaller providers may find it harder to compete or access wholesale services on fair terms, potentially reducing the diversity of offerings available to consumers.

## Layer 1 unbundling

Do you have any preferred option(s)?

Consider repeal as part of the next regulatory reset in 2027

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages::

The UFB initiative introduced the concept of Equivalence of Input (EOI) to ensure separation between Layer 1 (physical fibre) and Layer 2 (wholesale broadband) services, aiming to promote competition and open access. However, in practice, the uptake of EOI-based Layer 1 services in New Zealand has been limited and overall, a failure. This is largely due to the economic realities of a localised growth model where scale supports a viable business model and price advantage, which have not been possible.

Given this context, it may be appropriate to reconsider how unused or underutilised EOI Layer 1 fibre is managed. One option could be to allow LFCs to repurpose or more flexibly utilise this spare fibre capacity, provided this is technically and commercially feasible. This approach could help maximise the value of existing infrastructure and better support possible evolving market needs for the future.

The Layer 1 unbundled fibre should not be given to any Network Operator that is not subject to government oversight.

Would there be any unintended consequences of repealing all Layer 1 unbundling obligations?

No

If you answered 'Yes', please provide your reason(s) below::

## Exemption process for services above Layer 2

Do you have a preferred option?

An option not included above

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages::

While we support lifting restrictions on LFCs and Chorus to allow them to offer services above Layer 2, we propose going further:

1. Allow LFCs and Chorus to become full-service wholesale and reseller service providers, including end-to-end Internet, voice, Content Delivery Networks (CDNs), value-added and other innovative services.
2. This would future-proof New Zealand's digital infrastructure and ensure a competitive, innovative, and resilient market.
3. We support allowing Chorus and LFCs (contrary to past government submissions by us) to offer wholesale Fixed Wireless Access (FWA) and Mobility Services (based on 3GPP standards) that all Service Providers can access equally for their customers.

We are of the view that Mobile Network Operators (MNOs) in New Zealand have exceeded their dominance in the wireless communications sector through persistently high cellular pricing. While these elevated prices should reflect premium service offerings, MNOs have offset their impact by predatory pricing on their fibre broadband plans. This practice undermines fair competition and makes it increasingly difficult for independent fibre service providers to compete effectively in the market.

Moreover, this pricing strategy has a dual effect: It distorts the fibre broadband market and creates barriers for Mobile Virtual Network Operators (MVNOs) seeking to offer competitive mobile services. MVNOs are often denied access to fair wholesale pricing, which restricts their ability to provide

consumers with affordable and innovative mobile solutions.

Would there be any unintended consequences of streamlining the exemption process?

Yes

If you answered 'Yes', please provide your reason(s) below::

Expanding the remit of Chorus and the LFCs to offer services beyond Layer 2 (including Layers 3 to 7) would enable them to deliver a broader range of digital services and drive further innovation. However, it is important to recognise that such a move could also impact other industry participants who currently provide these higher-layer services. Without appropriate safeguards, there is a risk that competition could be reduced, making it more challenging for other providers to maintain, compete or grow their market share.

### Fibre deregulation review process

Do you have a preferred option?

An option not included above

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages::

We believe the fibre industry in New Zealand is currently subject to a level of regulation that has disproportionately favoured large Tier 1 Network Operators and Service Providers that have competing technologies. This imbalance has contributed to poor return on investment for UFB fibre infrastructure providers, which in turn risks limiting future reinvestment and innovation in the sector.

While we agree that price controls may be necessary to ensure affordability, they should be applied consistently across all Tier 1 Network Operators and Service Providers, including those offering satellite, mobile and other technologies.

If a consistent regulatory approach cannot be applied across these providers, we recommend that regulatory constraints for Chorus and the LFCs be lifted to allow them to fairly compete and be granted greater flexibility, including relief from certain regulatory restrictions. This would help ensure a more balanced and competitive environment, encourage infrastructure investment, and support the long-term sustainability and growth of New Zealand's fibre industry.

Would there be any unintended consequences of adopting a single step process for deregulation reviews?

Yes

If you answered 'Yes', please provide your reason(s) below::

We are not in favour of either option; we feel that the regulation of the UFB fibre industry should be lifted. If it cannot be lifted, then it should be equally applied to the other Tier 1 Network Operators and Service Providers.

### Legacy regulatory obligations in telecommunications

Do you have a preferred option?

No preferred option

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages: :

Would there be any unintended consequences of streamlining and modernising these Deeds?

No

If you answered 'Yes', please provide your reason(s) below::

### Telecommunications Development Levy & Telecommunications Regulatory Levy methodology

Do you wish to skip this section?

Yes

#### How revenue is defined

Do you have a preferred option?

Status quo – base the levies on qualified revenue

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages::

We support maintaining the current status quo for levy calculations based on qualified revenue. This approach allows new and competitive operators to enter the market without being immediately burdened by levy obligations. If these operators are successful, they will naturally reach the \$10 million revenue threshold, at which point they can contribute fairly to the levy system. This model encourages innovation and growth while ensuring that contributions are proportionate to market success. Simplifying the reporting process may be beneficial, but any changes should preserve the principle of fairness and avoid creating barriers for emerging providers.

Are there any unintended consequences of moving from qualified revenue to gross telecommunications revenue?

No

If you answered 'Yes', please provide your reason(s) below::

Should there be any adjustments to the levies to mitigate these (e.g. changes to the levy threshold, rates, should the levy be charged on gross telecommunications revenue from a Public Telecommunications Network etc)?

Unsure

If you answered 'Yes', please provide your reason(s) below::

## Method for calculating the levy

Which option(s) would you support?

Status quo – keep the levy-based proportion of total industry revenue

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages::

Could shifting from a revenue-based levy to a fixed-rate model lead to any unintended consequences? If so, what adjustments to the methodology could help address them?

Yes

If you answered 'Yes', please provide your reason(s) below::

Yes, shifting to a fixed-rate levy model could disadvantage smaller operators for the following reason:

1. Loss of proportional fairness: Under the current model, each provider pays based on their share of industry revenue. This ensures that smaller operators contribute less, in line with their market size.
2. Flat rate burden: A fixed percentage applied uniformly could result in smaller providers paying a disproportionately high share relative to their actual revenue and market impact.
3. Barrier to growth: For emerging or regional providers, higher fixed costs could discourage market entry or expansion, reducing competition and innovation.

Could a tiered contribution structure help mitigate any unintended consequences of moving to a gross telecommunications revenue model?(E.g. would applying lower rates for smaller providers or differentiating rates between retailers and wholesalers support a more proportionate approach?)

Unsure

If you answered 'Yes' or 'No', please provide your reason(s) below::

A tiered contribution structure would help ensure fairness and proportionality in the levy system, especially if the model shifts to one based on gross telecommunications revenue. Smaller service providers and network operators often operate with tighter margins and play a vital role in serving regional, remote, and underserved communities. Applying lower levy rates or maintaining a minimum revenue threshold, as currently set at \$10 million benchmark, would allow these providers to continue innovating and expanding without being disproportionately burdened by regulatory costs.

This approach would also encourage market diversity and competition by lowering barriers to entry for new and emerging players. Differentiating rates between retailers and wholesalers could further refine the model, ensuring that contributions reflect the scale and nature of each provider's operations. Ultimately, a tiered structure supports a more inclusive and sustainable telecommunications ecosystem, aligning with the broader goals of affordability, innovation, and equitable access for all New Zealanders.

## Auditing Requirements

Do you have a preferred option?

Not Answered

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages::

Are there any unintended consequences of removing the requirement for financial information to be externally audited every financial year?

Not Answered

If you answered 'Yes', please provide your reason(s) below::

### Should the levies be merged

Do you have a preferred option? (Select one)

Not Answered

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages::

Could there be any unintended consequences of merging the TDL and TRL?

Not Answered

If you answered 'Yes', please provide your reason(s) below::

### Who is required to pay the levy

Do you have a preferred option?

Not Answered

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages::

Would there be any unintended consequences of charging the levies on retailers and not wholesalers (for example, would it risk increasing costs for retailers and/or consumers)?

Not Answered

If you answered 'Yes', please provide your reason(s) below::

### Balancing the costs and benefits of regulation

Do you wish to skip this section?

No

### Consideration of costs and benefits

Do you have a preferred option?

An option not included above

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages: :

The Fibre Services Market Monitoring Code was crucial during the Ultra-Fast Broadband (UFB) rollout phase. However, now that the UFB programme is complete and fibre is available to over 87% of the population, the continued application of this code in its current form is outdated and increasingly counterproductive.

Rather than supporting transparency, the code is now being used by competing access technology providers (e.g. mobile network operators and satellite providers) to undermine the performance and perception of fibre networks.

If the Fibre Monitoring Code is to remain, equivalent codes should apply to all access technology providers, including:

1. Mobile Network Operators (MNOs)
2. Satellite internet providers
3. Fixed Wireless Access (FWA) operators, etc.

If applied, this should apply to Tier 1 and Tier 2 Service Providers and Network Operators, to ensure regulatory consistency and fairness is being observed on performance and pricing.

### Return on Investment Disparity

Fibre providers operate under tight regulatory constraints, with annual CPI-linked price increases and a restricted Return on Investment (ROI) which may be in single digits (under 10%). In contrast:

Mobile and satellite providers are achieving double-digit ROIs and have no restrictions.

These providers are not subject to the same price-quality regulation; their price increases have disproportionately increased, and they are not subject to

price shock protections for consumers.

This disparity distorts competition and disincentivises long-term infrastructure investment in fibre, a foundational asset for New Zealand's digital economy.

#### Retail Service Quality Reporting Gaps

The current Retail Service Quality (RSQ) reports are incomplete and retracted. This undermines the integrity of the reporting framework and skews market insights, especially when fibre providers are subject to full transparency under Part 6 Information Disclosure.

If fibre and other access providers are recognised as competing technologies, then regulatory obligations should reflect that reality. Otherwise, the current framework risks entrenching competitive imbalances.

If you prefer option 2, are there any unintended consequences to consumers or industry that might arise from having an overarching purpose statement:

Unsure

If you answered 'Yes', please provide your reason(s) below::

If you prefer option 3, which parts of the Telecommunications Act 2001 should the sectional purpose statements apply to:

Other sections

If you answered 'Other', what sections and why?:

BAINZ Consulting Ltd and Broadband & Internet New Zealand Ltd made a formal submission on the Regulatory Systems (Economic Development) Amendment Bill, and presented at a Select Committee hearing (28 September 2024). Our submission outlines key recommendations for amending the Telecommunications Act 2001 to ensure a more equitable and competitive environment for emerging businesses like ours to develop and grow fairly without unfair barriers from government red tape and having equal access to government and Crown funding to develop our mobile and communications services across New Zealand.

Our submission highlights the urgent need for reform to ensure fairer competition in New Zealand's mobile and communications sector. We requested reform and changes to the regulatory framework and the Telecommunications Act 2001, which are summarised as follows:

1. Reform Spectrum Access Rules: We request that access to the radio spectrum beyond fixed wireless access (FWA) be broadened to allow our 5G technology to support full mobility services,
2. Make unused radio spectrum available to us nationally (and by lifting any regional constraints on our current Crown spectrum rights), by re-farming unused or legacy spectrum (e.g. 2G/3G) for new entrants like ourselves, through exclusive spectrum rights where feasible.
3. Amend Part 3 – National Roaming Rules, to allow us as a new Mobile Network Operator (MNOs) to access national roaming rights without unrealistic infrastructure thresholds. To achieve this, we proposed changes to Part 3 of the Telecommunications Act 2001 to remove the threshold for national roaming eligibility.
4. Ensure Equal Access to Government Funding: We require a level playing field in access to Crown and government infrastructure funding. This will require reform to the way Crown Infrastructure Partners (CIP) funding criteria are applied to include emerging operators and community-focused providers and put measures in place to avoid preferential treatment of incumbents.
5. Enforce Fair Tendering Practices We demand that the government prevent the exclusion of alternative providers from government tenders by strengthening probity rules and transparency in procurement to ensure fair competition and prevent vendor lock-in and favouritism.

We also urge the Commerce Commission to look closely at the anti-competitive behaviour by industry "comparison sites". These platforms often promote only a limited set of providers' products and services and typically those who pay for placement or do not compete with their own brands, while deliberately excluding or downranking new entrants on fair terms. This creates a misleading impression of market choice and unfairly blocks smaller or emerging providers from competing on a level playing field.

We have recently raised these concerns with the Commission, but we are concerned that the full extent of the harm caused by these so-called "comparison sites" is not being recognised. Their practices distort consumer choice, entrench incumbents, and severely undermine fair competition in New Zealand's telecommunications market.

Are there any unintended consequences to consumers and industry that might arise from having sectional purpose statements?

Unsure

If you answered 'Yes', please provide your reason(s) below::

## Response ID ANON-KAUD-75Q1-K

Submitted to Telecommunications Sector Regulatory Review - Consultation  
Submitted on 2025-09-25 16:35:37

Have your say

Privacy notice

I consent to the Ministry for Regulation sharing my contact details with another government agency and I am happy to be contacted if required.

Yes

Demographic information

What is your email address?

Email Address:

s 9(2)(a) @chorus.co.nz

Are you making a submission on behalf of an organisation or as an individual?

Organisation

Organisation Submission

What is the name of your organisation?

Name of organisation:

Chorus

I consent to my organisation's name being publicly released by the Ministry for Regulation as a submitter to the Review.

Yes

If no, please can you explain why: :

What best describes the nature of your organisation in relation to telecommunication services? (Please tick all that apply)

Local Fibre Company (LFC), Wholesale provider, Infrastructure deployment and operation

If other, please specify in the box below. :

Permission to Contact You About Your Submission

Are you happy for us to contact you if we have questions about your submission?

Yes

Consumer protection and customer service

Do you wish to skip this section?

No

Simplifying rules and strengthening consumer protection

Do you have a preferred option?

No preferred option

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages::

The RSQ regime is an increasingly vital component of the telecommunications regulatory framework, particularly in light of the continued deployment of 5G infrastructure. The commercial incentives for vertically integrated mobile network operators to migrate fibre customers to their own fixed wireless services, combined with the information asymmetry between those providers and end-users, present a genuine risk that consumers may be sold services that do not meet their needs.

Chorus is legislatively prohibited from supplying fibre services directly to end-users. It is therefore appropriate and consistent with the intent of the Act for retail regulation to continue to be applied only to retail service providers. We do not have a preferred view on the specific implementation of the RSQ regulatory framework, provided it efficiently and effectively achieves the intended outcome to improve retail service quality to reflect the demands of end-users of telecommunications services.

Could there be any unintended consequences (to consumers or industry) by creating a single enforceable Commerce Commission code for regulating retail service quality?

Not Answered

If you answered 'Yes', please provide your reason(s) below::

## Access to basic telecommunications services

Do you wish to skip to the next section?

No

## Future of the Telecommunications Service Obligations arrangement

Do you have any preferred option(s)? (Please select all that apply)

Phase out the requirement to provide home telephone service

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages::

In light of the Review's terms of reference, framework and approach, we consider the removal of the TSO to be one of two key issues the Review should address, alongside the removal of the ownership restrictions on Chorus.

We support removal of the existing TSO arrangements, with consumers being protected through legally-binding commitments from Chorus. It is important to clarify at the outset that removal of the TSO will not affect the general availability of home telephone services to New Zealanders. The TSO is not a universal guarantee that every New Zealander can access a home telephone service (as implied from the description of Option 1). The TSO applies only to a specific, diminishing set of addresses which had a phone line on 20 December 2001 and do not have access to fibre services. Landline services delivered over fibre, wireless, or mobile networks are commercially and widely available and will remain so following removal of the TSO.

The TSO is obsolete and removing it should be part of the focus on solving the real challenges facing rural New Zealand – particularly the persistent digital equity gap between urban and rural communities. As outlined in this section, the TSO is no longer delivering meaningful value to rural New Zealanders. In practice, it acts as a barrier to the uptake of widely available modern services that offer superior performance and comparable pricing to legacy copper-based (including TSO) services (which were identified by the Commerce Commission in its recent Copper Services Investigation (Final Recommendation Report, 21 August 2025).

Chorus is very mindful of the long legacy the copper network has in New Zealand and is committed to making the transition to modern technologies as smooth as possible for all users. An important factor in facilitating a smooth transition is certainty – and the continued presence of legacy regulation affecting the copper network means consumers are receiving conflicting signals about the future of copper. All industry participants, regulators and policymakers need to be clear with consumers that the copper network is being retired and work together to ensure consumers understand their options for moving to services that better meet their needs.

Once the TSO is removed, a set of robust and comprehensive consumer protections would apply to the withdrawal, over time, of TSO services delivered over the copper network. These protections, being agreed between Chorus and the Commerce Commission, would apply to all remaining rural copper connections and be legally-binding on Chorus.

Importantly, consideration of removing the existing TSO arrangements (Option 2) must be separated from any consideration of a new service obligation (Option 3). The existing TSO arrangements are obsolete and should be removed without delay. The TSO applies to a voice service that supports dial-up internet and analogue fax, i.e. services which are no-longer relevant for consumers, with modern alternatives now commercially available. Additionally, the arbitrary address set to which the TSO applies (addresses that had a phone line on 20 December 2001, and do not have access to fibre services) creates unnecessary confusion. Few consumers are likely to know whether the TSO applies to their address or what that means in practice.

There is precedent for immediate removal of the TSO. The 2018 amendments to the Act disapplied the TSO at addresses with fibre services available (over 80% of addresses in New Zealand at the time, now over 87%), independently of whether Chorus could meet its obligations under the Copper Withdrawal Code at an address. We anticipate a similar approach (immediate removal) could be taken for remaining TSO addresses – recognising that the legally-binding consumer protections outlined above will apply to TSO addresses.

We provide supporting detail below.

-- Overview --

The rationale for the TSO dates back to the privatisation of Telecom NZ in the late 1980s and is irrelevant in 2025.

The TSO is a framework that ensures the price capped availability of a fixed-line voice telephone service which supports dial-up internet and analogue fax services. The service must be made available to residential properties that had a telephone service on 20 December 2001. The TSO does not apply in areas the Commerce Commission has declared to be 'specified fibre areas' – essentially, areas where one of the UFB network partners has installed fibre network.

The TSO is implemented through two instruments:

- TSO Deed for Local Residential Telephone Service between Spark and the Crown which requires Spark to make the retail service available at the relevant addresses; and
- TSO Deed for Network Service between Chorus and the Crown which requires Chorus to provide Spark with a network input service to support the retail service.

Today, the TSO construct is manifestly obsolete. The continued TSO obligation now operates only to impose costs and create confusion as the copper network that has traditionally supported TSO services is retired. The TSO should be removed and its removal should be expedited.

The Deeds can be terminated by mutual agreement, or their 'Deemed TSO instrument' status can be revoked through s76 of the Act in which case the TSO Deeds will terminate. No legislative changes are required.

-- What was the rationale for government intervention? --

In 1989 Telecom NZ had an absolute monopoly over telecommunications services in New Zealand. When the company was privatised, the government established the 'KiwiShare Obligation' (KSO) which capped the price of a residential landline and set it on a CPI price path. This intervention was to prevent an absolute monopoly extracting rents from a basic consumer utility. The price cap set at 1 November 1989 continues to apply today.

In 2001, the KSO was given a statutory framework and changed to the TSO. Though the 1989 price cap was maintained, the service requirement was updated – the voice service guaranteed by TSO now needed to support dial-up internet (at a minimum speed of 9.5kbps) and fax services using procedures and equipment generally available in 2001. The TSO geographic footprint was also frozen as at 20 December 2001.

The 2001 amendments recognised that though there were the beginnings of competitive entry into telco markets in New Zealand, Telecom NZ still had an effective monopoly and a price control on the basic utility service remained warranted. The freezing of the geographic footprint recognised that any expansion of the telephone network would need to be on a commercial basis.

In 2011, Telecom NZ was separated into (now) Spark and Chorus, and the TSO was separated into network and retail obligations via the deeds which remain in force today. The 1989 price and 2001 service specification were maintained, but the network obligation was made explicitly technology neutral. This policy choice reflected that separation of Telecom occurred in the context of a major technology change and that the TSO should not require choice or maintenance of any particular technology.

Amendments to the Act in 2018 established a framework for the withdrawal of copper services in areas the Commerce Commission declared to be 'specified fibre areas' – essentially, areas where one of the UFB network partners has installed fibre network. The TSO was automatically disappplied in specified fibre areas – the vast majority of the TSO footprint. This recognised that the guarantees provided by TSO had little value to consumers by the mid/late 2010s.

At the time of the 2018 amendments, the government was still undertaking a number of rural connectivity programmes (Rural Broadband Initiative phase 2 commenced in 2018 and Rural Connectivity Upgrade in 2022). In our view the residual TSO obligation was always intended to fall away as government build programmes ensured rural consumers had superior options. Today, those connectivity improvements and the entry and expansion of international satellite operators means rural consumers have a number of modern connectivity options. As of June 2023, 97% of remaining copper customers are within coverage of a (superior) cellular fixed wireless or non-cellular fixed wireless WISP network. ~100% can also access satellite services (LEO and GEO). Those services compete with each other and are now comparable in price to TSO/copper services. Looking forward, all three MNOs have announced agreements with LEO satellite operators to provide Direct to Device services, enabling MNOs to offer some cellular-based services such as voice calls and text messages in some areas where terrestrial services do not reach.

Throughout its 35-year history, the KSO/TSO has been about an intervention to protect consumers of a basic utility service from the market power of a (near) monopoly who provided that service.

Today, a voice service that supports analogue fax and dial-up internet is not a basic utility service and the TSO providers do not have a monopoly over the provision of it (or its modern equivalents).

The market failure which the TSO was implemented to address no longer exists.

-- If there is market failure, what is the proportionate response? --

The historic market context the TSO was implemented to address has long since vanished.

The KSO/TSO was implemented to prevent an absolute monopoly extracting rents from the provision of a basic consumer utility. In 1989 Telecom NZ had 100% retail market share in telecommunications and there was no wholesale market. In 2001, when the current TSO service specification was set, limited fixed-line competition was developing but this was almost entirely based on Telecom NZ's copper network. Mobile phones were beginning to offer an alternative to a copper landline – but Telecom NZ was the biggest player in this market too and calling prices were among the highest in the OECD.

Today, the situation is vastly different. In areas where the TSO continues to apply, Chorus' copper network had just 28% market share by June 2024. Connections to the copper network have declined markedly from their peak of around 1.5 million in 2015 to ~92,000 by June 2025 - a decline of nearly 95%. Copper disconnections continue, with rural copper connections down 18% in the year to June 2024. Of those exiting copper, 40% move to LEO

satellite, 40% to 4G wireless, and 20% to other wireless services. The Commerce Commission said these shifts reflect active consumer choice based on speed, service continuity, and local support. Chorus has announced it will retire the copper network entirely by 2030.

By 2024, mobile phone voice minutes exceeded chargeable fixed-line minutes by nearly nine times, though mobile minutes are now also declining as people move to over-the-top calling using mobile data or broadband through apps like FaceTime, Microsoft Teams or WhatsApp. Technology markets are highly dynamic and the replacement for the copper landline is already being replaced. In 2024 New Zealand's price per month to meet average mobile prepaid use was in line with the OECD average.

The world that the TSO was imposed to regulate no longer exists. Further, the services required by the TSO (basic fixed voice, dial-up and fax) have no relevance to modern connectivity needs. Accordingly, the only proportionate response is to remove the TSO.

There may be a separate question as to whether any kind of communications universal service obligation (USO) is required in New Zealand. The TSO has not functioned as a USO since 2001 when the geographic footprint was frozen and it should not be mischaracterised as such. TSO is about availability and price controls on a legacy service for pre-existing customers – not ensuring uneconomic customers have access to services at reasonable prices (the function of a USO).

Delaying removal of TSO until a process to determine whether a communications USO is required presupposes that TSO is conferring some benefit to customers who may not have adequate access to communications at reasonable prices and who would benefit from a potential USO. As we describe below, the TSO is not conferring any benefits and, in fact, is imposing costs on customers impacted by copper retirement. It would not be appropriate to delay removal of TSO while undertaking an inquiry into whether a USO is required for communications services in New Zealand.

-- What are the costs and benefits of regulation and the distribution of those across different parties? --

The benefits of the TSO are negligible and, to the extent they exist at all, the application of TSO to addresses that had a residential telephone line on 20 December 2001 means the distribution of those benefits is essentially arbitrary.

Every address to which TSO applies can access a landline voice service from a provider other than Spark using a satellite or wireless service. In addition, nearly all those addresses will be able to access mobile voice calling (over 99% of premises are within mobile coverage), and all can use broadband to access a Voice over Internet Protocol (VoIP) landline, use Wi-Fi calling on a mobile phone or conduct over-the-top voice calling using applications like Zoom, Microsoft Teams or WhatsApp. Many of these services can be accessed at lower cost than the TSO retail price cap. Mobile phone plans can be purchased for as little as \$8 a month, with landline over VoIP often available for an extra \$10 a month on top of an existing broadband connection. Over-the-top calling applications can be accessed for free. Accordingly, the TSO provides no value to these consumers.

We recognise for some consumers, the TSO may still hold perceived value, particularly for those who have relied on copper-based services for many years or who feel an attachment to traditional landline phones. As the copper network is retired and consumers transition to modern alternatives, we have heard from some who prefer the simplicity of a traditional landline or perceive copper phone lines as more reliable. While evidence shows that modern alternatives are generally more reliable and resilient, we understand these preferences and are committed to supporting consumers through this transition.

A particular issue arises because copper services are provided over a 'loop' meaning they begin and end at the same Chorus network cabinet or exchange. This means copper voice services only require power at the network end to operate and customers can sometimes still use a copper landline when the power is off at their property. This has led to a misconception that 'copper phones work in a power cut'. In reality:

- As with all electronics, the copper network requires power and if it continues to work in a power cut it is because of a battery back-up installed at the Chorus exchange or cabinet. Like the rest of the copper network, the batteries are aging and may not provide much time (if any) of operation in a power cut. Consumers are far better off with a charged mobile, in-home battery back-up or portable generator.
- Even if there is a functioning battery back-up in the network, many copper landline handsets require power to operate (including all cordless handsets). This means the calling service will not work during a power cut at the consumer's property.
- The TSO makes no mention of operation in a power cut and does not require a service that can operate without power at the end-user's premises.
- The TSO is explicitly technology neutral and does not mandate the use of copper lines.

We recognise that reliable voice services are important to consumers, and we are committed to ensuring that information about the capabilities and limitations of different modern technologies is clear and accessible as the transition away from copper continues. However, it is clear that any perceived benefits from the TSO are likely a result of misconception or 'reliance' due the fact that copper has simply been the technology Chorus has used to deliver TSO input services.

Against no benefits, there are material costs:

- Inhibiting a smooth exit of superseded (copper) technology and disincentivising proactive migration to modern services.
- Inhibiting redeployment of capital in ways that better serve contemporary demands – including disincentivising further fibre build and investment in existing network.
- Cost implications/increasing commercial challenges in supporting legacy or non-existent services (such as dial-up internet) when associated equipment and expertise is increasingly difficult and costly to procure.

TSO is explicitly technology neutral – clauses in both Spark's and Chorus' deeds set out that the providers may use any type of technology to provide the service. Therefore, the TSO should not be seen as an obstacle to retiring the copper network when there are so many other networks using contemporary technologies that cover the full TSO footprint. The TSO service requirement is so archaic, contemporary technologies cannot be used to deliver it.

The local residential telephone service (described in the Schedule to Spark's TSO Deed) consists of two parts: First, the 'local residential voice telephone service'. This is the basic telephone line most people think of when they think of a landline. Any contemporary network (including fibre, wireless or satellite) could easily be used to provide this part of the service. However, there is a second part to the TSO service, the 'local residential dial up data

service'. This part of the TSO requires that the service support 'standard facsimile calls' and 'standard internet calls'. There are detailed definitions of these in the schedule to Spark's TSO Deed but, essentially, they require the TSO voice service to support dial-up internet services and fax services using equipment and procedures 'generally available immediately before 20 December 2001'.

Modern networks simply cannot support the local residential dial up data service without significant investment to adapt them for that purpose. Any such investment would be patently wasteful, serving only to ensure compliance tick-boxing and there is no realistic prospect it would be made. Dial-up internet is not available for purchase in New Zealand (and would be entirely unusable for contemporary internet applications if it was). Use of fax is extremely rare and decreasing. In any event, a fax can be sent or received using internet applications over broadband, so requiring a voice service to support faxes using equipment and procedures 'generally available immediately before 20 December 2001' is redundant.

While the costs of TSO are principally borne by Chorus, consumers also face a burden from the existence of TSO. We have experienced just how confusing the TSO is for customers affected by copper retirement, as it requires them to grapple with complexities including:

- The application of TSO depends on whether their house had a phone line on 20 December 2001. A consumer is very unlikely to have a record of whether their property had a phone line on 20 December 2001 and there are limitations to the available data given its age, changes to New Zealand rural addressing systems, platform migration of the data over 25 years of system changes, and infrequent data use.
- Even if TSO does apply, it does not guarantee service will be provided over a copper line. Copper is simply the only practical way of meeting the TSO requirement to support services that are no longer available. However, since copper is end-of-life and being retired, if the TSO was to continue, there would be an absurd scenario whereby Chorus would need to purchase a modern wireless or satellite service, adapt it to support obsolete 2001 fax and dial-up services (which are not available), and resell that service to Spark who would then resell it to the consumer.

This is clearly nonsensical. The sensible approach is to help the consumer understand the modern alternatives available and assist them to move to the one that best meets their needs. The TSO makes this an unnecessarily confusing process.

-- How is the regulation working, including compared to equivalent regimes in other countries? --

TSO is an intervention designed to address market structure issues that no longer exist, using a solution that is rooted in late twentieth century technology. It imposes costs without benefit and is causing confusion for consumers impacted by copper network retirement. In no sense can it be said to be 'working'.

We have also noted why it would be incorrect to characterise TSO as any kind of USO: it does not ensure essential services are available to consumers who might not otherwise have access to those services on a commercial basis.

In other jurisdictions, USOs have played a similar role to TSO insofar as they can operate as an obstacle to smooth transition away from legacy networks. Other jurisdictions have, or are implementing, modernised USOs. For example, Australia is currently examining USO delivery and funding arrangements in light of changes in available technologies and consumer preferences. This includes consideration of the role satellites and device-to-device (D2D) technology may play in delivering USO services.

We reiterate that maintaining obsolete regulation pending consideration of any new regulation is counter to good regulatory practice.

If you included Option 3 'ensuring access to basic telecommunication services' as one of your preferred options, please indicate your preference between the following:

Not Answered

Are there any unintended consequences that might arise from phasing out or replacing the current TSO arrangement?

No

If you answered 'Yes', please provide your reason(s) below::

Refer to section above

If you currently rely on a copper connection, is there anything that would make it difficult or impractical to switch to a different technology (e.g. cost or a medical alarm)?

Not applicable - I don't have a copper connection.

If you answered 'Yes', please provide your reason(s) below::

Which of these telecommunication services are critical for people to access?

If other, please explain::

Do you have any concerns about the potential removal of directory services (white pages listing, print telephone book and directory assistance)?

No

If you answered 'Yes', please provide your reason(s) below::

Refer to section above

## Geographically Consistent Pricing

Do you agree or disagree with our recommendation that the Commerce Commission review and assess the effectiveness of GCP.

Alternative option

Please explain the reason for your selection. If you identified an alternative, please explain.:

MFR should recommend repealing GCP.

Removing GCP will better incentivise further expansion of the fibre network to more New Zealanders living in less populated areas. In these locations, incremental price increases, relative to prices in areas with existing network coverage, may support a more viable commercial case for expansion.

GCP is not a necessary feature for a utility-style regime, and is not present in the frameworks governing the electricity or gas sectors under Part 4 of the Commerce Act. Its inclusion risks distorting pricing signals for potentially competitive technologies which can negatively affect the development of telecommunications markets and the economic benefits available to all end-users (see Commerce Commission "Submission on the Telecommunications (New Regulatory Framework) Amendment Bill" (2 February 2018), at paragraphs 35 to 42).

We are also concerned by MfR's suggestion that GCP helps prevent "pocket pricing". The Government's purpose in applying GCP was to ensure rural consumers did not pay more for fibre service than their urban counterparts (see paragraph 36 of the Commission's February 2018 submission to the Select Committee). Retrospectively framing GCP as a tool to prevent pocket pricing is not only unhelpful, but also inconsistent with the purpose of MfR's review, to ensure that the current regulation remains fit for purpose in light of technology and market changes.

We expand on our views below.

-- What is the rationale for Government intervention? --

When the utility style regulatory model was introduced, Chorus received a degree of flexibility in setting prices within its overall revenue cap. There was a concern that Chorus might change its pricing to reflect the cost to serve different areas of the country. This could have resulted in customers in more sparsely populated, rural areas paying more for broadband services.

The solution implemented was a blanket rule that Chorus must charge the same price for the same service everywhere.

We note this was a social policy intervention rather than a market failure. GCP prevents Chorus from providing services at costs that reflect the cost to serve particular locations. Pricing that accurately reflects the attribution of costs is not a market failure, rather it is the opposite, and is what would take place in a workably competitive market.

-- If there is market failure, what is the proportionate response? --

In our view there is no issue to address. While there can be some difference in the cost to serve rural and urban consumers, there is no commercial incentive to differentiate pricing where network is already built. This is because:

- All consumers in New Zealand (and especially those with access to fibre) have access to a number of alternative networks and providers for connectivity.
- It is not straightforward from either a systems or commercial standpoint to implement different pricing for instances of the same service provided at scale (i.e. mass market, consumer services).

If there is concern about the price paid by rural consumers for connectivity, the appropriate intervention would be a service obligation under Part 3 of the Act. However, as noted above, the market currently provides good service options for all/nearly all New Zealanders so even this is likely unnecessary.

Accordingly, the proportionate response is to remove the geographically consistent pricing requirement.

-- What are the costs and benefits of regulation? --

Benefits: The intention of GCP is to force a cross-subsidy of high-cost end users by low-cost end users. It was assumed that rural end-users are higher cost due to lower density and therefore rural end-users would benefit from the regulation.

Costs:

- Impedes/distorts competition: While there is no general commercial incentive to differentiate on price (as discussed in the section above), the blanket restriction reduces flexibility to respond to competition in particular areas. Other telecommunications operators (including MNOs and other local fibre companies) are not subject to GCP, putting Chorus at a competitive disadvantage: A geographically averaged price makes it harder for Chorus to compete in lower-cost (urban) areas and enables cherry-picking by our competitors
- Impedes fibre network expansion: creates an uneven playing field for pricing, which disincentivises further fibre rollout in rural areas where the cost of expansion is comparatively more expensive, raising our prices overall and making us less competitive against products like fixed wireless in urban areas.
- Creates inefficiency in 'non-target' services: The GCP intervention was about services for consumers. However, GCP applies to all fibre fixed line access services which means it captures services like network co-location, backhaul and transport services, and high-capacity connectivity provided to large corporates or data centres. These services are competitive, highly customised and location dependent. GCP makes it difficult for Chorus to engage in these markets in a compliant way, and impossible to do so efficiently.

-- How is the regulation working? --

This rule – intended to ensure rural customers didn't pay more for basic services, instead acts to constrain fibre roll out to rural and outlying users. It is also inconsistent with basic economic principles, and requirements for other utilities, which can differentiate pricing on the basis of cost to serve.

While this requirement has superficial appeal, this rule only applies to Chorus, not to any other telecommunications companies, like mobile network operators who operate fixed wireless services or other fibre providers (ie the rule requires consistent fibre pricing in Auckland but not in Northland; in Dunedin but not in Christchurch, etc – there is no rational basis for this).

GCP prevents Chorus from providing services at costs that reflect the cost to serve particular locations. This disincentivises further fibre network expansion to reach more New Zealanders and limits the ability to competitively respond in markets for highly customised and location dependent commercial services.

## Basic fibre services

Do you agree or disagree with our recommendation that the Commerce Commission should review anchor services and consider the option of a phased repeal as part of their next regulatory reset in 2027?

Alternative option

Please explain the reason for your selection. If you identified an alternative, please explain.:

MFR should recommend removal of the requirement to offer anchor services from the Act.

Competitive market forces already serve the intended purpose of the anchor services. Consumers benefit from this competition through innovation and choice, for example differentiated fibre speed tiers offered at varying price points. Anchor services impose unnecessary compliance costs.

Accordingly, anchor services are not required to achieve their intended objectives, which are already being delivered by the market. Even if gaps in delivery were to emerge, anchor services would be the wrong mechanism to address them.

The proposed recommendation, to require the Commission to undertake a review of anchor services, adds negligible value. Section 208 of the Act already provides the Commission with discretionary power to review and make recommendations on anchor services.

We expand on our views below.

-- What is the rationale for intervention? --

The anchor services have two purposes set out in the Act (section 208(7)):

- To ensure the availability of voice and basic broadband services to end-users at reasonable prices (i.e. a USO); and
- To act as a constraint on the price and quality of other fibre services.

When the anchor services were first declared in the Telecommunications (Regulated Fibre Services) Regulations 2021, they were extremely detailed specifying all the terms on which the anchor services must be provided including incorporating thousands of pages of documentation 'to the extent relevant'. These regulations had a significant detrimental effect on Chorus because:

- It effectively froze all the terms of our fibre services unless and until the regulations were revised. This left us unable to adapt our terms (including, in practice, on non-anchor commercial services) to respond to changing market demands or competition; and
- Incorporation of thousands of pages 'to the extent relevant' meant it was not clear what exactly we were required to provide to comply. This created a significant compliance risk.

Chorus carried out a successful judicial review of the regulations (Chorus Ltd v Minister for Digital Economy & Governor-General [2022] NZHC 3602). The Court held:

- The Minister had made errors of law;
- The regulations were inconsistent with the empowering provisions; and
- The regulations were unacceptably uncertain.

This shows that the anchor services were misconceived from the outset. While the High Court made changes to the regulations that have largely resolved the issues we have described above, there is the potential for these problems to recur if/when the regulations are revised.

-- If there is market failure, what is the proportionate response? --

There is no market failure to address. The anchor services have two purposes but, in practice, neither of those purposes are advanced by the anchor services making the regulation redundant.

Considering each of the two purposes of anchor services:

- Availability of basic services: As a USO the anchor service regulations are inadequate and unnecessary. Anchor service regulations only apply to Chorus and only where Chorus is subject to PQ regulations. Therefore they do not apply in significant portions of the country. For example, anchor service regulations do not apply in Christchurch or Tauranga. Nevertheless, voice and basic broadband services are available at reasonable prices in all areas. It is also odd that an intervention aimed at delivering reasonable prices to end-users controls the price of wholesale input that cannot be provided to end-users. There is no restriction on the retail price of services based on anchor service inputs. This demonstrates the anchor service regulations are

unnecessary for this purpose. And if they were necessary, they would be inadequate, and a service guarantee of wider application would be required.

- Anchor on service pricing: The fibre portfolios offered by both Chorus and other LFCs demonstrate that anchor services are unnecessary to operate as a constraint on the price and quality of other fibre services. In summary:

- o Chorus offers and promotes anchor equivalent services at sub-anchor prices (Home Fibre Starter) in order to maximise fibre connections against competing networks showing that market incentives are sufficient to ensure the availability of basic services at reasonable prices.

- o Chorus offers a service with substantially higher performance at the same price as the anchor service showing it is the market not the regulation setting the price/quality balance.

- o The LFCs, unconstrained by the anchor service regulation but facing similar competition from wireless networks, offer comparable fibre portfolios further reinforcing the adequacy of market forces to constrain fibre portfolios.

-- Costs and benefits of the regulation --

Benefits: There are no benefits to this regulation. The market and competitive pressure already delivers basic services at reasonable prices, and constrains the prices and quality of other services. If there were any benefits, they would fall to RSPs (and end-users if the RSPs chose to pass through the benefits) in the parts of the country where Chorus has installed fibre network. This means, for example, RSPs/end-users in Wellington would benefit but not RSPs/end-users in Hamilton. There is no rationale for distributing benefits in this way.

Costs:

- Compliance overhead from having to build and offer a service that no one buys. We note that having now built the services, the costs of continuing to offer them are low, but there would be further costs if revisions to the regulations required service changes.

- Uncertainty and contingent risk that a revision of the anchor service requirement could result in poor specification or a price point that would undermine Chorus' fibre portfolio and mean we are unable to achieve our maximum allowable return (MAR). This is not a theoretical concern – it was the reality of the first set of anchor service regulations in 2021 which Chorus had to get remedied via judicial review.

-- How is the regulation working? --

In the three years the anchor service regulation has been in force Chorus has not sold a single broadband anchor service connection. The voice anchor service represents a tiny fraction of our fibre connections (>0.5%) and it makes little sense to regulate access to a voice over fibre service (in some parts of the country) when the overwhelming majority of voice calling takes place via mobile and mobile coverage in areas where fibre is available is ~100%.

## Fibre Regulation

Do you wish to skip this section?

No

## Governance settings in Local Fibre Company constitutions

Do you have any preferred option(s)?

No preferred option

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages::

NA

Would there be any unintended consequences of removing the Government Share?

Unsure

If you answered 'Yes', please provide your reason(s) below::

## Ownership restrictions in Local Fibre Company constitutions

Do you have a preferred option?

Remove ownership restrictions and rely on existing legislation

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages::

In light of the Review's terms of reference, framework and approach, we consider the removal of Chorus' ownership restrictions to be one of two key issues the Review should address, alongside the removal of the TSO.

We support Option 2: Remove ownership restrictions and rely on existing legislation.

This will better ensure New Zealand's capital markets remain open, dynamic, and attractive to both domestic and international investors. In turn, this supports economic growth, including by attracting capital to help address New Zealand's infrastructure deficit. In a well-functioning market, shares should be available to investors who value them most highly. A shareholder cap prevents this by stopping certain investors - for example strategic buyers and institutional funds – from investing beyond the 10% threshold, even if they are willing to pay a premium. This prevents efficient price discovery.

With alternative regulatory frameworks already providing oversight of investments in Chorus, the separate shareholding restrictions are an additional and unnecessary overlay. The effect of this is extra cost, uncertainty, and potential for delay for prospective investors in Chorus – disincentivising investment.

The shareholder restrictions on Chorus can be removed by deleting clause 4.3 and amending or deleting clause 4.5 of the 2011 Deed of Operational and Governance Undertakings between Chorus and the Crown (Deed). This requires Crown consent which would, if granted, provide us with flexibility to seek changes to the mirrored shareholder restrictions in our constitution (clauses 2.1 and 2.2 of the First Schedule). We would still require 75% of voting shareholders to support the removal of the shareholding constraint from the Chorus constitution. No legislative changes are required.

-- What is the rationale for Government intervention? --

The Deed and Constitution prohibit: Any person from holding a relevant interest in 10% or more of Chorus shares without Crown approval; or Non-New Zealand nationals from holding a relevant interest in more than 49.9% of Chorus shares without, and except in accordance with the terms of, Crown approval.

These restrictions were required by the Crown at demerger of Telecom NZ in 2011 to maintain the protections that had previously applied in respect of Telecom NZ under the KSO – reflecting obligations that had been placed on Telecom NZ since 1990.

On demerger in 2011, those restrictions were removed from Telecom because post-demerger Telecom (now Spark) was going to be a retailer and mobile network owner competing with other retailers like Vodafone and TelstraClear which did not have any foreign ownership restrictions. The government at the time felt that it was fair that everyone operate under the same rules.

However, the restrictions continue to apply to Chorus indefinitely until the Crown agrees to vary or terminate the Deed, despite completion of the UFB network in 2022 and the implementation of modern regulatory frameworks providing robust oversight of prospective investments in Chorus and how it operates.

Modern regulatory frameworks include:

- The Overseas Investment Act 2005 (OIA) providing:
  - o the National Security and Public Order (NSPO) regime, allowing the Government to assess whether an overseas investment poses a significant risk to New Zealand's national security or public order (and powers to block or impose conditions on investments, and order the disposal of assets). Notification is voluntary, but unnotified investments can be subject to Overseas Investment Office (OIO) scrutiny; and
  - o a National Interest test for overseas investments that result in a greater than 25% control/ownership, providing the Crown with broad discretion to decide whether the prospective investment would be contrary to the national interest;
- The Takeovers Code which prohibits foreign or domestic entities increasing shareholdings over 20% in "Code Companies" (of which Chorus is one) other than in accordance with the Code or an exemption;
- The Commerce Act 1986, which prohibits any person from acquiring the assets of or shares in a business if that acquisition would have (or would be likely to have) the effect of substantially lessening competition in a market;
- Part 6 of the Telecommunications Act, which (through Chorus' price quality path) incentivises Chorus to act in ways that are consistent with the long-term benefit of end users (countering the risk any investor would encourage Chorus to act in ways that may be detrimental to consumers); and
- Chorus' fibre Open Access Deed of Undertakings, requiring Chorus to supply wholesale fibre services in accordance with key open access principles (non-discrimination and equivalence).

These mechanisms protect against the same risks the Chorus shareholding constraints were designed to address.

We also note that Chorus' fellow network operators 2Degrees (2022), Tuatahi First Fibre (2020), Vocus (2021) and Vodafone (2019) have all been the subject of successful OIO applications approving acquisition by overseas persons. None of these strategically important assets were subject to additional shareholding constraints by the Crown over and above the OIA processes. Tuatahi First Fibre, who along with Chorus was one of the successful bidders for Crown funding under the UFB initiatives and whose network covers over 250,000 premises, is a particularly relevant comparator.

-- If there is market failure, what is the proportionate response? --

No market failure exists. The restrictions in the Deed are obsolete, having been superseded by alternative regulatory frameworks. Accordingly, the proportionate response is to remove the restrictions.

Note that other restrictions in the Deed would continue to apply.

-- What are the costs and benefits of regulation and the distribution of those across different parties? --

The shareholding restrictions create a restraint on efficient capital allocation and reduce liquidity.

In a well-functioning market, shares should be available to investors who value them most highly. A shareholder cap prevents this by stopping certain investors - for example strategic buyers and institutional funds – from investing beyond the 10% threshold, even if they are willing to pay a premium. This prevents efficient price discovery.

While there is a process by which potential investors may seek approval to exceed the 10% limit, this process is complex, uncertain and expensive. As such it prevents capital market participants from assessing, valuing and investing in Chorus in a normal way.

As we consider further expansion of our fibre footprint into more commercially challenging areas of New Zealand, any unjustified disincentive to investment in Chorus risks constraining our ability to maximise long-term investment in our fibre network.

-- How is the regulation working, including compared to equivalent regimes in other countries? --

Crown approval for exceeding the limitations on shareholding has been provided in the past. Most recently:

- In 2023, UniSuper Limited received approval to acquire up to, but not including, 20% of the total voting shares in Chorus;
- In 2017, L1 Capital received approval to increase its shareholding to up to a maximum of 15%; and
- In 2012, AMP Capital Investors (NZ) Limited received approval to hold up to 15% of Chorus' share capital.

While these applications were approved, this does not demonstrate that the restrictions contained in the Deed are effective or justified. It is also not appropriate that New Zealand investors are being constrained by a 10% ownership restriction in the same way as international investors (who are subject to Overseas Investment restrictions anyway), when other local fibre companies such as Northpower and Enable are already wholly New Zealand owned and Takeover Code provisions would apply at a 20% ownership level.

Would there be any unintended consequences of removing the ownership restrictions?

No

If you answered 'Yes', please provide your reason(s) below::

### Layer 1 unbundling

Do you have any preferred option(s)?

Repeal Layer 1 unbundling requirements

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages::

We support MfR's proposal to repeal Layer 1 unbundling requirements (Option 2). This will ultimately benefit consumers by supporting more efficient network deployment and reducing unnecessary regulatory costs that are passed through to end-users. The current obligations require Chorus to build and maintain services and processes that are not, or rarely, used, diverting resources away from network expansion and improving service quality. Removing these requirements will allow wasted resource to be directed to where it delivers the greatest value, including connecting more New Zealanders.

Market incentives from network competition, restrictions on retailing, price-quality regulation, and general competition law are sufficient to ensure access to fibre networks is provided on appropriate terms. Unbundling of fibre networks has not been pursued overseas as technological development means unbundling is neither necessary nor helpful in facilitating retail competition.

-- What is the rationale for Government intervention? --

Chorus' unbundling obligations refer to the requirements under Part 4AA and Part 6 of the Act for Chorus to allow other telecommunications providers to access its fibre network at a passive level, so they can offer retail services directly to end users without relying on Chorus's full wholesale service stack. Unbundling is a vestige of a historic competition policy approach.

When the UFB Initiative commenced in 2009 it was envisaged that the fibre network would be regulated the same way as the copper network – that is, retail service providers would buy access to elements of the fibre network on a 'ladder of investment'. Retailers would 'climb the ladder' by starting off buying active services (which use the network provider's electronic equipment) before achieving scale and moving to passive services using their own electronic equipment. This model requires network providers to be 'unbundled' – offer active and passive services with the passive services used as an input on an equivalent basis.

By 2016 it was clear that the 'ladder of investment' doesn't work in New Zealand's market. The network architecture of cabinetised copper and point-to-multipoint fibre, together with low population density, means it is nearly impossible to achieve a scale where widespread investment in unbundled services is economic. High value connections can be cherry-picked by larger providers improving their margin but offering no benefit to consumers.

The model succeeded only in benefiting incumbent large retailers and undermining the principle that low cost (urban) connections should subsidise high-cost connections (rural).

Accordingly the decision was made to move to a 'utility style' model of regulation. This model, already used for electricity networks, gas pipelines and airports in New Zealand, recognises that duplication of the network is unlikely to be economic, so network operators should be regulated to ensure they

do not make excessive profits and keep quality at a level consumers demand. However, the unbundling requirements were retained (and duplicated) in the new framework.

-- If there is market failure, what is the proportionate response? --

In today's market we believe there are sufficient market incentives to ensure Chorus provides access to its fibre network on reasonable terms. However, there are also several interventions in place which ensure access to fibre networks is provided on reasonable terms aside from ex-ante unbundling requirements. In particular:

- Prohibition on providing retail services on the fibre network means Chorus has no path to a return other than by selling fibre network access to retailers. We have a strong incentive to make that access as attractive as possible – particularly where the largest retailers have their own networks which they would prefer to use.
- Price-Quality regulation controls the revenue Chorus is able to recover from selling services on the fibre network. There is no prospect of generating higher than normal profits by restricting access to the fibre network by competitors, and therefore no incentive to do so.

Specific ex-ante unbundling interventions are also unnecessary as general competition law obliges a firm controlling a bottleneck asset to provide competitors with access to that asset on reasonable terms. Failure to do so risks breach of restrictions on the misuse of market power under Part 2 of the Commerce Act 1986. These restrictions were recently strengthened by amendment to the Commerce Act in 2022 and are sufficient to prevent Chorus obstructing access to its network assets.

Ex post tools like those provided under the Commerce Act are also more appropriate in fast-moving markets like telecommunications. Ex ante unbundling requirements were predicated on the idea that fibre network assets will always and everywhere be bottleneck assets the control of which confers market power. Today, the presence of vertically integrated, high-speed mobile networks and rapidly advancing international LEO satellite services means this assumption does not hold in all cases. An ex-post tool that involves the assessment of market power in any particular case is a more proportionate response.

-- What are the costs and benefits of the regulation? --

Benefits:

- Building network ready for unbundling reserves a separate, dedicated physical line to be taken up by a retail service provider on the chance a niche use case for it is developed and becomes economic to pursue at a point in the future.
- Retailers are able to cherry-pick connections to unbundle in areas of particularly high density or for particularly large customers. In most cases the retail provider will benefit from an increased margin on these connections.

Costs:

- Unbundling obligations require that all fibre network must be deployed to accommodate unbundling that will not occur in most cases. This includes, for example, running two fibres to every premises connected to the network so there is a spare fibre available for unbundling. This is inefficiency mandated by regulation.
- Any new fibre extended to rural areas needs to be built to enable unbundling that will never occur (the economics of unbundling are, at best, marginal in dense urban areas and prohibitive in rural areas), raising the costs of network deployment and making fibre extension into rural areas less likely.
- The potential for cherry-picking of low-cost urban connections also undermines the business case for rural fibre extension.
- There are significant costs to ensuring compliance with unbundling requirements. Unbundling is regulated under two different parts of the Act and under three subordinate instruments. The requirements of each are different and building unbundled products and systems to comply with all the regulations is not straightforward.
- The Commerce Commission recently closed an investigation into compliance with our regulatory obligations regarding one unbundled product (called 'unbundled fibre service' in Part 6 of the Act and 'PONFAS' in the open access deeds and in the market). It resulted in no action. However, engagement in that investigation was highly resource intensive (presumably for the Commission as well as Chorus). It involved diverting substantial internal resource from our legal team as well as network and other experts across our business to information gathering and responding to inquiries over the course of 16 months. In addition, we engaged expert external advice at significant cost, including US-based utilities and networks expert consultants SkeensMcDonnell Consulting Group. Having expended all that time and resource, nothing changed, and we received no clarification of our obligations.
- The Commerce Commission has signalled it will consider whether further intervention is required into PONFAS. This creates notable uncertainty for our operations and we are, again, forced to expend substantial resource demonstrating why this isn't required. This is more avoidable waste.
- Through our PQID framework, the additional costs borne by Chorus to comply with unbundling obligations and respond to Commission processes ultimately flow through our cost base into our allowable revenue. They are added to prices and ultimately borne by consumers.

-- How is the regulation working? --

Unbundling at scale, and the theoretical benefits it would bring, has not, and will not occur in New Zealand.

It is difficult to overstate the complexity and incoherent nature of current unbundling requirements. Unbundling is double regulated – being required under both our open access deeds for fibre services and for UFB2 (Fibre Deeds) made under part 4AA of the Act, and the Telecommunications (Regulated Fibre Services) Regulations 2021 made under Part 6 of the Act which currently applies to DFAS only (but could be applied to unbundled fibre service/ PONFAS).

This double regulation is a problem because:

- the Fibre Deeds are different in scope from regulation under Part 6. The Fibre Deeds apply to services provided over fibre-to-the-premises access networks built under the UFB and UFB2/2+ initiatives respectively. DFAS and unbundled fibre regulations can apply to fibre fixed-line access services (as defined in the Act) where they are subject to price-quality regulation.
- The Fibre Deeds have a different purpose from regulations under Part 6:
  - o The purposes of the Fibre Deeds are to promote competition for the benefit of end-users; to facilitate transparency, non-discrimination and

equivalence; and to facilitate efficient investment in telco infrastructure and services.

o DFAS and unbundled fibre regulations are a component of price-quality regulation under Part 6. The purpose of Part 6 is to promote the long-term benefit of end-users by promoting outcomes consistent with those in workably competitive markets.

- These purposes are different. Having different regulation of the same service for different purposes raises questions about the appropriate approach to the service itself and how Chorus' conduct with respect to unbundling should be assessed.
- Two regulatory frameworks for the same thing is likely to expose Chorus to double jeopardy. There is a strong likelihood the same conduct could give rise to breaches of both the Fibre Deeds and DFAS or unbundled fibre regulations (a price-quality requirement under Part 6). It is inconsistent with good regulation for firms to be exposed to double jeopardy in this way. The different purposes would also make it difficult to assess the seriousness of any potential breach in considering enforcement action.

In Part 6 there is provision for the Minister, in setting regulations for unbundled services, to remove regulation of unbundled services under Part 4AA to avoid this double regulation (see s230). However, when the 2021 regulations were passed the Minister chose not to exercise this power – despite Chorus arguing strongly for it. No reasons were given. Accordingly, both frameworks apply.

This complex framework drives significant cost in Chorus' business for very limited benefits which largely accrue to the major retail service providers. These costs are ultimately borne by consumers.

In 2023, during the Commerce Commission's investigation into compliance with our unbundling requirements (noted earlier) we commissioned a report from SkeensMcDonnell Consulting Group into our approach to unbundling. They noted: "We have worked as an advisor on 48 telecommunications projects over the past two years. Approximately two-thirds of them were either exclusively fiber PON networks or had a fiber PON component. We have not encountered other service providers that offer a PONFAS service in a Layer 1 unbundled fashion like Chorus is required to provide. There are two types of offerings that we do encounter. The most common is a PON network built and offered exclusively for the use by the service provider themselves. The second are networks commonly referred to as "open access networks", where the service provider accommodates third parties acting as retail service providers, as is the case with the Chorus Bitstream product. And those open access networks are always Layer 2 equivalents."

They went on to explain why other jurisdictions do not require unbundling like New Zealand: "Since such feature rich services can now be performed largely via software platforms and cloud-based services, the need for specialized hardware (i.e., more custom PON solutions) has been greatly diminished, and we believe that is why you do not see service providers around the world offering a Layer 1 type model, as exemplified by PONFAS. Our observation is that the lack of unbundler participation at Layer 1 does not reflect any flaw in the Layer 1 PONFAS design or any unfair advantage held by the incumbent, but rather reflects that it is easier and less risky for Access Seekers to participate at Layer 2, especially as recent developments (which may post-date original consideration of PONFAS) have increased service differentiation at Layer 2."

Would there be any unintended consequences of repealing all Layer 1 unbundling obligations?

No

If you answered 'Yes', please provide your reason(s) below::

Exemption process for services above Layer 2

Do you have a preferred option?

An option not included above

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages::

Business line restrictions should be amended to ensure the vertical separation of wholesale and retail fibre services, without additional restriction.

Amending the restrictions will benefit consumers by enabling greater innovation, more responsive service offerings, and improved access to fibre services. The current restrictions limit Chorus' ability to support new entrants, develop complementary services, and respond to evolving consumer needs. By refining the rules to preserve wholesale-retail separation without unnecessarily constraining technology or service design, consumers will gain from a more dynamic and competitive telecommunications market.

This can be achieved by:

- Removing restrictions on services above layer 2 and end-to-end services by repealing sections 69R and 69S; and
- Amending the retail restriction to apply to 'fibre-to-the-premises access services' to align with the fibre open access requirements, by replacing references to 'telecommunications services' with references to 'fibre-to-the-premises access services' in sections 69O, 69P and 69Q.

We outline the reasons for this below.

-- What is the rationale for Government intervention? --

Participation in the government's UFB initiative was conditional on providers being wholesale only. The intention was to establish a structurally separate, open access network as a platform for retail competition.

Three business line restrictions (BLRs) were imposed on Chorus under Subpart 3 of Part 2A of the Act:

- BLR1 – a prohibition on Chorus retailing telecommunications services. This was to ensure Chorus' supplied access to its nationwide copper network and (yet to be built) fibre network on a wholesale only basis.
- BLR2 – a prohibition on Chorus providing services which operate at above Layer 2 of the Open Systems Interconnection model. This was to promote innovation by retailers at the higher levels of the technology stack.

• BLR3 – a requirement that Chorus only offer links between its aggregation points (usually an exchange or central office) or between an aggregation point and an end-user's premises. Referred to as 'no end-to-end services', this was intended to prevent Chorus leveraging market power over the access network (between the aggregation point and the end user's premises) into competitive backhaul markets (between aggregation points).

-- If there is market failure, what is the proportionate response? --

Today, the Government has indicated a policy intention to preserve the vertical separation of wholesale and retail fibre services by excluding it from this review. However, the BLRs introduced in 2011 go much further than necessary to achieve this separation. They are therefore a disproportionate response to this issue.

The BLRs imposed in 2011 were so extensive mostly because the fibre network, which was the focus of the restrictions, was not built yet. It therefore wasn't clear how downstream markets for fibre services would develop and policymakers wanted to ensure as much 'space' as possible for innovation and competition to develop by restricting the operations of the upstream network operator. Today, the shape of retail fibre competition is established and the extensive BLRs operate to impede competition rather than promote it.

An additional but subordinate consideration was that extensive BLRs were imposed for the benefit of the then-existing Telecom shareholders. Telecom shareholder support for demerger was required and extensive BLRs were desirable in order to prevent Chorus and Spark diminishing overall value to the common shareholder base by competing with each other immediately following demerger. Spark was also subject to a BLR that prevented it from buying unbundled copper services for a period of three years to ensure it did not immediately compete with Chorus.

Chorus and Spark have now been entirely separate organisations for 14 years and protection of common shareholders is no longer relevant.

Overall, the proportionate response to ensuring vertical separation of wholesale and retail fibre services is to scale back the BLRs to ensure just that. This involves removing restrictions on technology (BLR2) and product construct (BLR3), and amending the retail restriction (BLR1) to apply to fibre-to-the-premises access services only.

-- What are the costs and benefits of the regulation? --

Benefits: BLRs ensure the vertical separation of wholesale and retail fibre services which prevents the vertical integration of fibre network operators and facilitates downstream competition for retail services. However, this benefit can be achieved without incurring the costs described below by optimising the BLRs.

Costs: BLR2 and BLR3 operate as a barrier to entry for new telco retailers. Fibre retail markets are currently dominated by the three, vertically integrated mobile network operators. Fibre network operators like Chorus, who are prevented from retailing, have no path to a return other than through retailers. It is a risk that we are dependent on three large customers who have a rational incentive to use their own networks and bypass ours. We therefore have a strong incentive to make it as easy as possible for new entrants to begin providing fibre services to challenge the incumbents. However, BLR2 and BLR3 make it difficult for us to provide services that facilitate new entry – significant investment in telco network and equipment is required in order to take Chorus inputs and build retail services because of restrictions on the technology and product construct we can provide.

BLRs prevent innovation and efficient operation of fibre network operators in non-fibre markets. BLR1 does not just prevent Chorus retailing fibre services, it prevents Chorus retailing any telecommunications service. The definition of telecommunications service under the Act is extremely broad including such things as broadcasting and provision of goods. This extensive restriction obstructs Chorus:

- Helping end-users get the best performance from their fibre services by providing direct assistance with set-up or equipment that will maximise fibre performance.
- Providing end-users with services that would stimulate demand for fibre services.
- Efficiently entering adjacent markets (such as wireless or satellite) using our capacity and experience as a network builder and operator.

-- How is the regulation working? --

While the concept behind extensive BLRs was understandable when Telecom was separated and fibre networks were not yet built, today it is clear they are far more restrictive than required and that the excessive restriction is harmful.

Retail competition is now robust and self-sustaining. The three largest RSPs, Spark, OneNZ and 2Degrees, are now each vertically integrated, and vertically integrated international satellite operators have entered (SpaceX) or are likely to enter (Amazon Kuiper) the NZ market. Chorus has no desire to retail fibre services and we are comfortable with this restriction remaining in place. Changes to the other BLRs will mean they don't stand in the way of innovation to meet changing technology and consumer demand.

Vertical separation of wholesale and retail fibre services simply means that there should always be a retailer between a fibre network operator and an end-user of fibre services. It does not necessitate restrictions on technology or product construct. We reject the idea that there are 'wholesale technologies' and 'retail technologies'. This is particularly the case where technology is described by reference to the Open Systems Interconnection model (as in BLR2). This model was developed to standardise network engineering to simplify troubleshooting, enhance interoperability, and provide a structure for data transmission. It was never intended to delineate legal boundaries or divide wholesale and retail markets.

In 2018 an exemption framework for BLR2 and BLR3 was added to the Act (exemptions from BLR1 are not available). However, this framework is entirely impractical as it requires an application to the Commission, and it requires the Commission to consult with parties who may be affected by the exemption (i.e. competitors).

It is simply not feasible that a business operating in a highly-dynamic technology market could delay bringing a new, innovative solution to market until completion of a process involving consultation with competitors for that solution and public decision making. The exemption framework has never been

used and it is highly unlikely it ever will be. It is a failed solution and the appropriate action now is to remove BLR2 and BLR3.

Would there be any unintended consequences of streamlining the exemption process?

Yes

If you answered 'Yes', please provide your reason(s) below::

As described above, an exemptions framework was added in 2018 and has been available for use since 2022. In that time, it has never been used. The exemption framework is harmful because it provides the illusion that the negative effects of BLRs on innovation and competition can be avoided without removing them when this is not true. Further tinkering with the framework will only exacerbate this problem.

Maintaining the exemption framework also implies that the restrictions deliver some benefits to consumers when the only benefits from the BLRs accrue to firms insulated from competition by them. Retaining the framework perpetuates the regulation's harms and wastes time and resources on a mechanism that has not, and is highly unlikely to ever, be used.

## Fibre deregulation review process

Do you have a preferred option?

Single step streamlined process for deregulation reviews

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages::

Chorus supports the Ministry's proposed Option 2: single step streamlined process for deregulation reviews. This will benefit consumers by ensuring that regulation remains proportionate and responsive to changes in market conditions. A more agile framework will allow competition to emerge and evolve without unnecessary regulatory delay, encouraging innovation, investment, and improved service offerings.

The current two-step deregulation review process introduces confusion and uncertainty into what should be a transparent and predictable decision-making methodology. The two-step process:

- Entrenches regulation. The reasonable grounds threshold means deregulation is more difficult to initiate, creating a bias towards regulation even where competition has emerged, or technology change supports deregulation. This delays any potential transition to a competitive market environment.
- Duplicates effort. Where the Commerce Commission decides the reasonable grounds test is met, it still needs to carry out a more fulsome competition assessment.
- Creates regulatory uncertainty. The ambiguity of the reasonable grounds test – as illustrated during the most recent decision-making process – means it is difficult for industry participants to determine the nature and extent of evidence required in order to satisfy the test.
- Drives regulatory inertia. The Commission has sole discretion over whether reasonable grounds exist, so (more fulsome) deregulation reviews are essentially able to be postponed indefinitely. This creates a perception that regulation is a 'one way street', and renders deregulation less likely.

There are benefits to moving to a single step streamlined process, including:

- Level playing field with competition law. Competition law (Commerce Act) already provides safeguards against the misuse of market power. Where competition emerges, extra hurdles like the reasonable grounds assessment are unnecessary.
- Streamlined process better encourages dynamic competition. More straightforward initiation of deregulation reviews would signal to new entrants and investors that regulation will remain proportionate as competition emerges, boosting incentives to enter and compete.
- Reduces regulatory inertia. Removing the reasonable grounds threshold encourages the Commission to review regulation more directly, rather than having an in-built bias to retain regulation.
- Reduces cost. Eliminating a phase of the decision-making process – or integrating it into the deregulation review itself – accelerates and reduces the cost of such reviews.

Removing the reasonable grounds review step does not necessarily mean the Commission would be required to carry out a full deregulation review before the start of each regulatory period. We are mindful of the need to avoid the costs of unnecessary reviews. We consider other mechanisms could be created to ensure deregulation reviews are only carried out where there is justification.

We suggest the Commission be required to carry out a deregulation review only when Chorus or a LFC requests such a process (and they would only have the ability to request this once per regulatory period).

Chorus, for example, could propose a deregulation review of one or more FFLAS services as part of its price-quality period proposal, enabling a decision on deregulation to be implemented alongside the price-quality decision process. There would be limited risk of unnecessary reviews - where deregulation could not be justified, Chorus would be unlikely to advocate for what would be a pointless and time-consuming review.

The LFCs could be provided with a regulatory mechanism to enable them to propose potential deregulation in a similar way (eg they could have the ability to request a deregulation review at the same time as Chorus submits a price-quality proposal – ie once every 3-5 years, so the Commission can coordinate the deregulation review process across all FFLAS providers).

Would there be any unintended consequences of adopting a single step process for deregulation reviews?

No

If you answered 'Yes', please provide your reason(s) below::

## Legacy regulatory obligations in telecommunications

Do you have a preferred option?

An option not included above

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages: :

We support the removal of legacy deeds and agreements. However, we do not consider there to be any residual obligations within those instruments that warrant separation and transfer into legislation. Doing so would likely introduce additional and unnecessary complexity into the regulatory framework and risk undermining both the stated rationale for removing the instruments and the broader purpose of the review (namely, ensuring that the current regulation remains fit for purpose in light of technology and market changes).

Removing legacy deeds and agreements will benefit consumers by simplifying the regulatory framework and allowing resources to be redirected toward meaningful investment. These instruments relate to outdated technologies and impose compliance costs without delivering any meaningful consumer protection or service benefit. Removing clearly obsolete regulation to reflect the current market realities will help ensure focus remains on delivering high-quality, future-ready services to New Zealanders.

We also note that MfR has listed the 2011 Deed of Operational Governance Undertakings as a legacy deed. While this is correct, the substantive issue with this deed relates to the shareholding restrictions, which are reflected in our Constitution. These legacy restrictions can be addressed by deleting clause 4.3 and amending or deleting clause 4.5 of the Deed, as outlined in our response to the section titled "Ownership restrictions in Local Fibre Company constitutions".

-- Legacy open access undertakings --

The Copper Deed and RBI Deed should be terminated, and the requirement for undertakings should be repealed (Subpart 4 of Part 2A & Subpart 4 of Part 4AA).

Chorus is required to provide open access to the copper network and other network funded by the 2010 rural broadband initiative. The purpose of open access to wholesale networks is to provide equal access to bottleneck assets and thereby establish a platform for robust downstream competition. While open access likely remains appropriate for fibre to the premises networks (though this is arguable given structural separation and the presence of vertically integrated competitors), it is clearly no longer appropriate for legacy networks that have ceased to be viable platforms for downstream competition.

-- RBI open access deeds --

Chorus (then Telecom) and OneNZ (then Vodafone) were required to give open access undertakings to participate in the Government's rural broadband initiative in 2011. The Telecom/Vodafone proposal involved expansion of copper broadband (DSL) and 3G wireless broadband coverage into rural New Zealand. The RBI undertakings require Chorus and OneNZ to offer nondiscriminatory wholesale access to the networks funded by the RBI subsidy. Both the copper and 3G wireless networks are being retired and the RBI contracts have long since expired.

-- Copper open access deed --

When Telecom NZ separated in 2011, Chorus was required to give an undertaking to provide open access on its copper local loop network. At the time, the copper network was the principal platform for retail competition in fixed telecommunications markets supporting well over a million connections. The copper network is now being retired and, as at 31 March 2025, there were just over 100k connections remaining and that number continues to decline rapidly. Some retail service providers have taken and are taking the decision to pro-actively exit copper services.

There is no question of these old networks being a platform for competition and the RBI open access deeds impose compliance costs without benefit. The only proportionate response is to repeal the requirements.

Benefits: The benefits of open access accrue when they facilitate a downstream competition. Since no rational provider would enter or expand based on a platform that: (a) cannot support competitive retail services given technology advances and (b) is in the process of being retired, no benefits accrue from the copper or RBI open access requirements.

Costs: Each open access deed imposes significant compliance overhead.

- The copper deed contains extensive internal compliance and audit requirements (clause 14) including annual employee training requirements, quarterly KPI reporting and access seeker compliance surveys, quarterly meetings with the Commission and annual internal audit and director certification of compliance (clause 10).
- The compliance requirements in the RBI deed are more limited, but there remains some overhead due to the need to monitor and report compliance issues (clause 8)

3G cellular and copper networks are being retired globally, and, accordingly, the regulation is now obsolete.

-- Telecom separation sharing arrangements --

The sharing arrangements framework has served its purpose and is no longer relevant. Accordingly, subpart 2 of Part 2A of the Act should be repealed.

When Chorus and Spark were separated from Telecom in 2011 extensive regulation and oversight was imposed over agreements between the two new

companies. This was to ensure the structural separation of Telecom was genuine rather than cosmetic.

This extensive regulation remains in place. It continues to require Chorus to produce reports and plans that have no value this long after demerger.

There is no market failure to address. Fourteen years after demerger, there can be no question that Spark and Chorus are truly separate businesses. No supervision of the commercial relationship is warranted, and the proportionate response is to repeal the sharing arrangements framework.

Benefits: None. The systems are very close to full exit as Chorus' copper network is retired.

Costs: Against this, resource is spent producing unnecessary annual reports.

The regulation requires Chorus to provide regular reports to Ministers, which add no value. One of these is the Sharing Arrangements Transition Plan, which requires Chorus to submit an annual report to the Minister setting out the number of systems shared with Spark.

To avoid substantial capital expenditure on duplicating legacy assets, and to ensure the economics of separation and transition to a fibre centric future, it was accepted that Spark and Chorus needed to share certain assets, systems and services following separation. To facilitate this, Sharing Arrangements were put in place at demerger and were summarised in the Asset Allocation Plan as approved by the Minister at that time.

Approximately 85% of systems shared with Spark since demerger have now been exited, with the remainder primarily serving declining copper services. Chorus continues to execute plans to exit the remaining systems before retirement of the copper network by 2030. Before then, we expect copper services demand will decline to a point where shared systems supporting those services are no longer required by Spark or Chorus. Our best estimate remains that this will occur by 2028. In April 2022, Chorus requested an amendment to the Deed to simplify (shorten) the reporting arrangements. This amendment was approved by the Minister in October 2023.

The time taken to process a straightforward and clearly beneficial change shows the Deed amendment process is unwieldy and not suited to the fast pace of technological change. While the amendment was welcome, it does not change the fact that the Deed requires the publication of reports that deliver zero value.

Would there be any unintended consequences of streamlining and modernising these Deeds?

No

If you answered 'Yes', please provide your reason(s) below::

## Telecommunications Development Levy & Telecommunications Regulatory Levy methodology

Do you wish to skip this section?

No

### How revenue is defined

Do you have a preferred option?

No preferred option

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages::

Are there any unintended consequences of moving from qualified revenue to gross telecommunications revenue?

Not Answered

If you answered 'Yes', please provide your reason(s) below::

Should there be any adjustments to the levies to mitigate these (e.g. changes to the levy threshold, rates, should the levy be charged on gross telecommunications revenue from a Public Telecommunications Network etc)?

Not Answered

If you answered 'Yes', please provide your reason(s) below::

### Method for calculating the levy

Which option(s) would you support?

Flat percentage

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages::

This option is likely the simplest to implement, as it removes the need to create and maintain service 'tiers'.

Could shifting from a revenue-based levy to a fixed-rate model lead to any unintended consequences? If so, what adjustments to the methodology could help address them?

No

If you answered 'Yes', please provide your reason(s) below::

Could a tiered contribution structure help mitigate any unintended consequences of moving to a gross telecommunications revenue model?(E.g. would applying lower rates for smaller providers or differentiating rates between retailers and wholesalers support a more proportionate approach?)

No

If you answered 'Yes' or 'No', please provide your reason(s) below::

A flat percentage approach is likely to be the most proportionate and straightforward method. Using tiers would create additional effort and debate in defining the tiers and could lead to unexpected shifts in revenues / amounts payable in circumstances where minor changes in revenue meant that a business moved to a new tier.

## Auditing Requirements

Do you have a preferred option?

No preferred option

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages::

While we do not have a preferred option, we would not support Option 2 if it involves a "Director certification" requirement. Introducing such a requirement risks increasing the compliance burden beyond the status quo.

Are there any unintended consequences of removing the requirement for financial information to be externally audited every financial year?

No

If you answered 'Yes', please provide your reason(s) below::

## Should the levies be merged

Do you have a preferred option? (Select one)

An option not included above

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages::

While we consider that the general sub-levy component of the TRL could be merged with the TDL, the fibre-specific sub-levies of the TRL should remain separate. These fund specific requirements related to the regulation of fibre wholesale providers and it would not be appropriate to fund them through a broad funding tool that includes a wide range of telecommunications service providers including some who do not use wholesale fibre networks.

Could there be any unintended consequences of merging the TDL and TRL?

Yes

If you answered 'Yes', please provide your reason(s) below::

Refer to section above.

## Who is required to pay the levy

Do you have a preferred option?

Charge levy only on retailers

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages::

This is the simplest and most transparent method to collect the levy.

Would there be any unintended consequences of charging the levies on retailers and not wholesalers (for example, would it risk increasing costs for retailers and/or consumers)?

No

If you answered 'Yes', please provide your reason(s) below::

### Balancing the costs and benefits of regulation

Do you wish to skip this section?

No

### Consideration of costs and benefits

Do you have a preferred option?

Status quo - Continue use of Letters of Expectation

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages: :

We consider legislative changes to be a disproportionate and blunt instrument for addressing the problem statement. If the stated problem does exist and requires intervention, we consider the existing framework to be sufficient to respond effectively.

If you prefer option 2, are there any unintended consequences to consumers or industry that might arise from having an overarching purpose statement:

Not Answered

If you answered 'Yes', please provide your reason(s) below::

If you prefer option 3, which parts of the Telecommunications Act 2001 should the sectional purpose statements apply to:

If you answered 'Other', what sections and why?:

Are there any unintended consequences to consumers and industry that might arise from having sectional purpose statements?

Yes

If you answered 'Yes', please provide your reason(s) below::

It is possible that introducing sectional purpose statements could increase the compliance burden on industry, as more (and more detailed) information may be required to demonstrate alignment with each sectional purpose statement.

## Response ID ANON-KAUD-757Q-S

Submitted to Telecommunications Sector Regulatory Review - Consultation  
Submitted on 2025-09-25 16:20:04

Have your say

Privacy notice

I consent to the Ministry for Regulation sharing my contact details with another government agency and I am happy to be contacted if required.

Yes

Demographic information

What is your email address?

Email Address:

s@devoli.com

9(2)

Are you making a submission on behalf of an organisation or as an individual?

Organisation

Organisation Submission

What is the name of your organisation?

Name of organisation:

Devoli Limited

I consent to my organisation's name being publicly released by the Ministry for Regulation as a submitter to the Review.

Yes

If no, please can you explain why: :

What best describes the nature of your organisation in relation to telecommunication services? (Please tick all that apply)

Mobile Virtual Network Operator (MVNO), Retail service provider, Wholesale provider

If other, please specify in the box below. :

Permission to Contact You About Your Submission

Are you happy for us to contact you if we have questions about your submission?

Yes

Consumer protection and customer service

Do you wish to skip this section?

No

Simplifying rules and strengthening consumer protection

Do you have a preferred option?

Create a single enforceable Commerce Commission code for retail service quality and remove the code-making role of the TCF from the Telecommunications Act 2001

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages::

The current system does not appear to work efficiently as many of the retail service quality codes are non-enforceable and are not adopted by all players in the industry. This creates confusion for end users and lowers the relevance and usefulness of the current code environment. While it would be best if the industry developed industry codes, the current industry behaviour and fragmentation prevents this from happening.

Devoli supports the Commerce Commission, with suitable industry engagement, developing a set of industry wide, enforceable codes.

Could there be any unintended consequences (to consumers or industry) by creating a single enforceable Commerce Commission code for regulating retail service quality?

Yes

If you answered 'Yes', please provide your reason(s) below::

The Commerce Commission, by its nature, are likely to overregulate and develop codes that are heavily influenced by significant players in the market. This could lead to unforeseen circumstances such as codes restricting innovation and a degrading of the customer outcomes. Careful consideration should be given to all industry participants input rather than simply the larger players who, with their larger budgets, will seek to manipulate the development of codes for their own benefit.

## Access to basic telecommunications services

Do you wish to skip to the next section?

No

## Future of the Telecommunications Service Obligations arrangement

Do you have any preferred option(s)? (Please select all that apply)

Ensuring access to basic telecommunications services, voice services at a minimum

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages::

Access to a minimum level of telecommunications is a must for all NZ'ers to be able to fully participate in today's connected society.

Regulations should be set that define a reasonable level of services including access to broadband and associated services (such as an ability to reliably convey voice services). Most available and planned technologies are designed to carry a broadband service around 40Mbps (i.e. 4G FWA, Wireless Networks, VDSL services) with fibre, 5G and satellite services delivering significantly greater performance.

Any minimum service should be articulated in the end user outcomes rather than being specific to technology to allow network owners to innovate and invest while still supporting intermodal competition.

To minimise the cost burden on taxpayers, services priced below normal retail cost should be contestable from service providers and network operators. Previous research into USO's has shown that the benefit of increased network coverage more than offsets any potential pricing below retail cost. Any contracting should be focussed on those end users that genuinely cannot be profitable, avoids socialising losses while not capturing a fair share of the privatised profits and be representative of the incremental costs to deliver the service.

If you included Option 3 'ensuring access to basic telecommunication services' as one of your preferred options, please indicate your preference between the following:

Contracting companies to make basic services available and affordable in places where it would not be profitable

Are there any unintended consequences that might arise from phasing out or replacing the current TSO arrangement?

Yes

If you answered 'Yes', please provide your reason(s) below::

There are risks that phasing out the current TSO would leave end users with:

- No coverage for certain end users as the current TSO copper-based services are withdrawn and that realistically affordable alternatives are not available
- That service providers and network operators may not be interested in providing service below retail cost

Practically, it would be plausible to recycle copper-based service equipment into rural and remote areas alongside a round of copper loop shortening that would elongate the life of existing copper, have marginal investment, and deliver reasonable copper based broadband services.

If you currently rely on a copper connection, is there anything that would make it difficult or impractical to switch to a different technology (e.g. cost or a medical alarm)?

Yes

If you answered 'Yes', please provide your reason(s) below::

Devoli has a number of customers that rely on access services outside of the UFB footprint (i.e. those on Chorus copper services). There are significant migration costs to alternative services such as installation of specialist wireless infrastructure (satellite dishes, wireless receivers) as well as migration

costs associated with existing customer services (such as new voice handsets that connect to an IP modem/router). For a standard residential connection, the migration costs can often exceed \$1,000 per connection.

Which of these telecommunication services are critical for people to access?

Voice calling, Broadband

If other, please explain::

A minimum level of broadband (i.e. a service that can deliver 40Mbps) is critical to operate current consumer services and support a reliable IP voice solution.

Do you have any concerns about the potential removal of directory services (white pages listing, print telephone book and directory assistance)?

No

If you answered 'Yes', please provide your reason(s) below::

Alternative services exist that allow end users to access similar information (such as search engines and personnel mobile device-based address books

## Geographically Consistent Pricing

Do you agree or disagree with our recommendation that the Commerce Commission review and assess the effectiveness of GCP.

Agree with the recommendation

Please explain the reason for your selection. If you identified an alternative, please explain.:

Devoli believes that price charged to end users should be reflective of the value the service creates for the end user. Connectivity services for end users outside of the UFB footprint are likely to have a higher value placed on connectivity services and are accordingly willing to pay more for certain services. This is evidenced by many NZ'ers already paying for improved broadband services delivered by wireless Internet Services Providers (WISPs) and Low Earth Orbiting (LEO) satellite providers. It would appear fair to allow fixed line service providers such as LFC's to be allowed to charge more for services outside of the UFB footprint to be able to compete against WISPs and LEO operators.

By way of example, if LFCs could increase its price for fibre services outside of the UFB footprint by ~\$50 per month (which would lead to a similar end user retail price point similar to Starlink's broadband service), then the incremental revenues could be used to invest into expanding the fibre footprint while avoiding excessive upfront fees to the end users.

## Basic fibre services

Do you agree or disagree with our recommendation that the Commerce Commission should review anchor services and consider the option of a phased repeal as part of their next regulatory reset in 2027?

Agree with the recommendation

Please explain the reason for your selection. If you identified an alternative, please explain.:

Devoli believes that a review of required, and ideally, the anchor products would match to the minimum product specifications for any USO services (i.e. 40Mbps). The 100Mbps anchor product appears to be a too highly specified product which leads to high investment and then in turn leads to higher end user prices. Other jurisdictions around the world have lower specified products as the anchor / reference / USO product which supports intermodal competition and leads to efficient investment choices by network operators as any incremental investment above the anchor product should be supported by a clear value proposition and willingness to pay by end users.

Careful consideration should be given to defining a minimum performance standard that delivers a reasonable end user outcome, supports competition across network technologies while ensuring that appropriate returns are available for all participants.

## Fibre Regulation

Do you wish to skip this section?

No

## Governance settings in Local Fibre Company constitutions

Do you have any preferred option(s)?

An option not included above

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages::

Devoli would like to see a modified version of the status quo where Ministerial approval is required but the process and timings are set out and enforceable. Examples of similar process for shareholders with associated timelines can be found in Companies Act and other legislation.

Retention of the Government share is a simple but effective mechanism that ensures that those operating critical NZ infrastructure have an element of obligation to the Government of the day.

Would there be any unintended consequences of removing the Government Share?

Yes

If you answered 'Yes', please provide your reason(s) below::

If the Government share is removed, there is risk that NZ can ultimately lose control of its critical infrastructure becoming reliant on overseas investors. Existing protections under Overseas Investment Act may be difficult to protect NZ interests at all times.

## Ownership restrictions in Local Fibre Company constitutions

Do you have a preferred option?

Remove ownership restrictions and rely on existing legislation

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages::

Devoli believes that enforceable shareholder caps, in combination with other controls such as the Government share and Overseas Investment Act create an environment that is restrictive and sub optimal for investors. In our experience, allowing market forces and capital investors to be able to determine the value of a company is the best way for capital heavy companies such as LFCs and Mobile Network Operators to access the required sources of capital at appropriate prices. There are many examples where NZ has benefits from free flow of capital into telecommunication and other critical infrastructure so removing the cap should not have an adverse impact on the sector as a whole.

Would there be any unintended consequences of removing the ownership restrictions?

Yes

If you answered 'Yes', please provide your reason(s) below::

There is the potential for overseas control of critical infrastructure that may not be suitable for the long-term benefit of NZ. Having that said, there are existing legislative and regulatory measures which can minimise the risk.

## Layer 1 unbundling

Do you have any preferred option(s)?

Status quo – continue to require Layer 1 unbundled fibre

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages::

There are many existing service providers that leverage Layer 1 unbundling in the provision of services to business end users. Having access to unbundled Layer 1 services (i.e. dark fibre) has supported innovation and lead to lower cost services than can be accessed through layer 2 only service providers.

While there has been no large-scale unbundling of Layer 1 services in the provision of services to residential end users, the current regulatory obligations act as a constraint on Layer 2 and Layer 3 pricing. If Layer 1 unbundling was removed, this constraint would be removed and ultimately end users are likely to suffer from higher prices than would otherwise exist and there is a risk that future innovative services that leverage Layer 1 unbundling.

Would there be any unintended consequences of repealing all Layer 1 unbundling obligations?

Yes

If you answered 'Yes', please provide your reason(s) below::

If Layer 1 Unbundling requirements were repealed, there are risks that Layer 2 and Layer 3 pricing will increase and / or that LFC's will optimise future network design and build to prevent Layer 1 unbundling. Should a service provider seek to access Layer 1 unbundled services into the residential market, their ability to do so would be limited to the current network footprint creating future have and have nots.

## Exemption process for services above Layer 2

Do you have a preferred option?

Status quo – require full public consultation

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages::

Devoli supports retention of the status quo with some form of guidance on how consultation will occur and what needs to be true to get permission that would guide LFCs and other market participants.

It is not true that innovations are being obstructed as there are no constraints from LFCs from working with other industry parties to deliver innovative services at Layer 3 or above. The reality is that LFCs are seeking regulatory removal that could damage other market participants that deliver Layer 3 and above services.

Would there be any unintended consequences of streamlining the exemption process?

Yes

If you answered 'Yes', please provide your reason(s) below::

Devoli as a multi-layer provider has delivered real competition benefits to our customers and their end users. Making it easy for LFCs to enter into higher layers of service provision will stifle innovation and remove competition from certain markets. Once LFCs start offering Layer 3 services, there is material risk that it will adversely impact on the industry, and potentially end users, so any change must be well thought through.

### Fibre deregulation review process

Do you have a preferred option?

Single step streamlined process for deregulation reviews

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages::

Devoli believes that a thorough single step process will speed up decision making, reduce costs for both regulators and market participants that ultimately will benefit end users.

Would there be any unintended consequences of adopting a single step process for deregulation reviews?

Yes

If you answered 'Yes', please provide your reason(s) below::

There are risks that a single step deregulation review could lead to gaming by those that are seeking de-regulation or see business opportunities by tying competitors up in de-regulation reviews. The regulators should be wary of regulatory gaming and put in place clear guidelines and rapid assessments before commencing de-regulation processes.

### Legacy regulatory obligations in telecommunications

Do you have a preferred option?

Status quo - retain legacy Deeds and agreements

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages: :

Devoli believes that the legacy deeds need modernisation and streamlining to reflect the 14 years since the original arrangements were put in place. Enough time has passed for each of the business to establish independent operations and where they haven't, more modern arrangements can be put in place to protect the market structure and operations.

Would there be any unintended consequences of streamlining and modernising these Deeds?

Unsure

If you answered 'Yes', please provide your reason(s) below::

It is unclear how reliant either Spark or Chorus are on any shared arrangements and whether continued regulatory mechanisms are required to protect the current market structure and operations.

### Telecommunications Development Levy & Telecommunications Regulatory Levy methodology

Do you wish to skip this section?

No

### How revenue is defined

Do you have a preferred option?

An option not included above

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages::

Devoli believes that an alternate option, where regulatory bodies determine a "per connection" fee for connectivity services would be the most efficient and fair way to capture levies from end users. This approach would see the regulator setting a monthly fee for connectivity services that can easily be calculated in advance on an annual basis, simply captured by retail service providers from end users and passed to regulatory bodies on a more regular basis. The levy should only be captured by retail service providers (i.e. the entity sending an end user an invoice) rather than the complicated industry approach which requires complex processes and reporting to remove potential double charging of the levy.

By way of example, the current TDL seeks to capture ~\$12m annually from end users by way of a complex reporting, auditing, and calculation basis. There are currently 2m fixed line broadband services and ~7m mobile services in operation in NZ which would lead to a simple \$0.11 monthly levy if averaged across all services. Some complexity can be added by way of "balancing" for the nature of the service, i.e. mobile services average ~\$30 per month and fixed line services average ~\$90 per month so rebalancing the levy to reflect price differences (as a proxy for value or as a proxy for equity) would lead to a \$0.08 charge per month per mobile service and \$0.24 charge per month per fixed line service).

Devoli believes that the current TDL environment is more of a selective industry tax than a levy in its normal use of the word. The purpose of the TDL is to promote the reach and services delivered over the networks and that using connection is the simplest way of measuring network reach.

The advantages of this approach are:

- Simple, transparent with Government agencies already holding the information required to determine a "per connection" fee
- An easy mechanism that allows retailers to capture the levy from end users in the same way that other levies are captured in NZ

The disadvantages are

- It will make market share information potentially more visible to the market that certain retailers and network operators may not appreciate
- The regulator will be accountable for setting the levy per service and may be subject to influence from industry participants
- All retail market participants need to be included for equity purposes

Are there any unintended consequences of moving from qualified revenue to gross telecommunications revenue?

Yes

If you answered 'Yes', please provide your reason(s) below::

The use of revenue also has complexities where discounts or incentives are offered to new or existing customers. It is possible that using revenue allows some participants to manipulate the capture of levies. It also requires significantly more information to be captured by regulators to ensure that the levy is fairly captured across service providers adding cost to the industry.

Should there be any adjustments to the levies to mitigate these (e.g. changes to the levy threshold, rates, should the levy be charged on gross telecommunications revenue from a Public Telecommunications Network etc)?

No

If you answered 'Yes', please provide your reason(s) below::

Devoli does not believe a revenue-based approach with complex criteria should be applied. The current methodology has anomalies that should be removed such as:

1. Over 10% of the residential fibre market are not equally liable for the levy as a result of the minimum threshold and the need for a liable party to operate a part of the Public Telecommunications Network. Moving to a simpler set of criteria that allows all end users to contribute to the levy would be more equitable
2. The eligibility criteria allow many market participants to avoid participation in the capturing of the levy from end users. The new methodology should be developed to capture the levy from all end users.

## Method for calculating the levy

Which option(s) would you support?

An option not included above

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages::

As proposed earlier, Devoli believes that an alternate option, where regulatory bodies determine a "per connection" fee for connectivity services would be the most efficient and fair way to capture levies from end users. This approach would see the regulator setting a monthly fee for connectivity services that can easily be calculated in advance on an annual basis, simply captured by retail service providers from end users and passed to regulatory bodies on a more regular basis. The levy should only be captured by retail service providers (i.e. the entity sending an end user an invoice) rather than the complicated industry approach which requires complex processes and reporting to remove potential double charging of the levy.

By way of example, the current TDL seeks to capture ~\$12m annually from end users by way of a complex reporting, auditing, and calculation basis. There are currently 2m fixed line broadband services and ~7m mobile services in operation in NZ which would lead to a simple \$0.11 monthly levy if averaged across all services. Some complexity can be added by way of "balancing" for the nature of the service, i.e. mobile services average ~\$30 per month and fixed line services average ~\$90 per month so rebalancing the levy to reflect price differences (as a proxy for value or as a proxy for equity) would lead to a \$0.08 charge per month per mobile service and \$0.24 charge per month per fixed line service).

Could shifting from a revenue-based levy to a fixed-rate model lead to any unintended consequences? If so, what adjustments to the methodology could help address them?

No

If you answered 'Yes', please provide your reason(s) below::

A fixed rate model (either based on end user derived revenues or Devoli's preferred connection model) should not have any unintended consequences.

Could a tiered contribution structure help mitigate any unintended consequences of moving to a gross telecommunications revenue model?(E.g. would applying lower rates for smaller providers or differentiating rates between retailers and wholesalers support a more proportionate approach?)

No

If you answered 'Yes' or 'No', please provide your reason(s) below::

As an industry levy, there should not be any adjustments to promote competition.

Under Devoli's preferred connection model charged to retailers only, the model is simple that costs will be reduced ultimately benefiting end users.

## Auditing Requirements

Do you have a preferred option?

Another option not identified

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages::

Under Devoli's preferred connection basis, the LFCs and Mobile Network Operators could provide regular (monthly) connection count analysis to regulators to match to self-disclosed levies captured by retailers. This matching would remove the need for an audit as the regulators would have access to two data sources to provide confidence of the levies being captured by retailers.

If required, the regulator could perform spot checks or reconcile to other publicly available information (such as information provided to NZX).

Are there any unintended consequences of removing the requirement for financial information to be externally audited every financial year?

No

If you answered 'Yes', please provide your reason(s) below::

The removal of the high-cost audit requirement could be mitigated through regular collection and analysis of connection counts under Devoli's preferred method. An example can be found in Australia where NBN record keeping rules allow regulator to monitor connection counts without incurring significant cost to the industry (as the connection information is already used in participants regular internal and external reporting cycles).

## Should the levies be merged

Do you have a preferred option? (Select one)

Merge the TDL and TRL

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages::

Devoli's preferred model would be for the retail service provider focused elements of the TDL and TRL to be merged where possible. Elements of the TRL that relate to LFCs can be carved out and levied directly to the impacted parties.

Merging the TDL and TRL would make the efficiency of the ComCom effort to capture the levy be more transparent. Currently the real cost of the levy is significantly higher than the levy itself with the cost of the TRL, data collection and preparation costs and the associated audit costs meaning that the TDL (currently \$12m) is approximately 30% of the total cost to the industry of the TDL.

Could there be any unintended consequences of merging the TDL and TRL?

Yes

If you answered 'Yes', please provide your reason(s) below::

Currently the TRL is a hidden industry tax. There is a risk that merging the TDL and TRL could see the Commerce Commission become less efficient leading to higher costs that are ultimately passed onto end users. These consequences can be mitigated through transparent disclosure on the use of the funds (i.e. X% used for traditional TDL purposes, remaining Y% used to cover the costs of the Commerce Commission).

## Who is required to pay the levy

Do you have a preferred option?

Charge levy only on retailers

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages::

Devoli supports a traditional levy approach that is captured from end users via the retail service provider as an explicit charge added to invoices. This model simplifies the data capture, removes complexity and cost from the entire levy system, and avoids the levy approximately as an industry specific tax.

Would there be any unintended consequences of charging the levies on retailers and not wholesalers (for example, would it risk increasing costs for retailers and/or consumers)?

No

If you answered 'Yes', please provide your reason(s) below::

Devoli believes that a traditional levy approach, combined with Devoli's preferred connection calculation model, will have the lowest cost to the industry which is likely to lead to a reduction in prices charged to end users. With a simpler model, there should also be reduction in the costs borne by the Commerce Commission which are recovered through the TRL.

## Balancing the costs and benefits of regulation

Do you wish to skip this section?

No

## Consideration of costs and benefits

Do you have a preferred option?

Overarching purpose statement to require consideration of costs and benefits

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages: :

Devoli believes that having an overarching consideration of costs and benefits when considering regulation for the telecommunications is the best way to ensure that regulators consider consequences up front and lay markers to ensure that the regulation is achieving the desired outcomes (i.e. benefits within initial expectations and costs within reasonable levels). Devoli does not envisage significant effort should be expended by regulators in developing the consideration of costs and benefits but should be considered at a high level. We envisage that benefits and costs can be estimated in days or weeks and not require lengthy consultation or consideration.

If you prefer option 2, are there any unintended consequences to consumers or industry that might arise from having an overarching purpose statement:

Unsure

If you answered 'Yes', please provide your reason(s) below::

Unsure - there are risks that regulators seek for perfection in cost and benefit analysis that is not attainable and incur costs on themselves and the industry in developing an initial assessment and statement of the expected costs and benefits.

If you prefer option 3, which parts of the Telecommunications Act 2001 should the sectional purpose statements apply to:

If you answered 'Other', what sections and why?:

Not applicable

Are there any unintended consequences to consumers and industry that might arise from having sectional purpose statements?

Yes

If you answered 'Yes', please provide your reason(s) below::

Yes - in keeping with the Ministry for Regulations principles, all regulation should have robust cost benefit analysis. Having purpose statements and cost / benefit analysis only apply to some sections does not align with the Ministry's intent and would allow certain pieces of legislation and regulation be exempt from robust analysis which could lead to regulatory creep and increased costs on industry participants and ultimately end users.

## Response ID ANON-KAUD-75QS-N

Submitted to Telecommunications Sector Regulatory Review - Consultation  
Submitted on 2025-09-25 08:41:38

Have your say

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I consent to the Ministry for Regulation sharing my contact details with another government agency and I am happy to be contacted if required.

Yes

Demographic information

What is your email address?

Email Address:

s 9(2)(a) @enable.net.nz

Are you making a submission on behalf of an organisation or as an individual?

Organisation

Organisation Submission

What is the name of your organisation?

Name of organisation:

Enable Networks Limited (Enable)

I consent to my organisation's name being publicly released by the Ministry for Regulation as a submitter to the Review.

Yes

If no, please can you explain why: :

What best describes the nature of your organisation in relation to telecommunication services? (Please tick all that apply)

Local Fibre Company (LFC)

If other, please specify in the box below. :

Permission to Contact You About Your Submission

Are you happy for us to contact you if we have questions about your submission?

Yes

Consumer protection and customer service

Do you wish to skip this section?

Yes

Access to basic telecommunications services

Do you wish to skip to the next section?

Yes

Fibre Regulation

Do you wish to skip this section?

No

## Governance settings in Local Fibre Company constitutions

Do you have any preferred option(s)?

An option not included above

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages::

Our alternative option is to remove the Government Share, but that the retail restriction currently in the constitution is moved to a Deed, rather than legislation as proposed in the options.

Legislation is time consuming and expensive to change, whereas a deed is more flexible. The choice of instrument (i.e. primary legislation or a deed) consequently depends on the degree of democratic accountability needed (decisions made by Parliament vs Minister vs officials) versus the degree of flexibility (time and cost to change). While the fundamental premise of not retailing fibre regulation is unlikely to change, Enable has made several arguments of why Local Fibre Companies (LFCs) should be allowed to retail non-fibre telecommunication services. This decision is at the margin of the more substantive issue. If these arguments are successful in the future, it will be time consuming and expensive to change primary legislation to allow this to happen.

Primary legislation is appropriate when the rule affects fundamental rights, involves significant political or economic consequences, or requires a high level of democratic legitimacy. Allowing LFCs to retail non-fibre telecommunication services does not fall into this category, and so the more proportionate regulatory instrument of a Deed should be used.

Additional matter: Allowing retail on non-fibre telecommunication services

Enable has previously argued that LFCs should be able to retail non-fibre telecommunication services, as this would have a number of benefits for customers. The Ministry has not included this as a consultation option. We refer the Ministry to our previous arguments, rather than repeat them here. An alternative to lifting the retail restriction completely, is to allow LFCs to retail non-fibre telecommunication services to an annual revenue cap e.g. \$10 million. This amount aligns with the level set for the TDL levy, and where activities are sufficiently small to incur paying the levy.

The benefits of a revenue cap are that:

- It allows LFCs to innovate in niche areas, where other retail service providers may not be operating
- It is consistent with the approach in other industries e.g. electricity distribution businesses are allowed to retail electricity up to a cap
- It avoids time consuming and expensive exemption processes, which can quickly deter smaller business cases.

Would there be any unintended consequences of removing the Government Share?

No

If you answered 'Yes', please provide your reason(s) below::

## Ownership restrictions in Local Fibre Company constitutions

Do you have a preferred option?

Remove ownership restrictions and rely on existing legislation

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages::

Enable Networks Limited has had an overseas ownership restriction in its constitution since the company was incorporated in 2011. This is that a, "Non-New Zealand national may not acquire more than 10% of shares without the Minister of Finance's approval". Northpower has the same restriction, whereas Tuautahi does not. Chorus has a similar restriction, but with a threshold set at 49.9% of shares.

Enable argues that this restriction is not needed for the following reasons:

- The Ultra-Fast Broadband initiative ended in 2022 and Enable has paid back the Crown's investment.
- Targeted laws such as the Overseas Investment Act 2005, the Takeovers Code, and the Commerce Act 1986 are in place. The current constitutional restriction duplicates these. In many respects, it is worse as it sets a lower threshold and also provides no detail of the criteria for the assessment or process to use (e.g. time limits of decisions), limiting investor certainty.
- Removing the restrictions will improve investor certainty and capital access, as well as deliver flexibility and proportionality for shareholders.
- The same approach should also be provided across all LFCs, including Chorus. There is no rationale of why there is different treatment across the LFCs (i.e. why Tuatahi has no restriction, but all the other LFCs do).

Would there be any unintended consequences of removing the ownership restrictions?

No

If you answered 'Yes', please provide your reason(s) below::

## Layer 1 unbundling

Do you have any preferred option(s)?

## Repeal Layer 1 unbundling requirements

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages::

LFCs undertook extensive work before building the UFB networks to understand requirements and what needed to be in place.

In practice this means that there is a second unused fibre supplied to every customer. This is a significant expense for an asset that has never been required.

The requirements also mean space has to be kept available in a range of assets, just in case it is required for another operator's equipment. This forces LFCs to build larger assets than we need. In some assets, there is no more space, meaning Enable would like to use the spare capacity for its own purposes. However, we have to invest in different options, to keep the unbundling space available.

As some examples of space needed to fulfil the current obligation:

• § 9 (2)(b)(ii)

§ 9 (2)(b)(ii)

While the original arguments for these rules had good intentions, in practice no retail service provider has decided to invest in providing Layer 2 services.

§ 9 (2)(b)(ii)

Fibre also has an asset life of around 25 years, meaning all this unused fibre will start to be required to be replaced in around 10 years as a significant expense.

The Ministry mentions the disadvantage that it might be difficult to restore the obligation if needed in the future. We don't think this is a significant issue given the focus towards LEO satellites and roll-out of the 5G network, where there is less interest in, and more competition for fixed line networks. Enable does not support the option of "removing the legislative duplication and amend the Telecommunications Act 2001 to require the Commerce Commission to consider repeal during the next Fibre Deregulation review".

§ 9 (2)(b)(ii)

Realistically, a review by the Commission will be finalised at the end of 2028 and then require legislative change. This is likely to take at least a year, meaning change might be complete by 2030.

As detailed above, by 2030, the spare fibre for unbundling will start to near the end of its expected life, and companies will need to start making significant renewal decisions. This has a major impact on capital needs, and so the earlier the decision is made, the better to provide certainty for companies and investors.

In summary, Enable supports the Ministry deciding this issue now given:

- LFCs are incurring significant costs now and disadvantaged in competing with other companies who do not have these requirements, and delay to possible change to 2030 adds to this cost.
- The Commerce Commission has a significant work programme to complete by 2028, and the Ministry is already proposing to add two more reviews to it.
- The spare fibre will start to near the end of its expected life by 2030, and investors need certainty on renewal forecasts.
- It unlikely any significant new information will become available to inform the decision between now and the next deregulation review.

Would there be any unintended consequences of repealing all Layer 1 unbundling obligations?

No

If you answered 'Yes', please provide your reason(s) below::

## Exemption process for services above Layer 2

Do you have a preferred option?

An option not included above

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages::

The alternative option supported is to remove the restriction on LFCs of providing services above Layer 2.

While Enable welcomes the Ministry's option of a streamlined exemption process, our preferred option however is one that requires no exemption

process and removes the restriction on LFCs providing wholesale services above Layer 2.

In addition, if the Ministry does not proceed with removing the restriction of retail of non-fibre telecommunications services in LFCs' constitutions, we note that a fast-track exemption process could be applied for LFCs. This could operate in the same way as proposed for service above layer 2, where non-controversial low risk proposals can be fast tracked.

a) Preferred option: Removing the restriction on providing wholesale fibre services above Layer 2

We note that if the retail restriction of fibre on LFCs remains in place, LFCs would be restricted to just wholesaling Layer 3 and Layer 4 services. We have already provided the Ministry with examples of services and benefits of this and other protections in place.

If the Ministry does not adopt this option to remove the restriction entirely, our second preference is providing a "streamlined exemption process, fast-track for low-risk services". This would be a significant improvement on the current approach, and we agree with the Ministry, that it would have the benefits of:

- Addressing limitations of the current process by offering a workable solution for low-risk services;
- Encouraging innovation and allowing LFCs to offer new services more quickly;
- Reducing time to market, so consumers benefit sooner; and
- Lowering the burden on businesses proposing low-risk or niche services.

We consider that the Commerce Commission has sufficient expertise in this area to design a system that sets an appropriate threshold, and to be able to assess applications without consultation.

b) Creating an exemption process to retail non-fibre telecommunication services

Under the section "Governance settings in Local Fibre Company Constitutions", Enable has proposed that LFCs should be able to retail non-fibre telecommunication services up to a revenue cap. If this does not occur, our next preference is that we strongly recommend that the Ministry provides a mechanism whereby LFCs can apply for an exemption to retail non-fibre telecommunications services.

Enable has a number of small, low risk ideas that would improve services for consumers. By creating an exemption process, it would allow these services to potentially progress. Enable has given examples in confidential documents of previous consultations, so will not repeat them here.

We also note that exemption processes, no matter how well they are designed, can still be costly, add uncertainty and potentially divulge confidential information. Therefore, we consider a revenue cap a much better mechanism than an exemption process, as this better supports innovation and speed of change.

Would there be any unintended consequences of streamlining the exemption process?

No

If you answered 'Yes', please provide your reason(s) below::

## Fibre deregulation review process

Do you have a preferred option?

Single step streamlined process for deregulation reviews

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages::

Enable supports a single streamlined process as it allows for emerging issues to be more promptly addressed and is much less bureaucratic. We note that the Commission has already decided that four of the six regulated services have met the threshold for the reasonable grounds for review. It is highly unlikely that there will be fewer grounds for review for these services in the future.

The remaining two services both relate to PON services, and there is a range of evidence showing increasing competition from fixed wireless networks and LEO satellite services. Therefore, it is likely these services will pass the reasonable grounds threshold from 2027 and beyond. It is also important to have a swift process to consider this, given the workload for the Commission and LFCs in the next few years.

Would there be any unintended consequences of adopting a single step process for deregulation reviews?

No

If you answered 'Yes', please provide your reason(s) below::

## Legacy regulatory obligations in telecommunications

Do you have a preferred option?

No preferred option

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages: :

Would there be any unintended consequences of streamlining and modernising these Deeds?

Unsure

If you answered 'Yes', please provide your reason(s) below::

## Telecommunications Development Levy & Telecommunications Regulatory Levy methodology

Do you wish to skip this section?

No

### How revenue is defined

Do you have a preferred option?

An option not included above

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages::

Option supported is to base levies on gross telecommunications services for defined services.

Enable supports this approach as it carries a lower administrative burden for companies.

We do not support Option one (the current approach), as this means the levy would continue to be calculated retrospectively, based on past earnings and other firms' earnings. This makes it impossible to inform telecommunications end users about how the levy contributes to the cost of the services they receive, and so the levy cannot be passed on in a transparent way.

Option two (basing the levies on gross telecommunications revenue) will not be sufficient to reduce complexity and administrative burdens, and bring much needed transparency.

To make the gross revenue option work the calculation needs to be based on a clearly defined scope of services - broadband, stand alone voice, mobile and data connection services. Our preferred option is therefore to base the levies on gross telecommunications revenue for defined services. However, we would not support this change to gross revenue if other levy issues are not addressed, including those needed to bring transparency. The levy issues need to be considered together.

Are there any unintended consequences of moving from qualified revenue to gross telecommunications revenue?

No

If you answered 'Yes', please provide your reason(s) below::

Should there be any adjustments to the levies to mitigate these (e.g. changes to the levy threshold, rates, should the levy be charged on gross telecommunications revenue from a Public Telecommunications Network etc)?

Yes

If you answered 'Yes', please provide your reason(s) below::

See the comments above and rest of submission.

### Method for calculating the levy

Which option(s) would you support?

Flat percentage

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages::

We note the TCF proposal requires the levy to be calculated based on a proportion of total industry revenue, so the status quo will not work.

Making the levy a fixed percentage (option two) will remove the complexity, and if set in advance, will provide greater clarity and certainty around expected levy charges. This will also enable telcos to inform telecommunications end users about how the levy contributes to the cost of the services they receive, and so the levy can be passed on in a transparent way.

Could shifting from a revenue-based levy to a fixed-rate model lead to any unintended consequences? If so, what adjustments to the methodology could help address them?

No

If you answered 'Yes', please provide your reason(s) below::

Could a tiered contribution structure help mitigate any unintended consequences of moving to a gross telecommunications revenue model?(E.g. would applying lower rates for smaller providers or differentiating rates between retailers and wholesalers support a more proportionate approach?)

No

If you answered 'Yes' or 'No', please provide your reason(s) below::

See earlier comments

## Auditing Requirements

Do you have a preferred option?

Remove the requirement for financial information to be externally audited

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages::

Are there any unintended consequences of removing the requirement for financial information to be externally audited every financial year?

No

If you answered 'Yes', please provide your reason(s) below::

## Should the levies be merged

Do you have a preferred option? (Select one)

An option not included above

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages::

Enable supports merging the TDR and TRL general Telecommunications Regulatory Levy, but not including the two TRL regulatory sub-levies associated with the price-quality regulation of Part 6. These can be easily separated out and charged to the four businesses involved.

Could there be any unintended consequences of merging the TDL and TRL?

No

If you answered 'Yes', please provide your reason(s) below::

## Who is required to pay the levy

Do you have a preferred option?

An option not included above

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages::

While we are of the view that the levy should only apply to retailers (to reduce complexity and the transaction costs of passing the levy on), we have chosen the "other" option because the application to retailers needs to be more nuanced. We propose that the levy would apply to all providers of prescribed retail services - broadband, standalone voice connections, pre-paid and post-paid mobile connections, and national data connections.

This approach will enable transparency. By setting the levy up front (before the start of the period), as a percentage of retail revenue for the prescribed services, which then translates to a percentage of retail price, providers have certainty relating to the TDL liability on a service basis and can communicate this to end users should they choose.

Accordingly the TDL would no longer form a component of wholesale prices.

Would there be any unintended consequences of charging the levies on retailers and not wholesalers (for example, would it risk increasing costs for retailers and/or consumers)?

No

If you answered 'Yes', please provide your reason(s) below::

## Balancing the costs and benefits of regulation

Do you wish to skip this section?

No

## Consideration of costs and benefits

Do you have a preferred option?

No preferred option

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages: :

Enable's most recent experience with the Commerce Commission is that it is making genuine attempts to reduce the regulatory burden where possible. For example, in its recent information disclosure draft determination, there were a range of positive changes we supported. There were also areas we pushed back, but we understand the Commission's rationale for this.

Enable also finds much of the information from the Annual Monitoring Report very useful, and the only way to understand how quickly and extensively changes are occurring at a national level.

If you prefer option 2, are there any unintended consequences to consumers or industry that might arise from having an overarching purpose statement:

Not Answered

If you answered 'Yes', please provide your reason(s) below::

If you prefer option 3, which parts of the Telecommunications Act 2001 should the sectional purpose statements apply to:

If you answered 'Other', what sections and why?:

Are there any unintended consequences to consumers and industry that might arise from having sectional purpose statements?

Not Answered

If you answered 'Yes', please provide your reason(s) below::

## Response ID ANON-KAUD-7575-W

Submitted to Telecommunications Sector Regulatory Review - Consultation  
Submitted on 2025-09-25 19:19:26

Have your say

Privacy notice

I consent to the Ministry for Regulation sharing my contact details with another government agency and I am happy to be contacted if required.

Yes

Demographic information

What is your email address?

Email Address:

s 9(2)(a) @eonfibre.nz

Are you making a submission on behalf of an organisation or as an individual?

Organisation

Organisation Submission

What is the name of your organisation?

Name of organisation:

EonFibre

I consent to my organisation's name being publicly released by the Ministry for Regulation as a submitter to the Review.

Yes

If no, please can you explain why: :

What best describes the nature of your organisation in relation to telecommunication services? (Please tick all that apply)

Wholesale provider

If other, please specify in the box below. :

Permission to Contact You About Your Submission

Are you happy for us to contact you if we have questions about your submission?

Yes

Consumer protection and customer service

Do you wish to skip this section?

Yes

Access to basic telecommunications services

Do you wish to skip to the next section?

No

Future of the Telecommunications Service Obligations arrangement

Do you have any preferred option(s)? (Please select all that apply)

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages::

If you included Option 3 'ensuring access to basic telecommunication services' as one of your preferred options, please indicate your preference between the following:

Not Answered

Are there any unintended consequences that might arise from phasing out or replacing the current TSO arrangement?

Not Answered

If you answered 'Yes', please provide your reason(s) below::

If you currently rely on a copper connection, is there anything that would make it difficult or impractical to switch to a different technology (e.g. cost or a medical alarm)?

Not Answered

If you answered 'Yes', please provide your reason(s) below::

Which of these telecommunication services are critical for people to access?

If other, please explain::

Do you have any concerns about the potential removal of directory services (white pages listing, print telephone book and directory assistance)?

Not Answered

If you answered 'Yes', please provide your reason(s) below::

## Geographically Consistent Pricing

Do you agree or disagree with our recommendation that the Commerce Commission review and assess the effectiveness of GCP.

Disagree with the recommendation

Please explain the reason for your selection. If you identified an alternative, please explain.:

EonFibre does not support reviewing Geographic Consistent Pricing (GCP) with a view to weakening it. Chorus and other Local Fibre Companies (LFCs) are monopoly operators in their regions — once a fibre network is built, households and service providers have no alternative wholesale fibre supplier for residential fibre services. In that context, GCP is the safeguard that applies to Chorus and prevents "pocket pricing" — higher charges where customers have no choice and tactical discounts where rivals exist.

GCP is standard across monopoly utilities. Postal services, electricity transmission, and Australia's NBN all apply nationally consistent pricing. Independent expert advice by Richard Feasey to the Commission has stressed that GCP protects both fairness and competition by preventing selective undercutting in contested areas while lifting prices elsewhere (ref: [https://comcom.govt.nz/\\_\\_data/assets/pdf\\_file/0026/366326/Feasey-NZ-fibre-regime-final-report-20-February-2025.pdf](https://comcom.govt.nz/__data/assets/pdf_file/0026/366326/Feasey-NZ-fibre-regime-final-report-20-February-2025.pdf)).

Removing GCP would create material risks for both market structure and consumers: rural and regional consumers would likely pay more for the same services than consumers in urban centres, retailers would face the cost of juggling multiple regional plans, and consumers would be confused by inconsistent offers. The consultation document argues that GCP potentially reduces incentives for Chorus to expand the fibre network into less economic areas. We do not support this argument. Under the maximum allowable revenue model, Chorus is entitled to recover costs across its fibre asset already.

The risks of removing GCP outweigh any potential benefits and therefore it would not be prudent to direct scarce regulatory resources into reviewing GCP. Regulatory resources are better spent on considering deregulation where it is genuinely justified and GCP is not one of those areas.

## Basic fibre services

Do you agree or disagree with our recommendation that the Commerce Commission should review anchor services and consider the option of a phased repeal as part of their next regulatory reset in 2027?

Disagree with the recommendation

Please explain the reason for your selection. If you identified an alternative, please explain.:

We do not support requiring the Commission to review anchor services with an eye to repeal in 2027. Anchor services remain the benchmark that keeps other Chorus wholesale fibre services in check. The risk of removing them is real: it would leave Chorus free to lift prices across the portfolio. Chorus has consistently earned below the maximum allowable revenue cap, meaning that this framework is not a sufficient safeguard: Chorus has headroom to increase prices if anchors are removed.

Parliament originally introduced anchors to protect affordability during the copper-to-fibre migration. That principle remains valid while fibre is the

overwhelmingly dominant fixed technology and alternatives like fixed wireless are not substitutes at scale. Expert evidence shows anchors should be seen as a safeguard against monopoly power, not an outdated tool (ref: [https://comcom.govt.nz/\\_data/assets/pdf\\_file/0026/366326/Feasey-NZ-fibre-regime-final-report-20-February-2025.pdf](https://comcom.govt.nz/_data/assets/pdf_file/0026/366326/Feasey-NZ-fibre-regime-final-report-20-February-2025.pdf)).

Requiring the Commission to review anchor products with a presumption of repeal would not be an efficient use of regulatory resources. Regulatory effort should be directed towards areas where there is genuine evidence of over-regulation or competitive constraints, not towards dismantling core safeguards. However, if a review is to take place, it should examine whether anchor specifications need to evolve, not whether to dismantle the safeguard altogether.

## Fibre Regulation

Do you wish to skip this section?

No

### Governance settings in Local Fibre Company constitutions

Do you have any preferred option(s)?

No preferred option

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages::

EonFibre does not hold a strong view on changes to the governance settings in LFC constitutions, as these matters primarily relate to the Crown's management of its UFB investment interests. What is important from our perspective is that if constitutional changes are made, all LFCs are clearly and consistently subject to the fibre regulatory framework set out in the Act, including the wholesale/retail separation and open access requirements. These obligations provide the safeguards that protect consumers and ensure the retail market can remain competitive on top of monopoly fibre networks.

If the Government decides to proceed, we recommend consulting with industry stakeholders to ensure regulatory protections are fully preserved. Any weakening or omission of these safeguards could have unintended consequences for the wider market structure.

Would there be any unintended consequences of removing the Government Share?

Yes

If you answered 'Yes', please provide your reason(s) below::

If regulatory safeguards on LFCs are weakened through this change, there could be the following unintended consequences:

- LFCs gaining greater flexibility to operate outside of the regulatory framework, weakening consumer protections.
- Inconsistent treatment of different UFB fibre providers.
- Reduced transparency and accountability, particularly given that LFCs are not currently subject to price-quality regulation.

### Ownership restrictions in Local Fibre Company constitutions

Do you have a preferred option?

Not Answered

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages::

Would there be any unintended consequences of removing the ownership restrictions?

Not Answered

If you answered 'Yes', please provide your reason(s) below::

### Layer 1 unbundling

Do you have any preferred option(s)?

Status quo – continue to require Layer 1 unbundled fibre

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages::

We strongly support retaining Layer 1 unbundling. It was designed as a structural check on monopoly fibre operators, allowing competitors to innovate below the bitstream layer. It is a fundamental building block of the fibre market structure.

The fact that unbundling has not been taken up is not evidence of irrelevance, as the Ministry for Regulation suggests — it is evidence of flawed implementation. Chorus' proposed pricing for unbundled fibre was higher than bundled bitstream, and non-price terms made use impractical. That is not lack of interest; it is lack of a viable product.

Removing unbundling would entrench monopoly control and be near-impossible to reinstate later, as recognised in the Ministry for Regulation's consultation paper. This is also the view of Richard Feasey who said in its report on the fibre regulatory regime that removing Layer 1 unbundling requirement now would cement Chorus' dominance and extinguish any prospect of meaningful infrastructure-based competition over fibre (ref: [https://comcom.govt.nz/\\_data/assets/pdf\\_file/0026/366326/Feasey-NZ-fibre-regime-final-report-20-February-2025.pdf](https://comcom.govt.nz/_data/assets/pdf_file/0026/366326/Feasey-NZ-fibre-regime-final-report-20-February-2025.pdf)). The better path is to fix the product — reset pricing to create real economic space, address non-price barriers, and ensure genuine equivalence of inputs.

Layer 1 unbundling remains a vital safeguard for consumers and for the long-term health of New Zealand's fibre market.

Would there be any unintended consequences of repealing all Layer 1 unbundling obligations?

Yes

If you answered 'Yes', please provide your reason(s) below::

- Loss of a key safeguard against monopoly power: Chorus is a monopoly fibre provider. Without Layer 1 unbundling, there is no structural tool for competitors to innovate below the bitstream layer, leaving wholesale fibre entirely under monopoly control.
- Entrenchment of the status quo: The lack of uptake of unbundling so far reflects unworkable commercial terms, not lack of demand. Repeal would lock in those failed settings rather than fixing them.
- Hard to restore later: Once repealed, reinstating unbundling would be politically and legally difficult. The opportunity to build long-term competitive tension in the fibre market would be lost.
- Erosion of the UFB market design: Unbundling was a cornerstone of the Ultra-Fast Broadband framework, designed to allow competition and service differentiation over monopoly networks. Removing it undermines the integrity of that framework.

Exemption process for services above Layer 2

Do you have a preferred option?

Status quo – require full public consultation

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages::

We support keeping the current exemption process. Wholesale/retail separation has been one of the key structural safeguards of the fibre regime since the separation of Telecom. The Ministry for Regulation has stated in its terms of reference for this review that wholesale/retail separation was out of scope. However, this proposal appears to contradict this. Streamlining exemptions risks blurring that line and letting monopoly operators expand into adjacent markets with minimal scrutiny.

What is defined as "low risk" today may become core tomorrow — as we have seen with services like cloud hosting. Fast-tracking exemptions would risk undermining confidence in the wholesale/retail split and could trigger the issues we are currently seeing in other sectors like electricity. Stakeholder consultation must remain part of the process. Short-circuiting it may save time in the short term, but it risks unintended consequences in the long term.

Would there be any unintended consequences of streamlining the exemption process?

Yes

If you answered 'Yes', please provide your reason(s) below::

- Weakening wholesale/retail separation: Fast-tracking exemptions risks blurring the clear line between wholesale and retail that has underpinned the fibre market since Telecom's separation. Monopoly fibre operators could more easily expand into retail-like or adjacent markets.
- Approval of services that are not truly "low risk": What may be classed as "non-core" today could quickly become central to competition tomorrow — as happened with cloud and content services. A lighter process increases the chance of approving activities that distort competition.
- Erosion of confidence in the regime: Investors, competitors, and consumers rely on the integrity of structural separation. Short-circuiting consultation or scrutiny would undermine confidence that the regime is being applied consistently and fairly.
- Incremental unwinding of the UFB market design: Making it easier for monopoly wholesalers to obtain exemptions could be the start of a gradual erosion of the safeguards that support competition — similar to problems seen in the electricity sector today.

Fibre deregulation review process

Do you have a preferred option?

Status quo – Two-step process with no timeframe for decisions

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages::

We support retaining the two-step deregulation review process. This cautious approach ensures full reviews only occur when there is evidence of sustained competitive constraints, not by default. It also maintains consistency with how other telecom services are deregulated.

Moving to a single step would risk premature deregulation, add unnecessary cost for industry and the regulator, and send the wrong signal — that deregulation is assumed even while fibre operators remain monopolies in their territories.

Would there be any unintended consequences of adopting a single step process for deregulation reviews?

Yes

If you answered 'Yes', please provide your reason(s) below::

- Premature deregulation: Reviews could be triggered too early, before there is clear evidence of sustained competition. This risks removing safeguards while fibre remains a monopoly service in most regions.
- Increased regulatory burden: A single-step process would force the Commission to conduct full reviews every cycle, even where market conditions have not changed. These are resource-intensive for both the Commission and industry, requiring extensive data collection and consultation.
- Reduced certainty and confidence: Moving to one step could be seen as making deregulation the default. This risks undermining investor and consumer confidence that regulation will only be removed when the evidence clearly justifies it.

## Legacy regulatory obligations in telecommunications

Do you have a preferred option?

Not Answered

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages: :

Would there be any unintended consequences of streamlining and modernising these Deeds?

Not Answered

If you answered 'Yes', please provide your reason(s) below::

## Telecommunications Development Levy & Telecommunications Regulatory Levy methodology

Do you wish to skip this section?

Yes

## Balancing the costs and benefits of regulation

Do you wish to skip this section?

No

## Consideration of costs and benefits

Do you have a preferred option?

Sectional purpose statements to require consideration of costs and benefits

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages: :

We agree with the Ministry that the Commission's oversight powers should be exercised in a way that is proportionate and transparent. It is sensible to expect the Commission to carefully weigh costs and benefits when deciding whether to introduce new obligations, such as retail service quality codes or additional monitoring programmes. Imposing blanket cost-benefit tests on every exercise of its powers, however, risks slowing processes, creating bureaucracy, and diverting resources from issues that matter most to consumers. A targeted approach is therefore the right one.

If you prefer option 2, are there any unintended consequences to consumers or industry that might arise from having an overarching purpose statement:

Not Answered

If you answered 'Yes', please provide your reason(s) below::

If you prefer option 3, which parts of the Telecommunications Act 2001 should the sectional purpose statements apply to:

Retail service quality, Information and monitoring

If you answered 'Other', what sections and why?:

We do not support sectional purpose statements applying to information disclosure (fibre services market monitoring). Information disclosure (ID) is not an optional "extra" — it is a core part of regulating monopoly infrastructure. The purpose of ID is not to deliver an immediate cost-benefit outcome in the same way as, for example, a new code might. Instead, it provides transparency to the market and allows the regulator, retailers, and consumers to see how monopoly providers are performing. Without transparency, monopoly power is exercised behind closed doors.

Chorus and the LFCs remain monopoly providers in their territories. In this context, robust disclosure obligations are essential. They provide the evidence base for assessing whether these monopolies are behaving in ways consistent with consumer interests.

International practice supports mandatory information disclosure and reporting obligations as tools for monopoly oversight. For example, Ofcom in the UK requires providers to publish transparency reports on performance and network technology, and Australia's ACCC requires NBN to report regularly under record-keeping rules on service quality, network performance, and access agreements. These disclosures can be costly to prepare, but regulators regard them as indispensable in keeping dominant providers in check and ensuring the market functions fairly.

Applying a strict cost-benefit filter to ID risks undermining this framework. By their nature, the benefits of disclosure are diffuse and long-term — enabling benchmarking, deterring anti-competitive conduct, and building trust in the regime. These benefits are hard to quantify in a single exercise but are no less critical. For LFCs that are not subject to price-quality regulation, disclosure is one of the few regulatory levers available. Weakening it would be a step backward.

We therefore support a legislative amendment that requires proportionality and cost-benefit testing when the Commission uses discretionary powers such as creating new codes. But ID requirements must remain carved out: they are not discretionary extras, but fundamental tools for oversight of monopoly providers.

Are there any unintended consequences to consumers and industry that might arise from having sectional purpose statements?

Yes

If you answered 'Yes', please provide your reason(s) below::

Yes, if sectional purpose statements are applied to fibre ID, see comments in response to previous question.

## Response ID ANON-KAUD-75QE-7

Submitted to Telecommunications Sector Regulatory Review - Consultation  
Submitted on 2025-09-25 13:38:47

Have your say

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I consent to the Ministry for Regulation sharing my contact details with another government agency and I am happy to be contacted if required.

Yes

Demographic information

What is your email address?

Email Address:

s 9(2)(a) @ispanz.org.nz

Are you making a submission on behalf of an organisation or as an individual?

Organisation

Organisation Submission

What is the name of your organisation?

Name of organisation:

Internet Service Providers Association of New Zealand Inc

I consent to my organisation's name being publicly released by the Ministry for Regulation as a submitter to the Review.

Yes

If no, please can you explain why: :

What best describes the nature of your organisation in relation to telecommunication services? (Please tick all that apply)

Industry group

If other, please specify in the box below. :

Permission to Contact You About Your Submission

Are you happy for us to contact you if we have questions about your submission?

Yes

Consumer protection and customer service

Do you wish to skip this section?

No

Simplifying rules and strengthening consumer protection

Do you have a preferred option?

Status quo: maintain the voluntary Commerce Commission guidelines and the role of the New Zealand Telecommunications Forum (TCF) in making industry codes

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages::

The status quo is currently working well and we see no reason for change.

Could there be any unintended consequences (to consumers or industry) by creating a single enforceable Commerce Commission code for regulating retail service quality?

Unsure

If you answered 'Yes', please provide your reason(s) below::

### Access to basic telecommunications services

Do you wish to skip to the next section?

No

### Future of the Telecommunications Service Obligations arrangement

Do you have any preferred option(s)? (Please select all that apply)

Phase out the requirement to provide home telephone service

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages::

Option 2 represents current reality.

If you included Option 3 'ensuring access to basic telecommunication services' as one of your preferred options, please indicate your preference between the following:

Not Answered

Are there any unintended consequences that might arise from phasing out or replacing the current TSO arrangement?

No

If you answered 'Yes', please provide your reason(s) below::

If you currently rely on a copper connection, is there anything that would make it difficult or impractical to switch to a different technology (e.g. cost or a medical alarm)?

Not applicable – I don't have a copper connection.

If you answered 'Yes', please provide your reason(s) below::

Which of these telecommunication services are critical for people to access?

Voice calling, Broadband

If other, please explain::

Do you have any concerns about the potential removal of directory services (white pages listing, print telephone book and directory assistance)?

No

If you answered 'Yes', please provide your reason(s) below::

### Geographically Consistent Pricing

Do you agree or disagree with our recommendation that the Commerce Commission review and assess the effectiveness of GCP.

Agree with the recommendation

Please explain the reason for your selection. If you identified an alternative, please explain.:

We believe that a review in 2027, in two years' time, is appropriate.

### Basic fibre services

Do you agree or disagree with our recommendation that the Commerce Commission should review anchor services and consider the option of a phased repeal as part of their next regulatory reset in 2027?

Agree with the recommendation

Please explain the reason for your selection. If you identified an alternative, please explain.:

We believe that a review in 2027, in two years' time, is appropriate.

## Fibre Regulation

Do you wish to skip this section?

No

## Governance settings in Local Fibre Company constitutions

Do you have any preferred option(s)?

An option not included above

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages::

ISPANZ is strongly in favour of Option 1, retaining the Government Share, except that there should be a timeframe imposed on the Minister's decision making. The time limit in the Companies Act for shareholders to consider a special resolution for constitutional amendments would be appropriate; 10 working days ( Companies Act Schedule 1, s2(1))

Would there be any unintended consequences of removing the Government Share?

Yes

If you answered 'Yes', please provide your reason(s) below::

Where does one start? There would be consequences well beyond Ministerial decision making timeframes. If the problem is the time that it takes a minister to make a decision, put a timeframe on that. This is sovereign national infrastructure and a natural monopoly that requires close government oversight.

## Ownership restrictions in Local Fibre Company constitutions

Do you have a preferred option?

Status quo – retain constitutional shareholder caps

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages::

This is sovereign national infrastructure and a natural monopoly that requires close government oversight.

The consultation states that various things "may" be inhibiting new investment, not that they are. ISPANZ does not believe that there is a problem that needs fixing.

Would there be any unintended consequences of removing the ownership restrictions?

Yes

If you answered 'Yes', please provide your reason(s) below::

This is sovereign national infrastructure and a natural monopoly that requires close government oversight.

## Layer 1 unbundling

Do you have any preferred option(s)?

Status quo – continue to require Layer 1 unbundled fibre

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages::

The consultation document is incorrect. ISPANZ knows of at least one instance where a provider is using Layer 1 unbundling. More may occur in the future. Therefore, ISPANZ supports Option 1.

Would there be any unintended consequences of repealing all Layer 1 unbundling obligations?

Yes

If you answered 'Yes', please provide your reason(s) below::

Contrary to what you say, it is being used today. We disagree with your statement that it is not being used. Layer 1 unbundling enhances competition, and is likely to become more, not less, important.

## Exemption process for services above Layer 2

Do you have a preferred option?

Status quo – require full public consultation

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages::

ISPANZ disagrees with your statement of the problem and strongly supports Option 1, the status quo. It is RSPs that innovate, not Layer 2 providers. The status quo helps keep fibre wholesale and retail services separate, promoting competition and preventing LFCs from competing directly with retailers.

Would there be any unintended consequences of streamlining the exemption process?

Yes

If you answered 'Yes', please provide your reason(s) below::

These are natural monopolies. Allowing a wider/easier ability for LFCs to offer services above Layer 2 would reduce fair competition amongst RSPs as LFCs worked to erode the RSP customer base.

## Fibre deregulation review process

Do you have a preferred option?

Status quo – Two-step process with no timeframe for decisions

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages::

ISPANZ does not agree that there is a problem. The current two-step deregulation process can easily cope with the fast pace of change in the telecommunications market. The assertion in the consultation document that "This two-step process can introduce delays in responding to market developments, slowing the removal of outdated regulations or the introduction of more adaptive ones" is manifestly incorrect. We note that it is the service providers who are the innovators. Fibre deregulation is not necessary for service innovation.

Would there be any unintended consequences of adopting a single step process for deregulation reviews?

Yes

If you answered 'Yes', please provide your reason(s) below::

There is no problem, so don't fix it. Avoiding an unnecessary change avoids unintended consequences.

## Legacy regulatory obligations in telecommunications

Do you have a preferred option?

An option not included above

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages: :

ISPANZ believes that Deeds of Open Access Undertakings for Rural Broadband Initiative Services are still required. Therefore, under your statement of the scope of Option 2, these Deeds are not "obsolete and redundant requirements" and so must be maintained. We therefore support a modified Option 2 that retains Deeds of Open Access Undertakings for Rural Broadband Initiative Services.

Would there be any unintended consequences of streamlining and modernising these Deeds?

Yes

If you answered 'Yes', please provide your reason(s) below::

ISPANZ believes that Deeds of Open Access Undertakings for Rural Broadband Initiative Services are still required. Therefore, deleting all the deeds mentioned in the consultation would not delete something which is not an "obsolete and redundant requirement".

## Telecommunications Development Levy & Telecommunications Regulatory Levy methodology

Do you wish to skip this section?

No

## How revenue is defined

Do you have a preferred option?

Base the levies on gross telecommunications revenue

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages::

This would be simple and fair. The \$10 million cap should be reviewed and possibly increased. "Gross revenue" would need to be clearly defined.

Are there any unintended consequences of moving from qualified revenue to gross telecommunications revenue?

Unsure

If you answered 'Yes', please provide your reason(s) below::

We cannot think of any.

Should there be any adjustments to the levies to mitigate these (e.g. changes to the levy threshold, rates, should the levy be charged on gross telecommunications revenue from a Public Telecommunications Network etc)?

Yes

If you answered 'Yes', please provide your reason(s) below::

The \$10 million cap should be reviewed and possibly increased. "Gross revenue" would need to be clearly defined.

## Method for calculating the levy

Which option(s) would you support?

Status quo – keep the levy-based proportion of total industry revenue

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages::

We consider this to be the most fair approach.

Could shifting from a revenue-based levy to a fixed-rate model lead to any unintended consequences? If so, what adjustments to the methodology could help address them?

Yes

If you answered 'Yes', please provide your reason(s) below::

The status quo works. You avoid unintended consequences by retaining the status quo.

Could a tiered contribution structure help mitigate any unintended consequences of moving to a gross telecommunications revenue model?(E.g. would applying lower rates for smaller providers or differentiating rates between retailers and wholesalers support a more proportionate approach?)

Not Answered

If you answered 'Yes' or 'No', please provide your reason(s) below::

The status quo works. You avoid unintended consequences by retaining the status quo.

## Auditing Requirements

Do you have a preferred option?

Remove the requirement for financial information to be externally audited

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages::

This would provide a simplification and a cost saving. A Director's certificate should ensure accuracy. It would be a courageous director that knowingly signed an incorrect certificate.

Are there any unintended consequences of removing the requirement for financial information to be externally audited every financial year?

No

If you answered 'Yes', please provide your reason(s) below::

### Should the levies be merged

Do you have a preferred option? (Select one)

No preferred option

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages::

Could there be any unintended consequences of merging the TDL and TRL?

No

If you answered 'Yes', please provide your reason(s) below::

### Who is required to pay the levy

Do you have a preferred option?

Status quo - charge the levies to both retailers and wholesalers

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages::

ISPANZ supports there being clear visibility of wholesale and retail costs, including levy costs. Option 2 contains no advantages and would obfuscate costs.

Would there be any unintended consequences of charging the levies on retailers and not wholesalers (for example, would it risk increasing costs for retailers and/or consumers)?

Yes

If you answered 'Yes', please provide your reason(s) below::

ISPANZ would be suspicious of LFCs not passing on the full levy savings that they would realise from Option 2.

### Balancing the costs and benefits of regulation

Do you wish to skip this section?

No

### Consideration of costs and benefits

Do you have a preferred option?

Sectional purpose statements to require consideration of costs and benefits

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages: :

The Telecommunications Act is too complex to have a single meaningful purpose statement that would not be so broad and all-encompassing as to be useless. Whilst we support sectional purpose statements, much will depend on what they say. If they are not well-worded and helpful, then they should not be introduced.

If you prefer option 2, are there any unintended consequences to consumers or industry that might arise from having an overarching purpose statement:

Not Answered

If you answered 'Yes', please provide your reason(s) below::

If you prefer option 3, which parts of the Telecommunications Act 2001 should the sectional purpose statements apply to:

Retail service quality, Information and monitoring, Information disclosure (fibre services market monitoring), Other sections

If you answered 'Other', what sections and why?:

Are there any unintended consequences to consumers and industry that might arise from having sectional purpose statements?

Yes

If you answered 'Yes', please provide your reason(s) below::

They might be useless. In the worst case they might inhibit innovation.

## Response ID ANON-KAUD-75QD-6

Submitted to Telecommunications Sector Regulatory Review - Consultation  
Submitted on 2025-09-25 17:59:30

Have your say

Privacy notice

I consent to the Ministry for Regulation sharing my contact details with another government agency and I am happy to be contacted if required.

Yes

Demographic information

What is your email address?

Email Address:

s 9(2)(a)@one.nz

Are you making a submission on behalf of an organisation or as an individual?

Organisation

Organisation Submission

What is the name of your organisation?

Name of organisation:

One NZ

I consent to my organisation's name being publicly released by the Ministry for Regulation as a submitter to the Review.

Yes

If no, please can you explain why: :

What best describes the nature of your organisation in relation to telecommunication services? (Please tick all that apply)

Mobile Network Operator (MNO), Retail service provider

If other, please specify in the box below. :

Permission to Contact You About Your Submission

Are you happy for us to contact you if we have questions about your submission?

Yes

Consumer protection and customer service

Do you wish to skip this section?

No

Simplifying rules and strengthening consumer protection

Do you have a preferred option?

An option not included above

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages::

One NZ supports strong and effective consumer protections that ensure all New Zealanders can confidently participate in the digital economy. Consumers should have clear information and protections irrespective of the service they buy or the technology they use.

We understand that the MfR is proposing to replace the current mix of Commission guidelines and industry-led codes with a single Commission

consumer protection code. The TCF would no longer play a role in connection with the category of codes that a single Commission consumer protection code replaces, although it could still choose to set voluntary codes for its members. The MfR's intention is that the Commission's code should be proportionate, and that a legislative objective requiring that benefits outweigh costs is being considered.

One NZ does not support Option 2. As currently proposed, this option would create a regime that is more complicated and burdensome for both industry and consumers than the status quo. We have outlined below the issues with Option 2 and proposed an alternative option, which is also supported by other major retail service providers including Spark and 2degrees.

MfR's proposal would result in more regulation

Under Option 2, industry-led retail service quality codes would be replaced by a single code developed and enforced by the Commission. This would result in a more onerous regulatory regime, contradicting the core purpose of this review. We do not support this option.

It is unclear what has driven MfR's view that having industry involvement in regulation and enforcement means that the system is 'not effective at protecting consumers.' As far as we're aware, the Commission does not share this view and has previously deemed compliance with industry guidelines and TCF retail service quality codes as satisfactory. This is supported by the fact that the Commission has not exercised its existing power under the Act to create a regulated retail service quality code.

The consultation document states: '[s]ome rules have helped make sure some businesses and consumers are not disadvantaged. But it isn't clear if ongoing consumer problems, for example around billing and service quality, are properly addressed.' It appears that these issues have not been properly understood by MfR:

- a. TCF retailer members provide services to approximately 95% of New Zealand's telecommunications consumers combined. All of these retailers are signatories to the TCF codes that deal with retail service quality matters. In addition, we understand that most medium to large size retailers that are not TCF members comply with the Commission's voluntary retail service quality guidelines. This means that the large majority of consumers receive protections provided for in the Commission's retail service quality programme. The key issue is not related to non-compliance by retailers, but the fact that fibre wholesale providers are out of scope of these rules despite engaging in extensive direct-to-consumer activities on a national basis. We've set out further detail on this issue and how it should be addressed below.
- b. MfR references billing and service quality as areas that may not have been 'properly addressed'. Both of these issues have been part of the Commission's retail service quality programme and associated consumer studies. The Commission's intervention on service quality and billing have been in the form of service quality and billing rankings that they are publishing on a quarterly basis. We believe that the intervention on billing, for example, is appropriate given that only 4% of consumers are dissatisfied with their provider's billing. It is unclear what has driven MfR's suggestion that these issues potentially require further intervention.

Setting the right scope for consumer protection

This review presents a big opportunity to update telecommunications regulatory settings to ensure they are fit for the future. However, in reviewing the retail service quality framework, the focus appears to have been on the regulatory mechanism – industry-led versus Commission-led codes – rather than on the scope of this framework, clear definition of the boundaries of what is properly a "retail service quality" issue that should be regulated, and in each instance whether regulation is necessary, desirable and proportionate. Put simply, the review does not engage at all with the question of what retail service quality intervention should be for, when intervention is appropriate, when it is not (including when quality issues should be left to resolve through competitive processes) and what threshold tests ought to be met before regulation is selected as the way forward.

This is a missed opportunity and not what we expected as part of the MfR review. The real issue today is not who makes the rules, but that the legislation gives the Commission an open-ended ability to issue new retail service quality rules without a clear, rigorous and proportionate threshold for intervention. A proper threshold test would ask, for example, whether the size of the issue justifies regulatory intervention, whether desired outcomes could be more appropriately achieved through competition, and whether the cost and risk created by a proposed intervention outweighs the anticipated benefits of competition instead.

We acknowledge MfR's desire not to prescribe the content of the consumer code that would replace the current retail service quality regime. However, if MfR is to recommend specific changes to give effect to the options proposed, then it must ensure that any new code framework is fit for purpose. MfR's failure to engage with this point increases the risk that movement to the preferred option will increase the regulatory burden on industry, delivering none of the clarity and predictability for regulated businesses and consumers that should be primary goals of the review, and contrary to the objectives that the Ministry set out to achieve at the start of this review.

Application of a consumer protection code

This review is an opportunity to fix a regulatory asymmetry where some market participants are not bound by the current retail service quality requirements despite engaging in the same direct-to-consumer activities as retail service providers. For example, fibre wholesale providers (i.e. Chorus and other Local Fibre Companies (LFCs)) routinely engage in extensive direct-to-consumer marketing activities. They can talk about services and technology in a way that retailers cannot because while retailers are subject to strict rules set under a TCF code, fibre wholesalers such as Chorus are not and do not accept a requirement to comply with these codes. This is because currently the Commission's retail service quality guidelines, which the TCF codes address, do not apply to fibre wholesalers because they are issued under Part 7 of the Telecommunications Act, which is directed at retail service providers.

This legal construct assumes incorrectly that wholesalers like LFCs cannot and do not engage in activities that can directly affect end users, such as advertising specific products and technology and offering direct inducements to purchase specific products. This assumption is incorrect: in fact, there are multiple instances of fibre wholesalers taking steps that can and do affect consumers, including directly seeking to influence the services they buy. Part 7 needs to be properly understood as being about consumer protection – and, as such, it should apply to any business operating in the telecommunications sector that's engaged in activity that affects end users. It's disappointing that the review has missed this obvious point and has

endorsed continuation of a status quo that means, for example, that Chorus can include comparisons between fibre and other broadband technologies in a way that is not permitted for retail service providers. MfR has an opportunity to correct this asymmetry but as it stands has missed the point.

Following the publication of the Commission's broadband marketing guidelines in 2022, Chorus and other LFCs sent a letter to the Commission suggesting a soft 'voluntary commitment' to follow parts of the guidelines which they deemed were relevant to them. LFCs have been able to pick and choose which rules they want to commit to, an approach that is not allowed for other industry participants, highlighting the asymmetric regulatory settings that currently exist. Indeed, Chorus has repeatedly breached those aspects of the guidelines that it has voluntarily committed to following. By failing to engage with this issue at all, MfR's review suggests it is unconcerned with a regulatory structure that applies unequally to different parts of the sector undertaking exactly the same activities and will tolerate continuation of this status quo despite obvious potential for consumer harm.

This potential for harm was recognised by the Commission most recently in its letter to Chorus following a Fair Trading Act investigation into Chorus' advertising (we've provided a copy with this submission). In its letter, the Commission states: 'We are disappointed that Chorus has engaged in advertising which we consider adds confusion, rather than clarity to consumer understanding of broadband services, and the applications which run across them' and notes that 'Chorus has not maintained' the principles it signed up to in its letter of commitment, adding that 'such commitments can have a place in the regulatory landscape, but to be meaningful, they must be practically applied, which does not appear to be the case.'

s 9 (2)(b)(ii)

here is no common-sense rationale for this distinct treatment, particularly in a scenario where Chorus is financially enabled and has the clear objective of upselling higher value fibre plans to consumers through continuing, well-funded marketing campaigns. It is therefore critical that Chorus and other LFCs are captured by a consumer protection code.

Chorus has previously argued that the retail service quality regime under Part 7 should not apply to fibre wholesalers because they are already subject to regulation relating to quality under Part 6 of the Telecommunications Act. They have claimed that including them under Part 7 scope would amount to double regulation. This argument is flawed. Part 6 covers only a small subset of activities compared to the scope of Part 7, which has been used to regulate a much broader range of service quality matters. Excluding fibre wholesalers may have made sense when Chorus and other LFCs were expected to have a narrow wholesale focus. However, that is clearly no longer the case. Today, fibre wholesalers engage in activities such as direct-to-consumer marketing that directly affect consumer experience. Applying Part 7 to them would not create duplication — it would close a regulatory gap that Chorus is currently exploiting, to the detriment of consumers.

#### Alternative option

We acknowledge that the current retail service quality framework has no single view of provider obligations. We agree that the framework could be updated so that there is a single TCF code and to clarify how the Commission and industry codes work together in the co-regulatory framework. In doing that, MfR should build on the current co-regulatory approach (which delivers better consumer outcomes in technical and dynamic sectors like telecommunications) and address concerns that the Act provides little guidance on where an intervention is warranted and therefore there is no logical end point to regulation.

We propose an alternative option, building on Option 2 and the current co-regulatory approach set out in the consultation paper. This alternative option would address the points raised above and result in a regulatory scheme that more fully protect consumer interests. This option is also supported by other major retail service providers, including Spark and 2degrees. Our preferred approach would incorporate the following changes:

#### Scope

The current section under Part 7 on retail service quality codes should be replaced with a section on consumer protection. The Act should make it clear that the TCF consumer code apply to all operators engaged in activities that affect end users, including fibre wholesalers.

#### Frontier

Section 233 of the Act currently states: 'The purpose of a retail service quality code is to improve retail service quality to reflect the demands of end-users of telecommunications services.' This is a very open-ended threshold. It does not specify whether demand must be held by a majority of end users and, based on practice to date, the demands of a substantial minority of end users have been considered a sufficient basis for action. There is no requirement to detail how requirements specified in a code would better address demand than measures that could be expected to be introduced through demand responses that should be expected in a competitive market.

In addition, there is no requirement to rigorously consider the costs of measures proposed against the benefits postulated. This has allowed the programme to evolve into what looks more like a "continuous service improvement" scheme (often based on subjective, partial assessments not compelling objective evidence) rather than a targeted regulatory tool. As noted above, there is no requirement for demand to reflect the position of a majority of end users, minority demand can and has been used to justify requests for industry to adjust commercial practice. Evidence of demand has on occasion been unclear or anecdotal at worst. The purpose and threshold for intervention via the retail service quality/consumer protection framework needs to be more tightly defined. The Act should set a clear frontier that must be crossed before regulation is considered.

We recommend amending section 233 to require that the Commission must first establish that competition is not currently delivering effective outcomes demanded by the majority of telecommunications consumers and is unlikely to do so in the near term. This requires clear definition of exactly what demand is unmet. If this test is met, the Commission should then carry out a proportionate cost-benefit analysis before introducing new obligations. In

practice, this would mean asking questions such as: Are the proposals proportionate? Are there other means of achieving the objective without intervention? Will they deliver outcomes that the market cannot deliver itself? Will the intervention effectively address the issue identified? Do the benefits clearly outweigh the costs? These should be set out as specific Commission considerations for exercising its consumer protection powers under the Act.

The potential for competition to deliver effective outcomes also needs to be considered with reference to any existing regulation that drives those outcomes. For example, generic consumer legislation places strict obligations on operators to disclose full and accurate information about their products. In determining where current regulation remains fit for purpose, it is expected that the review would consider whether multiple sources of overlapping regulation are necessary to achieve outcomes like transparency to end users. In other words, is additional regulation via Part 7 justified where it simply overlays legal requirements that already exist and where no compelling analysis has been done to show how and why this existing regulation is inadequate.

This issue goes squarely to the first principles framework that the Terms of Reference for this review said would be applied, in particular (for Part 7 intervention):

- i. What is the rationale for intervention;
- ii. What is the proportionate regulatory response; and
- iii. What are the costs and benefits of regulation.

Addressing gaps in existing legislation is always preferable to layering duplicative requirements on operators. Additional drafting for section 233 should therefore reflect a principle that the purpose of a consumer protection code is to address consumer harms that cannot be addressed by existing regulation or by the operation of competition (noting that this consideration will not apply to monopoly wholesale providers).

#### Safeguards in the process

Section 239, which sets out the process for making or amending Commission codes, should be amended to require the Commission to carry out a cost-benefit analysis (as proposed by MfR in a separate section) and to require it to test where proposed requirements overlap with existing regulation, including existing consumer law, and if so whether there is any necessity to overlay new regulation on existing rules.

#### Design

Any future consumer protection code should continue to be developed by industry with the Commission having an oversight role to ensure that codes are consistent with other legislation that the code has the function of supplementing. Removing industry from the code making process would likely result in requirements that are unworkable in practice and that deliver material cost and complexity for consumers rather than any benefit. Industry-led code development is the preferred approach in Australia, where industry develop consumer protection codes and they are then approved by the regulator, with the resulting code applying to all industry participants involved in activities covered by the codes (regardless of whether they contribute to development). As is the case today, we believe that any new consumer code should be a matter for industry self-regulation and enforcement in the first instance. This can be simply achieved by clarifying the relationship between codes and Commission endorsement as described above.

To give effect to this, the Act should be amended to enable the Commission to request the TCF to create a new or amend an existing consumer protection code. Initial scope of work in connection with any new consumer code would be for the TCF to consolidate existing Commission's RSQ guidelines and TCF codes into a single draft document for Commission consideration. In exercising its power to approve the TCF codes, the Commission would need to apply the recommended s233 considerations (set out in paras 15-20 above). Upon Commission approval, the TCF code would apply to all operators, including non-TCF members. Consolidation provides consumers with a single authoritative source that they can readily identify and make sense of, consistent with good regulatory practice.

#### Enforcement

An effective compliance framework is an integral part of any code. The TCF consumer protection code would include compliance and enforcement provisions, which would need to be approved by the Commission.

#### Clean-up of related sections

If a single consumer protection code is implemented, section 234 of the Act (which enables the Commission to issue guidelines to industry) should be removed, as should section 235 (which enables the Commission to review industry retail service quality codes). Retaining these provisions would simply embed potential for overlapping and duplicative sources of regulation. This is not in the interests of consumers, who need to interpret and draw from multiple sources, and can't be justified in terms of any principle of good regulatory practice or the objectives of the Terms of Reference.

#### Advantages and disadvantages of our alternative proposal

##### Advantages:

- Simplified consumer protection regime, providing consumers with a single, authoritative source of rights and protections.
- Minimum standards would apply to all parties engaging in relevant consumer-facing activities (including fibre wholesalers), ensuring consistency and enhancing consumer protections.
- Cost benefit analysis results in the Commission imposing less prescriptive regulation, resulting in a greater ability for retail markets to innovate competitively, and lower compliance costs, which would free up of business resources to work on competitive market initiatives.
- Greater clarity and certainty for industry. The current retail service quality framework is too open-ended; a tighter statutory purpose and thresholds for intervention reduce the risk of arbitrary or anecdotal requirements.
- Improved alignment with broader consumer law, reducing duplication and encouraging regulators to consider existing protections before adding new obligations.
- Co-development with industry ensures codes are practical, proportionate, and take account of commercial realities, reducing the risk of poorly designed

rules.

- Approach is consistent with good international practice (e.g. Australia), providing assurance of regulatory oversight while leveraging industry expertise.

Disadvantages:

- May not address all industry behaviour affecting end users, unless amendments are made to ensure every industry participant engaged in activities subject to the code – including fibre wholesalers - is bound by it.
- Risk of increased regulatory burden on industry if legislative safeguards (e.g. clear thresholds, cost-benefit tests) are not developed and embedded in the Act.
- Possibility of overlap or inconsistency with existing consumer protection laws if legislative drafting is not carefully aligned.

Could there be any unintended consequences (to consumers or industry) by creating a single enforceable Commerce Commission code for regulating retail service quality?

Yes

If you answered 'Yes', please provide your reason(s) below::

The consultation asks whether there could be any unintended consequences (to consumers or industry) by creating a single enforceable Commerce Commission code for regulating retail service quality. We foresee the following unintended consequences if the Act is amended to require the Commission to implement an enforceable retail service quality code without appropriate legislative guardrails:

- Increased costs and regulatory burden on industry without materially improved outcomes for consumers. Increased regulatory costs will be passed through to end users through higher charges.
- Possibility of overlap or inconsistency with existing consumer protection laws if legislative drafting is not carefully aligned.
- Risk of the code being overly prescriptive, which could undermine innovation and differentiation across operators and so impact competition by restricting operators' ability to differentiate their services.
- Increased compliance costs on industry via more onerous reporting obligations.
- Need for increased resources for the Commission for enforcement activities, which will be passed through to industry via the Telecommunications Regulatory Levy (and ultimately to consumers using telecommunications services through higher prices).
- Limited consumer benefits if fibre wholesale providers engaging in direct-to-consumer activities (e.g. marketing) continue to be excluded from consumer protection requirements.

## Access to basic telecommunications services

Do you wish to skip to the next section?

No

## Future of the Telecommunications Service Obligations arrangement

Do you have any preferred option(s)? (Please select all that apply)

Phase out the requirement to provide home telephone service

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages::

We support Option 2: Phase out the requirement to provide home telephone service. The consultation raises some valid questions around ensuring access to basic telecommunications services and Option 3 raises some interesting ways in which this issue could be addressed once copper services are removed. However, these are ultimately policy questions that relate to affordability, not the regulation to provide services of specific quality under the TSO. We consider that the MfR review is not the right process for considering these policy questions.

If you included Option 3 'ensuring access to basic telecommunication services' as one of your preferred options, please indicate your preference between the following:

Not Answered

Are there any unintended consequences that might arise from phasing out or replacing the current TSO arrangement?

Not Answered

If you answered 'Yes', please provide your reason(s) below::

If you currently rely on a copper connection, is there anything that would make it difficult or impractical to switch to a different technology (e.g. cost or a medical alarm)?

Not Answered

If you answered 'Yes', please provide your reason(s) below::

Which of these telecommunication services are critical for people to access?

If other, please explain::

Do you have any concerns about the potential removal of directory services (white pages listing, print telephone book and directory assistance)?

Not Answered

If you answered 'Yes', please provide your reason(s) below::

## Geographically Consistent Pricing

Do you agree or disagree with our recommendation that the Commerce Commission review and assess the effectiveness of GCP.

Disagree with the recommendation

Please explain the reason for your selection. If you identified an alternative, please explain.:

In this section, we have provided general comments on the proposals relating to fibre deregulation. These considerations apply to other proposals too, not just in relation to GCP. We are inserting these here as there was no other place to provide this in the online feedback form. We then provide our views on the GCP proposals.

Fibre regulations - general comments

MfR is consulting on options that would roll back elements of the fibre regulatory framework. We are strongly opposed to any relaxation of these safeguards. Fibre is not an ordinary product; it is the essential plumbing of the digital economy. Removing key protections risks higher prices, reduced competition, and creating challenges currently seen in the electricity market. We have provided views on each proposal below. In this section, we provide a general overview of the risks around unwinding the fibre regulatory regime.

Fibre is still a monopoly service and needs proper safeguards

Fibre regulation was the foundation for broadband competition after Telecom's separation – and is why New Zealand now has more than 90 broadband providers. Undoing this risks shrinking competition, raising prices and the wider problems we're currently seeing in other sectors like electricity.

Fibre is the dominant broadband technology in New Zealand, accounting for around 74% of all connections. Chorus has successfully positioned it as the "gold standard" for internet access. That dominance makes it extremely difficult for alternative technologies to provide an effective competitive check. Support for deregulation based on competition from alternative access technologies wouldn't be in line with Chorus' own prior arguments and campaigns claiming superiority of fibre compared to these alternatives.

Fixed wireless access (FWA) and satellite are often held up as alternatives, but they are not a substitute at scale. FWA in particular is constrained by the need to share capacity with mobile services. Operators must carefully balance the demands of mobile and FWA customers to preserve service quality. Data volumes on mobile networks are growing exponentially, meaning spare capacity is quickly absorbed. Richard Feasey's report on fibre regulation is clear that while FWA can play a role for some households, it does not provide a meaningful competitive constraint on fibre pricing and will remain a relatively weak substitute for the foreseeable future. Relaxing the existing rules on Chorus in particular, which are rules that Chorus itself actively sought through 2018 amendments to the Telecommunications Act, would undermine fundamental structural settings of the telecommunications market on which the existing highly competitive retail services market is based. While suggestions made by Chorus and LFCs that changes to this regulatory scheme are costless and have no effect on end users may be superficially attractive, any acceptance of these submissions is to misunderstand how existing market features operate and how retail service competition is maintained.

Meanwhile, LFCs like to portray themselves as small, regional players. But in reality, each is a monopoly in its territory. Once a fibre network is built in an area, households and service providers have no alternative wholesale fibre provider. As Feasey observed, the fundamental economics of fibre mean it will remain the superior and cheapest way to deliver large volumes of data, and alternative technologies will not discipline monopoly pricing in any meaningful way.

New Zealand's fibre regulatory framework is not out of step with other jurisdictions. In the UK, Ofcom continues to designate Openreach as a fibre monopoly with 'significant market power', despite extensive fibre rollout by challengers. In Australia, NBN remains subject to monopoly-style regulation.

Furthermore, the consultation paper suggests that because the UFB build is complete and most Crown funding has been repaid, regulatory obligations may no longer be needed. This is premature. Chorus is actively lobbying for new rounds of Crown co-funding to extend the fibre footprint, and its proposal included in the Infrastructure Commission's Infrastructure Priorities Programme relies on external funding. If the Government is expected to contribute again, it is only fair that consumers continue to be protected by strong regulation.

Chorus has a history of seeking regulatory change

Chorus has long argued that regulation is 'not fit for purpose' whenever it constrains its commercial ambitions. From its challenges to IPP benchmarking through to recent criticisms of the regulatory regime under Part 6 of the Telecommunications Act, Chorus has repeatedly sought to shift the regulatory playing field. Anyone conducting a review of regulation should be alert to this before removing features of existing regulation that are central to delivering affordable, high-quality broadband for consumers.

Fibre deregulation risks the same problems we're currently seeing in electricity

The proposals underestimate how interconnected the different fibre safeguards are. Anchor products, unbundling, geographically consistent pricing, and wholesale-retail separation form critical foundations for competition. Removing any single one of them piecemeal is like playing Jenga: removing any one of them may collapse the existing tower of effective competition and enhance the ability to exercise market power. If there is a desire for a different regulatory framework for fibre, then this needs to be considered through a developed process that considers all elements of the ecosystem in detail, not by a truncated 3-month analysis that can only skim the surface and can't properly assess the full implications unpicking different parts of regulation in isolation.

The current framework is working

The fibre regulatory regime was carefully designed as part of the structural separation of Telecom and the UFB initiative. The current framework is working: Chorus earns steady, fair returns while consumers benefit from affordable, high-quality services. Regulation on Chorus and other LFCs is sensible and proportionate, and not out of step with what we see internationally. As Feasey concludes in its report on fibre regulation, the competitive constraints on fibre are weak and are likely to remain so; unwinding regulation now would be contrary to both evidence and international precedent.

Geographically Consistent Pricing (GCP)

One NZ position

We disagree with the recommendation that the Commerce Commission should review and assess the effectiveness of GCP. GCP is a core safeguard in monopoly regulation, and its removal would expose consumers and the industry to serious risks.

Rationale

GCP is a well-established tool in monopoly regulation. It prevents monopoly providers from charging different prices in different areas based on the level of local competition – a practice known as “pocket pricing.” In the absence of GCP, Chorus could raise prices in regions where fibre is the only viable option while cutting prices in areas where it faces a greater risk of losing customers. The result would be consumers facing a “postcode lottery” for fibre prices.

GCP is the norm for monopoly utilities. Other regulated sectors have long recognised that leaving regional monopolies free to set localised prices leads to unfairness and inefficiency:

- i. Postal services: New Zealand Post, like postal operators worldwide, is bound by a ‘universal service obligation’ that requires the same stamp price for delivering a letter to central Wellington as to rural Northland. Without this, remote customers would pay far more.
- ii. Electricity transmission: Transpower’s charges for using the national grid are regulated and applied consistently across the country. Local differences in cost are not passed directly to households, recognising that all consumers benefit from a national grid.
- iii. Telecommunications in Australia: NBN is required by law to charge the same wholesale broadband prices nationwide, regardless of location. The Australian Competition and Consumer Commission has called this “a central pillar” of fair broadband access.

Richard Feasey, in his 2025 report for the Commission, also stressed that GCP serves two purposes: ensuring households are not subject to unfair price differences based on location, and preventing regulated firms from using selective pricing to undercut competitors in contested areas while raising prices elsewhere. He recommended that GCP be maintained in New Zealand ‘for the foreseeable future’ on both fairness and competition grounds.

Removing GCP would create material risks for both market structure and consumers:

- i. Consumers in some regions, particularly rural and regional New Zealand, would face higher fibre prices than those in urban centres. This would create inequitable outcomes and undermine the purpose of the UFB programme, which was built on the principle of universal, affordable access.
- ii. While Chorus may save costs by being able to set regionally targeted prices, these costs would simply be shifted onto retail service providers. RSPs would be forced to create multiple fibre retail plans (e.g. one for Auckland, another for rural Waikato). This added complexity would increase provisioning costs and ultimately flow through to consumers.
- iii. For consumers, the result would be confusion and mistrust. A family might see national advertising for “\$90 a month fibre” only to discover that in their town it costs \$110. It would be like a supermarket advertising national special, but at the checkout customers in some suburbs find the prices are higher than advertised.

The risks clearly outweigh any potential benefits. It is not prudent to direct scarce regulatory resources into reviewing GCP when the risks associated with tinkering with this regulation are substantial. Regulatory resources are better spent on considering deregulation where it is genuinely justified and GCP is not one of those areas. If the Government nonetheless decides a review is needed, it should be undertaken by MBIE, not the Commission. GCP is fundamentally a policy matter, not a technical regulatory question.

We also do not accept the argument in the consultation document that GCP potentially undermines incentives for fibre expansion by limiting the costs that LFCs can recover. Under the existing Maximum Allowable Revenue (MAR) model, Chorus is entitled to recover costs across its fibre asset: but there is a general requirement that these costs should align with those incurred by a prudent operator not having a monopoly position. Moreover, there are wider policy and social objectives at play in connection with GCP. It makes particular sense in a system where networks have been built with the significant benefit of government funding with the implicit assumption that the resulting fibre monopoly would not discriminate between categories of customers. Just as with postal services or electricity transmission, consumers (as taxpayers) have contributed to a national network on the basis that access and prices would be consistent. If further Crown funding is used to extend fibre coverage – something Chorus itself has been lobbying for – it would be unacceptable to allow Chorus to raise prices in higher-cost regions of regional New Zealand while still receiving public money.

Basic fibre services

Do you agree or disagree with our recommendation that the Commerce Commission should review anchor services and consider the option of a phased repeal as part of their next regulatory reset in 2027?

Disagree with the recommendation

Please explain the reason for your selection. If you identified an alternative, please explain.:

One NZ position

We disagree with the recommendation to amend the Telecommunications Act 2001 to require the Commerce Commission to review anchor services and consider the option of a phased repeal as part of their next regulatory reset in 2027.

Rationale

Anchor products are a cornerstone of the fibre regime. They provide a fixed reference point for price and quality, acting as a safeguard against monopoly pricing. Without an anchor product, Chorus would have no regulatory baseline against which its other wholesale services are constrained.

The consultation paper itself acknowledges that 'the rules around anchor service pricing and quality might be supporting competition by helping keep prices lower for better services. There is a risk that removing these rules increases prices for consumers.' This risk is not hypothetical – it is real. Consumers would be left exposed if anchor obligations were weakened or removed.

When the current framework was introduced, Parliament recognised the importance of anchor services to ensure consumers could access entry-level fibre products at affordable prices, and to set a benchmark that anchors the price and quality of the broader portfolio of services. That need has not gone away. As Feasey's 2025 report explains, anchor products in New Zealand served two statutory purposes: first, to ensure no end user was made worse off by the transition from copper to fibre; and second, to act as a pricing constraint on other fibre services. He concluded that while the role of anchor products has changed as copper is decommissioned, they still provide an important safeguard and should be retained as a form of social tariff that ensures affordability.

Removing anchor product regulation would hand Chorus the ability to raise fibre prices without real constraint. The MAR under the Part 6 framework is not a sufficient safeguard – Chorus has consistently earned below the cap, which means there is headroom to increase prices if anchors are removed. Without an anchor product, Chorus would be free to lift its entry-level offers, pulling up the entire price ladder with them. As previously emphasised, alternative technologies are not strong enough to constrain Chorus' pricing power.

Requiring the Commission to review anchor products with a presumption of repeal would not be an efficient use of regulatory resources. Regulatory effort should be directed towards areas where there is genuine evidence of over-regulation or competitive constraints, not towards dismantling core safeguards.

If the Government nonetheless decides to proceed with this recommendation, the review should not be limited to considering repeal. It should also examine whether different specifications of anchor services would be more suitable for the next phase of the market, for example setting the anchor at the most widely adopted product tier. This would be consistent with Feasey's suggestion that anchor services may need to evolve but should continue to function as a backstop for affordability and fair pricing.

In short, anchor products remain a critical safeguard for consumers. Removing them would risk higher prices, reduced affordability, and greater complexity in the fibre market – all for little or no benefit.

## Fibre Regulation

Do you wish to skip this section?

No

## Governance settings in Local Fibre Company constitutions

Do you have any preferred option(s)?

No preferred option

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages::

One NZ does not have a strong preference on governance arrangements in LFC constitutions. Decisions relating to the Crown's protection of its UFB investment interests are ultimately matters for the Crown. However, if changes to the constitutions are made, it is essential that LFCs are fully brought under the fibre regulatory framework in the Act, with all relevant obligations carried across. Maintaining these safeguards is critical to protecting consumers and preserving the competitive retail market structure built on top of the LFC monopolies.

We recommend that, if the Government proceeds with this proposal, it undertakes consultation with relevant stakeholders on the detail. Without careful design, there is a risk that important regulatory safeguards could be weakened, with unintended consequences for the wider market.

Would there be any unintended consequences of removing the Government Share?

Yes

If you answered 'Yes', please provide your reason(s) below::

The consultation asks if there would be any unintended consequences of removing the Government Share. There could be unintended consequences if the relevant regulatory safeguards, including line of business restrictions and open access requirements, are not appropriately transferred to legislation, including:

- a. LFCs being able to operate outside of the established fibre regulatory framework, weakening key consumer protections.
- b. Unequal treatment between Chorus and other LFCs, undermining regulatory consistency.
- c. Reduced transparency and oversight of LFC performance, particularly as they are not subject to price-quality regulation.
- d. Risks to the stability of the broader market structure.

### Ownership restrictions in Local Fibre Company constitutions

Do you have a preferred option?

No preferred option

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages::

One NZ does not have a strong view on the proposed changes to ownership restrictions in LFC constitutions. However, it is important to carefully consider the implications for the Crown, given its role as an investor in these assets through the UFB programme. Existing legal mechanisms may provide sufficient protection, but this should be tested before any change is made.

Fibre is not an ordinary product – it is the essential plumbing of the digital economy. Ongoing Crown oversight may be particularly important if further public funding is provided for fibre expansion, as has been proposed by Chorus. Any change to ownership restrictions should therefore be considered in light of both the Crown's past investment and the possibility of future public contributions.

Would there be any unintended consequences of removing the ownership restrictions?

Unsure

If you answered 'Yes', please provide your reason(s) below::

### Layer 1 unbundling

Do you have any preferred option(s)?

Status quo – continue to require Layer 1 unbundled fibre

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages::

One NZ position

We support Option 1: Status Quo – Retain Layer 1 unbundling requirements.

Rationale

Layer 1 unbundling is a fundamental building block of the fibre market structure. Removing it would take away a core principle of monopoly regulation: ensuring competitors can access essential infrastructure at fair terms. It was introduced so that retail service providers could compete not only on reselling Chorus' bitstream services, but also by innovating and differentiating at deeper layers of the network.

MfR suggests that because Layer 1 unbundling has not been taken up, the obligation is outdated. This is the wrong conclusion. The lack of uptake is not because of a lack of interest, but because the commercial terms set by Chorus are not viable. This is a critical misunderstanding of the position and the role that Layer 1 unbundling can play in unlocking new models of competition.

s 9 (2)(b)(ii)

[Redacted content]

The Commission itself acknowledged at the time that the principle of equivalence of inputs requires sufficient economic space between Layer 1 and Layer 2 prices so that an efficient competitor could realistically replicate Chorus' Layer 2 services. Yet Chorus' pricing allowed no margin for access seekers, denying the possibility of competition.

The issue went beyond price. Chorus' non-price terms further undermined unbundling: refusing access to existing ONTs, denying access to both distribution fibres, restricting cabinet access, and imposing provisioning delays of up to 95 days compared to 30 days for bitstream. These conditions made unbundling commercially and technically unattractive.

Unbundling was intended as a tool to enhance competition and service differentiation at Layer 2. In his report on the fibre regime, Feasey recognised that while take-up has been limited to date, that reflects the way the service was specified and priced, not a lack of policy merit. Removing the requirement now would cement Chorus' dominance and extinguish any prospect of meaningful infrastructure-based competition over fibre.

The advantages of removing Layer 1 unbundling regulation do not outweigh the disadvantages. The one disadvantage of proposed change listed in the consultation document says that it would be '[d]ifficult to restore obligation if found to be needed in the future to preserve competition'. This risk is real and not worth the 'reduced regulatory complexity and uncertainty' which MfR considers as the advantage of change.

We also do not support Option 3 – asking the Commission to consider repeal at the 2027 reset. The Commission has already acknowledged unbundling's importance to the fibre regulatory regime. If MfR nonetheless proceeds, any such review should be undertaken by MBIE, as this is a fundamental policy issue rather than a technical regulatory question.

In short, the real lesson from the past decade is not that unbundling has failed, but that the implementation has been flawed. The answer is to improve it – for example, revisiting the specification of PONFAS, requiring genuine equivalence of inputs, and ensuring commercial terms that allow efficient competitors to enter – not to repeal it.

Unbundling remains a vital safeguard for consumers and for the long-term health of New Zealand's fibre market. Removing it would undermine the regime and erode the competition that underpins affordable, high-quality broadband.

Would there be any unintended consequences of repealing all Layer 1 unbundling obligations?

Yes

If you answered 'Yes', please provide your reason(s) below::

The consultation document asks if there would be any unintended consequences of repealing all Layer 1 unbundling obligations. The answer is 'yes' and these are as follows:

- i. Loss of the only regulatory lever that allows competitors to innovate below the bitstream layer.
- ii. Undermining of the model that was a cornerstone of the UFB design.
- iii. Making it near-impossible to reinstate unbundling later.

Exemption process for services above Layer 2

Do you have a preferred option?

Status quo – require full public consultation

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages::

One NZ position

We support Option 1: Status Quo – retain current process.

Rationale

Wholesale/retail separation has been the cornerstone of New Zealand's fibre market structure since the separation of Telecom. It was also the defining feature of the UFB initiative, ensuring that LFCs would remain neutral wholesale providers and that retail competition would flourish on top. MfR has stated from the outset of this review that wholesale/retail separation is out of scope. Yet the proposal to 'streamline' the exemption process by fast-tracking certain services is, in reality, tinkering with that separation. In addition, absent any requests from wholesalers for exemption that have tested the existing process and show that it is unduly slow or complex such that it needs to be streamlined, there is no evidence base for suggesting that existing provisions needs to be changed.

The consultation document proposes that the Commission could more quickly approve exemptions for what it calls 'low risk or non-core services.' But how do we define those categories? What looks non-core today could easily become central to competition tomorrow. Cloud services and content delivery, for example, were once considered niche add-ons; today they are central to the digital economy. Allowing exemptions without full scrutiny risks undermining the neutrality of the wholesale layer. What clearly is at play here is enabling geographic monopolists with market power the ability to expand into adjacent markets, including through use of revenues derived from their 'home' markets. MfR should be extremely cautious about making recommendations that more readily enable this.

Stakeholder consultation must remain part of the process. Short-circuiting it may save time in the short term, but it risks unintended consequences in the long term.

Would there be any unintended consequences of streamlining the exemption process?

Yes

If you answered 'Yes', please provide your reason(s) below::

The consultation document asks if there would be any unintended consequences of streamlining the exemption process. The answer is yes, and these include:

- i. Risk of services being approved that, in practice, are retail activities.
- ii. Risk of undermining investor and competitor confidence in the integrity of wholesale/retail separation.
- iii. Risk of sparking a gradual unwind of the market structure, leading to the same structural problems we currently see in electricity.

## Fibre deregulation review process

Do you have a preferred option?

Status quo – Two-step process with no timeframe for decisions

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages::

One NZ position

We support Option 1: Status quo – retain two-step process.

Rationale

The two-step process for fibre deregulation reviews is a standard feature of New Zealand's regulatory framework. It is also applied in other contexts, such as Mobile Termination Access Services (MTAS), co-location, and number portability. Any change to simplify the fibre review process would need to be mirrored in other areas where the Commission has a statutory duty to periodically consider deregulation. Selectively altering the process only for fibre would risk regulatory inconsistency and undermine confidence in the broader framework.

In practice, the current two-step process strikes the right balance. It ensures that deregulation is not ignored where competitive conditions genuinely justify it, but it also provides a filter to avoid wasting resources on full reviews where market conditions are unchanged. It is both cautious and efficient – this approach is needed when dealing with monopoly infrastructure at the heart of the digital economy.

Would there be any unintended consequences of adopting a single step process for deregulation reviews?

Yes

If you answered 'Yes', please provide your reason(s) below::

The consultation asks if there would be any unintended consequences of adopting a single step process for fibre deregulation reviews. The answer is yes, including:

- i. Premature reviews: Deregulation could be considered too early, without sufficient evidence of sustained competitive constraints. A single-step process could force the Commission into repeating complex reviews with little prospect of different outcomes.
- ii. Regulatory burden: Full deregulation reviews are resource-intensive for both the Commission and industry. The most recent fibre deregulation review required extensive information requests and consultation rounds. For industry participants like One NZ, responding has meant devoting significant staff time and resources away from other priorities. s 9 (2)(b)(ii) . Requiring this every cycle, without first establishing reasonable grounds, would create unnecessary compliance costs.
- iii. Erosion of confidence: A 'one-step' process could be seen as making deregulation the default, rather than a carefully considered decision. This risks undermining investor and consumer confidence that the Commission will only deregulate when the evidence clearly shows monopoly constraints no longer exist.

## Legacy regulatory obligations in telecommunications

Do you have a preferred option?

An option not included above

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages: :

One NZ supports the streamlining and modernisation of legacy regulatory obligations. The existing Deeds are complex and contain significant detail, so any changes should be approached carefully. It will be important for the Government to consult fully with stakeholders before making adjustments, to ensure that critical safeguards are not lost and that the modernised framework remains clear, workable, and effective.

Would there be any unintended consequences of streamlining and modernising these Deeds?

Yes

If you answered 'Yes', please provide your reason(s) below::

If not done appropriately, it could result in critical regulatory safeguards being lost, impacting the wider market structure and consumer outcomes. This is why consultation is critical.

## Telecommunications Development Levy & Telecommunications Regulatory Levy methodology

Do you wish to skip this section?

No

How revenue is defined

Do you have a preferred option?

An option not included above

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages::

We have provided some context for One NZ's position on TDL proposals first in this section, as there was no other place to insert this in the online feedback form. We then address the question.

General comments

The consultation paper outlines a range of potential models for reforming the TDL. It is good to see that industry's concerns around the complexity of the current regime have been considered and taken account in MfR's recommended reforms. We support a simpler model that would enable levy costs to be made more transparent to end users and to allow transparent presentation of levies in the same way as now occurs in sectors like electricity and fuel.

However, it is critical that the reform is carefully designed. Some of the options outlined in the consultation could, if adopted without sufficient consideration of all issues involved, lead to outcomes that are less efficient and more complex than the regime we have today. The timing constraints of the MfR review means that there are limitations to considering these issues in more detail under this process. The most effective next step to achieve real benefits would be for MfR to recommend that the relevant sections under Part 3 of the Telecommunications Act are amended to remove the specifics of how the TDL is calculated and allocated from primary legislation. Instead, the Act should simply state these details will be set out in regulations. The current regime would continue to apply until the regulations are developed. MBIE should then be tasked with developing the regulations in collaboration with industry, which should be required to give effect to specific key principles, including:

- i. Simplified allocation methodology: The method for calculating and allocating the levy should be straightforward, with liability set in advance rather than retrospectively, enabling providers to pass through costs to end users in a transparent way.
- ii. Reduced compliance burden: The auditing requirements should be removed to reduce compliance costs while maintaining appropriate oversight using existing legislative mechanisms.

s 9(2)(f)(iv)

█ Making TDL calculation and allocation rules by regulation would be consistent with that approach, and with the model already used for the Telecommunications Regulatory Levy (TRL).

How revenue is defined

We support an alternative option: revenue definition should be determined through the MBIE process recommended above and set out in regulation.

Are there any unintended consequences of moving from qualified revenue to gross telecommunications revenue?

Unsure

If you answered 'Yes', please provide your reason(s) below::

Should there be any adjustments to the levies to mitigate these (e.g. changes to the levy threshold, rates, should the levy be charged on gross telecommunications revenue from a Public Telecommunications Network etc)?

No

If you answered 'Yes', please provide your reason(s) below::

Method for calculating the levy

Which option(s) would you support?

An option not included above

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages::

We support an alternative option: the method for calculating the levy should be determined through the MBIE process recommended above and set out in regulation.

Could shifting from a revenue-based levy to a fixed-rate model lead to any unintended consequences? If so, what adjustments to the methodology could help address them?

Unsure

If you answered 'Yes', please provide your reason(s) below::

Could a tiered contribution structure help mitigate any unintended consequences of moving to a gross telecommunications revenue model?(E.g. would applying lower rates for smaller providers or differentiating rates between retailers and wholesalers support a more proportionate approach?)

No

If you answered 'Yes' or 'No', please provide your reason(s) below::

## Auditing Requirements

Do you have a preferred option?

Remove the requirement for financial information to be externally audited

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages::

We support an alternative option that builds on Option 2. The requirement for financial information to be externally audited should be removed. External audit would serve no useful purpose if regulations were amended simply to allow the value of a levy to be collected from each end user or connection to be specified. Government will have up to date information about each operator's connection numbers via the Commission's AMR processes (and this data is provided to the Commission subject to a legal obligation as to truth and accuracy). Provided operators application of a levy is consistent with this data, then there is no issue and no case for imposing the additional cost and complexity of external audit. We would support giving the Commission a power to investigate if there are reasonable grounds for suspecting that any operator is not properly applying a levy.

We do not support the suggestion under Option 2 that the Commission could also require Director certification to ensure the onus is still on companies to provide accurate information. The inevitable consequence of this requirement will be that companies will end up having to carry out external audits to give Directors confidence that they are signing off on accurate information and protect them from personal liability. This would result in a more burdensome process than what we have today.

Are there any unintended consequences of removing the requirement for financial information to be externally audited every financial year?

No

If you answered 'Yes', please provide your reason(s) below::

## Should the levies be merged

Do you have a preferred option? (Select one)

An option not included above

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages::

We support an alternative option that builds on Option 2. The TDL should be merged with the portion of the TRL that funds the Commission's general enforcement activities. The portion of the TRL that currently funds regulation of fibre should remain separate and continue to be funded by Chorus and other LFCs. This will ensure that retail service providers don't end up subsidising the regulation of fibre companies.

As set out in our previous submission on the scope of the MfR review, we also recommend that Telecommunications Operators (Commerce Commission Costs) Levy Regulations 2011 are amended to enable the Commission to recover costs for mandatory activities only via the TRL. Currently, the TRL allows the Commission to recoup costs of discretionary activities and essentially operate to make these activities costless for the Commission (although clearly they are not for industry). This creates perverse incentives: the Commission simply passes the bill for regulation and has no incentive to reduce regulatory activity or redirect resources from telecommunications regulation to other areas that need more attention. Industry pays twice: once for the Commission's costs associated with these activities and again for its own costs of responding to these actions. This dynamic also skews incentives to focus on higher priority matters across the Commission's entire portfolio of work across all sectors of the economy, as recognised by the Government in recent announcements made . There is an opportunity to fix this issue through this MfR process.

Could there be any unintended consequences of merging the TDL and TRL?

Yes

If you answered 'Yes', please provide your reason(s) below::

Yes, if the portion of the TRL that currently funds fibre regulation is merged with the TDL and retail service providers end up inadvertently paying for fibre regulation.

## Who is required to pay the levy

Do you have a preferred option?

An option not included above

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages::

We support an alternative option: the decision on who is required to pay the levy should be reserved for the MBIE process, as set out in the introduction of this section. This question requires careful consideration to ensure that the new approach is workable. For example, while shifting levy responsibility entirely to retailers would appear to be the simplest way to enable a more transparent pass through of costs to end users, questions around how should companies that are both wholesalers and retailers be treated and how do we ensure that levy allocation is fair and equitable need further consideration. The timing constraints of the MfR review means that there are limitations to considering these issues under this process.

Would there be any unintended consequences of charging the levies on retailers and not wholesalers (for example, would it risk increasing costs for retailers and/or consumers)?

Yes

If you answered 'Yes', please provide your reason(s) below::

Yes, if other changes to ensure the model enables a transparent pass through of costs to consumers is not implemented at the same time.

## Balancing the costs and benefits of regulation

Do you wish to skip this section?

No

## Consideration of costs and benefits

Do you have a preferred option?

Sectional purpose statements to require consideration of costs and benefits

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages: :

One NZ position

We support Option 3: Sectional purpose statement.

Rationale

We agree with MfR's assessment that, while the Commission's oversight powers are essential, the rules are currently drafted in very broad terms. This can result in processes that are disproportionate or unclear in scope. As MfR itself notes, 'more consideration could be given to ensure the work the Commerce Commission undertakes, e.g. information gathering, is proportionate and transparent.' We strongly support the intent behind this statement – but the recommendation could be more specific. In particular, when performing discretionary activities that are permitted but not required by legislation, it is critical that the Commission rigorously and transparently explains why the action it is proposing to take is necessary, how it proportionately addresses the specific issue or problem identified, and why the anticipated benefits of the action exceed its costs.

Requiring the Commission to consider costs and benefits as part of its regulatory processes is good regulatory practice. However, we believe a targeted approach — rather than a blanket requirement — is the most practical way forward. The approach that we proposed would not require a detailed cost-benefit analysis to be performed for every regulatory task. Imposing a blanket requirement in every instance would create processes that are slow, bureaucratic and burdensome, without materially improving outcomes. By contrast, requiring such analysis when the Commission is extending activities beyond what is strictly required by law, including where it can choose between a scale of non-intervention to extremely wide-ranging intervention (including where it imposes new retail service quality codes or undertakes major monitoring programmes) would deliver the benefits of discipline and transparency without unnecessary costs.

Those parts of the Act providing for information collection and monitoring, and retail service quality interventions, should be amended to include clear threshold tests for the use of discretionary powers and specific factors that should be considered when exercising discretion. This could include a clear legislative direction that the Commission must take account of proportionality and weigh up costs and benefits before imposing new requirements.

A cost-benefit framework should ask the following practical questions before regulatory intervention is pursued, or new information requests are issued:

- i. Is there clear evidence of harm to consumers or competition that the intervention is intended to address?
- ii. Could the desired outcomes be delivered by existing consumer law or competition rather than new sector-specific rules?
- iii. Are the expected benefits of the intervention likely to outweigh the direct and indirect compliance costs for industry?
- iv. Is the proposed intervention proportionate to the scale and severity of the problem?
- v. Are there alternative, less burdensome approaches that could achieve the same outcome more efficiently?
- vi. Has sufficient consultation been undertaken with affected stakeholders to test both the problem definition and the practicality of the proposed remedy?

Embedding these principles in legislation would ensure that the Commission remains accountable for the proportionality of its regulatory activities. It would also create greater certainty for industry participants, who need to be confident that requests for data or new obligations will be justified, targeted, and aligned with consumer benefit.

If you prefer option 2, are there any unintended consequences to consumers or industry that might arise from having an overarching purpose statement:

Not Answered

If you answered 'Yes', please provide your reason(s) below::

If you prefer option 3, which parts of the Telecommunications Act 2001 should the sectional purpose statements apply to:

Retail service quality, Information and monitoring

If you answered 'Other', what sections and why?:

This question contemplates whether sectional purpose statements should extend to 'information disclosure (fibre services market monitoring)'. If this refers to the information disclosure (ID) obligations applying to LFCs under Part 6 of the Act, we do not support applying a cost-benefit test to those requirements. Information disclosure is not a "nice to have" add-on — it is a cornerstone of effective monopoly regulation. Its purpose is not to deliver immediate measurable benefits, but to provide ongoing transparency that allows the regulator, retailers, and consumers to see how monopoly providers are performing.

Introducing a cost-benefit hurdle for fibre services ID would risk undermining the entire framework. By design, the benefits of disclosure are broad and long-term — enabling benchmarking, deterring anti-competitive behaviour, and building trust in the regulatory system. They may be difficult to quantify in a single analysis, but they are no less critical. For LFCs that are not subject to price-quality regulation, ID is one of the few levers available to provide visibility and accountability. Weakening it would be a step backwards.

It is also worth noting that when the Government introduced ID requirements into legislation, a full regulatory impact statement was carried out to assess costs and benefits at that time. These obligations were not imposed lightly. To now add an additional cost-benefit filter risks second-guessing decisions that have already been tested through a rigorous policy process.

Are there any unintended consequences to consumers and industry that might arise from having sectional purpose statements?

Yes

If you answered 'Yes', please provide your reason(s) below::

Yes, if they a sectional purpose statement is applied to the information disclosure (ID) obligations applying to LFCs under Part 6 of the Act. See our response to the previous question for detail.

## Response ID ANON-KAUD-7572-T

Submitted to Telecommunications Sector Regulatory Review - Consultation  
Submitted on 2025-09-25 19:03:47

Have your say

Privacy notice

I consent to the Ministry for Regulation sharing my contact details with another government agency and I am happy to be contacted if required.

Yes

Demographic information

What is your email address?

Email Address:

s 9(2)(a) @spark.co.nz

Are you making a submission on behalf of an organisation or as an individual?

Organisation

Organisation Submission

What is the name of your organisation?

Name of organisation:

Spark NZ

I consent to my organisation's name being publicly released by the Ministry for Regulation as a submitter to the Review.

Yes

If no, please can you explain why: :

What best describes the nature of your organisation in relation to telecommunication services? (Please tick all that apply)

Mobile Network Operator (MNO), Retail service provider, Wholesale provider, Infrastructure deployment and operation

If other, please specify in the box below. :

Permission to Contact You About Your Submission

Are you happy for us to contact you if we have questions about your submission?

Yes

Consumer protection and customer service

Do you wish to skip this section?

No

Simplifying rules and strengthening consumer protection

Do you have a preferred option?

An option not included above

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages::

Consumer protection and customer service

8. The consultation paper notes that the system for making retail service quality rules is complicated and not effective at protecting consumers and proposes instead that the Commerce Commission make a single, enforceable code for retail service quality without reviewing industry rules and to remove the TCF's role in the Telecommunications Act 2001.

9. The review hasn't considered whether current regulatory interventions can be rolled back, and in our view, the Ministry has missed an opportunity to deliver on its brief to critically review and remove unnecessary regulation. We recommend that, in transitioning to any new framework, a critical review of existing regulation occurs, applying good regulatory practice guidelines which should be codified in the Act.

10. Further, we don't support the Ministry's proposed option to simplify the rules and address regulatory gaps. A single Commission code - without the benefits of co-regulation, effective legislative guidance and effective Commission prioritisation - is likely to result in more rather than less unwarranted regulation.

11. The consultation paper notes that it is hard for businesses to understand and follow the rules, and there are few consequences for businesses that do break the rules. Because some retailers are not members of the TCF, the rules don't apply to all businesses, and the protections don't apply to all consumers.

12. In our view, these concerns can be resolved within the current co-regulatory model by simply amending the Act to clarify that the Commission may adopt a TCF code as a Commission code. For example, by adding this option to those set out in s236 of the Act. A single TCF code adopted by the Commission - applying the guidance in the Act to its considerations - would apply to all providers of telecommunications services.

13. The current framework doesn't apply to all providers marketing broadband services to consumers such as wholesaler fibre providers and comparison websites, and we agree this should be addressed by the review. The Act should be amended to ensure that Wholesale providers and comparison website operators comply with the code when engaging with consumers.

Reviewing current regulation to ensure it is warranted

14. The sector operates in a significantly different environment to 2018 when Part 7 was added to the Act. Chorus and LFCs were rapidly rolling out and connecting customers to new UFB fibre networks. Wholesale fibre network providers and retailers were building services, processes and systems for these new networks.

15. In a period of significant network change, there was general dissatisfaction with wholesale and retail provider engagement with customers:

a. The 2018 amendment Regulatory Impact Statement (RIS) noted that the telecommunications sector generates more consumer complaints than any other sector.

b. The 2016 National Consumer Survey (consumer survey) had earlier reported that consumers had more problems purchasing telecommunications services than any other sector, with complaints relating to fibre connections, incorrect, misleading or insufficient information about fixed-line telecommunications services, and hidden fees or unexpected costs.

16. The period up to 2018 was all about fibre rollout - a period characterised by a major overhaul of telecommunications infrastructure, new mass market consumer services, and a period of regulatory forbearance in regard to wholesale fibre providers - and the rapid growth in the volume of retail service providers.

17. There have been significant changes since 2016. Fibre connection processes have matured, and retailers have made significant investments in customer service. The 2024 consumer survey reports that the number of consumers having problems with their telecommunications purchases has halved since 2016, and telecommunications services are now one of the least problematic sectors it tracks, with low average cost to fix when problems occur (Figure 1 from the report). The motor vehicle, grocery, real estate, property, consumer electronics and whiteware, build repairs and renovations and clothing sectors are all more problematic.

Figure 1: National Consumer Survey reported problem incidence

The 2024 consumer survey highlights that telecommunications services have a low incidence of consumer problems, and low cost to fix.

s 9(2)(g)(i)

[Redacted content]

An alternative model to simplify the system and strengthening consumer protection

22. We recommend an alternative option built on the current co-regulatory framework.

23. A co-regulatory framework is essential to enable providers technical and consumer expertise to be applied to issues and provides for better regulatory outcomes. Co-regulation is the best way for achieving enduring and effective sector-wide outcomes.

24. In the dynamic and innovative sector we operate in there is also a material real risk of unintended consequences. For example, our customer research indicates that the volume of detailed information we must provide to customers in the sales process undermines customer recall of key issues.

25. Under our preferred option, Commission would be permitted to adopt a single TCF consumer code as the regulated Commission code. In addition to providing for a regulate TCF consumer code, the Ministry should ensure any alternative:

a. Addresses gaps in the current framework. We agree that protections should apply to all parties marketing telecommunications services to end users, yet the current framework excludes fibre wholesalers and comparison websites marketing to consumers.

Chorus and LFC were exempted from the retail service quality framework on the assumption that Part 6 Price-Quality regulation would address any service quality concerns. However, in practice, Chorus and LFCs' broad marketing activities extend well beyond the scope of Price-Quality regulation and the Commission has taken a broader approach to consumer regulation than could reasonably be included in Price-Quality regulation. The Act should be amended to address this anomaly.

b. Provides specific legislative guidance for the Commission in exercising its regulatory powers. The legislation provides no clear guidance on the Part 7 objectives and Commission considerations for intervening in competitive markets, and this means there is significant uncertainty relating to the materiality of the issues that are to be addressed through Part 7, and how far Part 7 regulation will go.

Further, the Commission's mandate in many ways requires them to continue to investigate and regulate retail service matters as there are no sensible tests or gates they need to apply before looking into or refrain from regulating something. As a result, the Commission finds itself chasing an impossible

standard - under this mandate the Commission's work will never be done.

26. The review is also considering the form of legislative guidance in the costs and benefits section of the consultation paper. We believe that, in practice, broad considerations are unlikely to be effective, and specific guidance should sit within the relevant Part of the Act. For example, Parts 2 and 6 already provide for specific Commission considerations relevant to those parts of the Act, but do not exist in relation to retail service quality.

27. Specific legislative guidance should relate to the scope of potential regulation and Commission considerations when exercising its' legislative powers. Without legislative safeguards there is a real risk that the revised framework - rather than streamline and simplify regulatory rules as intended - increases the regulatory burden on the industry while delivering few additional benefits to consumers.

28. The Ministry could draw on the Australian co-regulatory approach for a system that includes the above features.

Alternative proposal

29. Therefore, considering the principles above, we recommend a different option that builds on the current co-regulatory framework. Amending the Act to:

a. Provide that the Commission can adopt or endorse a TCF consumer code as a Commission code . The current legislative framework already permits the TCF to develop a single industry consumer protection code.

Once endorsed by the Commission, the single TCF consumer code would be mandatory for all telecommunications providers. As it can today, if the Commission does not support the TCF code, or the TCF is unwilling to create a code where requested, it may create its own applying our proposed legislative guidance. The Commission can also ask the TCF to consider creating a TCF code or amend an existing code.

b. Address key gaps by removing the wholesale exemption. All providers marketing directly to consumers should comply with Commission code obligations.

c. Provide specific legislative guidance for the Commission in exercising its powers under Part 7 of the Act. Guidance should include:

i. The limits of potential interventions.

ii. The key considerations and precursors for intervention - such as where there is evidence of market failure, the lack of other options for addressing the market failure (including non-regulatory options), the likely benefits and costs, proportionality, and the benefits of the intervention exceeding costs.

iii. Further Commission considerations such as the need to minimise the impact on providers and competition, the number of consumers benefiting from the proposal and recognition of existing regulatory requirements in related or supporting regulations.

iv. Forbearance – regulators should be encouraged to refrain from exercising a regulatory power unless the market mechanisms are unlikely to resolve concerns over the long term.

Could there be any unintended consequences (to consumers or industry) by creating a single enforceable Commerce Commission code for regulating retail service quality?

Yes

If you answered 'Yes', please provide your reason(s) below::

A single Commission code - without the benefits of co-regulation, effective legislative guidance and effective Commission prioritisation – is likely to result in more rather than less unwarranted regulation.

A co-regulatory framework is essential to enable providers technical and consumer expertise to be applied to issues and provides for better regulatory outcomes. Co-regulation is the best way for achieving enduring and effective sector-wide outcomes.

In the dynamic and innovative sector we operate in there is also a material real risk of unintended consequences. For example, our customer research indicates that the volume of detailed information we must provide to customers in the sales process undermines customer recall of key issues.

## Access to basic telecommunications services

Do you wish to skip to the next section?

No

## Future of the Telecommunications Service Obligations arrangement

Do you have any preferred option(s)? (Please select all that apply)

Phase out the requirement to provide home telephone service, An option not included above

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages::

CONFIDENTIAL INFORMATION IN THIS RESPONSE

Future of the Telecommunications Service Obligations arrangement

Phasing out the legacy TSO

30. The Ministry is considering proposals to phase out the TSO requirement to provide home telephone service in line with Chorus' plan to retire its copper network by 2030. This would include phasing out the associated services apart from 111 emergency calling, which would remain unaffected.

31. We support removing TSO requirements subject to an agreed migration plan. The TSO obligation makes little sense:

a. Spark and Chorus are obliged, among other things, to support basic voice, fax and dial-up services even though those services no-longer serve the needs of New Zealanders and retailers do not offer them.

b. Consumers now have access to more cost effective and better performing options which are widely available.

c. The Commerce Commission reported that rural consumers were able to access multiple telecommunication technologies and recommended to the Minister that copper broadband and voice services should be deregulated.

32. However, phasing out of the copper network must be in accordance with a migration plan agreed by all stakeholders – i.e., Chorus and Spark as TSO Deed partners, the Crown and impacted consumers – to ensure that the migration minimises costs to all parties and is acceptable to rural communities. For example,

- a. Some Spark exchanges are serving very few customers and closing these exchanges during the initial phases of the TSO migration would allow us to remove expensive to maintain legacy equipment.
- b. Further, legacy obligations that make little if any sense in today's context - such as the provision of directory assistance, fax, dial up internet calling and expensive auditing requirements - can be removed now to reduce costs to maintain residual infrastructure.

Ensuring access to basic telecommunications services

33. We do not support the Ministry options to replace current TSO arrangements with digital inclusion proposals without a wider policy framework that links digital inclusion to other critical factors at a broader national level.

34. The Ministry is further considering options to replace the current TSO arrangement with either financial support direct to people so they can afford access to basic telecommunications services or contracting companies to make basic services available and affordable in places where it would not be profitable.

35. However, it is unclear what the purpose of these alternative arrangements would be beyond assistance to connect to an alternative provider. As set out in the Commission copper deregulation report, multiple infrastructures and technologies are available to rural consumers at affordable prices. For example, Starlink broadband plans are available from \$79 per month and Chorus has successful migrated customers to Gravity \$60 landline service.

36. Nonetheless, we agree that digital equity is an issue for many families and communities across urban and rural areas. We support a broader policy process to consider digital equity issues, and how to ensure that all New Zealanders have the internet and device access, digital skills and confidence to function in an increasingly digital world. Rural connectivity issues are a sub-set of digital equity issues, but the challenges are broader. The telco sector, Digital Equity Coalition Aotearoa and other NGOs have been calling for work on digital equity issues for some time.

37. The removal of the existing TSO arrangements should proceed independently of this broader policy conversation, which is not a telco regulatory issue and not in scope for MFR review.

Phone Booths

38. While not addressed in the consultation paper, a further concern is that the Telecommunications Act would benefit from enhanced clarity (for the avoidance of doubt) to enable the modernisation of assets designed to serve a public purpose, including opportunities to create a modern phone booth network. **s 9 (2)(b)(ii)**

39. Spark has operated public phone booths in New Zealand for over 40 years. With the current technology now end of life, and Chorus decommissioning the copper lines connected to these booths, we face a choice: remove all ~2,000 booths or invest in a smaller subset of modernised versions.

40. Phone booths serve a public function and have always required a source of revenue to underpin their operation. Around the world, funding models have evolved from end-user coin and card revenue collection, to an integrated advertising-funded model. Today, integrated advertising in modern phone booths is commonplace in many major countries around the world - including Australia, the US and the UK. In New Zealand, phone booths are not government funded.

**s 9 (2)(b)(ii)**

42. International examples demonstrate that modernised alternatives have strong appeal and uptake by the community. As an example, Telstra's deployment of free calling through its phone booths saw over 25 million free calls annually, including 300,000 emergency calls.

**s 9(2)(g)(i)**

s 9(2)(g)(i)

52. We think the issue can be resolved if the Telecommunications Act 2001 was amended to clarify, for the avoidance of doubt, that Part 4 of the Telecommunications Act 2001 applies to all modern equivalents of public phone booths. s 9(2)(g)(i)

s 9(2)(g)(i)

If you included Option 3 'ensuring access to basic telecommunication services' as one of your preferred options, please indicate your preference between the following:

Not Answered

Are there any unintended consequences that might arise from phasing out or replacing the current TSO arrangement?

Yes

If you answered 'Yes', please provide your reason(s) below::

32. However, phasing out of the copper network must be in accordance with a migration plan agreed by all stakeholders – i.e., Chorus and Spark as TSO Deed partners, the Crown and impacted consumers – to ensure that the migration minimises costs to all parties and is acceptable to rural communities. For example,

- a. Some Spark exchanges are serving very few customers and closing these exchanges during the initial phases of the TSO migration would allow us to remove expensive to maintain legacy equipment.
- b. Further, legacy obligations that make little if any sense in today's context - such as the provision of directory assistance, fax, dial up internet calling and expensive auditing requirements - can be removed now to reduce costs to maintain residual infrastructure.

36. Nonetheless, we agree that digital equity is an issue for many families and communities across urban and rural areas. We support a broader policy process to consider digital equity issues, and how to ensure that all New Zealanders have the internet and device access, digital skills and confidence to function in an increasingly digital world. Rural connectivity issues are a sub-set of digital equity issues, but the challenges are broader. The telco sector, Digital Equity Coalition Aotearoa and other NGOs have been calling for work on digital equity issues for some time.

37. The removal of the existing TSO arrangements should proceed independently of this broader policy conversation, which is not a telco regulatory issue and not in scope for MFR review.

If you currently rely on a copper connection, is there anything that would make it difficult or impractical to switch to a different technology (e.g. cost or a medical alarm)?

Not Answered

If you answered 'Yes', please provide your reason(s) below::

Which of these telecommunication services are critical for people to access?

If other, please explain::

Do you have any concerns about the potential removal of directory services (white pages listing, print telephone book and directory assistance)?

No

If you answered 'Yes', please provide your reason(s) below::

## Geographically Consistent Pricing

Do you agree or disagree with our recommendation that the Commerce Commission review and assess the effectiveness of GCP.

Disagree with the recommendation

Please explain the reason for your selection. If you identified an alternative, please explain.:

Fibre Regulation

54. While the Crown may consider changes to provisions intended to protect its UFB investment, we don't support changes to key elements of the framework, i.e., geographic consistent pricing requirements, anchor services, availability of a layer 1 service and line of business restrictions. The proposed changes undermine the effectiveness of the overall regulatory framework and, accordingly, should only be considered in the context of a

review of the overarching policy objectives and framework.

The UFB regulatory framework

55. The current regulatory framework was intended to provide for the Crown UFB arrangements and to resolve years of industry conflict and public dissatisfaction. Policy makers implemented a regulatory framework to resolve these issues:

- a. Chorus and LFCs were established as standalone wholesale fibre only network providers and – recognising that these entities had the ability and incentives to exploit their market power – protections were put in place to protect competition and innovation (line of business restrictions).
- b. The provision of anchor products, layer one unbundling, geographically consistent pricing, and line of business restrictions are all important components of this framework.

56. Therefore, it is concerning that the Ministry is considering changes to core elements of the fibre regulatory framework without consideration of the overarching policy intent and desired outcomes. For example, removing the restriction on services above layer 2 facilitates fibre wholesale providers expanding further into competitive parts of the market, and further away from their intended open access fibre access provider role. These are more than simple tweaks to current framework and policy settings.

57. Accordingly, while it is open to the review to consider changes to provisions intended to protect the Crown's UFB investment, changes to elements of the framework - such as geographic consistent pricing requirements, anchor services, availability of a layer 1 service and line of business restrictions - should only be considered in the context of a review of the overarching policy objectives and framework.

Geographically Consistent Pricing

58. We don't support a standalone review of geographically consistent pricing (GCP) obligations.

59. The GCP rule was created to ensure UFB fibre services were uniformly priced across areas with different costs (largely relating to density) and to help prevent "pocket pricing". The GCP obligation limits Chorus' ability and incentive to expand into neighbouring LFC fibre areas.

60. As the review notes the GCP may reduce incentives for the regulated party to expand the fibre network into new areas by limiting the costs they can recover, although it is unclear whether this is a material factor limiting fibre expansion. The current roll out of UFB fibre was only possible with significant Crown funding and - in Commission proceedings - Chorus claims that UFB prices are already constrained by the anchor services and competition. It is unclear whether there are opportunities in practice for higher fibre prices in fibre expansion areas.

61. Importantly, the GCP forms part of the policy framework whereby the Government would consider and fund further UFB fibre expansion outside Part 6 of the Act. Under this framework Crown UFB subsidies recognise the increasing costs to deploy fibre in to less dense areas - i.e., UFB subsidies ranging from \$1,118 per premise passed in low cost to deploy UFB1 areas, through to \$1552, \$2,000 and \$2,300 per premise passed in UFB2 areas to reflect higher deployment costs – and consumers would benefit from uniform pricing.

62. In our view, any change to the GCP obligation - which would be expected to also result in higher prices for some end users - is a material change in the policy framework and a matter for policy makers rather than the Commission.

## Basic fibre services

Do you agree or disagree with our recommendation that the Commerce Commission should review anchor services and consider the option of a phased repeal as part of their next regulatory reset in 2027?

Disagree with the recommendation

Please explain the reason for your selection. If you identified an alternative, please explain.:

Basic fibre services

63. We do not support reviewing anchor services outside the considerations of the Act and regulatory framework, or with an assumption that anchor services be repealed.

64. The review proposes that the Commission review anchor services and potential repeal as part of their next regulatory reset in 2027.

65. However, it is unclear what problem the review is seeking to resolve. The Commission is already empowered by s208 of the Act to review anchor services before the start of each regulatory period. The Minister may make regulations declaring an anchor service (following advice from the Commission) and Chorus is only required to offer an anchor service when one has been declared.

66. Accordingly, the Commission is arguably already able to review anchor services and - if it concludes in that review that no anchor service best supports the anchor product purposes – recommend that the anchor product be omitted from regulations. The Commission took a similar approach to the recent copper deregulation review where it recommended to the Minister that measures be put in place to facilitate customers migrating from the regulated copper service to other technologies.

67. In any case, even if the currently specified anchor services have little effect, anchor services with a different specification may better meet the purposes of anchor services. For example, submitters to the most recent Commission review of anchors services, recommended that the Commission consider a higher specified broadband anchor service as this would better reflect most end user demand and provide a better anchor.

## Fibre Regulation

Do you wish to skip this section?

No

## Governance settings in Local Fibre Company constitutions

Do you have any preferred option(s)?

No preferred option

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages::

Constitutional changes and Ministerial approval for constitutional changes

68. The Ministry proposes to make changes to the rules in LFC company constitutions that prevent LFCs from expanding outside core fibre activities.

69. The review reports that these rules were put in place to protect the Crown's investment during the Ultra-Fast Broadband initiative. Since then, most Crown funding has been repaid and protections, like open access and equal treatment of providers, are now covered by legislation and Deeds.

70. We have no view on the restrictions for the purpose of protecting Crown investment, this is a matter for the Crown. However, if the competition protections are also removed from the relevant constitutions, the Ministry should ensure that these are provided for in Deeds and amendments to the Act as proposed.

Would there be any unintended consequences of removing the Government Share?

Yes

If you answered 'Yes', please provide your reason(s) below::

That important competition protections may be inadvertently lost in the change.

## Ownership restrictions in Local Fibre Company constitutions

Do you have a preferred option?

Not Answered

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages::

Would there be any unintended consequences of removing the ownership restrictions?

Not Answered

If you answered 'Yes', please provide your reason(s) below::

## Layer 1 unbundling

Do you have any preferred option(s)?

Status quo – continue to require Layer 1 unbundled fibre

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages::

### Layer 1 fibre unbundling

71. The Ministry notes that while Layer 1 unbundling was intended to promote competition, in practice, no providers have used it in the years since the Ultra-Fast Broadband initiative was completed, due to the cost and technical complexity.

72. We do not support the proposed approach. While Layer 1 services have not been taken up, it remains an important option in the regulatory framework that potentially constrains Chorus behaviour. If the Layer 1 option were removed, then the means the only possible means to access the fibre network is at layer 2. The point at which wholesale customers connect to the fibre network is an important part of the regulatory design, balancing policy setting to promote competition and innovation, i.e., lower-level access is often seen as better promoting innovation and “deeper” competition.

73. If the Ministry decides to progress this proposal, it is critical that the point at which wholesale customers connect to the wholesale network is purposefully designed and supported by the framework.

Would there be any unintended consequences of repealing all Layer 1 unbundling obligations?

Yes

If you answered 'Yes', please provide your reason(s) below::

### Layer 1 fibre unbundling

71. The Ministry notes that while Layer 1 unbundling was intended to promote competition, in practice, no providers have used it in the years since the Ultra-Fast Broadband initiative was completed, due to the cost and technical complexity.

72. We do not support the proposed approach. While Layer 1 services have not been taken up, it remains an important option in the regulatory framework that potentially constrains Chorus behaviour. If the Layer 1 option were removed, then the means the only possible means to access the fibre network is at layer 2. The point at which wholesale customers connect to the fibre network is an important part of the regulatory design, balancing policy setting to promote competition and innovation, i.e., lower-level access is often seen as better promoting innovation and “deeper” competition.

73. If the Ministry decides to progress this proposal, it is critical that the point at which wholesale customers connect to the wholesale network is purposefully designed and supported by the framework.

## Exemption process for services above Layer 2

Do you have a preferred option?

Status quo – require full public consultation

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages::

#### Exemption process for services above Layer 2

74. Chorus and LFCs are not permitted to offer services at levels above layer 2. We do not support a fast-track process for considerations of this nature.

75. The Commission may provide an exemption from this rule, but our expectation is that this would only be for services where layer 3 is incidental to the core layer 2 functionality. The exemption process requires the Commerce Commission to first consult with people it considers will be substantially affected by the exemption.

76. The Ministry proposes to amend the process to not require consultation on all new service proposals and introduce fast-track to ensure regulatory approvals are timely. However, the layer 2 limit is an important element of the line of business restrictions. A monopoly wholesale fibre provider suggesting that a proposal remain confidential for competition reasons should set alarm bells ringing.

77. Approving services above layer 2 is a significant change with complex implications for the market, with a high potential for unintended consequences that are not easily reversed. This is not the sort of decision made using a fast-track process.

Would there be any unintended consequences of streamlining the exemption process?

Yes

If you answered 'Yes', please provide your reason(s) below::

#### Exemption process for services above Layer 2

74. Chorus and LFCs are not permitted to offer services at levels above layer 2. We do not support a fast-track process for considerations of this nature.

75. The Commission may provide an exemption from this rule, but our expectation is that this would only be for services where layer 3 is incidental to the core layer 2 functionality. The exemption process requires the Commerce Commission to first consult with people it considers will be substantially affected by the exemption.

76. The Ministry proposes to amend the process to not require consultation on all new service proposals and introduce fast-track to ensure regulatory approvals are timely. However, the layer 2 limit is an important element of the line of business restrictions. A monopoly wholesale fibre provider suggesting that a proposal remain confidential for competition reasons should set alarm bells ringing.

77. Approving services above layer 2 is a significant change with complex implications for the market, with a high potential for unintended consequences that are not easily reversed. This is not the sort of decision made using a fast-track process.

#### Fibre deregulation review process

Do you have a preferred option?

Status quo – Two-step process with no timeframe for decisions

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages::

The process for reviewing fibre service regulation

78. We do not support removing the two-step process for reviewing fibre service regulation.

79. On the face of it, the two-step process was intended to provide for a quick review so that parties were not required to devote significant resources to a review where there was little prospect of change. The two-step process is common to all key review powers in the Act.

80. If the Ministry wishes to remove the two-step review model, this should be removed consistently throughout the Act.

Would there be any unintended consequences of adopting a single step process for deregulation reviews?

Not Answered

If you answered 'Yes', please provide your reason(s) below::

#### Legacy regulatory obligations in telecommunications

Do you have a preferred option?

An option not included above

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages: :

Copper and operational separation deeds

81. We support reviewing legacy Deed obligations relating to the provision of copper services, operational separation and the Rural Broadband Initiative.

82. A number of providers have entered legacy Deeds with the Crown – including Spark in the context of RBI – and redundant provisions should be removed. These arrangements provide for matters such as ownership restrictions and the provision of non-discriminatory/equivalent access to public funded infrastructure.

83. However, these are highly technical documents and it's unlikely to be clear cut what provisions are obsolete and can be deleted or consolidated into relevant legislation. Even then, it's unclear what the of consolidating backward looking and legacy infrastructure related commitments into legislation might be.

84. Accordingly, we recommend that officials consider all legacy Deeds in more detail with the view to removing obsolete obligations and consolidating the residual obligations to reducing and minimising residual obligations.

Would there be any unintended consequences of streamlining and modernising these Deeds?

Not Answered

If you answered 'Yes', please provide your reason(s) below::

## Telecommunications Development Levy & Telecommunications Regulatory Levy methodology

Do you wish to skip this section?

No

### How revenue is defined

Do you have a preferred option?

An option not included above

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages::

#### Telecommunications Development Levy & Telecommunications Regulatory Levy methodology

85. We do not support the levy used to fund activities which, in our view, can be better funded through alternative funding mechanisms. For example, the TDL is primarily used to fund the Telecommunications Relay Service and that service would be better considered, and funded, alongside other support options as a core budget activity.

86. However, if the levy remains, we support implementing a more transparent, less complex methodology for recovering regulatory and development levies from the industry.

87. The current levy is expensive to administer (for both government and industry), unnecessarily complex (for what is essentially a special projects fund for public good investment), does not align with Treasury and Auditor General guidance on good levy design, and lacks transparency (making it impossible to be transparent with customers about how the levy contributes to the cost of services).

88. Accordingly, we support the alternative option set out in the TCF submission which has wide industry support.

89. That option is based on an earlier Martin Jenkins report that assesses the levy against government guidance and identifies more transparent and less administratively burdensome approaches. Martin Jenkins identified two options - a levy applied on a per connection or percent of the retail price basis - that are consistent with government guidelines, address the issues faced by the industry and could easily be applied in practice.

90. Under the industry proposed approach, the levy is based on a percentage of retail revenue, which translates to a percentage of retail prices for prescribed retail services. A levy described in this way would be transparent to providers and end-users. Further, the proposed approach is less complex and simpler to apply. For example:

a. Officials would set the percentage using easily accessible data (any unders or overs could be dealt with in a memorandum account):

i. the forecast funding requirements from existing budget estimates, project business cases and reporting. In practice, "BAU" and major project funding requirements are known several years ahead of time.

ii. Forecasting product revenues and volumes from existing Commerce Commission industry reporting information. Telcos already provide line counts and review data to the Commerce Commission for annual market monitoring purposes.

b. The levy would apply to all providers of prescribed retail services - broadband, standalone voice connections, pre-paid and post-paid mobile connections, and national data connections.

c. The levy would accordingly be set up front (rather than applied retrospectively as with the current model) and apply to known and externally reported services. Providers and consumers can identify the contribution they are making to TDL funded services.

d. A less complex methodology that uses already reported values is less costly for providers to apply and requires less assurance reporting to validate (as reviewers can compare returns with already reported data to test for discrepancies). These processes are already subject to existing assurance processes and so no additional audit, or review is needed.

91. In terms of the proposed parameters set out in the discussion paper:

#### Proposal Comment

How revenue is defined • We don't support the status quo option as this does not resolve issues with the current approach.

• The scope should be limited for simplicity to broadband, mobile and business data services. The clear demarcation this provides between levied and non-levied services significantly reduces the costs to administer the scheme.

• A less complex and low cost to comply methodology means there is no a \$10M revenue threshold before the levy applies.

Method for calculating the levy • We do not support the status quo approach which can only be applied retrospectively and fails to resolve issues with the current approach.

• We support the fixed percentage approach and agree that any unders and overs can be easily managed through memorandum accounts.

• We do not support a tiered approach. It is unclear what the purpose of a tiered approach is - a percent levy approach is proportionate in itself - and it would simply add complexity.

• The beneficiary is the end user and there is no reason why an end-user on a small network should pay a different amount to an end-user on a large network.

Auditing requirements • A simplified levy based on reported prices and services would not require formal audit. Providers already provide the same validated data to the Commission and for financial reporting. If the Commission detected any material discrepancies it can investigate further.

• We further do not support a Directors certificate as, in practice, this would require a similar level of work to the audit costs we're seeking to avoid through the data validated approach.

• Auditing is only required from complexity - a simple percent approach has cross checks built in that will highlight discrepancies.

Should the levies be merged (TRL and TDL) • We agree that the levy for general Telecommunications Act enforcement and TDL could be merged.

However, this is not essential for implementing the updated model provided the same methodology applies to both. In which case, the total levy is simply the sum of the two components.

• The fibre regulation levy should apply to wholesale fibre providers as it does today.

Levy both wholesale and retail or just retail • We support option 2 as the least complex to apply, as otherwise you need a netting out process to remove

double levy payments.

• As noted in the consultation paper, the levy is a pass-through cost for the purposes of the regulatory cost model and we should see a equivalent reduction wholesale prices over time.

Are there any unintended consequences of moving from qualified revenue to gross telecommunications revenue?

Not Answered

If you answered 'Yes', please provide your reason(s) below::

Should there be any adjustments to the levies to mitigate these (e.g. changes to the levy threshold, rates, should the levy be charged on gross telecommunications revenue from a Public Telecommunications Network etc)?

No

If you answered 'Yes', please provide your reason(s) below::

- We don't support the status quo option as this does not resolve issues with the current approach.
- The scope should be limited for simplicity to broadband, mobile and business data services. The clear demarcation this provides between levied and non-levied services significantly reduces the costs to administer the scheme.
- A less complex and low cost to comply methodology means there is no a \$10M revenue threshold before the levy applies.

## Method for calculating the levy

Which option(s) would you support?

Flat percentage

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages::

Telecommunications Development Levy & Telecommunications Regulatory Levy methodology

85. We do not support the levy used to fund activities which, in our view, can be better funded through alternative funding mechanisms. For example, the TDL is primarily used to fund the Telecommunications Relay Service and that service would be better considered, and funded, alongside other support options as a core budget activity.

86. However, if the levy remains, we support implementing a more transparent, less complex methodology for recovering regulatory and development levies from the industry.

87. The current levy is expensive to administer (for both government and industry), unnecessarily complex (for what is essentially a special projects fund for public good investment), does not align with Treasury and Auditor General guidance on good levy design, and lacks transparency (making it impossible to be transparent with customers about how the levy contributes to the cost of services).

88. Accordingly, we support the alternative option set out in the TCF submission which has wide industry support.

89. That option is based on an earlier Martin Jenkins report that assesses the levy against government guidance and identifies more transparent and less administratively burdensome approaches. Martin Jenkins identified two options - a levy applied on a per connection or percent of the retail price basis - that are consistent with government guidelines, address the issues faced by the industry and could easily be applied in practice.

90. Under the industry proposed approach, the levy is based on a percentage of retail revenue, which translates to a percentage of retail prices for prescribed retail services. A levy described in this way would be transparent to providers and end-users. Further, the proposed approach is less complex and simpler to apply. For example:

a. Officials would set the percentage using easily accessible data (any unders or overs could be dealt with in a memorandum account):

i. the forecast funding requirements from existing budget estimates, project business cases and reporting. In practice, "BAU" and major project funding requirements are known several years ahead of time.

ii. Forecasting product revenues and volumes from existing Commerce Commission industry reporting information. Telcos already provide line counts and review data to the Commerce Commission for annual market monitoring purposes.

b. The levy would apply to all providers of prescribed retail services - broadband, standalone voice connections, pre-paid and post-paid mobile connections, and national data connections.

c. The levy would accordingly be set up front (rather than applied retrospectively as with the current model) and apply to known and externally reported services. Providers and consumers can identify the contribution they are making to TDL funded services.

d. A less complex methodology that uses already reported values is less costly for providers to apply and requires less assurance reporting to validate (as reviewers can compare returns with already reported data to test for discrepancies). These processes are already subject to existing assurance processes and so no additional audit, or review is needed.

91. In terms of the proposed parameters set out in the discussion paper:

Proposal Comment

How revenue is defined • We don't support the status quo option as this does not resolve issues with the current approach.

- The scope should be limited for simplicity to broadband, mobile and business data services. The clear demarcation this provides between levied and non-levied services significantly reduces the costs to administer the scheme.
- A less complex and low cost to comply methodology means there is no a \$10M revenue threshold before the levy applies.

Method for calculating the levy • We do not support the status quo approach which can only be applied retrospectively and fails to resolve issues with the current approach.

• We support the fixed percentage approach and agree that any unders and overs can be easily managed through memorandum accounts.

• We do not support a tiered approach. It is unclear what the purpose of a tiered approach is - a percent levy approach is proportionate in itself - and it would simply add complexity.

• The beneficiary is the end user and there is no reason why an end-user on a small network should pay a different amount to an end-user on a large

network.

Auditing requirements • A simplified levy based on reported prices and services would not require formal audit. Providers already provide the same validated data to the Commission and for financial reporting. If the Commission detected any material discrepancies it can investigate further.

- We further do not support a Directors certificate as, in practice, this would require a similar level of work to the audit costs we're seeking to avoid through the data validated approach.
- Auditing is only required from complexity – a simple percent approach has cross checks built in that will highlight discrepancies.

Should the levies be merged (TRL and TDL) • We agree that the levy for general Telecommunications Act enforcement and TDL could be merged.

However, this is not essential for implementing the updated model provided the same methodology applies to both. In which case, the total levy is simply the sum of the two components.

- The fibre regulation levy should apply to wholesale fibre providers as it does today.

Levy both wholesale and retail or just retail • We support option 2 as the least complex to apply, as otherwise you need a netting out process to remove double levy payments.

- As noted in the consultation paper, the levy is a pass-through cost for the purposes of the regulatory cost model and we should see a equivalent reduction wholesale prices over time.

Could shifting from a revenue-based levy to a fixed-rate model lead to any unintended consequences? If so, what adjustments to the methodology could help address them?

No

If you answered 'Yes', please provide your reason(s) below::

Could a tiered contribution structure help mitigate any unintended consequences of moving to a gross telecommunications revenue model?(E.g. would applying lower rates for smaller providers or differentiating rates between retailers and wholesalers support a more proportionate approach?)

No

If you answered 'Yes' or 'No', please provide your reason(s) below::

- We do not support a tiered approach. It is unclear what the purpose of a tiered approach is – a percent levy approach is proportionate in itself – and it would simply add complexity.
- The beneficiary is the end user and there is no reason why an end-user on a small network should pay a different amount to an end-user on a large network.

## Auditing Requirements

Do you have a preferred option?

Remove the requirement for financial information to be externally audited

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages::

- A simplified levy based on reported prices and services would not require formal audit. Providers already provide the same validated data to the Commission and for financial reporting. If the Commission detected any material discrepancies it can investigate further.
- We further do not support a Directors certificate as, in practice, this would require a similar level of work to the audit costs we're seeking to avoid through the data validated approach.
- Auditing is only required from complexity – a simple percent approach has cross checks built in that will highlight discrepancies.

Are there any unintended consequences of removing the requirement for financial information to be externally audited every financial year?

No

If you answered 'Yes', please provide your reason(s) below::

## Should the levies be merged

Do you have a preferred option? (Select one)

An option not included above

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages::

- We agree that the levy for general Telecommunications Act enforcement and TDL could be merged. However, this is not essential for implementing the updated model provided the same methodology applies to both. In which case, the total levy is simply the sum of the two components.
- The fibre regulation levy should apply to wholesale fibre providers as it does today.

Could there be any unintended consequences of merging the TDL and TRL?

No

If you answered 'Yes', please provide your reason(s) below::

## Who is required to pay the levy

Do you have a preferred option?

An option not included above

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages::

- We support a levy at a single point in the chain in the context of a new model.
- We support option 2 as the least complex to apply, as otherwise you need a netting out process to remove double levy payments.
- As noted in the consultation paper, the levy is a pass-through cost for the purposes of the regulatory cost model and we should see a equivalent reduction wholesale prices over time.

Would there be any unintended consequences of charging the levies on retailers and not wholesalers (for example, would it risk increasing costs for retailers and/or consumers)?

Not Answered

If you answered 'Yes', please provide your reason(s) below::

## Balancing the costs and benefits of regulation

Do you wish to skip this section?

No

## Consideration of costs and benefits

Do you have a preferred option?

Sectional purpose statements to require consideration of costs and benefits

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages: :

Balancing the costs and benefits of regulation

92. We support adding section purpose statements that require consideration of the costs and benefits of the Commission exercising its regulatory powers.

93. As noted above, in our view, these purpose statements should provide specific guidance on the scope of potential interventions and the specific Commission considerations relevant to the section when the Commission exercises its regulatory powers.

94. These considerations should highlight that the Commission must consider market failure, and costs and benefits of regulation and proportionality in regulatory proposals.

If you prefer option 2, are there any unintended consequences to consumers or industry that might arise from having an overarching purpose statement:

Not Answered

If you answered 'Yes', please provide your reason(s) below::

If you prefer option 3, which parts of the Telecommunications Act 2001 should the sectional purpose statements apply to:

Retail service quality, Information and monitoring

If you answered 'Other', what sections and why?:

Are there any unintended consequences to consumers and industry that might arise from having sectional purpose statements?

No

If you answered 'Yes', please provide your reason(s) below::

## Response ID ANON-KAUD-75ZU-Z

Submitted to Telecommunications Sector Regulatory Review - Consultation  
Submitted on 2025-09-25 10:06:28

Have your say

Privacy notice

I consent to the Ministry for Regulation sharing my contact details with another government agency and I am happy to be contacted if required.

Yes

Demographic information

What is your email address?

Email Address:

s 9(2)(a) @tdr.nz

Are you making a submission on behalf of an organisation or as an individual?

Organisation

Organisation Submission

What is the name of your organisation?

Name of organisation:

Telecommunications Dispute Resolution Limited

I consent to my organisation's name being publicly released by the Ministry for Regulation as a submitter to the Review.

Yes

If no, please can you explain why: :

What best describes the nature of your organisation in relation to telecommunication services? (Please tick all that apply)

Dispute Resolution Provider

If other, please specify in the box below. :

Permission to Contact You About Your Submission

Are you happy for us to contact you if we have questions about your submission?

Yes

Consumer protection and customer service

Do you wish to skip this section?

No

Simplifying rules and strengthening consumer protection

Do you have a preferred option?

Create a single enforceable Commerce Commission code for retail service quality and remove the code-making role of the TCF from the Telecommunications Act 2001

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages::

TDRL's primary concern is to ensure that all consumers are afforded the same level of protection, irrespective of which retail provider they choose to engage with. This is particularly important in a fast-changing consumer environment where technology and retail options continue to evolve.

The current voluntary compliance regime has limitations and creates a very real risk of inconsistent consumer protections. There are an increasing number of providers who are not TCF members and/or not signing up to various consumer codes, which means that some consumers are not protected by the same standards as others.

The current regime enables regulatory arbitrage, through providers being able to choose whether to sign up to consumer codes, at the possible expense of consumers.

This should not be enabled by the regulatory regime. As such we support having a universal set of consumer protections that apply to all providers of retail services.

We note that this would not prevent voluntary commitment to higher standards through industry codes, but would ensure that basic protections are afforded to all consumers.

Could there be any unintended consequences (to consumers or industry) by creating a single enforceable Commerce Commission code for regulating retail service quality?

Yes

If you answered 'Yes', please provide your reason(s) below::

For consumer protection codes to be effective, they need to be able to adapt to the changing technology environment as well as changing consumer behaviour.

Any centralised consumer code making process would need to be flexible enough to ensure updates can be made in a suitably responsive timeframe. This would mean, for instance, that an ongoing programme of updates would be more appropriate than a scheduled review every few years.

Codes also need to be practical and workable, and so we would support a system that allows for effective industry and consumer stakeholder engagement on codes to ensure they are fit for purpose. An example of this is the current model in Australia.

## Access to basic telecommunications services

Do you wish to skip to the next section?

No

## Future of the Telecommunications Service Obligations arrangement

Do you have any preferred option(s)? (Please select all that apply)

Phase out the requirement to provide home telephone service, Ensuring access to basic telecommunications services, voice services at a minimum, An option not included above

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages::

The TSO arrangement was originally designed to provide a basic level of consumer telecommunication access, to allow all New Zealanders to have the basic accessibility they need to be safe and connected.

Decades later, there are fundamental issues with the design of the TSO which mean that it no longer provides this effective consumer protection mechanism.

This includes its technological specificity (copper), the lack of universal coverage for all consumers, and the fact that it does not have any provision for digital connectivity (which is increasingly critical).

As such we support the removal of the current TSO, and note that we do not believe this will have a material impact on consumers.

Alongside this, however, as a successor to the TSO we suggest that Government should undertake a more comprehensive policy development process to assess appropriate interventions to ensure digital equity for all New Zealanders.

This should include determining appropriate interventions necessary to ensure that all consumers will have access to an affordable base level of connectivity, including some digital connectivity. This will be essential to help ensure ongoing digital equity, supporting our people, communities, and businesses.

We note that any replacement policy for the TSO would need to go further than another voice-only solution. Such a low-level intervention is unlikely to provide suitable protections for New Zealand either today or in the future.

If you included Option 3 'ensuring access to basic telecommunication services' as one of your preferred options, please indicate your preference between the following:

Contracting companies to make basic services available and affordable in places where it would not be profitable

Are there any unintended consequences that might arise from phasing out or replacing the current TSO arrangement?

Unsure

If you answered 'Yes', please provide your reason(s) below::

If you currently rely on a copper connection, is there anything that would make it difficult or impractical to switch to a different technology (e.g. cost or a medical alarm)?

Not applicable – I don't have a copper connection.

If you answered 'Yes', please provide your reason(s) below::

Which of these telecommunication services are critical for people to access?

Voice calling, Broadband

If other, please explain::

Do you have any concerns about the potential removal of directory services (white pages listing, print telephone book and directory assistance)?

Unsure

If you answered 'Yes', please provide your reason(s) below::

### Geographically Consistent Pricing

Do you agree or disagree with our recommendation that the Commerce Commission review and assess the effectiveness of GCP.

Disagree with the recommendation

Please explain the reason for your selection. If you identified an alternative, please explain.:

We believe any decision to assess or amend the Geographically Consistent Pricing requirements needs to primarily focus on the impact of any change on consumers.

Removal of the requirements risks worsening digital exclusion, with the possibility that it would unreasonably punish those in non-urban areas.

In addition, if location-based pricing were to be introduced at a retail level, the likelihood for consumer confusion and a reduced ability for consumers to effectively shop around is likely to lead to worse outcomes for consumers.

In the absence of compelling evidence that the current policy is leading to poor outcomes for consumers, we do not believe there is enough reason to justify a review at this time.

### Basic fibre services

Do you agree or disagree with our recommendation that the Commerce Commission should review anchor services and consider the option of a phased repeal as part of their next regulatory reset in 2027?

Agree with the recommendation

Please explain the reason for your selection. If you identified an alternative, please explain.:

We agree that a review of anchor services is justified. These requirements were introduced to ensure a fair and accessible basic service for consumers.

With the passage of time, the current anchor services requirements are no longer appropriate, being out of step with product evolution (both in terms of performance and price) since they were introduced.

While we support the removal of the current anchor services, in line with previous comments around the TSO we support further work to assess whether an updated set of anchor service requirements should be introduced to support digital equity.

### Fibre Regulation

Do you wish to skip this section?

Yes

### Governance settings in Local Fibre Company constitutions

Do you have any preferred option(s)?

Not Answered

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages::

Would there be any unintended consequences of removing the Government Share?

Not Answered

If you answered 'Yes', please provide your reason(s) below::

### Ownership restrictions in Local Fibre Company constitutions

Do you have a preferred option?

Not Answered

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages::

Would there be any unintended consequences of removing the ownership restrictions?

Not Answered

If you answered 'Yes', please provide your reason(s) below::

### Layer 1 unbundling

Do you have any preferred option(s)?

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages::

Would there be any unintended consequences of repealing all Layer 1 unbundling obligations?

Not Answered

If you answered 'Yes', please provide your reason(s) below::

### Exemption process for services above Layer 2

Do you have a preferred option?

Not Answered

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages::

Would there be any unintended consequences of streamlining the exemption process?

Not Answered

If you answered 'Yes', please provide your reason(s) below::

### Fibre deregulation review process

Do you have a preferred option?

Not Answered

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages::

Would there be any unintended consequences of adopting a single step process for deregulation reviews?

Not Answered

If you answered 'Yes', please provide your reason(s) below::

### Legacy regulatory obligations in telecommunications

Do you have a preferred option?

Not Answered

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages: :

Would there be any unintended consequences of streamlining and modernising these Deeds?

Not Answered

If you answered 'Yes', please provide your reason(s) below::

Telecommunications Development Levy & Telecommunications Regulatory Levy methodology

Do you wish to skip this section?

Yes

How revenue is defined

Do you have a preferred option?

Not Answered

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages::

Are there any unintended consequences of moving from qualified revenue to gross telecommunications revenue?

Not Answered

If you answered 'Yes', please provide your reason(s) below::

Should there be any adjustments to the levies to mitigate these (e.g. changes to the levy threshold, rates, should the levy be charged on gross telecommunications revenue from a Public Telecommunications Network etc)?

Not Answered

If you answered 'Yes', please provide your reason(s) below::

Method for calculating the levy

Which option(s) would you support?

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages::

Could shifting from a revenue-based levy to a fixed-rate model lead to any unintended consequences? If so, what adjustments to the methodology could help address them?

Not Answered

If you answered 'Yes', please provide your reason(s) below::

Could a tiered contribution structure help mitigate any unintended consequences of moving to a gross telecommunications revenue model?(E.g. would applying lower rates for smaller providers or differentiating rates between retailers and wholesalers support a more proportionate approach?)

Not Answered

If you answered 'Yes' or 'No', please provide your reason(s) below::

Auditing Requirements

Do you have a preferred option?

Not Answered

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages::

Are there any unintended consequences of removing the requirement for financial information to be externally audited every financial year?

Not Answered

If you answered 'Yes', please provide your reason(s) below::

### Should the levies be merged

Do you have a preferred option? (Select one)

Not Answered

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages::

Could there be any unintended consequences of merging the TDL and TRL?

Not Answered

If you answered 'Yes', please provide your reason(s) below::

### Who is required to pay the levy

Do you have a preferred option?

Not Answered

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages::

Would there be any unintended consequences of charging the levies on retailers and not wholesalers (for example, would it risk increasing costs for retailers and/or consumers)?

Not Answered

If you answered 'Yes', please provide your reason(s) below::

### Balancing the costs and benefits of regulation

Do you wish to skip this section?

No

### Consideration of costs and benefits

Do you have a preferred option?

No preferred option

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages: :

An assessment of costs and benefits is part of all good policy making, and from our perspective it is already part of how the Commerce Commission should make decisions.

We are concerned that introducing an express requirement to undertake cost/benefit analysis could have a number of unintended consequences.

The first is that it has the potential to drive inefficiencies in regulation. While general principles of impact and cost assessment apply in all cases, how this is practically done needs to be right sized with the use of detailed assessments being limited to times where the question justifies that level of assessment.

Overuse of formal cost benefit assessments is likely to use more regulator time and delay the speed of intervention. This is both inefficient and could have negative implications for consumers through further delays.

Secondly, we note that consumers and consumers' representative organisations often lack the significant resources required to support these assessments. Contrasting this with market participants, who have the resources and incentives to support assessments of the costs, it means that the assessment of benefits (particularly to consumers) may be less developed.

Without proper processes to ensure consumer impacts are properly assessed, this imbalance could lead to negative outcomes for consumers and poor regulation. If this approach was to be adopted active steps would need to be taken to ensure a meaningful benefit assessment. This would require the Commission to take a proactive role in driving that work alongside consumer stakeholders.

If you prefer option 2, are there any unintended consequences to consumers or industry that might arise from having an overarching purpose statement:

Not Answered

If you answered 'Yes', please provide your reason(s) below::

If you prefer option 3, which parts of the Telecommunications Act 2001 should the sectional purpose statements apply to:

If you answered 'Other', what sections and why?:

Are there any unintended consequences to consumers and industry that might arise from having sectional purpose statements?

Not Answered

If you answered 'Yes', please provide your reason(s) below::

## Response ID ANON-KAUD-75QR-M

Submitted to Telecommunications Sector Regulatory Review - Consultation  
Submitted on 2025-09-25 14:41:39

Have your say

Privacy notice

I consent to the Ministry for Regulation sharing my contact details with another government agency and I am happy to be contacted if required.

Yes

Demographic information

What is your email address?

Email Address:

s 9(2)(a) @tcf.org.nz

Are you making a submission on behalf of an organisation or as an individual?

Organisation

Organisation Submission

What is the name of your organisation?

Name of organisation:

New Zealand Telecommunications Forum

I consent to my organisation's name being publicly released by the Ministry for Regulation as a submitter to the Review.

Yes

If no, please can you explain why: :

What best describes the nature of your organisation in relation to telecommunication services? (Please tick all that apply)

Industry group

If other, please specify in the box below. :

Permission to Contact You About Your Submission

Are you happy for us to contact you if we have questions about your submission?

Yes

Consumer protection and customer service

Do you wish to skip this section?

No

Simplifying rules and strengthening consumer protection

Do you have a preferred option?

No preferred option

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages::

We have selected no preferred option because TCF members are supporting different options or proposing different options. Some members are not submitting on this issue.

We understand the Ministry is looking to reduce complexity in the making of retail service quality rules, and to achieve universal compliance. Both can be

achieved through a co-regulatory approach, and we urge the Ministry to ensure it factors in the broader benefits of a co-regulatory approach in making any recommendations in this area.

The TCF currently develops industry codes and regulated telecommunications access codes, and oversees the compliance of industry codes. This model has delivered tangible benefits for both consumers, industry and the regulator.

A co-regulatory approach offers several important advantages over a purely regulatory model:

(a) Industry expertise and practicality. Codes are developed and maintained by those with operational knowledge, ensuring rules are workable, practical, and efficient in real-world application.

(b) Innovation and flexibility. Allows for innovative approaches and continuous improvement without the rigidity of more prescriptive regulation.

(c) Responsiveness. Industry-led processes can adapt more quickly to technological change and emerging issues than formal regulatory processes.

(d) Lower compliance costs. Industry-developed codes can reduce compliance complexity and cost, which ultimately benefits consumers through lower prices/better service.

In addressing complexity we would not want to lose the benefits to code quality that come from experts working in a sector playing a role in the development of codes. Tapping into the industry's collective expertise is more efficient than reproducing this at the agency level, and delivers more operationally achievable outcomes that can be efficiently implemented by service providers.

The TCF is therefore of the view that the Telecommunications Act should continue to enable the TCF to develop industry codes or regulated telecommunications access codes that relate to telecommunications services to support the sector and consumers.

§ 9 (2)(b)(ii)

Could there be any unintended consequences (to consumers or industry) by creating a single enforceable Commerce Commission code for regulating retail service quality?

Not Answered

If you answered 'Yes', please provide your reason(s) below::

Access to basic telecommunications services

Do you wish to skip to the next section?

No

Future of the Telecommunications Service Obligations arrangement

Do you have any preferred option(s)? (Please select all that apply)

Phase out the requirement to provide home telephone service

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages::

Preferred option:

Option two (phase out the requirement to provide home telephone service).

Explanation for the selection:

The existing telecommunications service obligation (TSO) arrangement is obsolete and should be removed.

The TSO service, a voice service that supports dial-up internet and analogue fax, is no longer relevant to modern connectivity needs. It also applies only to a limited set of addresses that had a phone line on 20 December 2001 and do not have access to fibre services. This creates inequities and confusion, as neighboring properties can have differing TSO status.

The telecommunications landscape is unrecognisable from what existed in 2001, when the TSO arrangements were fixed. Today, consumers have access to a wide range of superior services such as those provided by fibre, fixed wireless, improved mobile services, LEO satellites and GEO satellites. These services are widely available and have been broadly adopted by consumers.

The Commerce Commission has recently recommended the removal of copper regulation because it is no longer needed to promote competition. This recommendation was based on the comparative availability, affordability, and superior performance of modern alternatives to copper services in rural areas.

Maintaining the copper infrastructure and equipment used to supply legacy TSO services is increasingly challenging. Challenges include the cost of maintaining a network for a diminishing number of consumers, and the inability to procure parts and people with the necessary skills to fix faults when they occur. The sector's focus should not be on investing in and sustaining outdated systems and services.

We recognise the importance of a managed withdrawal process that applies to all remaining copper consumers, including those covered by the TSO. It is essential that those consumers receive the same benefits and protections through this process as all other remaining non-TSO copper consumers. The Commerce Commission is progressing work on an appropriate set of managed withdrawal commitments for rural consumers as outlined in the Telecommunications Commissioner's letter to the Minister for Media and Communications dated 21 August 2025, which delivered the final Copper Services Investigation report.

While we do not think the TSO needs to be replaced with a modern regulatory alternative (option 3), we do support a broader policy process to consider digital equity issues, including how to appropriately ensure New Zealanders have the internet and device access, digital skills and confidence to function in an increasingly digital world. Rural connectivity issues are a sub-set of digital equity issues, but the challenges are broader.

However, the removal of the existing TSO arrangements should proceed independently of this broader policy conversation, which is not a telco regulatory issue and not in scope for MFR review. The removal of obsolete regulation should not be delayed by discussions about alternative approaches.

If you included Option 3 'ensuring access to basic telecommunication services' as one of your preferred options, please indicate your preference between the following:

Not Answered

Are there any unintended consequences that might arise from phasing out or replacing the current TSO arrangement?

Not Answered

If you answered 'Yes', please provide your reason(s) below::

If you currently rely on a copper connection, is there anything that would make it difficult or impractical to switch to a different technology (e.g. cost or a medical alarm)?

Not Answered

If you answered 'Yes', please provide your reason(s) below::

Which of these telecommunication services are critical for people to access?

If other, please explain::

Do you have any concerns about the potential removal of directory services (white pages listing, print telephone book and directory assistance)?

Not Answered

If you answered 'Yes', please provide your reason(s) below::

## Geographically Consistent Pricing

Do you agree or disagree with our recommendation that the Commerce Commission review and assess the effectiveness of GCP.

Not Answered

Please explain the reason for your selection. If you identified an alternative, please explain.:

## Basic fibre services

Do you agree or disagree with our recommendation that the Commerce Commission should review anchor services and consider the option of a phased repeal as part of their next regulatory reset in 2027?

Not Answered

Please explain the reason for your selection. If you identified an alternative, please explain.:

## Fibre Regulation

Do you wish to skip this section?

Yes

## Telecommunications Development Levy & Telecommunications Regulatory Levy methodology

Do you wish to skip this section?

No

### How revenue is defined

Do you have a preferred option?

An option not included above

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages::

Sector narrative (to be read ahead of each section):

The TCF has been calling for the Telecommunications Development Levy (TDL) methodology to be updated because it:

(a) Is expensive to administer, for the sector and government. The revenue calculations needed for the TDL process are bespoke and not used for other reporting processes. Liable companies need dedicated inhouse resources to unpick revenue information for TDL purposes. They also need to pay external auditors to verify the information. Some member's estimates of the TDL costs range between \$50 000 and \$100 000 per year for this unnecessary accounting.

(b) Is unnecessarily complex for what is essentially a special projects fund for public good investment.

(c) Does not align with Treasury and Auditor General guidance on good levy design.

(d) Lacks transparency, making it impossible to be transparent with customers about how the levy contributes to the cost of services.

Any replacement methodology needs to consider and address all of these issues, to ensure the MFR process makes the most of the opportunity to create better regulation. Some of the proposed options in the consultation could reduce some cost, but would not address the important need for transparency. Some proposed options (tiered levy liability, wholesale/retail reconciliations, expanded scope and requiring director certification in place of audit) would increase cost and complexity.

A careful pick and mix of the issues and options using the online tool could get us to a result that addresses all four issues. But we think there is a much simpler and effective approach, and way to describe it.

The simplest approach is to base the levy on a percentage of service price. This could be achieved as a percentage of retail revenue, which would translate to a percentage of retail price for prescribed retail services, or as an amount per connection. Under this option:

(a) Officials would set the percentage by:

(i) Forecasting the amount the Government needs to recover for telco projects (as provided for in the Telecommunications Act) over the period, drawing on existing budget estimates, project business cases and reporting. In practice, "BAU" and major project funding requirements are known several years ahead of time.

(ii) Forecasting product revenues and volumes from existing Commerce Commission industry reporting information. Telcos already provide line counts and review data to the Commerce Commission for annual market monitoring purposes.

(b) Any unders or overs could be dealt with in a memorandum account.

(c) The levy would apply to all providers of prescribed services - broadband, standalone voice connections, pre-paid and post-paid mobile connections, and national data connections.

(d) There is transparency. Setting the levy up front (before the start of the period) by reference to services acquired by end-users (e.g. as a percentage of retail revenue which translates to a percentage of retail price, or per connection) ensures the levy is transparent to providers and consumers. Providers and consumers can identify the contribution they are making to TDL funded services.

(e) Data to forecast, apply and assure the levy can be derived from existing financial and regulatory reporting processes. Retailers already provide telecommunications volume and review reports to the Commission. These directly correspond to reported revenues. Wholesalers total regulated revenue is provided to the Commerce Commission as part of information disclosure. These processes are already subject to existing assurance processes and so no additional audit or review is needed.

We understand the Ministry does not have a lot of time to present its advice to ministers after the consultation closes. If this does not afford enough time to design a replacement methodology the Ministry could make an in principle recommendation that the levy methodology be changed (to address issues around transparency, complexity and cost) and recommend that the Telecommunications Act be amended so that the TDL methodology is set via regulation. This would provide more time for the policy work to be done (outside the review), and remove the need to find a vehicle to amend the primary legislation.

How revenue is defined

Preferred option:

An option not included above (base levies on gross telecommunications revenue for defined services).

Explanation for selection:

Retaining the status quo (option one), a calculation based on a share of qualified revenue, means the levy would continue to be calculated retrospectively, based on past earnings and other firms earnings. This makes it challenging to inform telecommunications end users about how the levy contributes to the cost of the services they receive, and so the levy cannot be passed on in a transparent way.

Option two (basing the levies on gross telecommunications revenue) will not be sufficient to reduce complexity and administrative burdens, and bring much needed transparency.

To make the gross revenue option work the calculation needs to be based on a clearly defined scope of services - broadband, stand alone voice, mobile and data connection services. Our preferred option is therefore to base the levies on gross telecommunications revenue for defined services.

However, we would not support this change to gross revenue if other levy issues are not addressed, including those needed to bring transparency. The levy issues need to be considered together.

Are there any unintended consequences of moving from qualified revenue to gross telecommunications revenue?

Not Answered

If you answered 'Yes', please provide your reason(s) below::

Should there be any adjustments to the levies to mitigate these (e.g. changes to the levy threshold, rates, should the levy be charged on gross telecommunications revenue from a Public Telecommunications Network etc)?

Not Answered

If you answered 'Yes', please provide your reason(s) below::

## Method for calculating the levy

Which option(s) would you support?

Flat percentage, An option not included above

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages::

Method for calculating the levy

Preferred options:

Flat percentage (option two) and an option not included above (percentage of service price).

Explanation for the selection:

The status quo (option one), continuing to calculate the levy based on a proportion of total industry revenue, will not address the problems concerning complexity and transparency.

Making the levy a fixed percentage (option two) will remove complexity, and if set in advance, will provide greater clarity and certainty around expected levy charges. This will also enable telcos to inform telecommunications end users about how the levy contributes to the cost of the services they receive, and so the levy can be passed on in a transparent way, should they choose.

Within option two we support the flat percentage sub-option, as a tiered approach would add additional complexity.

We have also ticked "an option not included above" as the method for calculating the levy should be a percentage of service price. As noted elsewhere in this submission, to enable transparency and simplicity the levy needs to be linked to prescribed services.

Could shifting from a revenue-based levy to a fixed-rate model lead to any unintended consequences? If so, what adjustments to the methodology could help address them?

Not Answered

If you answered 'Yes', please provide your reason(s) below::

Could a tiered contribution structure help mitigate any unintended consequences of moving to a gross telecommunications revenue model?(E.g. would applying lower rates for smaller providers or differentiating rates between retailers and wholesalers support a more proportionate approach?)

Not Answered

If you answered 'Yes' or 'No', please provide your reason(s) below::

### Auditing Requirements

Do you have a preferred option?

Another option not identified

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages::

Auditing requirements

Preferred option:

Another option not identified (alternatives to director certification are discussed).

Explanation for the selection:

We support the removal of the requirement for financial information to be externally audited. External audit will not be needed if the complexity in calculating the TDL is removed, as has been proposed by the TCF (by applying the levy to revenue from defined services).

While we can support the regulator having investigative powers, we are not able to support option two because of the proposal to require director certification. Directors would require an external audit to meet such a legal obligation, which would make the process more complicated and costly than the status quo, requiring companies to go through a director certification process plus an external audit.

An alternative approach could be to look at the power Inland Revenue has to do periodic audits or spot checks. But our view is that auditing isn't necessary due to the existing Commerce Commission annual monitoring process. Telcos already provide the necessary information and data as part of the Commission's data collection for its Annual Monitoring Report (AMR). To obtain this information the Commission issues a section 98 notice for AMR data which comes with legal consequences. If the Regulator notices any material discrepancy it can investigate. The rigour around this process means the data can be relied on and provides a good comparator for a TDL return.

Are there any unintended consequences of removing the requirement for financial information to be externally audited every financial year?

Not Answered

If you answered 'Yes', please provide your reason(s) below::

### Should the levies be merged

Do you have a preferred option? (Select one)

An option not included above

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages::

Should the levies be merged

Preferred option:

An option not included above (merge TDL with only part of the TRL).

Explanation for the selection:

If the levy method is changed so it is calculated as a percentage of service price the general Telecommunications Regulatory Levy (TRL) sub-levy which is currently paid by all telecommunications operators could be merged with the TDL. However, the two TRL sub-levies related to fibre regulation, paid by the local fibre companies, should not be merged with the TDL and continue to be calculated and applied separately.

Could there be any unintended consequences of merging the TDL and TRL?

Not Answered

If you answered 'Yes', please provide your reason(s) below::

Who is required to pay the levy

Do you have a preferred option?

An option not included above

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages::

Who is required to pay the levy

Preferred option:

An option not included above (apply levy to prescribed retail services).

Explanation for the selection:

We have chosen the "other" option because any application to retailers only needs to be more nuanced, in two respects:

(a) Firstly, the application to retailers only, can only be supported if the transparency issues raised by the TCF are also addressed. As noted previously, the TDL issues need to be addressed as a package.

(b) Secondly, if the levy applied to all providers of prescribed retail services - broadband, standalone voice connections, pre-paid and post-paid mobile connections, and national data connections. This approach would enable transparency and certainty relating to the TDL liability on a service basis and enable telcos to communicate this to end users should they choose.

Accordingly, the TDL would no longer form a component of wholesale prices. Our retail members have said they would expect this to flow through as an equivalent reduction in wholesale input prices.

Would there be any unintended consequences of charging the levies on retailers and not wholesalers (for example, would it risk increasing costs for retailers and/or consumers)?

Not Answered

If you answered 'Yes', please provide your reason(s) below::

Balancing the costs and benefits of regulation

Do you wish to skip this section?

No

Consideration of costs and benefits

Do you have a preferred option?

No preferred option

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages: :

Preferred option:

No preferred option (members prefer different options).

Explanation for selection:

We agree that robust and transparent analysis, including cost benefit assessments, should be undertaken before any exercise of regulatory powers.

Following several years of regulatory change and intervention, the telecommunications sector is now highly competitive. Yet in some areas the Commission has introduced regulatory interventions which raise questions about whether the benefits outweigh the costs, and which are insufficiently justified by evidence. While in some cases the Commission may ask the sector about costs, benefits to consumers are often assumed.

Like all government policy and regulatory agencies the Commission should work through a process to determine that an issue is significant enough to require intervention. While there needs to be an assessment of cost benefit, this doesn't necessarily need to be a resource intensive CBAX analysis (it will depend on the stage of the process and proposed intervention). But there does need to be a threshold level of cost benefit analysis, along with other standard regulatory practice including consideration of problem definition, magnitude of the problem, and options analysis.

Going through this standard process will also help the Commission to make decisions about resource allocation, ensuring resources are focused on areas where New Zealanders have concerns about markets and competition. The Commission has 29 employees working on telecommunications issues, 21 in the grocery division and only 9 working on electricity distribution regulation. These numbers are surprising when we consider the regulatory maturity and competitive environment in telecommunications relative to the grocery and electricity markets.

We have not selected a preferred option as TCF members have different opinions. Some support a legislative approach while others would prefer to see

greater focus on cost benefit analysis in the letter of expectations.

If you prefer option 2, are there any unintended consequences to consumers or industry that might arise from having an overarching purpose statement:

Not Answered

If you answered 'Yes', please provide your reason(s) below::

If you prefer option 3, which parts of the Telecommunications Act 2001 should the sectional purpose statements apply to:

If you answered 'Other', what sections and why?:

Are there any unintended consequences to consumers and industry that might arise from having sectional purpose statements?

Not Answered

If you answered 'Yes', please provide your reason(s) below::

## Response ID ANON-KAUD-75Q4-P

Submitted to Telecommunications Sector Regulatory Review - Consultation  
Submitted on 2025-09-25 16:52:39

Have your say

Privacy notice

I consent to the Ministry for Regulation sharing my contact details with another government agency and I am happy to be contacted if required.

Yes

Demographic information

What is your email address?

Email Address:

s 9(2)(a) @tuatahifibre.co.nz

Are you making a submission on behalf of an organisation or as an individual?

Organisation

Organisation Submission

What is the name of your organisation?

Name of organisation:

Tuatahi First Fibre

I consent to my organisation's name being publicly released by the Ministry for Regulation as a submitter to the Review.

Yes

If no, please can you explain why: :

What best describes the nature of your organisation in relation to telecommunication services? (Please tick all that apply)

Local Fibre Company (LFC)

If other, please specify in the box below. :

Permission to Contact You About Your Submission

Are you happy for us to contact you if we have questions about your submission?

Yes

Consumer protection and customer service

Do you wish to skip this section?

Yes

Access to basic telecommunications services

Do you wish to skip to the next section?

No

Future of the Telecommunications Service Obligations arrangement

Do you have any preferred option(s)? (Please select all that apply)

No preferred option

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages::

As the TSO does not apply to Tuatahi, we do not have a position on this longstanding obligation. Tuatahi therefore consider it appropriate that any outcomes of this part of the review are informed by the Chorus position.

Tuatahi does have general observations of the telecommunications sector that we believe are relevant to consider though. The sector is fast-moving, and the regulation can become rapidly outdated. Tuatahi has first hand experience of the need for regulation to be frequently reviewed, and at present the rate of technological change is outpacing regulatory change.

Relating specifically to voice services, we see changes in delivery happening rapidly even within the provision of fibre. While we are required to provide an Analog Telephone Adaptor (ATA) port on our ONTs, the uptake of voice services through this port is now minimal. s 9 (2)(b)(ii)

The Commerce Commissions annual monitoring reports further confirm the decline in demand for fixed line voice services.

This decrease in fixed line voice service demand in Fibre relates to a move away from the voice service being provided on the ATA port. Many of our RSPs now deliver voice services over the top (OTT) instead.

Tuatahi agree voice services are an extremely important service for homes to have access to. However, the regulatory framework needs to adapt with the technological changes occurring in the delivery of voice services.

If you included Option 3 'ensuring access to basic telecommunication services' as one of your preferred options, please indicate your preference between the following:

Not Answered

Are there any unintended consequences that might arise from phasing out or replacing the current TSO arrangement?

No

If you answered 'Yes', please provide your reason(s) below::

If you currently rely on a copper connection, is there anything that would make it difficult or impractical to switch to a different technology (e.g. cost or a medical alarm)?

Not Answered

If you answered 'Yes', please provide your reason(s) below::

Which of these telecommunication services are critical for people to access?

If other, please explain::

Do you have any concerns about the potential removal of directory services (white pages listing, print telephone book and directory assistance)?

Not Answered

If you answered 'Yes', please provide your reason(s) below::

## Geographically Consistent Pricing

Do you agree or disagree with our recommendation that the Commerce Commission review and assess the effectiveness of GCP.

Alternative option

Please explain the reason for your selection. If you identified an alternative, please explain.:

Tuatahi submits that Geographically Consistent Pricing (GCP) restrictions be retired as a result of this review in the first instance, or that the Commerce Commission begin engagement on GCP now rather than wait until 2027.

Tuatahi believes it is helpful to provide context to our responses, notes that we can only share our experiences and offer constructive reasons to support change.

Tuatahi is not subject to the geographically consistent pricing (GCP) requirements in s 201 of the Telecommunications Act 2001; however, there has always s 9 (2)(b)(ii)

Now that the Commerce Commission has recommended the deregulation of Chorus' copper network

[<https://comcom.govt.nz/news-and-media/news-and-events/2025/comcom-recommends-deregulation-of-rural-copper-network>], Tuatahi expects this will

result in an accelerated withdrawal of copper from rural (aka non-urban) areas. Accordingly, Tuatahi considers it would not be appropriate to wait until 2027 to commence a GCP review.

Tuatahi suggest the either the rules be retired as a result of this review, or the Commerce Commission be instructed to begin engagement with Chorus and the wider industry now (rather than wait until 2027).

A possible solution to the current GCP issue is to update the settings, retaining the GCP requirements in urban areas to keep prices consistent in areas with higher population density, but taking the opportunity to set a framework for price differentiation in rural areas to support the business case for the level of private sector capital investment required. This cannot happen under the current GCP settings.

A recent example of the investment constraint was highlighted earlier this year, when the National Infrastructure Commission (NIC) endorsed Chorus' aspiration to extend the Chorus fibre network to another 160,000 homes and businesses at a cost of between \$2.5 billion and \$3b in rural areas [https://company.chorus.co.nz/media/releases/fibre-for-95-of-kiwis-chorus-proposal-endorsed-as-national-priority]. In making this recommendation, the NIC noted Chorus's business case estimated that by extending the coverage of the UFB network from the current level of 87% of homes and businesses to 95% of homes and businesses offered a projected economic benefit of >\$17 billion over the next decade, with particularly significant gains for rural communities that have long faced digital disadvantage. In the NIC assessment, the Chorus proposal was awarded a green rating for value for money, highlighting Chorus' strong benefit cost ratio of 6.3 – significantly higher than most infrastructure projects. Chorus qualified the NIC announcement by noting that Chorus could not achieve an economic return on that investment without government funding, and confirmed Chorus was “ready to work with government again to explore innovative funding models that draw on both public and private capital to extend fibre coverage even further”. Tuatahi's experience in modelling rural fibre deployment investment cases consistently identifies the GCP expectation as a hurdle; and it appears as though Chorus' GCP obligations have contributed to making the investment supported by NIC uneconomic without government funding.

For current information on rural connectivity issues, refer to the Federated Farmers 2025 Rural Connectivity Study [https://www.fedfarm.org.nz/Web/Web/Resourses/Rural-Connectivity-Survey.aspx?hkey=0f8d2cdb-58ab-4c66-ac3d-414d573e05c2], which identified the need for urgent action from telecommunications companies and the Government. The survey was completed by more than 600 farmers in August and September 2025, and highlighted ongoing issues with inconsistent mobile coverage. Federated Farmers noted that internet access is affected by factors including variable quality, weather-related outages, and high costs; and wireless broadband use has slipped to 44%, while satellite services such as Starlink have jumped to 36% of respondents, up from 19% in 2022. Federated Farmers stated that "Farmers are increasingly reliant on services like Starlink, but simply relying on an overseas provider isn't in the best interests of the country," and "While many appreciate the coverage and performance they get from Starlink, that's not a sustainable solution for New Zealand...Nor does it support the many small Kiwi businesses that are working hard to provide internet service solutions for their local communities.". Federated Farmers believes fibre expansion is also now a critical issue. "Fibre currently reaches only 3% of surveyed rural households, leaving most farmers locked out of the benefits urban people and businesses are enjoying.". "Access to fibre could transform rural connectivity, but right now it's beyond reach for most farmers.". "We need investment in an independent service to give farmers clear information on local internet providers, the best options for retaining a landline number, and advice on backup power to cover emergencies,.". The survey also highlighted growing concerns as traditional copper landlines disappear; and how farmers consistently report paying high prices for unreliable service, with some describing the situation as "rural discrimination".

## Basic fibre services

Do you agree or disagree with our recommendation that the Commerce Commission should review anchor services and consider the option of a phased repeal as part of their next regulatory reset in 2027?

### Alternative option

Please explain the reason for your selection. If you identified an alternative, please explain.:

Tuatahi submit that anchor service requirements can be removed as result of the Ministry for Regulation review. If the anchor services are not removed as a result of this review, we support of the recommendation to review anchor services as part of the Commerce Commissions next regulatory reset in 2027.

With high fibre uptake and emerging higher-capacity technologies, Tuatahi submits that anchor service regulation can be repealed as it is no longer needed to ensure access to affordable basic broadband and voice services. That role is now being fulfilled by fixed wireless broadband services which operate as a competitive constraint on the provision of basic fibre broadband services and, through a chain of substitution, effectively acts as price anchor even on high-speed plans.

If the anchor service regulation is not removed now, it is necessary for a review in 2027 which considers the comparable market power of retail mobile/fixed-wireless (services and bundles) offered by the incumbent providers in direct competition to fibre. A review will test whether fibre anchors remain the best protection for consumer prices.

While the anchor fibre services were designed as a transitional safeguard, Tuatahi's experience shows that competition from fixed wireless is the real competitive constraint on pricing § 9 (2)(b)(ii)

Recent market data and commentary confirm the New Zealand broadband market is competitive, with electricity retailers successfully taken market share from the traditional RSPs – who have invested and delivered growth in fixed wireless (FWA) broadband as a “cost-effective alternative to fibre offerings”. 2Degrees CEO, Mark Callander noted that while the recent fibre speed boost offers did see cost-conscious consumers switching onto the lower-cost plans

that were now running at higher speeds, there has also been “no slowdown” in demand for FWA broadband: “In fact, if anything, we’ve seen it increase, which just comes down to the quality of the product ... probably close to 200 mbps downloads, and it’s also the ability to pick it up and move it with you.” [[https://www.nbr.co.nz/tech/two-degrees-reports-top-line-growth-vocus-integration-completed/?utm\\_medium=email](https://www.nbr.co.nz/tech/two-degrees-reports-top-line-growth-vocus-integration-completed/?utm_medium=email)].

As fixed wireless is effectively fulfilling the role the regulated anchor service was intended to play, Tuatahi considers that now is the right time to remove anchor service regulation.

In the alternative, if the anchor service regulation is not repealed, a requirement to undertake periodic reviews of the necessity for continued regulation of these services could be introduced. This would replace the current approach under s 208 of the Act which grants the Commission the discretion to undertake a review of anchor services but does not require a review to be undertaken. It would also bring New Zealand in line with the approach taken in other jurisdictions. For example, Ofcom (UK)

[<https://www.ofcom.org.uk/siteassets/resources/documents/consultations/category-1-10-weeks/185028-promoting-investment-and-competition-in-fibre-networks>] and the ACCC (Australia) revisit anchor/entry-level price protections each regulatory cycle, adapting them to market conditions.

If this approach is taken, the first mandatory review process should form part of the 2027 reset to leverage the Commerce Commission’s existing fibre price-quality (PQ) and information disclosure (ID) regime, with the review also giving consideration to retail mobile/fixed-wireless services and bundles offered by the incumbent providers in direct competition to fibre.

## Fibre Regulation

Do you wish to skip this section?

No

## Governance settings in Local Fibre Company constitutions

Do you have any preferred option(s)?

Remove the Government Share and move line of business restrictions to legislation

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages::

Tuatahi submits the regulatory restrictions in the Tuatahi Constitution which remain subsequent to this regulatory review should be moved to the Telecommunications Act 2001 and the Government Share should be removed.

This change will not remove the safeguards protecting fibre wholesale/retail split and fibre open access regulatory constructs because those controls will still apply (with Commerce Commission oversight) under the Telecommunications Act 2001 (Act) and the Deeds of Open Access – Fibre Undertakings granted by Tuatahi under Part 4AA of the Act (the Fibre Deeds).

### Background:

Tuatahi’s Constitution contains regulatory restrictions on Tuatahi’s commercial activities that cannot be amended, removed or altered in effect without the written consent of the Government Shareholder (being the Minister of Finance). Unlike conventional regulatory frameworks, the Constitution does not:

- set out a process for seeking the Minister’s consent,
- list the factors the Minister must take account of in making a decision,
- specify a time within which a decision must be made, or
- provide any rights to review the Minister’s decision.

As a result, the constitution is inconsistent with well-recognised attributes and indicators of best practice regulation. For instance, the Constitution fails to meet the standards set out in the NZ Treasury Best Practice Regulation: Principles and Assessments (February 2015);

- it is not growth-compatible (it does not give sufficient weighting to the LFCs’ economic objectives and prevents them from making long-term investment decisions,
- the regime is not flexible nor durable, and
- the process of amending the Constitution is not transparent, accountable or subject to public scrutiny.

### Tuatahi’s experience working under the current framework:

Tuatahi believes it is helpful to provide context to Tuatahi’s response by sharing Tuatahi’s experiences of working within the existing Government Share framework, and offering constructive reasons to support change based on applying a forward- looking approach.

For Tuatahi to deliver a viable business case to support an investment decision – such as, developing a new fibre or non-fibre telecommunications service, extending the deployment of Tuatahi’s fibre network, acquiring (or providing services to support) other fibre and non-fibre telecommunications networks and services – then, in addition to Tuatahi’s Constitutional obligations, Tuatahi is required to navigate across (and comply with) provisions in our Crown UFB contracts, the Telecommunications Act 2001 (Act) (Part 6), our fibre undertakings overseen by the Commerce Commission under Part 4AA of the Act (Fibre Deeds), and other overlapping New Zealand statutes.

Tuatahi and our shareholder (Igneo Infrastructure Partners) are committed to supporting investment in New Zealand – in fibre, other telecommunications technologies, supporting digital equity, sustainable investments and resilience. However, it is unavoidable that these investment decisions are materially influenced by the degree of regulatory uncertainty and inconsistency we face.

Under the 2009 UFB policy, the contractual restrictions put in place in 2011 were to be replaced by a new regulatory regime. From 1 January 2022, the

Part 6 fibre regulations for the LFCs and Chorus came into effect, replacing a number of settings in the original UFB contracts. Unlike the other UFB contracts, Tuatahi's Constitution still contained a number of controls on what Tuatahi could and could not do, and conflicted with the expiry of the UFB contracts and Tuatahi's Fibre Deeds.

Accordingly, in June 2022, Tuatahi requested Government Shareholder approval to remove those controls due to the introduction of Part 6 of the Act and because Tuatahi had repaid the Crown UFB funding in 2016.

At that time, Tuatahi said: "The changes we are asking for with this request align with the Crown's exit mechanism contained in the [2009] UFB tender process. We need to be able to invest in innovation that retailers are either unable or unmotivated to invest in and respond to increasing competition on a level playing field with wholesale and retail providers of non-fibre broadband services who are required to rely on to retail our fibre services. As we expand the availability of our network and more retail inducements are offered for competing products, our experience is that lowering wholesale prices is not the only way we make our services competitive or resolve the consumer barriers to fibre uptake."

Following a series of engagements with MBIE officials, on 28 April 2023 Tuatahi was advised the Minister of Finance had agreed to remove the geographic restriction that prohibited Tuatahi from deploying, owning or operating a fibre network anywhere outside Tuatahi's original UFB areas (this represented an alignment with Chorus as they had always had this right post separation from Telecom in 2011). This change supported Tuatahi's objective – and confidence – to invest in extending Tuatahi's fibre networks to new geographic areas and improve opportunities for education and economic growth.

In May 2024, MBIE commenced a consultation proceed to consider the other changes Tuatahi had requested in June 2022. On 13 March 2025, Cabinet agreed that the Minister of Finance may give consent to amend Tuatahi's Constitution to expand Tuatahi's permitted activities in line with the same permitted activities Chorus has had since 2011 (in Subpart 3 of Part 2A of the Telecommunications Act) [<https://www.mbie.govt.nz/dmsdocument/30532-telecommunications-regulatory-and-funding-frameworks-minute-of-decision-proactiverelase-pdf>].

Tuatahi is pleased to have achieved this outcome by working with the Minister and officials. While Tuatahi acknowledges the significant time and cost invested in that work, it is regrettable that this outcome did not address the other changes to Tuatahi's Constitution Tuatahi had requested (including the ability to invest in other (non-fibre) telecommunications networks and services; the right to supply services above Layer 2; and the removal of the Government Share (and approval) process). We therefore welcome this opportunity to further address those matters.

Current status of our Constitution changes:

s 9(2)(f)(iv)

Following the changes approved by Cabinet, Tuatahi's Constitution will contain the following restricted activities:

- no participation in supply of retail services
- no services above layer 2; and
- no end-to-end services

In the section below on the exemption process for services above layer 2, Tuatahi submits that the layer 2 restriction is no longer appropriate and should be removed. At the end of this section Tuatahi submits that the end-to end services restriction is unnecessary and should also be removed.

Any regulatory restrictions in Tuatahi's constitution that survive this regulatory review should be moved to the Telecommunications Act 2001 and the Government Share removed.

Market competition:

Tuatahi's intention for sharing our experiences under the Government Share framework is to demonstrate the uncertainty, barriers and challenge that both Tuatahi and officials currently operate within because the outdated 2009 UFB constitutional restrictions still apply. This review represents an opportunity to review these settings and reset.

These settings were put in place in a different market, with fibre forecast to replace copper and no other technology expected to compete with fibre - and restrictions were placed in the Tuatahi Constitution to ensure Tuatahi focussed on delivering the Layer 1 and 2 fibre-to-the-premises network the Crown was partially funding. In addition, open access obligations were imposed on Tuatahi by Part 4AA of the Act as the Government wanted to ensure the UFB networks did not gain, or use significant market power (SMP) resulting in poor consumer outcomes.

Since 2009, the telecommunications market has undergone profound change. Fibre networks have been rolled out, Tuatahi has repaid the Crown funding, mobile networks have advanced through successive generations (4G and now 5G, with 6G already on the horizon), and fixed wireless has become a significant alternative to wired connections. The way consumers use digital connectivity has also shifted dramatically, with broadband now central to economic productivity, education, healthcare, and community wellbeing.

The 2009 UFB policy settings also did not anticipate the scale of consumer reliance on broadband, or the prospect of strong competitive tension between fibre and unregulated mobile/fixed wireless services, or the increasingly complex global environment for digital infrastructure investment.

Recent market data and commentary confirms the New Zealand broadband market is competitive, with electricity retailers successfully taken share in that market from the traditional RSPs – who have invested and delivered growth in fixed wireless (FWA) broadband as a "cost-effective alternative to fibre offerings". 2Degrees CEO, Mark Callander noted that while the recent fibre speed boost offers did see cost-conscious consumers switching onto the lower-cost plans that were now running at higher speeds, there has also been "no slowdown" in demand for FWA broadband: "In fact, if anything, we've seen it increase, which just comes down to the quality of the product ... probably close to 200 mbps downloads, and it's also the ability to pick it up and move it with you." [[https://www.nbr.co.nz/tech/two-degrees-reports-top-line-growth-vocus-integration-completed/?utm\\_medium=email](https://www.nbr.co.nz/tech/two-degrees-reports-top-line-growth-vocus-integration-completed/?utm_medium=email)].

Benefits of change:

The primary benefit of removing the Government Share from Tuatahi's Constitution is that any remaining regulatory obligations will be in the Act, subject

to the Commission oversight and enforcement regime in the Act. This certainty will materially improve shareholder confidence. Investors typically weigh both financial performance and regulatory certainty when making capital allocation decisions. If a regulatory obligation imposes uncertainty (e.g. because of an approval process), the perceived risk profile is increased. This is particularly relevant because Tuatahi operates in a market with regulatory asymmetry because there is substantial difference in regulatory restrictions on Tuatahi compared with Tuatahi's competitors in broadband markets.

If the Government Share is removed, Tuatahi will be able to operate on the basis of a fair and level playing field with other market participants – and this will give Tuatahi's shareholder confidence to make investment decisions to support growth and innovation. It will also improve Tuatahi's operational confidence and allow Tuatahi to direct resources to those initiatives rather than regulatory reporting or constraints.

To expand on the growth and innovation opportunities referred to above, examples include:

- expanding the reach and performance of fibre (and adjacent telecommunications technologies, including wireless), to improve connectivity in urban, rural and urban-fringe areas
- encourage investment in underserved areas by creating policy settings that support innovation in rural deployment (e.g. use targeted tax incentives to encourage Tuatahi to extend the fibre network infrastructure or develop hybrid fibre/wireless solutions to deliver services to rural and other harder-to-reach areas)
- enhance resilience by supporting investment in services to make telecommunications and other utility networks more robust

Alternative model:

Although there is currently a misalignment between the current framework, market dynamics, investor confidence and consumer needs, this is something that can be easily reset by removing the Government Share and relying on the extensive existing protections offered by Parts 4AA and 6 of the Act, as well as competition laws (Commerce Act 1986, Overseas Investment Act 2005, Takeovers Code), will adequately address the risks the original UFB policy was designed to avoid. We do not see a need to replicate the existing protections.

No risk to fibre retail restriction:

Removing the Government Share will not impede or change the enduring prohibition on Tuatahi supplying retail fibre services, which remains a core safeguard under Part 4AA of the Act.

End-to-end services:

While the end-to-end services restriction is not discussed in the questionnaire, it is subject to the same exemption process as applies to services above layer 2. That restriction is that LFCs must not provide telecommunications links to customers except:

- between an end user's building (or, in the case of a commercial building, the building distribution frames) and one of the LFCs local or regional aggregation point; and
- between 2 of the LFC's local or regional aggregation points.

These restrictions were put in place in 2011 to ensure the Telecom retail business remained viable following structural separation. Tuatahi and the other smaller LFCs should not be captured by a prohibition where there is no policy rationale for it to apply beyond the initial scope.

If the end-to-end services prohibition is not removed, it should be moved from our Constitution into the Telecommunications Act, and the proposed streamlined exemption process for services above layer 2 extended to end-to-end services applied.

Scope of the retail services prohibition:

Tuatahi acknowledges that the separation of wholesale and retail services over the UFB fibre network remains a fundamental feature of the UFB Initiative. This fundamental feature is fully enshrined in Part 4AA of the Act (Services provided using networks with Crown funding: Undertakings regime and Commerce Act 1986 authorisations) which was inserted into the Act on 1 July 2011 to govern fibre optic communication networks that were constructed, in whole or in part, with Crown investment funding provided as part of the Ultrafast Broadband Initiative. [s156AA(1)(a)]. This obligation is recorded in clause 7.4 of the Deed of Open Access Undertakings for Fibre Services given by Tuatahi in favour of the Crown in accordance with Part 4AA, which provides that Tuatahi will not supply telecommunications services to end users that are provided using its UFB fibre-to-the-premises access network. Section 156L(1)(b) of the Act provides that a person who has failed without reasonable excuse to comply with an undertaking under Part 4AA may be liable to pay a pecuniary penalty of up to \$10 million for each breach.

The restriction in Tuatahi's Constitution, mirroring the requirement that Chorus not participate in the supply of retail services in section 690 of Part 2A (Structural separation of Telecom) of the Act, extends to all telecommunications services; defined in the Act as "any goods, services, equipment, and facilities that enable or facilitate the conveyance by electromagnetic means from one device to another of any encrypted or nonencrypted sign, signal, impulse, writing, image, sound, instruction, information, or intelligence of any nature, whether for the information of any person using the device or not."

This restriction is far broader than the contemplated by the UFB policy settings, which is well described in this questionnaire - "In 2011, the Government launched the Ultra-Fast Broadband initiative to bring high-speed fibre broadband to homes and businesses across New Zealand. To do this, the Government partnered with four Local Fibre Companies (LFCs) - Chorus, Enable, Northpower Fibre, and Tuatahi First Fibre. These companies received interest-free loans from the Crown and were required to only offer wholesale services, meaning they could build and operate the fibre network, but not sell broadband directly to customers".

The current prohibition prevents LFCs from supplying end users with any non-fibre telecommunications goods or services to make their telecommunications experience easier (for instance, in-house trouble shooting and advice) as well as any telecommunications good or service that is unrelated to the UFB network (for instance, operating a telecommunications network using non-fibre technology (such as wireless) to deliver telecommunications services in areas beyond the footprint of the LFC's UFB fibre network).

There is opportunity now to either remove this restriction, which it is resulting in outcomes we do not think were intended in 2009, or introduce a Commission approval mechanism akin to the end-to-end service, or layer 2 approval process.

The opportunity for a modern framework:

This Ministry for Regulation review presents an opportunity to address the misalignment between the Act and the wide-ranging restrictions in the 2009 UFB policy that still apply to Tuatahi today. Tuatahi urges this review to limit the LFC retail restriction to retail services provided using the LFC's UFB fibre-to-the-premises network. If the broader retail prohibition is not amended, it should be moved from the Tuatahi Constitution into the Telecommunications Act, and brought into the scope of Commission approval mechanisms.

International comparisons:

There are international examples where telecommunications operators function effectively without a Government Share:

- In Ireland (population: 5.4m; fibre availability: 76%; uptake (fibre: 53%; copper: 23%; fixed wireless: 5%; cable: 18%; satellite: 1%), the Government supported the fibre rollout by National Broadband Ireland (NBI) without using the government share or constitution control mechanisms. The Department of Environment, Climate and Communications (DECC) is responsible for telecommunications regulation, and conducts 5-yearly market reviews and significant market power assessments to monitor market conduct.
- In Sweden (population: 10.6m; fibre availability: 97.8%; uptake (fibre: 78%; copper: <1%; fixed wireless: 5%; cable: 15%; satellite: <1%), the Swedish Government does not hold a government share or any constitution controls in any of the telecommunications network operators, and unbundling is not mandated. Telecommunications regulatory oversight comprises the Swedish Post and Telecom Authority (PTS), National Regulatory Authority of Sweden (NRA) and the Electronic Communications Act 2022.

Would there be any unintended consequences of removing the Government Share?

No

If you answered 'Yes', please provide your reason(s) below::

### Ownership restrictions in Local Fibre Company constitutions

Do you have a preferred option?

Remove ownership restrictions and rely on existing legislation

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages::

Tuatahi submits in favour of the removal of LFC ownership restrictions, as there are sufficient statutory controls in place to render these unnecessary.

As outlined in the Consultation Document: "...at the start of the Ultra-Fast Broadband initiative, the Government introduced ownership rules for the Local Fibre Companies (LFCs) to protect public investment and prevent any one owner from gaining too much control". It is important to note however, that a non-New Zealand shareholder cap was not included in the Tuatahi First Fibre Constitution.

When Tuatahi was acquired by Igneo Infrastructure Partners, an overseas entity, in 2020, Ministerial approval was required, and appropriately sought and obtained, under clause 5.9(b)(i) of Tuatahi's Constitution because that sale resulted in the indirect change of control of the Tuatahi fibre-to-the-premises networks Tuatahi deployed under the UFB1, UFB2 and UFB2+ initiatives. In addition, the purchaser was required to obtain OIA consent to the purchase.

s 9 (2)(b)(ii)

As noted above, Tuatahi and Igneo want to support further investment in fibre and other telecommunications technologies, and any investment decision Tuatahi makes is influenced by regulatory certainty. If the current shareholder restrictions are retained, there would continue to be overlap with existing statutory protections in the Overseas Investment Act 2005, the Takeovers Code, and the Commerce Act 1986 – all of which allow a form of Crown oversight to remain in effect, but with a more structured and consistent model.

There is no longer any Crown funding at risk. Tuatahi repaid Tuatahi's UFB funding to the Crown in September 2016. In addition, Crown oversight of the UFB networks has been replaced by the Part 6 (and Part 4AA) regulatory constructs.

Tuatahi considers that there is no longer any material risk or reason for Tuatahi, or any other LFC, to remain subject to ownership restrictions.

Would there be any unintended consequences of removing the ownership restrictions?

No

If you answered 'Yes', please provide your reason(s) below::

### Layer 1 unbundling

Do you have any preferred option(s)?

Repeal Layer 1 unbundling requirements

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages::

Tuatahi submits in support of Option 2 (Layer 1 unbundling requirements being repealed).

In responding to this question, Tuatahi believes it is helpful to provide context to our response by noting that we can only share our experiences and offer constructive reasons to support change.

Background:

Section 156AD(c)(ii) of the Telecommunications Act 2001 (Act) and the open access obligations Tuatahi is subject to under Part 4AA of the Act, required Tuatahi to design and build Tuatahi's UFB1, UFB2 and UFB2+ networks to enable equivalence of inputs (EOI) to deliver unbundled Layer 1 services from 1 January 2020 in Tuatahi's UFB1 areas; and from 1 January 2026 in Tuatahi's UFB2 and UFB2 areas. In addition, Tuatahi has self-funded fibre network growth and Rural Capacity Upgrade (RCU) networks to support EOI.

The specific requirements in the Crown UFB contracts for building the fibre network included allowing for "...sufficient fibre to permit future Layer 1 unbundling past 31 December 2019, with

- two fibres per premises where a point-to-point architecture is chosen;
- sufficient feeder and distribution fibres, where a point to multipoint architecture is chosen, such that each premises may be serviced by two distribution fibres fed from separate splitters, the second splitter to be provided by an Access Seeker; and
- sufficient fibre to allow for growth in in-fill housing."

§ 9 (2)(b)(ii)

However, since 1 January 2020, no access seeker has on-boarded with Tuatahi to initiate Layer 1 fibre unbundling.

Current market:

Tuatahi's analysis confirms that the lack of fibre unbundling is linked to the significant changes in the competitive telecommunications market since 2011. The fibre networks have been rolled out, mobile networks have advanced through successive generations (4G and now 5G, with 6G already on the horizon), and the three largest RSPs (or access seekers) (or mobile network operators (MNOs)) have directed their investment into their own competing fixed wireless access (FWA) and mobile networks to offer an alternative to fibre. In addition, smaller access seekers do not have the capital or scale required for the level of investment required for Layer 1 unbundling. This means that, while Layer 1 unbundling was intended to promote competition, in practice, no providers have elected to make use of it in the years since the UFB initiative was completed, due to the cost and technical complexity.

In 2024, Tuatahi provided the Commerce Commission with data to demonstrate the level of investment in FWA services from 2016 to 2022, while retail FWA prices have fallen across the same period, in Tuatahi's submission responding to the Commission's draft fibre de-regulation decision (see: [https://www.comcom.govt.nz/assets/pdf\\_file/0027/362628/Tuatahi-submission-on-draft-decision-deregulation-review-24-September-2024.pdf](https://www.comcom.govt.nz/assets/pdf_file/0027/362628/Tuatahi-submission-on-draft-decision-deregulation-review-24-September-2024.pdf), paras 9.3 to 9.9).

§ 9 (2)(b)(ii)

The increased competition and market share for non-fibre services has encouraged the fibre providers to proactively respond with product and performance innovations (e.g. Fibre Starter [[https://tuatahi-first-fibre.cdn.prismic.io/tuatahi-first-fibre/aL4GbmGNHVfTOvPd\\_FibreStarter-OfferLetter-20250829.pdf](https://tuatahi-first-fibre.cdn.prismic.io/tuatahi-first-fibre/aL4GbmGNHVfTOvPd_FibreStarter-OfferLetter-20250829.pdf)] and Fibre Boost [<https://www.broadbandcompare.co.nz/n/big-fibre-boost/>]); the Commerce Commission (in Dec 2024) determined there was insufficient data to support a review of Bitstream PON services, citing the limited 5G data available to compare it to fibre.

At the same time, competing FWA providers have been taken to task for referring to their products as being "fibre like" [[https://businessdesk.co.nz/article/markets/chorus-hits-back-at-claims-on-fixed-wireless-speed?utm\\_source=chatgpt.com](https://businessdesk.co.nz/article/markets/chorus-hits-back-at-claims-on-fixed-wireless-speed?utm_source=chatgpt.com)]; and one of the largest MNOs is actively investing in that MNO's mobile and FWA network and product strategies (including bundling and incentives) to increase market share (including 30% on FWA) [[https://investors.sparknz.co.nz/FormBuilder/\\_Resource/\\_module/gXbeer80tkeL4nEaF-kwFA/file/SPK30\\_Strategy\\_Presentation.pdf](https://investors.sparknz.co.nz/FormBuilder/_Resource/_module/gXbeer80tkeL4nEaF-kwFA/file/SPK30_Strategy_Presentation.pdf)].

Tuatahi is committed to competing on a level playing field with all technologies, and Tuatahi encourages the Ministry for Regulation to support that outcome.

Expert opinions:

As noted in the Framework for promoting competition report by Vogelsang & Cave dated 19 November 2019 [[https://comcom.govt.nz/\\_data/assets/pdf\\_file/0039/189894/Ingo-Vogelsang-and-Martin-Cave-Framework-for-promoting-competition-15-November-2019.pdf](https://comcom.govt.nz/_data/assets/pdf_file/0039/189894/Ingo-Vogelsang-and-Martin-Cave-Framework-for-promoting-competition-15-November-2019.pdf)]: "The reason why unbundled L1 services are or will be demanded only by large service providers is that unbundling is associated with significant economies of scale and is only justified if a service provider has sufficiently many customers to serve in an area. This again favors the densest geographic areas over less dense ones." [at 2.2.1].

Feasey also noted (at 111 in his report titled The regulation of fibre-based telecommunications services and networks in New Zealand: a review and recommendations for the future, and dated 20 Feb 2025) [<https://comcom.govt.nz/regulated-industries/fibre/projects/fibre-input-methodologies-review-2027/feasey-report-on-fibre-telecommunications-in-nz>]: "...It is possible - and in my view quite likely - that the Layer 2 services currently provided by Chorus sufficiently meet the needs of RSPs and align with their capabilities and other business priorities. RSPs may see better places to invest their time and resources than trying to [use PONFAS] substitute their own Layer 2 services for those which they currently purchase from Chorus or the other LFCs, particularly if they still have to rely on Chorus for national coverage, as I think they will. I have also not seen any evidence that the absence of competition in the provision of Layer 2 services has had adverse effects on competition in the retail fibre broadband market in New Zealand, a market which I have found to be workably competitive. Given this, the

Commission should be prepared to conclude at the end of its investigation that no change is required or that the obligation on LFCs to provide PONFAS should simply be withdrawn altogether.”.

The benefits of removing the unbundling obligations include:

- reduced regulatory complexity and uncertainty
- helping address the market distortion in non-UFB areas where Tuatahi is still obligated to deploy fibre to support unbundling even though Tuatahi’s competitors are not required to do so. [There is no unbundling obligations in non-UFB areas]

Tuatahi does not consider there to be a risk of fibre wholesalers gaining SMP if the unbundling obligations were removed, because the non-discrimination and equivalence obligations in Part 4AA of the Act for Layer 1 and Layer 2 services will continue to apply.

International comparisons:

There is international precedent to operating without a regulated fibre unbundling framework:

- In Ireland (population: 5.4m; fibre availability: 76%; uptake (fibre: 53%; copper: 23%; fixed wireless: 5%; cable: 18%; satellite: 1%), the Government supported the fibre rollout by National Broadband Ireland (NBI) without using the government share or constitution control mechanisms, and unbundling is not mandated. The Department of Environment, Climate and Communications (DECC) is responsible for telecommunications regulation.
- In Sweden (population: 10.6m; fibre availability: 97.8%; uptake (fibre: 78%; copper: <1%; fixed wireless: 5%; cable: 15%; satellite: <1%), the Swedish Government does not hold a government share or any constitution controls in any of the telecommunications network operators, and unbundling is not mandated. Telecommunications regulatory oversight comprises the Swedish Post and Telecom Authority (PTS), National Regulatory Authority of Sweden (NRA) and the Electronic Communications Act 2022.

Conclusion:

If the Layer 1 unbundling requirements no longer applied, Tuatahi would have the ability to use of the EOI fibre network assets that have already been deployed but remain unused.

s 9 (2)(b)(ii)

Each of these options would support increased competition at the retail level.

Would there be any unintended consequences of repealing all Layer 1 unbundling obligations?

No

If you answered ‘Yes’, please provide your reason(s) below::

Exemption process for services above Layer 2

Do you have a preferred option?

An option not included above

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages::

Tuatahi supports an additional option which was not included in the consultation document – and that is to propose removing the prohibition on Tuatahi providing services above Layer 2 which were part of the 2009 UFB policy restrictions. This reflects the completion of the UFB network build, and repayment of the Crown funding, as well as the realities of the current New Zealand telecommunications market. If the restriction remains, Tuatahi supports a streamlined exemption process.

Background:

Tuatahi believes it is helpful to provide context to Tuatahi’s response by sharing Tuatahi’s experiences of working within the existing Government Share framework, and offering constructive reasons to support change based on applying a forward-looking approach.

As Tuatahi noted in response to the section in this review relating to Governance settings in Local Fibre Company constitutions, the original 2009 ultra-fast broadband (UFB) policy framework was designed to ensure that network operators focused solely on the wholesale fibre network rollout, while retail fibre services could only be offered to end-users by retail service providers (RSPs).

The 2009 UFB policy included requirements to give effect to the structural separation of Telecom into Chorus (wholesale) and Telecom (now Spark) (retail). The 2009 policy requirements were also applied to Tuatahi (and the other LFCs) by association to ensure the Crown investment in UFB would be used for its sole intended purpose – the delivery of UFB Layer 1 and 2 fibre network infrastructure – without distraction. Supplementary Order Paper 204 (dated 16 Feb 2011), and the associated Regulatory Impact Statement, described the Chorus restrictions as necessary to prevent Chorus supplying retail

telecommunications services and returning to a vertically integrated model. In comparison, Tuatahi was never vertically integrated, and there was no official assessment undertaken that confirms the decision to extend the Chorus restrictions to include Tuatahi was based on the same underlying concerns the Government had about Chorus.

It is also relevant to note that Chorus has publicly stated (in a 2018 submission responding to the Telecommunications (New Regulatory Framework) Amendment Bill 2017 [[https://www.parliament.nz/resource/en-NZ/52SCED\\_EVI\\_74818\\_416/9b8bf930d83b9c6962145d94c24e14f68453d921](https://www.parliament.nz/resource/en-NZ/52SCED_EVI_74818_416/9b8bf930d83b9c6962145d94c24e14f68453d921)] (at 143), the restrictions applied to Chorus as part of the structural separation of Telecom were mainly aimed at protecting [Telecom (now Spark)] shareholder value during the separation, rather than addressing ongoing competition concerns.

The 2009 UFB policy settings were reflected in Tuatahi's UFB contracts with the Crown and Tuatahi's Constitution, both of which only allowed Tuatahi to supply Layer 1 and Layer 2 services; and an ability to provide Layer 3 and 4 services with the prior approval of the Minister of Communications. Under the current changes to the LFCs constitutions, it is proposed that the restriction will remain in Tuatahi's Constitution, but subject to the Commerce Commission exemption powers in the Act.

The OSI Model:

Tuatahi considers it relevant for the Ministry for Regulation to give consideration to how the above Layer 2 restriction refers to the Open Systems Interconnection (OSI) model – which is a model recommended by the International Telecommunication Union (ITU) (the UN agency responsible for information and communication technologies) in 1984 (as ISO 7498).

The purpose of the OSI model was to provide a standard reference for how different networking systems communicate with one another, regardless of their underlying architecture or technology type. In other words, the OSI model is not specific to telecommunications or any specific type of telecommunications technology.

While the OSI model served its purpose in the copper-era context, that model is no longer considered an effective framework for defining the range of wholesale broadband technologies and services available in 2025. Technological advances have increasingly blurred the boundaries between the OSI layers, and international practice increasingly relies on more flexible models such as TCP/IP, which better support investment, innovation, and the delivery of emerging telecommunications technologies.

Tuatahi also notes that the requirement in Tuatahi's Constitution to seek ministerial approval (i.e. the Minister for Media and Communications) not the Government Shareholder (Minister of Finance) to supply any services above Layer 2 demonstrates that this restriction was operational rather than regulatory.

Tuatahi's experience:

By the end of 2019, Tuatahi's Crown UFB contractual obligations had been satisfied, the Crown funding repaid, and CIP's oversight role was scheduled to conclude (but it was extended by 2 years to allow the Commerce Commission to develop the fibre regulatory framework under Part 6 of the Telecommunications Act 2001 (Act)).

In June 2022, Tuatahi requested Government Shareholder approval to remove the above Layer 2 restriction, and other restrictions. Tuatahi's intention was to ensure that Tuatahi (and the other LFCs) were able to operate with a clear, consistent set of controls – and reduce the risk of confusion or differing interpretation across different regulatory mechanisms. Tuatahi was not seeking any Crown funding, and this has not formed any part of the rationale for Tuatahi's request for these changes – or the recommendations Tuatahi has given in this response.

In May 2024, MBIE took Tuatahi's request and added it to a regulatory frameworks consultation which they completed in March 2025. In that consultation, MBIE described the restriction as preventing the LFCs (including Tuatahi) from selling internet or phone services directly to customers, in order to maintain the wholesale-retail split. Unfortunately, that explanation conflates two different restrictions:

- the prohibition on the LFCs (including Tuatahi) supplying retail fibre services (which remains prohibited under Part 4AA of the Act and in Tuatahi's Fibre Deed); and
- the prohibition on the LFCs (including Tuatahi) offering above Layer 2 services – which only appears in Tuatahi's Constitution and prevents Tuatahi from investing in innovation and competition in wholesale markets.

The outcome of the Tuatahi's request submitted in June 2022 – and subsequently leading the engagements with MBIE – resulted in MBIE undertaking a consultation process, which resulted in Cabinet approval for Tuatahi (and the other LFCs) to have the same rights Chorus has always had under Chorus' line of business restrictions in Subpart 3 of Part 2A of the Act – which is to supply fibre services directly to non-retail users, and to apply for Commerce Commission approval to supply any services above Layer 2.

Tuatahi's practical experience in working to develop new fibre products is the overlap between the OSI layers – and a lack of consistency in the interpretation of each of those layers – make it challenging for technical teams to confidently interpret and navigate within the above Layer 2 restriction. There is often significant disagreement on where a specific technology, input, or device fits within the OSI model layers.

Given there is no intrinsic link between the layers of the OSI model and retailing (it is possible to offer wholesale services at many layers), this Ministry for Regulation review presents an opportunity for New Zealand to lead the way and replace using the OSI model to restrict investment and innovation – and instead rely on established competition law principles that more appropriately define a market and market power.

Comparisons:

There are examples of how what Tuatahi is asking for works, both in the New Zealand market and in international markets, and to demonstrate how risks can be effectively monitored:

- New Zealand already has a range of wholesale / retail / vertically integrated providers operating above layer 2 in addition to the regulated fibre networks:

- In Australia, Telstra Wholesale's Brand White Label Internet product demonstrates the benefits of such models in lowering costs and speeding up service delivery while allowing retailers to retain full control of their customer relationships. In this example, Application Programming Interfaces (APIs) operate at Layer 7 of the OSI Model to enable application-level interactions – and a RSP can consume a Telstra wholesale service and integrate it with that RSP's existing CRM and billing systems to offer a cost-effective retail service to the RSP's customers.
- The European Union regulatory framework (in the European Electronic Communications Code, or EECC) focuses on markets, not OSI layers.
- The US framework differentiates between telecommunications (transmission networks) and information services (applications and content).
- In Ireland (population: 5.4m; fibre availability: 76%; uptake (fibre: 53%; copper: 23%; fixed wireless: 5%; cable: 18%; satellite: 1%), the Government supported the fibre rollout by National Broadband Ireland (NBI) without using the government share or constitution control mechanisms. NBI supplies wholesale fibre services, and is permitted to operate above Layer 2 value-add services like IP addressing, managed Wi-Fi/CPE, in-home services: [[https://www.comreg.ie/media/dlm\\_uploads/2018/11/ComReg-1895.pdf](https://www.comreg.ie/media/dlm_uploads/2018/11/ComReg-1895.pdf)] on non-discriminatory terms. The Department of Environment, Climate and Communications (DECC) is responsible for telecommunications regulation, and allows NBI to supply Wholesale In-Home Products and Services (e.g. UPS provision to support VoIP during power outages; installing RSP residential gateways; IPTV wiring; data-port extensions) [<https://nbi.ie/wp-content/uploads/2020/09/NBI-Reference-Offer-Bitstream-and-VUA-v2.0CLEAN.pdf>] [<https://nbi.ie/wp-content/uploads/2020/02/NBI-In-Home-Services-Schedule-v1.0.pdf>]. DECC conduct 5-yearly market reviews and significant market power assessments to monitor market conduct.
- In Sweden (population: 10.6m; fibre availability: 97.8%; uptake (fibre: 78%; copper: <1%; fixed wireless: 5%; cable: 15%; satellite: <1%), telecommunications regulatory oversight comprises the Swedish Post and Telecom Authority (PTS), National Regulatory Authority of Sweden (NRA) and the Electronic Communications Act 2022. There is no statutory prohibition on wholesale fibre operators offering above Layer 2 services to RSPs or end-users; with existing competition laws (and 5-yearly reviews) used to monitor behaviour and an obligation to notify the PTS of services [<https://pts.se/en/application-and-notification/internet-and-telephony/notificationofoperators>].

No risk to fibre retail restriction:

Removing the above Layer 2 restriction for Tuatahi (and the other LFCs) will not remove or change the enduring prohibition on Tuatahi (or any of the other LFCs) supplying retail fibre services, which remains a core safeguard under Part 4AA of the Act.

Benefits:

Tuatahi believes there is now a significant opportunity to modernise these settings in ways that deliver tangible benefits for end-users, access seekers, and the wider economy. Allowing Tuatahi to participate in the supply of above Layer 2 services would:

- support expanding the reach and performance of fibre and adjacent telecommunications technologies by enabling integration between complementary technologies, including wireless, to improve connectivity in urban, rural and urban-fringe areas for consumer, education, economic development and enterprise growth
- support digital equity and affordability by allowing Tuatahi to develop targeted wholesale solutions, such as bespoke products for access seekers, while maintaining compliance with non-discrimination obligations – and support new or smaller RSPs to innovate and serve specific customer segments cost-effectively
- promote competition and choice by opening opportunities for white-label wholesale services – and reduce barriers to entry for smaller RSPs
- encourage investment in underserved areas by creating policy settings that support innovation in rural deployment (e.g. use targeted tax incentives to encourage Tuatahi to extend its fibre network infrastructure and develop hybrid fibre/wireless solutions to deliver services to harder-to-reach areas)
- enhance resilience by supporting investment in network monitoring and management services to make telecommunications and other utility networks more robust and responsive to events
- allow RSPs to reduce costs by removing the need to pay for expensive routing and aggregation platforms in every region
- support new entrants into the retail market by avoiding duplicating infrastructure and operational costs, such as the cost to build their own national IP core, OSS/BSS systems, and aggregation – which will increase retail diversity and competition, and benefit consumer end-users (Example: In Sweden, the Stokab model allows operators to provide open Layer 2 and Layer 3 services, and that has supported smaller RSPs to easily launch retail broadband offers without the cost of backhaul or IP cores)
- support investment in innovation, like a Tuatahi Layer 3 service to streamline the fibre service activation process by allowing end-users to order (or change) their fibre service directly on the network portal; or offering services like managed Wi-Fi, direct access to gaming/streaming optimised networks, or bundled security services

The prohibition on Tuatahi supplying above Layer 2 services is no longer required and means the capabilities and capacity on the fibre networks are under-utilised. Fibre has near-unlimited bandwidth, and the ability to operate above Layer 2 (e.g. supply Layer 3/4 services, such as IP transit, content delivery networks (CDNs), cloud edge hosting) will allow the fibre networks to invest in platforms for entire digital ecosystems, instead of remaining a predominantly passive collection of pipes and fibre. Increasing the utilisation of the deployed fibre networks also offers the benefit of zero environmental impacts because it avoids the need to deploy more aerial infrastructure or towers for wireless services, especially in residential areas.

The opportunity for a modern framework:

Tuatahi believes this Ministry of Regulation review presents an opportunity to work collaboratively to address the misalignment between the Telecommunications Act 2001 and the wide-ranging restrictions in the 2009 UFB policy that still applies today – and to establish a framework that is adaptable to future changes in telecommunications technologies and evolving customer needs.

Would there be any unintended consequences of streamlining the exemption process?

No

If you answered 'Yes', please provide your reason(s) below::

### Fibre deregulation review process

Do you have a preferred option?

Single step streamlined process for deregulation reviews

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages::

Tuatahi supports moving to a streamlined process for fibre de-regulation reviews and the removal of the reasonable grounds requirement.

Tuatahi believes it is helpful to provide context to Tuatahi's response by sharing Tuatahi's experiences of the de-regulation review process, and offer constructive reasons to support change based on applying a forward- looking approach.

Tuatahi experienced the current two-step process during the first fibre deregulation review. That was resource-intensive in time and cost. Streamlining would reduce Tuatahi's administrative, resourcing and cost burdens, and provide more certainty for our work-planning.. It will also reduce uncertainty and risk for Tuatahi when forecasting capex, network growth and product development plans. We believe increased certainty in the Commission's fibre deregulation work plan would also benefit the Commission's own resource and cost planning.

For context, it took more than a year to complete the reasonable grounds assessment. The Commission did not release the final reasonable grounds decision paper until 19 December 2024, which concluded there were reasonable grounds to commence a deregulation review for Voice services and Transport services for Tuatahi (and the other LFCs), as well as point-to-point services and co-location and interconnected services. While the Commission has recently commenced the second stage of the fibre de-regulation review process, it has indicated an intention to make a recommendation to the Minister before the commencement of PQP3. Taken together, the current two-stage process places a material administrative and cost burden on both Tuatahi and the Commission itself.

The reasonable grounds assessment phase could be removed by amending section 210 of the Telecommunications Act 2001 to require the Commission to undertake fibre de-regulation reviews using competition law principles. To recognise the dynamic nature of the New Zealand telecommunications market, and the rapid growth in technology, reviews should focus more on market share and market power, and less on the type of technology. By way of example:

- In Ireland (population: 5.4m; fibre availability: 76%; uptake (fibre: 53%; copper: 23%; fixed wireless: 5%; cable: 18%; satellite: 1%), the Government supported the fibre rollout by National Broadband Ireland (NBI) without relying on government share or constitution control mechanisms. The Department of Environment, Climate and Communications (DECC) is responsible for telecommunications regulation, and conducts 5-yearly market reviews and significant market power assessments to monitor market conduct.
- In Sweden (population: 10.6m; fibre availability: 97.8%; uptake (fibre: 78%; copper: <1%; fixed wireless: 5%; cable: 15%; satellite: <1%), telecommunications regulatory oversight is provided under the Electronic Communications Act 2022 by the Swedish Post and Telecom Authority (PTS), which conducts five-yearly reviews using existing competition law principles and manages new services notifications from network operators [<https://pts.se/en/application-and-notification/internet-and-telephony/notificationofoperators>].
- In Singapore (population: 6m; fibre availability: 95%; uptake (fibre: 99%; copper: <1%; fixed wireless: 0%; cable: 0%; satellite: 0%), telecommunications regulatory oversight is provided by the Info-Communications Media Development Authority (IMDA) and the Ministry of Digital Development and Information (MDDI), under the Telecommunications Act 1999 and the Telecom & Media Competition Code (TMCC) 2022 (which serves as the general code of practise) [<https://www.imda.gov.sg/-/media/imda/files/regulation-licensing-and-consultations/codes-of-practice-and-guidelines/code-of-practice-for-competition-for-the-pro>]. The IMDA reviews the TMCC every five years to consider potential deregulation changes.

Would there be any unintended consequences of adopting a single step process for deregulation reviews?

No

If you answered 'Yes', please provide your reason(s) below::

### Legacy regulatory obligations in telecommunications

Do you have a preferred option?

No preferred option

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages: :

As none of these regulatory instruments apply to Tuatahi, Tuatahi does not have a position on these legacy agreements. Tuatahi considers it appropriate that any outcomes on this part of the review be informed by the respective positions of Chorus and Spark.

As a general observation of the telecommunications sector, it is fast-moving, and regulation needs to be frequently reviewed as such. In our experience, the present rate of technological change is outpacing regulatory change.

Would there be any unintended consequences of streamlining and modernising these Deeds?

Not Answered

If you answered 'Yes', please provide your reason(s) below::

## Telecommunications Development Levy & Telecommunications Regulatory Levy methodology

Do you wish to skip this section?

No

### How revenue is defined

Do you have a preferred option?

An option not included above

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages::

Tuatahi agrees that the current approach to defining revenue for the purposes of the TDL and TRL is complex and creates unnecessary administrative burden on businesses. Of the options presented, Tuatahi prefers the alternative option presented "base the levies on gross telecommunications revenue". This option would help to reduce administrative burden for companies.

Tuatahi submits this would work most effectively by setting the levy as a percentage of revenue for a clearly defined scope of services. If the percentage is set at the beginning of a reporting period this would greatly increase certainty and enable efficient passthrough of levy costings into the pricing of the defined services. This approach would both increase transparency and reduce complexity.

Are there any unintended consequences of moving from qualified revenue to gross telecommunications revenue?

No

If you answered 'Yes', please provide your reason(s) below::

Should there be any adjustments to the levies to mitigate these (e.g. changes to the levy threshold, rates, should the levy be charged on gross telecommunications revenue from a Public Telecommunications Network etc)?

Not Answered

If you answered 'Yes', please provide your reason(s) below::

### Method for calculating the levy

Which option(s) would you support?

Flat percentage

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages::

Tuatahi supports a simplified solution, and applying a flat percentage will provide greater certainty around levy charges for industry. Tuatahi does not support a tiered percentage, as this does not address the issue of uncertainty and lack of transparency surrounding levy charges.

As long as the levy percentage is determined up front, qualifying liable persons will be able to transparently pass this through in product costing more efficiently, so a tiered percentage is unnecessary.

Could shifting from a revenue-based levy to a fixed-rate model lead to any unintended consequences? If so, what adjustments to the methodology could help address them?

Not Answered

If you answered 'Yes', please provide your reason(s) below::

Could a tiered contribution structure help mitigate any unintended consequences of moving to a gross telecommunications revenue model?(E.g. would applying lower rates for smaller providers or differentiating rates between retailers and wholesalers support a more proportionate approach?)

Not Answered

If you answered 'Yes' or 'No', please provide your reason(s) below::

## Auditing Requirements

Do you have a preferred option?

Status quo – keep requirement for external auditing

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages::

Tuatahi submits the requirement for external auditing should be retained, as the change proposed in option 2 is unlikely to realise any benefits. The change described will not result in a decrease in workload for the organisation. While there is a financial cost associated with the audit, it is the preparation of the information required itself that carries more burden. This would remain unchanged under this proposal.

Tuatahi anticipates that should the requirement for audit be removed, but in its place a director's certification be required, it is likely that directors would require an audit for their assurance.

Tuatahi therefore submits it is unlikely that a change to this requirement will realise any benefits, the levy proposals that would have more substantial impact are the options to simplify and make more transparent the methodology and who pays.

Are there any unintended consequences of removing the requirement for financial information to be externally audited every financial year?

Not Answered

If you answered 'Yes', please provide your reason(s) below::

## Should the levies be merged

Do you have a preferred option? (Select one)

An option not included above

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages::

Tuatahi has two potential preferences, that are contingent on other decisions made regarding the levy model. These are detailed below;

- 1) If all else remains unchanged, the levies should remain separate due to the loss in transparency a merge would bring.
- 2) Where the intent is to simplify the calculation and process by having the levy(s) recovered on the retail side through a set percentage, Tuatahi believes this simplified approach is possible by changing the way the levies are bucketed:
  - The general TRL (currently paid by all telecommunications operators) could be merged with the TDL (and recovered from retailers).
  - The remaining TRL sub-levies relating to the regulation of fibre apply to the local fibre companies.

This solution would not require the retailers to carry the burden of recovering levies that relate to wholesale regulation alone, but would still achieve increased certainty and simplification.

Could there be any unintended consequences of merging the TDL and TRL?

Unsure

If you answered 'Yes', please provide your reason(s) below::

## Who is required to pay the levy

Do you have a preferred option?

Charge levy only on retailers

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages::

Tuatahi submits in support of charging the levy to retailers, to ensure transparent passthrough.

Tuatahi's greatest concern with the current levy arrangement is the lack of transparency, and the inability for the costs to be easily budgeted and transparently incorporated in pricing. Given the uncertainty regarding the levy's annual cost, Tuatahi's recommendation for the retailers to pay the levy is contingent upon the levy amount being changed to a set percentage. This would reduce the complexity of passing the levy on, and this simplification will ensure that there is no overcollection inadvertently occurring.

Accordingly, the TDL would no longer form a component of wholesale pricing, and only the sub-levies relating to fibre regulation would continue to be paid by the Local Fibre Companies (and incorporated in pricing). While Tuatahi is not subject to pricing regulation, competitive pressures as well as strong retailer expectations that Tuatahi is aligned with Chorus offerings will ensure that all wholesale pricing reflects any change in levy liability.

Would there be any unintended consequences of charging the levies on retailers and not wholesalers (for example, would it risk increasing costs for retailers and/or consumers)?

No

If you answered 'Yes', please provide your reason(s) below::

### Balancing the costs and benefits of regulation

Do you wish to skip this section?

No

### Consideration of costs and benefits

Do you have a preferred option?

Status quo - Continue use of Letters of Expectation

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages: :

Tuatahi agrees that the rules should provide clear, objective standards that are simple and fit for purpose. Given the Telecommunications Act currently contains multiple purpose provisions which set out the expectations of the Commission's various regulatory functions, and the Letters of Expectation guide the execution of the Commission's discretionary functions, Tuatahi submits that the additional purpose statements are required. Tuatahi expects these existing mechanisms are sufficient to ensure the Commission is carrying out their duties in a transparent and proportionate manner.

Tuatahi observes that the level of competition in the telecommunications market should not require the level of regulatory intervention it currently has. All government agencies should be considering the costs and benefits of their workplan, this is important not only to whether the work is warranted, but in prioritisation. However, Tuatahi would not want the mechanism used to ensure this occurs to be so rigid, that it results in overcaution and excessive work for the Commission in its internal processes.

Therefore Tuatahi is supportive of continuing with the status quo, on the basis that if there are concerns surrounding how the Commission is carrying out its duties, Tuatahi thinks this would better be addressed by an external review process rather than additional purpose statements.

If you prefer option 2, are there any unintended consequences to consumers or industry that might arise from having an overarching purpose statement:

Not Answered

If you answered 'Yes', please provide your reason(s) below::

If you prefer option 3, which parts of the Telecommunications Act 2001 should the sectional purpose statements apply to:

If you answered 'Other', what sections and why?:

Are there any unintended consequences to consumers and industry that might arise from having sectional purpose statements?

Not Answered

If you answered 'Yes', please provide your reason(s) below::

## Response ID ANON-KAUD-757B-A

Submitted to Telecommunications Sector Regulatory Review - Consultation  
Submitted on 2025-09-25 20:08:58

Have your say

Privacy notice

I consent to the Ministry for Regulation sharing my contact details with another government agency and I am happy to be contacted if required.

Yes

Demographic information

What is your email address?

Email Address:

s 9(2)(a) @2degrees.nz

Are you making a submission on behalf of an organisation or as an individual?

Organisation

Organisation Submission

What is the name of your organisation?

Name of organisation:

Two Degrees

I consent to my organisation's name being publicly released by the Ministry for Regulation as a submitter to the Review.

Yes

If no, please can you explain why: :

What best describes the nature of your organisation in relation to telecommunication services? (Please tick all that apply)

Mobile Network Operator (MNO), Retail service provider, Wholesale provider

If other, please specify in the box below. :

Permission to Contact You About Your Submission

Are you happy for us to contact you if we have questions about your submission?

Yes

Consumer protection and customer service

Do you wish to skip this section?

No

Simplifying rules and strengthening consumer protection

Do you have a preferred option?

An option not included above

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages::

Preferred option:

An option not included above.

Explanation for selection:

2degrees is a strong supporter of great retail service quality and customer experience. As set out to the Ministry for Regulation (MFR) previously, we

compete on this, and that's why consumers choose 2degrees.

2degrees supports fit-for-purpose, proportionate consumer protection regulations, and works constructively with the Commission under the existing framework to achieve this.

The MFR consultation paper identifies issues with the current regulatory framework being complicated, making it hard for business to understand and follow the rules, and indicates concerns regarding the system being 'not effective at protecting consumers' and industry compliance.

- 2degrees has not raised any concerns regarding the complicated nature of the rules, however we recognise there may be ways to clarify and simplify the regulatory framework. The main area of 'complication' from our perspective, is that a significant portion of the market engaging with end-users (fibre wholesalers) do not consider themselves to be currently captured by the Part 7 Retail Service Quality Code section of the Act. As a result, they have pursued a 'side-letter' voluntary undertaking with the Commission rather than sign up to the same TCF Code obligations as retailers. TCF Codes do not prevent wholesalers from signing up to them.

- We are also not aware of concerns regarding effective protection for consumers. This is not an issue the Commission has raised with us and we are not aware that this is the Commission's view - the Commission has previously indicated compliance with Industry Guidelines and TCF Codes as satisfactory and we work together constructively.

- We are also not aware of issues regarding compliance with TCF Codes. Again, this is not an issue the Commission has raised with us. It is worth noting that almost all consumers' retailers are signatories and are subject to compliance with relevant TCF Codes. The key issue is that wholesalers are not signatories to the same TCF Codes because they consider they are too linked to Part 7 of the Act (which they consider doesn't apply to them). While we are not aware of Commission issues with TCF Code compliance, we are aware that the Commission has had to engage with Chorus regarding its (non) 'compliance' with its 'side-letter' voluntary undertaking.

We do not consider the MFR review has addressed our key issues with the RSQ framework, which we understand were also raised by multiple other industry stakeholders. These concerns don't relate to the regulatory mechanism (TCF versus Commerce Commission) that the MFR Review appears to have focussed on, but rather to the important regulatory principles of ensuring relevant parties are captured by consumer protection regulation and the appropriate scope of regulatory intervention. While we had expected these concerns to form a key component of this aspect of the MFR review, neither Option 1 (the status quo) nor Option 2 (a single enforceable Commission code) presented appear to address these issues. In particular, 2degrees' key concerns relate to:

- Ensuring consumer protection regulation captures all relevant players engaging with end-users

As noted above, Chorus and LFCs do not consider themselves to be captured under the current retail service quality (Part 7) legislation, but it is very clear that they market directly to end users and engage in the same activities as retail service players. For example, advertising on billboards, TV, radio and sending direct emails to consumers. This can result in consumer confusion and results in an unlevel playing field. We consider this a much more substantial gap in the coverage of consumer protection than the small percentage of RSPs that are not TCF members/have not signed up to the TCF Code, that MFR appears to be concerned with. We consider this should be the priority gap to close.

- Ensuring regulatory settings do not undermine competition and innovation in a competitive retail market (scope of regulatory framework)

As set out in our response to the MFR terms of reference, a significant level of prescription is imposed on industry, despite a highly competitive retail market place and despite our marketing and services already being subject to the Fair Trading Act and Consumer Guarantees Act. For example, the Commission have provided guidelines or expectations related to how we can describe plans, talk about speeds, contents and placement of disclaimers, and in some cases the number of 'clicks' on our websites. While resulting in costs, we are not clear all changes are positive or priorities of our customers. We are happy to work with the Commission, and generally appreciate the Commission's intentions, but as a competitive operator with limited resources and a challenger mindset, our team wants to focus on competitive enhancements we have identified to improve customer experience and the like. While we support and work with the Commission on requirements, to ensure compliance, these limited resources are diverted from other customer initiatives we are undertaking as part of the competitive marketplace.

We would like to ensure the regulatory framework sets the appropriate scope for retail regulatory intervention, in what we consider a highly competitive retail market. Competition should be the main driver for improved retail service, not regulation. If competition is not strong enough to deliver appropriate service quality, then consideration should be given to whether the underlying market failure can be addressed by initiatives to promote competition, rather than relying on regulation of competitive market activity. In the regulatory context it is normally the 'purpose' of competition 'to improve retail service quality to reflect the demands of end-users of telecommunications services', with regulation used as a proxy for competition in markets where competition does not exist or is not possible. That doesn't mean that there should be no service quality regulation, and sometimes we support it, just that it should be justified.

2degrees considers that the Telecommunications Act legislation should provide stronger guardrails for determining where and when regulatory intervention in a competitive market is required (i.e. including an appropriate threshold:

□ For example, the MFR should consider the extent to which the definition of RSQ in the Act (section 5), and the open-ended powers for producing guidelines (section 234-237) result in regulatory overreach into competitive market activities. This similarly applies to the Commission's implementation of section 9 and 10A, where we note the industry has had to respond to very significant and challenging statutory data requests, with much information not used. We do appreciate the Commission working with us to address this issue.

We support MFR proposals to include an explicit cost-benefit requirement in relation to Part 7 (which should be carried out alongside problem definition etc).

2degrees does not support Option 2

We note, while it might not be the intention, MFR Option 2 imposes more regulation and burden/costs on both the industry and regulator compared to the status quo – the opposite of the purpose of this review. This has not been recognised in MFR's summary of disadvantages. Further, given evidence suggests the current process with TCF expertise and involvement is working well, we do not consider this step is proportionate. We do not support removing the TCF role from the Telecommunications Act as proposed under Option 2, and consider a co-regulatory approach is necessary for both the industry and the Commission to ensure that requirements are workable and appropriate.

An alternative Option

2degrees supports 'An option not included above'. Taking into account key industry concerns, and the MFR proposal for a 'one stop shop', we and other major retailers including Spark and OneNZ - which together account for the majority of the retail market - instead support an alternative option that both recognises and addresses concerns regarding the scope of providers captured and the scope and threshold for regulatory intervention (and builds on Option 2). This option involves:

- Amending the Part 7 Retail Service Quality Code section to become a Consumer Protection section of the Act – which captures all operators (retail and wholesale) engaged in activities that affect end users, not just retailers.
- Updating section 233 and section 239 to clarify the threshold for regulatory intervention:
  - This should require that the Commission must first establish that competition is not currently delivering effective outcomes demanded by consumers and is unlikely to do so in the near term. This requires a clear definition of exactly what demand is unmet.
  - Where this test is met, the Commission can then carry out a proportionate cost-benefit analysis (in line with MFR proposals) before introducing new obligations. Section 239, which sets out the process for making or amending Commission codes, should be amended to require the Commission to carry out a cost-benefit analysis and to require it test where proposed requirements overlap with existing regulation, including consumer law.
- A co-regulatory approach for development of a 'single' customer code, applying the MFR proposal for cost benefit assessments (new section 239):
  - This recognises the desire for a 'one stop shop' and the value of a co-regulatory approach with telecommunications, including operational, expertise.
  - A single TCF Code would be developed, based off the Commission's existing RSQ guidelines and TCF Codes, but considering the appropriate level of regulatory intervention (and prescription).
  - This Code would then be reviewed/approved by the Commerce Commission, who would continue to have an important oversight role. Once approved by the Commerce Commission this Code would apply to all operators (including non-TCF members).
- Repeal of section 234 and 235 (which enables the Commission to issue guidelines to industry and which enables the Commission to review industry retail service quality codes, respectively), as these would no longer be relevant or required.

#### Advantages and disadvantages of alternative proposal

##### Advantages

Simplified consumer protection regime, providing consumers with a single, authoritative source of rights and protections.

Minimum standards would apply to all parties engaging in relevant consumer-facing activities (including wholesalers), ensuring consistency and enhancing consumer protections.

Cost-benefit analysis results in Commission imposing less regulation, and less prescriptive regulation, a greater ability for retail markets to innovate competitively, and lower compliance costs/freeing up of business resources to work on competitive market initiatives.

Greater clarity and certainty for industry. The current retail service quality framework is too open-ended; a tighter statutory purpose and thresholds for intervention reduce the risk of arbitrary or anecdotal requirements.

Improved alignment with broader consumer law, reducing duplication and encouraging regulators to consider existing protections before adding new obligations.

Co-development with industry ensures codes are practical, proportionate, and take account of commercial realities, reducing the risk of poorly designed rules.

Approach is consistent with good international practice (e.g. Australia), providing assurance of regulatory oversight while leveraging industry expertise.

##### Disadvantages

May not address all industry behaviour affecting end users, unless amendments are made to ensure every industry participant engaged in activities subject to the code - including wholesalers - is bound by it.

Risk of increased regulatory burden on industry if legislative safeguards (e.g. clear thresholds, cost-benefit tests) are not developed and embedded in the Act.

Possibility of overlap or inconsistency with existing consumer protection laws if legislative drafting is not carefully aligned.

Could there be any unintended consequences (to consumers or industry) by creating a single enforceable Commerce Commission code for regulating retail service quality?

Yes

If you answered 'Yes', please provide your reason(s) below::

Unintended consequences of proposed option for a single Commerce Commission code:

The MFR has requested unintended consequences of its proposed option, which represents an increase in regulation. If the Act is amended to require the Commission to implement an enforceable Retail Service Quality Code without appropriate legislative guardrails there could be the following unforeseen consequences:

- Increased costs and regulatory burden on industry without materially improved outcomes for consumers.

##### § 9 (2)(b)(ii)

- Possibility of overlap or inconsistency with existing consumer protection laws if legislative drafting is not carefully aligned.
- Risk of the Code being overly prescriptive, which could undermine innovation and differentiation across operators and so impact competition by restricting operators' ability to differentiate their services.
- Increased compliance costs on industry via more onerous reporting obligations.
- Need for increased resources for the Commission for enforcement activities, which will be passed through to industry via the Telecommunications Regulatory Levy (and ultimately consumers paying for telecommunications services).
- Limited consumer benefits if fibre wholesale providers engaging in direct-to-consumer activities (e.g. marketing) continue to be excluded from consumer protection requirements.

#### Access to basic telecommunications services

Do you wish to skip to the next section?

No

#### Future of the Telecommunications Service Obligations arrangement

Do you have any preferred option(s)? (Please select all that apply)

Phase out the requirement to provide home telephone service

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages::

Supported option:

Option two (phase out the requirement to provide home telephone service).

Explanation for the selection:

2degrees supports Option 2 (Phase out the requirement to provide home telephone service by 2030, with copper-based TSO users being transitioned through a managed process to alternative technologies).

In line with the TCF submission on this issue, we recognise that much of the existing TSO arrangement is obsolete and should be removed:

- The TSO service, a voice service that supports dial-up internet and analogue fax, is no longer relevant to modern connectivity needs. It also applies only to a limited set of addresses that had a phone line on 20 December 2001 and do not have access to fibre services. We consider that the current situation can cause confusion e.g. as neighboring properties can have differing TSO status.
- The telecommunications landscape is very different to 2001, when the TSO arrangements were set. There is a much wider range of services available, such as those provided by fibre, fixed wireless, improved mobile services, LEO satellites and/or GEO satellites.
- The Commerce Commission has recently proposed the removal of copper regulation. This recommendation was based on the comparative availability, affordability, and performance of modern alternatives to copper services in rural areas.
- Maintaining the copper infrastructure and equipment used to supply legacy TSO services presents increasing challenges. These include the cost of maintaining a network for a diminishing number of consumers and the inability to procure parts and people with the necessary skills to fix faults when they occur. The sector's focus should not be on sustaining outdated systems and services.

While 2degrees recognises that copper services are rapidly becoming obsolete, we are strongly supportive of a managed withdrawal process that applies to all remaining copper consumers, including those covered by the TSO (for example, in line with the Copper Withdrawal Code process that applies to urban customers). We understand that the Commerce Commission is progressing work on an appropriate set of managed withdrawal commitments for rural consumers, as outlined in the Telecommunications Commissioner's letter to the Minister for Media and Communications dated 21 August 2025 [Letter-to-Minister-Copper-Services-Investigation-Final-recommendation-21-August-2025.pdf], which delivered the final Copper Services Investigation report, and we look forward to inputting on this.

Consistent with the TCF submission on this matter, while we do not think the TSO needs to be replaced with a modern regulatory alternative (Option 3), we do support a broader policy process for the Government to consider the appropriate level of digital access for all New Zealanders. The managed phase out of obsolete regulation should not be delayed by broader policy discussions about alternative approaches, which are likely to include consideration of new technologies, including satellite.

If you included Option 3 'ensuring access to basic telecommunication services' as one of your preferred options, please indicate your preference between the following:

Not Answered

Are there any unintended consequences that might arise from phasing out or replacing the current TSO arrangement?

Not Answered

If you answered 'Yes', please provide your reason(s) below::

If you currently rely on a copper connection, is there anything that would make it difficult or impractical to switch to a different technology (e.g. cost or a medical alarm)?

Not Answered

If you answered 'Yes', please provide your reason(s) below::

Which of these telecommunication services are critical for people to access?

If other, please explain::

Do you have any concerns about the potential removal of directory services (white pages listing, print telephone book and directory assistance)?

Not Answered

If you answered 'Yes', please provide your reason(s) below::

## Geographically Consistent Pricing

Do you agree or disagree with our recommendation that the Commerce Commission review and assess the effectiveness of GCP.

Agree with the recommendation

Please explain the reason for your selection. If you identified an alternative, please explain.:

Supported Option:

2degrees agrees with the MFR recommendation to "Amend the Telecommunications Act 2001 to require the Commerce Commission to review GCP as

part of their next regulatory reset in 2027 and consider whether existing or alternative regulatory tools better achieve the GCP's dual objectives."

Explanation for the selection:

We agree with the MFR that it is appropriate that the Commerce Commission consider this matter.

The GCP rule was specifically applied to the national, natural monopoly service provider.

Consideration of submissions to the Commerce Commission show that the issues with GCP have been the opposite of that suggested in the consultation, which suggests the GCP "comes at the cost of reducing incentives for the regulated party to expand the fibre network into new areas by limiting the costs they can recover." GCP does not limit the costs Chorus can recover but affects who they are recovered from.

2degrees considers that the GCP means Chorus is over incentivised to expand its fibre network, including to areas that would be uneconomic or commercially non-viable. This is because the costs of the network expansion are socialised across all fibre consumers and Chorus would be guaranteed to recover all the costs and make a commercial return on the investment.

For example, submissions from 2degrees, One NZ and Spark in relation to Chorus' fibre 2025 price-quality path all raised concerns that Chorus has been proposing network extensions which would result in supply to customers that would be commercially non-viable based on geographically-averaged prices and, in all likelihood, at unregulated prices. The submissions have all highlighted that Chorus has proposed the Commission apply tests for deciding whether to allow network extension expenditure which would make it easier for Chorus to expand.

The Commerce Commission review should not be limited to a binary consideration of whether to retain/remove GCP, and should also consider whether there are more efficient pricing methodology regulations that could be adopted. Pricing methodology regulation for monopolies is common in other sectors such as electricity distribution and transmission. For example, a pragmatic option to consider if GCP is retained would be to grandfather GCP to existing customers and Chorus' existing fibre footprint.

This would make it clear that for future 'commercial' Chorus fibre network expansion to go ahead it would need to be economic in its own right, i.e. the incremental revenue (unconstrained by GCP) would need to be sufficient to recover the incremental costs of the network expansion.

## Basic fibre services

Do you agree or disagree with our recommendation that the Commerce Commission should review anchor services and consider the option of a phased repeal as part of their next regulatory reset in 2027?

Alternative option

Please explain the reason for your selection. If you identified an alternative, please explain.:

Supported Option:

Alternative Option. 2degrees supports the Commerce Commission undertaking a section 208 review of anchor services.

Explanation for the selection:

2degrees supports the MFR proposal to require the Commerce Commission to review anchor services, which could consider the option of a phased repeal as part of their next regulatory reset in 2027. However:

- It is not clear from the consultation that this requires an amendment to the Telecommunications Act. Section 208 of the Act already provides that the Commerce Commission can review the service; and
- The Commerce Commission review should not be limited to considering the option of a phased repeal of anchor services but must consider whether the existing anchor service settings are appropriate. This is provided for in section 208.

Anchor services form part of the wider fibre regulatory framework. We expect the MFR is aware from its considerations of this issue that access seekers, including 2degrees, have consistently raised concerns that the anchor services settings are not set at an appropriate level to be fully effective in regulating Chorus and ensuring fibre services are provided at affordable prices.

We agree with MFR that "more in-depth analysis of the impact of repealing this regulation would have on prices for consumers is needed before a decision is made" and that the Commerce Commission is the appropriate body to undertake this review. We therefore support an alternative option: that MFR recommend that such a section 208 review is undertaken.

We are also concerned that the Commission ensure the current regulation is not 'gamed' by Chorus. There are currently multiple Chorus services available at what appears to be the same technical specifications as the anchor product (i.e. multiple 100/20 Mbps products). We note that one of the services Chorus offers at anchor product specifications is at a significantly lower 'commercial' wholesale input price than the anchor service (which is supposed to keep prices in check), on the condition that the retail price is below a certain level. This further brings into question the appropriate settings for the 'anchor' service.

Further, under the current framework, it appears Chorus is using its position as a natural monopoly wholesale input provider to directly influence retail market pricing. If Chorus did not have substantial market power or dominance it would not be able to dictate retail prices to its wholesale customers (Access Seekers). 2degrees considers that such practices are inconsistent with outcomes in workably competitive markets.

## Fibre Regulation

Do you wish to skip this section?

No

## Governance settings in Local Fibre Company constitutions

Do you have any preferred option(s)?

An option not included above

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages::

Supported Option:

An option not included above. We support the MFR recommending MBIE conduct a consultation and recommendation to the Minister on this matter.

Explanation for the selection:

In principle, we understand the reasons for aligning LFC requirements with Chorus obligations under the legislation. However:

- The consultation does not set out evidence of the issues the MFR is seeking to address. It is unclear from the MFR consultation paper what the full implications are of the changes being sought by LFCs, which is required in order to be able to assess the size/scope of the issue and whether this is the most appropriate solution.
- Changes need to be careful to ensure that all appropriate safeguards continue to apply, which are wider than just the wholesale/retail split and open access identified in the MFR table of 'disadvantages of change'.

To address this, we support the MFR recommending MBIE conduct a consultation and recommendation to the Minister on the governance settings in LFC constitution. This could be subject to a timeframe requirement if this is a concern.

Would there be any unintended consequences of removing the Government Share?

Unsure

If you answered 'Yes', please provide your reason(s) below::

Changes need to be careful to ensure that all appropriate safeguards continue to apply, which are wider than just the wholesale/retail split and open access identified in the MFR table of 'disadvantages of change'.

## Ownership restrictions in Local Fibre Company constitutions

Do you have a preferred option?

An option not included above

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages::

Supported Option:

An option not included above. We support the MFR recommending MBIE conduct a consultation on and recommendation to the Minister on this matter.

Explanation for the selection

We support the MFR recommending MBIE conduct a consultation on and recommendation to the Minister on this matter. It makes sense for this to be considered with proposed changes to LFC Governance i.e. a combined short consultation on LFC Governance and Ownership Restrictions. As noted above, this could be subject to a timeframe requirement if this is a concern.

Would there be any unintended consequences of removing the ownership restrictions?

Not Answered

If you answered 'Yes', please provide your reason(s) below::

## Layer 1 unbundling

Do you have any preferred option(s)?

Status quo – continue to require Layer 1 unbundled fibre

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages::

Supported Option:

Option1 - Status quo – retain Layer 1 unbundling requirements, plus consideration of whether the Act/Fibre Deeds should be amended to allow the Commission to set the price or non-price terms.

Explanation for the selection:

2degrees supports Option 1 – retaining Layer 1 Unbundling Requirements in addition to consideration of whether the Act/Fibre Deeds should be amended to allow the Commission to set the price or non-price terms. We note that Layer 1 fibre unbundling forms part of the wider regulatory framework.

We do not support Option 2 – repealing Layer 1 Unbundling Requirements. MFR will be aware from its considerations that multiple access seekers

(including One NZ, Vector and Vocus (2degrees' predecessor)) have all raised substantial concerns about their ability to access Layer 1 Unbundling (including associated terms and conditions). The issue isn't a lack of demand (which would warrant deregulation) but problems with Chorus' providing access (which would warrant stronger regulation). It would be premature to determine whether Layer 1 Unbundling requirements should be repealed, prior to reviewing why Layer 1 Unbundling has not been adopted.

Would there be any unintended consequences of repealing all Layer 1 unbundling obligations?

Yes

If you answered 'Yes', please provide your reason(s) below::

As above, Layer 1 Fibre Unbundling forms part of the wider regulatory framework. Access seekers have already raised issues with the terms and conditions associated with this. Repealing this requirement, rather than revisiting terms, would mean the potential benefits of Layer 1 fibre unbundling are not realised.

## Exemption process for services above Layer 2

Do you have a preferred option?

Status quo – require full public consultation

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages::

Supported Option:

Option 1: Status quo – retain current process

Explanation for the selection:

Layer 2 restrictions are important for ensuring that natural monopoly operators do not interfere with or undermine competition in downstream markets.

2degrees supports the status quo and restrictions on Chorus and the other Local Fibre Companies (LFCs) from providing retail services/services above Layer 2.

2degrees supports section 69SA and the protections offered by 69SA(3) that an exemption cannot be granted unless the Commission (a) "is satisfied that the exemption is consistent with the purpose set out in section 69A"; and (b) "has had regard to whether the exemption will harm, or is likely to harm, competition in any telecommunications market"; and (c) "has consulted the persons or organisations that appear to the Commission to be representative of the interests of those persons likely to be substantially affected by the exemption."

A genuine case has not been established to review the exemption process:

- The consultation has not established that there is any market or regulatory failure which could justify changes to be made to the existing exemption process.
- The consultation does not include any examples of the issue it is seeking to address and we are not aware of any evidence that the exemption process has created issues in relation to commercially sensitive information, nor that a consultation requirement on low-risk/non-core changes would delay new services let alone prevent them from being launched at all.
- If changes are technical and non-contentious in nature then the existing process should not be expected to delay or prevent innovations. The requirements are not onerous. The Commission only needs to consult "the persons or organisations that appear to the Commission to be representative of the interests of those persons likely to be substantially affected by the exemption."
- We, and MFR, should be more concerned that Chorus and LFCs are or will suggest that changes are low-risk or non-core, when they will have an impact on the market that MFR and Government are not across. We have substantive competition concerns with proposals from Chorus and LFCs to provide above Layer 2 services. These are not low-risk, nor non-contentious.

As such, we consider that the existing consultation process remains appropriate. Further, if there is evidence to suggest there is a problem in applying this existing process (which 2degrees is not aware of to date) we suggest this is discussed with the Commerce Commission.

An alternative may be to clarify consultation is required "unless the Commission considers the matters are limited to being technical in nature and/or non-contentious matters", or similar.

Would there be any unintended consequences of streamlining the exemption process?

Yes

If you answered 'Yes', please provide your reason(s) below::

Chorus and LFCs may suggest that changes are low-risk or non-core, when they will have an impact on the market that MFR and Government are not across. We have substantive competition concerns with proposals from Chorus and LFCs to provide above Layer 2 services. These are not low-risk, nor non-contentious.

## Fibre deregulation review process

Do you have a preferred option?

Status quo – Two-step process with no timeframe for decisions

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages::

Supported Option:

Option 1: Status quo – retain two-step process

Explanation for the selection:

We note that the two-step process applies to multiple access services under the Telecommunications Act, not just fibre, and should be consistent.

We do not agree that the two-step process creates a material problem in terms of the speed and timeliness of the review process or the administrative cost. In contrast, we recognise that the two-step process can speed up the process and result in lower administrative costs. For example, where it is established at the first step that deregulation or a full deregulation review and associated information requests etc is unwarranted. We consider this is significantly better use of regulatory resources.

It would be useful to understand whether the Commerce Commission considers that the two-step deregulation process causes it problems, and whether it would like the Telecommunications Act to be amended to give it more flexibility to consider which process is best when considering deregulation.

Based on our more recent observations, if an issue has been identified, the problem may not be with the two-step process per se, but rather that at times the assessment the Commerce Commission has taken at the first step may be more substantive than it needs to be. Some of the assessments at step 1, for example, may most appropriately be undertaken as part of step 2. For example, our response to the Commerce Commission's FFLAS Deregulation Review "reasonable grounds" consultation (step 1) noted that "The Commission's analysis for the 'reasonable grounds' decision on whether to undertake a deregulation review has been very thorough, including a draft decision of over 80 pages" and we suggested "an issue the Commission may like to consider - including given that it will need to periodically consider whether there are reasonable grounds to start a deregulation review in the future - is what level of analysis is needed to establish reasonable grounds, versus the level of analysis to be carried out when a deregulation review is carried out (should that be assessed as warranted)." [2degrees-submission-on-draft-decision-deregulation-review-24-September-2024.pdf]

Would there be any unintended consequences of adopting a single step process for deregulation reviews?

Not Answered

If you answered 'Yes', please provide your reason(s) below::

## Legacy regulatory obligations in telecommunications

Do you have a preferred option?

Streamline and modernise

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages: :

Supported Option:

Option 2: Streamline and modernise

Explanation for the selection:

2degrees considers that the legal agreements (Deeds) Chorus entered into with the Crown have an important ongoing role. 2degrees does not consider review of the Deeds to be a high priority.

However, we recognise it may be the case that some of the deed obligations are now set out in legislation or have become obsolete. We therefore support careful clause by clause review. This is required to establish whether Deed provisions should be removed and to determine what legislative changes may be needed.

Would there be any unintended consequences of streamlining and modernising these Deeds?

Yes

If you answered 'Yes', please provide your reason(s) below::

Given the importance of these deeds to market structure and consumers, we are cautious about the risk of unintended consequences from the potential changes. We consider the MFR recommending a clause-by-clause review of the Deeds, with the view to establish whether Deed provisions should be removed and to determine what legislative changes may be needed (if any), is a mitigator of this risk, with input from relevant stakeholders (as relevant).

## Telecommunications Development Levy & Telecommunications Regulatory Levy methodology

Do you wish to skip this section?

No

How revenue is defined

Do you have a preferred option?

An option not included above

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages::

Supported Option:

An option not included above (transparent base levies on gross telecommunications revenue for defined services).

Explanation for the selection:

s 9(2)(f)(iv)

The TCF has outlined that the TDL administration and collection method is expensive, inefficient and resource intensive, the current mechanism does not provide transparency to consumers, it does not comply with the Government's guidance for design and implementation of cost-recovery levies, and it differs from the levy allocation methodology of other sectors, such as electricity.

We support the TCF submission on this matter and particularly note that the TDL reforms must be considered together as a package, not as the separate components broken out in the MFR consultation process. For example, we support the status quo net revenue approach if levies are not transparently allocated to defined consumer services, and we would not support wholesalers being exempt from the TDL if the status quo net revenue approach is maintained.

As set out in the TCF submission:

- We support an option not included in the above (transparent base levies on gross telecommunications revenue for defined services):
  - Retaining the status quo (Option 1), a calculation based on a share of qualified revenue, means the levy would continue to be calculated retrospectively, based on past earnings and other firms' earnings, and is not transparently allocated to defined consumer services.
  - Basing the levies on gross telecommunications revenue (Option 2) is not sufficient to reduce complexity and administrative burdens, nor deliver consumer transparency. We do not support Option 2 without additional changes.
  - If a gross revenue option is used, the calculation must be based on a clearly defined scope of services - broadband, stand-alone voice, mobile and data connection services. Our preferred option is therefore to base the levies on gross telecommunications revenue for defined services. We do not support a change to gross revenue if other levy issues are not addressed, including those needed to bring transparency. Further details of this approach are set out in the TCF submission.

We understand the MFR does not have a lot of time to present its advice to Ministers after this consultation closes and this may not provide enough time to consider and design a replacement methodology. As such, we support MFR making an in-principle recommendation that the levy methodology be changed (to address issues around transparency, complexity and cost) and recommending that the Telecommunications Act be amended so that the TDL methodology is set via regulation. This is also supported by other TCF members and in the TCF submission.

Are there any unintended consequences of moving from qualified revenue to gross telecommunications revenue?

Yes

If you answered 'Yes', please provide your reason(s) below::

Please see our previous response. We recommend MFR make an in-principle recommendation that the levy methodology be changed (to address issues around transparency, complexity and cost) and recommend that the Telecommunications Act be amended so that the TDL methodology is set via regulation. This would provide more time for the policy work to be done (outside the review), and remove the need to find a vehicle to amend the primary legislation.

Should there be any adjustments to the levies to mitigate these (e.g. changes to the levy threshold, rates, should the levy be charged on gross telecommunications revenue from a Public Telecommunications Network etc)?

Not Answered

If you answered 'Yes', please provide your reason(s) below::

Method for calculating the levy

Which option(s) would you support?

An option not included above

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages::

Supported Option:

An option not included above.

Explanation for the selection:

As set out in the TCF submission:

- The status quo (Option 1), continuing to calculate the levy based on a proportion of total industry revenue will not address the problems concerning complexity and transparency.
- Making the levy a fixed percentage (Option 2) will remove some complexity, and if set in advance, will provide greater clarity and certainty around expected levy charges.
- The levy should be a fixed percentage of defined service price. We do not support a general fixed percentage.

Could shifting from a revenue-based levy to a fixed-rate model lead to any unintended consequences? If so, what adjustments to the methodology could help address them?

Not Answered

If you answered 'Yes', please provide your reason(s) below::

Could a tiered contribution structure help mitigate any unintended consequences of moving to a gross telecommunications revenue model?(E.g. would applying lower rates for smaller providers or differentiating rates between retailers and wholesalers support a more proportionate approach?)

Unsure

If you answered 'Yes' or 'No', please provide your reason(s) below::

A tiered approach could add additional complexity not justified by benefits.

## Auditing Requirements

Do you have a preferred option?

Another option not identified

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages::

Preferred option:

Another option not identified (alternatives to director certification are discussed).

Explanation for the selection:

Consistent with the TCF submission, we support the removal of the requirement for financial information to be externally audited. (MFR option: Remove the requirement for financial information to be externally audited). An external audit will not be needed if the complexity in calculating the TDL is removed, as has been proposed by the TCF (by applying the levy to revenue from defined services).

While we can support the regulator having investigative powers, we are not able to support Option 2 because of the additional suggestion to require Director certification. Directors would require an external audit to meet such a legal obligation, which would make the process more complicated and costly than the status quo, requiring companies to go through a director certification process plus an external audit.

Are there any unintended consequences of removing the requirement for financial information to be externally audited every financial year?

Not Answered

If you answered 'Yes', please provide your reason(s) below::

## Should the levies be merged

Do you have a preferred option? (Select one)

An option not included above

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages::

Preferred option:

An option not included above (merge TDL with only part of the TRL).

Explanation for the selection:

2degrees does not consider this change a high priority and we do not think that the separation of the TDL and TRL imposes significant complexity or cost. Regardless of method, we consider it is very important to be able to track the type of fund and use of funds. For example, it is important to understand the amount of funding allocated to telecommunications regulatory (TRL) work versus both TDL spending and other regulated sectors. We appreciate and support the MFR proposal that this is maintained under either option.

If the levy method is changed so it is calculated as a percentage of service price the general TRL sub-levy, which is currently paid by all telecommunications operators, could potentially be merged with the TDL. However, the two TRL sub-levies related to fibre regulation, which are paid by the Chorus and the LFCs, must not be merged with the TDL and must continue to be calculated and applied separately.

Could there be any unintended consequences of merging the TDL and TRL?

Not Answered

If you answered 'Yes', please provide your reason(s) below::

As noted above, part of the TRL is not relevant to all parties, and must not be merged with the TDL. The transparent separation of spend is also important to maintain, to support monitoring and appropriate use of funds (including benchmarking of efficient regulatory funding across sectors).

## Who is required to pay the levy

Do you have a preferred option?

An option not included above

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages::

Preferred option:

An option not included above (apply levy to prescribed services).

Explanation for the selection:

As per the TCF submission, we have selected the "other" option because any application to 'retailers only' needs to be more nuanced, in two respects:

- The application to retailers only is only supported if the transparency issues raised by the TCF are also addressed. As noted previously, the TDL issues need to be addressed as a package.

- The levy would need to be applied to all providers of prescribed retail services, e.g. broadband, standalone voice connections, pre-paid and post-paid mobile connections, and data connections. This approach would enable transparency and certainty relating to the TDL liability on a service basis.

Accordingly, the TDL would no longer form a component of wholesale prices. We would expect this to be reflected in lower wholesale input prices from these providers. This is consistent with MFR's consultation paper 'problem' statement, which states "What is the problem? Some stakeholders noted that it is inefficient to charge the levies on both wholesalers and retailers, as wholesalers pass the levy costs onto retailers anyway."

Would there be any unintended consequences of charging the levies on retailers and not wholesalers (for example, would it risk increasing costs for retailers and/or consumers)?

Yes

If you answered 'Yes', please provide your reason(s) below::

A retail-only levy represents a transfer to wholesalers if they do not in fact reduce their wholesale input prices, as is expected, to reflect they are no longer paying this levy for relevant services.

## Balancing the costs and benefits of regulation

Do you wish to skip this section?

No

## Consideration of costs and benefits

Do you have a preferred option?

Sectional purpose statements to require consideration of costs and benefits

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages: :

Preferred option:

Option 3 - Sectional purpose statements to require consideration of costs and benefits

Explanation for selection:

2degrees supports Option 3 (Sectional purpose statements to require consideration of costs and benefit):

- We consider this should be applied to what is currently the Part 7 - Retail Service Quality Code section and to general market monitoring, in particular section 10A (Power to require supply of information to support functions of monitoring and reporting on retail service quality).
- Our concerns do not apply to fibre regulation which has a strong natural monopoly justification for intervention.

As outlined in the TCF submission, robust and transparent analysis including cost benefit assessments should be undertaken before any exercise of regulatory intervention powers. Like all government policy and regulatory agencies, the Commission should work through a process to determine that an issue is significant enough to require regulatory intervention. This should include standard regulatory practice, including consideration of problem definition, magnitude of the problem, and options analysis as well as cost benefit analysis.

While it might generally be an expectation that all regulators will make decisions on the basis of Cost Benefit Analysis, with the costs and benefits quantified to the extent practicable, this has not always been the experience. We note the Commission has increasingly introduced regulatory interventions (particularly in the RSQ space) where Cost Benefit Analysis does not appear to have been undertaken, or not undertaken sufficiently. Some of the retail interventions the Commission has introduced have been highly prescriptive. While we work with the Commission to ensure compliance, we are aware that some proposals (including the level of prescription), limit our opportunity for competitive differentiation and innovation, and have diverted customer experience focused resources to a compliance focus.

We consider a sectional requirement for Cost Benefit Analysis would support proportionality and it allows for targeting to more 'discretionary' activities.

Competition should be the main driver for improved retail service regulation and not regulation. We consider the retail market has become highly competitive and the Commission's approach to retail regulatory intervention is able to reflect this.

We also note that the industry has received very significant data requests that are generally considered to have been excessively onerous and gone well beyond what was required e.g. including requests for granular data that subsequently was not used or required for the purpose. This has imposed considerable cost and resourcing pressures on 2degrees, including diverting staff away from more customer-oriented activity. We do appreciate ongoing

steps since taken by the Commission to be more targeted for some of its requests, and we will continue to engage constructively on this. A Cost Benefit/proportionality requirement would be expected to impact the scope of some requests from the outset.

#### Information Disclosure Regulation

We do not support a sectional purpose statement for fibre Information Disclosure.

We note that Information Disclosure should be considered very separately to general monitoring powers.

As the MFR will recognise, Information Disclosure is a particular regulatory tool used to support regulatory oversight and transparency of natural monopoly operators (in the case of the NZ telecommunications sector, Information Disclosure is a set requirement for Chorus and the LFCs, as part of the wider regulatory framework).

In this natural monopoly context, information disclosures deter anti-competitive conduct, enable regulatory monitoring and benchmarking, and support trust in the regulatory regime.

Given this context and purpose, it is inappropriate and against regulatory best practice for this to be subject to a cost benefit analysis.

If you prefer option 2, are there any unintended consequences to consumers or industry that might arise from having an overarching purpose statement:

Not Answered

If you answered 'Yes', please provide your reason(s) below::

If you prefer option 3, which parts of the Telecommunications Act 2001 should the sectional purpose statements apply to:

Retail service quality, Information and monitoring

If you answered 'Other', what sections and why?:

Are there any unintended consequences to consumers and industry that might arise from having sectional purpose statements?

Yes

If you answered 'Yes', please provide your reason(s) below::

As noted above, we do not support a sectional purpose statement for fibre Information Disclosure. Information Disclosure should be considered very separately to general monitoring powers. It is a particular regulatory tool used to support regulatory oversight and transparency of natural monopoly operators. In this natural monopoly context, information disclosures deter anti-competitive conduct, enable regulatory monitoring and benchmarking, and support trust in the regulatory regime. Given this context and purpose, it is inappropriate and against regulatory best practice for this to be subject to a cost benefit analysis.

## Response ID ANON-KAUD-75H4-D

Submitted to Telecommunications Sector Regulatory Review - Consultation  
Submitted on 2025-09-25 16:17:30

Have your say

Privacy notice

I consent to the Ministry for Regulation sharing my contact details with another government agency and I am happy to be contacted if required.

Yes

Demographic information

What is your email address?

Email Address:

s [REDACTED]@udl.co.nz

9(2)

Are you making a submission on behalf of an organisation or as an individual?

Organisation

Organisation Submission

What is the name of your organisation?

Name of organisation:

Utilities Disputes Limited

I consent to my organisation's name being publicly released by the Ministry for Regulation as a submitter to the Review.

Yes

If no, please can you explain why: :

What best describes the nature of your organisation in relation to telecommunication services? (Please tick all that apply)

Dispute Resolution Provider

If other, please specify in the box below. :

Permission to Contact You About Your Submission

Are you happy for us to contact you if we have questions about your submission?

Yes

Consumer protection and customer service

Do you wish to skip this section?

No

Simplifying rules and strengthening consumer protection

Do you have a preferred option?

Create a single enforceable Commerce Commission code for retail service quality and remove the code-making role of the TCF from the Telecommunications Act 2001

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages::

In New Zealand/Aotearoa there are some 6.8 million mobile connections, that is 127 mobile connections per 100 people, and mobile revenues are 3.31 billion. Telecommunications revenue is 5.69 billion. Telecommunication is also intertwined with other utilities, e.g. 300,000 households bundle broadband with electricity (see Commerce Commission (Com Com) document, 2024 Telecommunications Monitoring Report: Pūrongo Aroturuki Torotoro Waea 2024,

pages 12-13).

## An Older Model

While telecommunications is a mature industry it is still working from an older model where the three functions complaint review, representation, and regulation appear intertwined to a degree. The voluntary representative organisation New Zealand Telecommunications Forum (Forum) has established Telecommunications Dispute Resolution Limited which oversees Telecommunication Dispute Resolution (TDR). The day to day management of TDR appears to be managed by the scheme agent Fair Way (See TDR, Annual Report 2024, 4-7).

## Issue

TDR as established by the Forum is an industry dispute resolution scheme (industry scheme). TDR as an industry scheme can consider Commission codes and make findings arising from Forum codes (see Telecommunications Act 2001 (Act); see s 5, definition: industry retail service quality code; and ss 232, 240-241, 247).

The Act allows for other dispute resolution schemes to operate as industry schemes. TDR operates the only industry scheme at present. UDL operates an independent telecommunication scheme outside part 7 of the Act.

Statutory and practical uncertainty is likely part of the reason TDRL remains the sole operator of an industry scheme. As the Act appears to envisage: a) each industry scheme separately interpreting Commission codes and Forum codes; or b) additional industry schemes considering Commission codes only (see ss 5, 235, 240, 246-248).

Either approach is not efficient or consumer friendly. Varying codes, and differing rules for schemes of equal standing are likely to result. If Forum codes are optional for some telecommunication providers, this may lead to uneven consumer standards and gaps in consumer protection.

These difficulties have been seen in the financial sector with the four dispute resolution schemes with differing approaches (see for example discussion Ministry of Business, Innovation and Employment, Review of the Approved Financial Dispute Resolution Scheme Rules April 2021). The financial schemes have worked hard to co-ordinate and synchronise their approaches. However, in the current context, it is not clear that adopting a multi-dispute resolution service approach in telecommunications is desirable.

## UDL Supports the Proposal

The regulatory review of telecommunications is an opportunity to return to first principles distinguishing, dispute resolution, regulation, and representation. Making the Commerce Commission (Com Com) the sole code maker would be the first step in this renewal. It would allow the Forum to focus on its industry representative role.

Importantly the issuing of a Commission retail service quality code (Commission RSQ code; see s 5), would lead to improvements in consumer protection. All industry schemes would apply the same standard and consumers would benefit from a structure that better supports independent complaint handling. This role would include feeding back to the public, Com Com, the Forum and other representative groups any systematic insights or issues of concern. Complaints which have regulatory significance would also be forwarded to Com Com.

Absent Com Com taking the code making role to itself, it is difficult to see how the Government can achieve its stated aim of allowing more industry schemes into the industry without causing: a) consumer confusion about which codes apply to which schemes or b) giving preference to some representative organisations and not others (see Cabinet Business Committee, 2 December 2024).

## A Single Industry Scheme

UDL acknowledges the government's policy aim of making it easier for other industry schemes to enter into the market. However, a clear differentiation of the complaints role from regulation and representation may be sufficient to bring about efficiencies and a high standard of consumer care. Having one industry scheme would ensure there are not multiple schemes with different levels of consumer protection.

The Government presently is suggesting only companies with revenue over 10 million would be required to belong to an industry scheme. However often new companies will have creative products that will be attractive to consumers, and it is not clear consumers would be best served by placing these new companies outside the standard consumer protection framework. Moreover, one industry scheme will:

- 1) give the consumer one point of contact;
- 2) create a central hub for the regulator and industry to contact about consumer issues; and
- 3) enable the industry scheme to network with other complaint's schemes through organisations such as the Australian and New Zealand Ombudsman Association.

Could there be any unintended consequences (to consumers or industry) by creating a single enforceable Commerce Commission code for regulating retail service quality?

Yes

If you answered 'Yes', please provide your reason(s) below::

There is always the possibility of unintended consequences, however these can be managed or mitigated by a co-design process with the telecommunications industry/experts, an open submission process, seeking feedback from consumers/consumer groups, and built in review.

## Access to basic telecommunications services

Do you wish to skip to the next section?

No

## Future of the Telecommunications Service Obligations arrangement

Do you have any preferred option(s)? (Please select all that apply)

Ensuring access to basic telecommunications services, voice services at a minimum

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages::

UDL supports option three due to the importance of consumers and vulnerable consumers having access to telecommunications for a range of services. Moreover at least in the short term, not everyone will have available a sure broadband connection.

Concern for at risk consumers is a feature of modern complaint handling and industry practice, for example: in electricity medically dependent customers are not to be disconnected, see Consumer Care Obligations 11, 31, 34, 36-37, 39, 46-63; in water Com Com when issuing a retail service quality code must consider classes of vulnerable consumers, see Commerce Act 1986, s 57Z1; and in the financial sector there is guidance on the treatment of vulnerable consumers, see the Financial Market Authority's document, Customer vulnerability – our expectations for providers, September 2021.

Often vulnerable consumers are unaware that they can register as medically dependent and/or have access to services provided by the industry for help. Therefore, in terms of consumers who are reliant on copper, UDL supports a cautious approach, and if copper is withdrawn, it seems these consumers should have access to basic telecommunication services.

If you included Option 3 'ensuring access to basic telecommunication services' as one of your preferred options, please indicate your preference between the following:

Contracting companies to make basic services available and affordable in places where it would not be profitable

Are there any unintended consequences that might arise from phasing out or replacing the current TSO arrangement?

Not Answered

If you answered 'Yes', please provide your reason(s) below::

If you currently rely on a copper connection, is there anything that would make it difficult or impractical to switch to a different technology (e.g. cost or a medical alarm)?

Not applicable – I don't have a copper connection.

If you answered 'Yes', please provide your reason(s) below::

Which of these telecommunication services are critical for people to access?

If other, please explain::

Do you have any concerns about the potential removal of directory services (white pages listing, print telephone book and directory assistance)?

Not Answered

If you answered 'Yes', please provide your reason(s) below::

## Geographically Consistent Pricing

Do you agree or disagree with our recommendation that the Commerce Commission review and assess the effectiveness of GCP.

Not Answered

Please explain the reason for your selection. If you identified an alternative, please explain.:

## Basic fibre services

Do you agree or disagree with our recommendation that the Commerce Commission should review anchor services and consider the option of a phased repeal as part of their next regulatory reset in 2027?

Not Answered

Please explain the reason for your selection. If you identified an alternative, please explain.:

## Fibre Regulation

Do you wish to skip this section?

Yes

## Governance settings in Local Fibre Company constitutions

Do you have any preferred option(s)?

Not Answered

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages::

Would there be any unintended consequences of removing the Government Share?

Not Answered

If you answered 'Yes', please provide your reason(s) below::

## Ownership restrictions in Local Fibre Company constitutions

Do you have a preferred option?

Not Answered

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages::

Would there be any unintended consequences of removing the ownership restrictions?

Not Answered

If you answered 'Yes', please provide your reason(s) below::

## Layer 1 unbundling

Do you have any preferred option(s)?

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages::

Would there be any unintended consequences of repealing all Layer 1 unbundling obligations?

Not Answered

If you answered 'Yes', please provide your reason(s) below::

## Exemption process for services above Layer 2

Do you have a preferred option?

Not Answered

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages::

Would there be any unintended consequences of streamlining the exemption process?

Not Answered

If you answered 'Yes', please provide your reason(s) below::

## Fibre deregulation review process

Do you have a preferred option?

Not Answered

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages::

Would there be any unintended consequences of adopting a single step process for deregulation reviews?

Not Answered

If you answered 'Yes', please provide your reason(s) below::

### Legacy regulatory obligations in telecommunications

Do you have a preferred option?

Not Answered

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages: :

Would there be any unintended consequences of streamlining and modernising these Deeds?

Not Answered

If you answered 'Yes', please provide your reason(s) below::

### Telecommunications Development Levy & Telecommunications Regulatory Levy methodology

Do you wish to skip this section?

Yes

### How revenue is defined

Do you have a preferred option?

Not Answered

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages::

Are there any unintended consequences of moving from qualified revenue to gross telecommunications revenue?

Not Answered

If you answered 'Yes', please provide your reason(s) below::

Should there be any adjustments to the levies to mitigate these (e.g. changes to the levy threshold, rates, should the levy be charged on gross telecommunications revenue from a Public Telecommunications Network etc)?

Not Answered

If you answered 'Yes', please provide your reason(s) below::

### Method for calculating the levy

Which option(s) would you support?

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages::

Could shifting from a revenue-based levy to a fixed-rate model lead to any unintended consequences? If so, what adjustments to the methodology could help address them?

Not Answered

If you answered 'Yes', please provide your reason(s) below::

Could a tiered contribution structure help mitigate any unintended consequences of moving to a gross telecommunications revenue model?(E.g. would applying lower rates for smaller providers or differentiating rates between retailers and wholesalers support a more proportionate approach?)

Not Answered

If you answered 'Yes' or 'No', please provide your reason(s) below::

### Auditing Requirements

Do you have a preferred option?

Not Answered

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages::

Are there any unintended consequences of removing the requirement for financial information to be externally audited every financial year?

Not Answered

If you answered 'Yes', please provide your reason(s) below::

Should the levies be merged

Do you have a preferred option? (Select one)

Not Answered

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages::

Could there be any unintended consequences of merging the TDL and TRL?

Not Answered

If you answered 'Yes', please provide your reason(s) below::

Who is required to pay the levy

Do you have a preferred option?

Not Answered

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages::

Would there be any unintended consequences of charging the levies on retailers and not wholesalers (for example, would it risk increasing costs for retailers and/or consumers)?

Not Answered

If you answered 'Yes', please provide your reason(s) below::

Balancing the costs and benefits of regulation

Do you wish to skip this section?

No

Consideration of costs and benefits

Do you have a preferred option?

Status quo - Continue use of Letters of Expectation

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages: :

UDL recommends retaining the status quo and/or strengthening the weight of letters of expectation. With the development of AI and digitalisation, all markets inclusive of telecommunications will likely undergo a transformation in terms of product offerings and bundling. In this context it is important the Government of the day, can be nimble in directing Commerce Commission, and the industry to focus on issues as they arise. Too rigid statutory settings may constrain this flexibility, and lead to inefficiencies.

An example illustrating this flexibility are the letters of expectation to the Electricity Authority (EA) of 2024/2025 and 2025/2026. A comparison of these letters shows the Minister able to focus the EA on specific issues such as EV charging, bill consistency and standardisation of contractual terms.

While on other issues the Minister is seen to give greater direction. For example, affordability of electricity is a feature of both letters of expectation. Yet the Minister in the 2025/2026 letter, seeing the necessity of further direction, is more prescriptive directing the EA to: "Make electricity more affordable through downward pressure on prices: Ensure wholesale and retail markets are competitive and efficient, so that costs and prices are as low as possible."

If you prefer option 2, are there any unintended consequences to consumers or industry that might arise from having an overarching purpose statement:

Not Answered

If you answered 'Yes', please provide your reason(s) below::

If you prefer option 3, which parts of the Telecommunications Act 2001 should the sectional purpose statements apply to:

If you answered 'Other', what sections and why?:

Are there any unintended consequences to consumers and industry that might arise from having sectional purpose statements?

Not Answered

If you answered 'Yes', please provide your reason(s) below::

## Response ID ANON-KAUD-75QN-G

Submitted to Telecommunications Sector Regulatory Review - Consultation  
Submitted on 2025-09-25 09:28:33

Have your say

Privacy notice

I consent to the Ministry for Regulation sharing my contact details with another government agency and I am happy to be contacted if required.

Yes

Demographic information

What is your email address?

Email Address:

s 9(2)(a) @vetta.nz

Are you making a submission on behalf of an organisation or as an individual?

Organisation

Organisation Submission

What is the name of your organisation?

Name of organisation:

Vetta Online Ltd

I consent to my organisation's name being publicly released by the Ministry for Regulation as a submitter to the Review.

Yes

If no, please can you explain why: :

What best describes the nature of your organisation in relation to telecommunication services? (Please tick all that apply)

Retail service provider, Wholesale provider

If other, please specify in the box below. :

Permission to Contact You About Your Submission

Are you happy for us to contact you if we have questions about your submission?

Yes

Consumer protection and customer service

Do you wish to skip this section?

No

Simplifying rules and strengthening consumer protection

Do you have a preferred option?

Status quo: maintain the voluntary Commerce Commission guidelines and the role of the New Zealand Telecommunications Forum (TCF) in making industry codes

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages::

Keeping separation between Commerce Commission and TCF allows for various levels of industry codes, from voluntary to regulated. Having all codes through Commerce Commission could overload both Commerce Commission and ISP teams, as well as over-regulate unnecessarily.

Could there be any unintended consequences (to consumers or industry) by creating a single enforceable Commerce Commission code for regulating retail service quality?

Yes

If you answered 'Yes', please provide your reason(s) below::

Higher pricing due to more resourcing required in ISP teams.

### Access to basic telecommunications services

Do you wish to skip to the next section?

No

### Future of the Telecommunications Service Obligations arrangement

Do you have any preferred option(s)? (Please select all that apply)

Phase out the requirement to provide home telephone service

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages::

111 Contact Code now exists to protect vulnerable users to ensure access to 111 via alternate means.

If you included Option 3 'ensuring access to basic telecommunication services' as one of your preferred options, please indicate your preference between the following:

Not Answered

Are there any unintended consequences that might arise from phasing out or replacing the current TSO arrangement?

No

If you answered 'Yes', please provide your reason(s) below::

If you currently rely on a copper connection, is there anything that would make it difficult or impractical to switch to a different technology (e.g. cost or a medical alarm)?

Not Answered

If you answered 'Yes', please provide your reason(s) below::

Which of these telecommunication services are critical for people to access?

If other, please explain::

Do you have any concerns about the potential removal of directory services (white pages listing, print telephone book and directory assistance)?

Not Answered

If you answered 'Yes', please provide your reason(s) below::

### Geographically Consistent Pricing

Do you agree or disagree with our recommendation that the Commerce Commission review and assess the effectiveness of GCP.

Agree with the recommendation

Please explain the reason for your selection. If you identified an alternative, please explain.:

### Basic fibre services

Do you agree or disagree with our recommendation that the Commerce Commission should review anchor services and consider the option of a phased repeal as part of their next regulatory reset in 2027?

Agree with the recommendation

Please explain the reason for your selection. If you identified an alternative, please explain.:

## Fibre Regulation

Do you wish to skip this section?

No

### Governance settings in Local Fibre Company constitutions

Do you have any preferred option(s)?

Status quo – continue Ministerial approvals with no defined or time-limited process

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages::

Retaining some level of government control protects industry and consumers from LFC decisions which may not be in the best interest of the public.

Would there be any unintended consequences of removing the Government Share?

Yes

If you answered 'Yes', please provide your reason(s) below::

Not retaining the small level of control removes oversight and allows the ability for LFCs to push changes which may not be in public interest.

### Ownership restrictions in Local Fibre Company constitutions

Do you have a preferred option?

Status quo – retain constitutional shareholder caps

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages::

Would there be any unintended consequences of removing the ownership restrictions?

Yes

If you answered 'Yes', please provide your reason(s) below::

### Layer 1 unbundling

Do you have any preferred option(s)?

Status quo – continue to require Layer 1 unbundled fibre

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages::

§ 9 (2)(b)(ii)

Would there be any unintended consequences of repealing all Layer 1 unbundling obligations?

Unsure

If you answered 'Yes', please provide your reason(s) below::

### Exemption process for services above Layer 2

Do you have a preferred option?

Status quo – require full public consultation

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages::

Would there be any unintended consequences of streamlining the exemption process?

Unsure

If you answered 'Yes', please provide your reason(s) below::

### Fibre deregulation review process

Do you have a preferred option?

Status quo – Two-step process with no timeframe for decisions

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages::

Would there be any unintended consequences of adopting a single step process for deregulation reviews?

Unsure

If you answered 'Yes', please provide your reason(s) below::

### Legacy regulatory obligations in telecommunications

Do you have a preferred option?

An option not included above

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages :

While some deeds may be redundant, unsure if the Deed of Open Access Undertakings for Rural Broadband Initiative Services is - this may still be required.

Would there be any unintended consequences of streamlining and modernising these Deeds?

Unsure

If you answered 'Yes', please provide your reason(s) below::

### Telecommunications Development Levy & Telecommunications Regulatory Levy methodology

Do you wish to skip this section?

No

### How revenue is defined

Do you have a preferred option?

Base the levies on gross telecommunications revenue

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages::

Agree, however may need to raise the cap with more revenue being included.

Are there any unintended consequences of moving from qualified revenue to gross telecommunications revenue?

Yes

If you answered 'Yes', please provide your reason(s) below::

Higher revenue threshold required.

Should there be any adjustments to the levies to mitigate these (e.g. changes to the levy threshold, rates, should the levy be charged on gross telecommunications revenue from a Public Telecommunications Network etc)?

Yes

If you answered 'Yes', please provide your reason(s) below::

Raise levy threshold.

### Method for calculating the levy

Which option(s) would you support?

Status quo – keep the levy-based proportion of total industry revenue

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages::

While harder to budget, is more fair.

Could shifting from a revenue-based levy to a fixed-rate model lead to any unintended consequences? If so, what adjustments to the methodology could help address them?

Unsure

If you answered 'Yes', please provide your reason(s) below::

Could a tiered contribution structure help mitigate any unintended consequences of moving to a gross telecommunications revenue model?(E.g. would applying lower rates for smaller providers or differentiating rates between retailers and wholesalers support a more proportionate approach?)

Unsure

If you answered 'Yes' or 'No', please provide your reason(s) below::

### Auditing Requirements

Do you have a preferred option?

Remove the requirement for financial information to be externally audited

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages::

Adds high cost for smaller players.

Are there any unintended consequences of removing the requirement for financial information to be externally audited every financial year?

No

If you answered 'Yes', please provide your reason(s) below::

### Should the levies be merged

Do you have a preferred option? (Select one)

No preferred option

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages::

Could there be any unintended consequences of merging the TDL and TRL?

No

If you answered 'Yes', please provide your reason(s) below::

### Who is required to pay the levy

Do you have a preferred option?

Status quo - charge the levies to both retailers and wholesalers

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages::

While its stated that lower costs would be passed down if just paid by retailers, this is unlikely, and would result in overall higher costs for retailers which would be passed down to users.

Would there be any unintended consequences of charging the levies on retailers and not wholesalers (for example, would it risk increasing costs for retailers and/or consumers)?

Yes

If you answered 'Yes', please provide your reason(s) below::

Higher end user cost.

### Balancing the costs and benefits of regulation

Do you wish to skip this section?

No

## Consideration of costs and benefits

Do you have a preferred option?

Sectional purpose statements to require consideration of costs and benefits

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages: :

If you prefer option 2, are there any unintended consequences to consumers or industry that might arise from having an overarching purpose statement:

No

If you answered 'Yes', please provide your reason(s) below::

If you prefer option 3, which parts of the Telecommunications Act 2001 should the sectional purpose statements apply to:

Retail service quality, Information and monitoring, Information disclosure (fibre services market monitoring)

If you answered 'Other', what sections and why?:

Are there any unintended consequences to consumers and industry that might arise from having sectional purpose statements?

No

If you answered 'Yes', please provide your reason(s) below::

## Response ID ANON-KAUD-75Q6-R

Submitted to Telecommunications Sector Regulatory Review - Consultation  
Submitted on 2025-09-25 11:45:26

Have your say

Privacy notice

I consent to the Ministry for Regulation sharing my contact details with another government agency and I am happy to be contacted if required.

No

Demographic information

What is your email address?

Email Address:

s 9(2)(a)@wirelessdynamics.co.nz

Are you making a submission on behalf of an organisation or as an individual?

Organisation

Organisation Submission

What is the name of your organisation?

Name of organisation:

Wireless Dynamics Limited

I consent to my organisation's name being publicly released by the Ministry for Regulation as a submitter to the Review.

Yes

If no, please can you explain why: :

What best describes the nature of your organisation in relation to telecommunication services? (Please tick all that apply)

Wireless Internet Service Provider (WISP)

If other, please specify in the box below. :

Permission to Contact You About Your Submission

Are you happy for us to contact you if we have questions about your submission?

Yes

Consumer protection and customer service

Do you wish to skip this section?

No

Simplifying rules and strengthening consumer protection

Do you have a preferred option?

Status quo: maintain the voluntary Commerce Commission guidelines and the role of the New Zealand Telecommunications Forum (TCF) in making industry codes

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages::

The status quo is currently working and we see no reason to change it.

Could there be any unintended consequences (to consumers or industry) by creating a single enforceable Commerce Commission code for regulating retail service quality?

Unsure

If you answered 'Yes', please provide your reason(s) below::

### Access to basic telecommunications services

Do you wish to skip to the next section?

No

### Future of the Telecommunications Service Obligations arrangement

Do you have any preferred option(s)? (Please select all that apply)

Phase out the requirement to provide home telephone service

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages::

It Currently represents the reality of what is to happen.

If you included Option 3 'ensuring access to basic telecommunication services' as one of your preferred options, please indicate your preference between the following:

Not Answered

Are there any unintended consequences that might arise from phasing out or replacing the current TSO arrangement?

Unsure

If you answered 'Yes', please provide your reason(s) below::

If you currently rely on a copper connection, is there anything that would make it difficult or impractical to switch to a different technology (e.g. cost or a medical alarm)?

Not applicable – I don't have a copper connection.

If you answered 'Yes', please provide your reason(s) below::

Which of these telecommunication services are critical for people to access?

If other, please explain::

Do you have any concerns about the potential removal of directory services (white pages listing, print telephone book and directory assistance)?

No

If you answered 'Yes', please provide your reason(s) below::

### Geographically Consistent Pricing

Do you agree or disagree with our recommendation that the Commerce Commission review and assess the effectiveness of GCP.

Agree with the recommendation

Please explain the reason for your selection. If you identified an alternative, please explain.:

That the review in 2027, which is in 2 years time, is appropriate.

### Basic fibre services

Do you agree or disagree with our recommendation that the Commerce Commission should review anchor services and consider the option of a phased repeal as part of their next regulatory reset in 2027?

Agree with the recommendation

Please explain the reason for your selection. If you identified an alternative, please explain.:

We believe that the appropriate time for the review would be in 2 years - 2027 with the rest

## Fibre Regulation

Do you wish to skip this section?

No

## Governance settings in Local Fibre Company constitutions

Do you have any preferred option(s)?

An option not included above

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages::

Wireless Dynamics is strongly in favour of Option 1, retaining the Government Share, except that there should be a timeframe imposed on the Minister's decision making.

The time limit in the Companies Act for shareholders to consider a special resolution for constitutional amendments would be appropriate; 10 working days ( Companies Act Schedule 1, s2(1)).

Would there be any unintended consequences of removing the Government Share?

Unsure

If you answered 'Yes', please provide your reason(s) below::

## Ownership restrictions in Local Fibre Company constitutions

Do you have a preferred option?

Status quo - retain constitutional shareholder caps

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages::

We note that this is sovereign national infrastructure and a natural monopoly that requires close government oversight. The consultation states that various things "may" be inhibiting new investment, not that they are. Wireless Dynamics does not believe that there is a problem that needs fixing.

Would there be any unintended consequences of removing the ownership restrictions?

Unsure

If you answered 'Yes', please provide your reason(s) below::

## Layer 1 unbundling

Do you have any preferred option(s)?

Status quo - continue to require Layer 1 unbundled fibre

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages::

Would there be any unintended consequences of repealing all Layer 1 unbundling obligations?

Unsure

If you answered 'Yes', please provide your reason(s) below::

## Exemption process for services above Layer 2

Do you have a preferred option?

Status quo - require full public consultation

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages::

These are natural monopolies. Allowing a wider/easier ability for LFCs to offer services above Layer 2 would reduce fair competition amongst RSPs as LFCs worked to erode the RSP customer base.

Would there be any unintended consequences of streamlining the exemption process?

Unsure

If you answered 'Yes', please provide your reason(s) below::

Fibre deregulation review process

Do you have a preferred option?

Status quo – Two-step process with no timeframe for decisions

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages::

Would there be any unintended consequences of adopting a single step process for deregulation reviews?

Unsure

If you answered 'Yes', please provide your reason(s) below::

Legacy regulatory obligations in telecommunications

Do you have a preferred option?

Streamline and modernise

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages: :

Would there be any unintended consequences of streamlining and modernising these Deeds?

Unsure

If you answered 'Yes', please provide your reason(s) below::

Telecommunications Development Levy & Telecommunications Regulatory Levy methodology

Do you wish to skip this section?

No

How revenue is defined

Do you have a preferred option?

Base the levies on gross telecommunications revenue

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages::

This would be simple and Fair. The \$10 million cap should be reviewed and possibly increased. "Gross revenue" would need to be clearly defined.

Are there any unintended consequences of moving from qualified revenue to gross telecommunications revenue?

Unsure

If you answered 'Yes', please provide your reason(s) below::

Should there be any adjustments to the levies to mitigate these (e.g. changes to the levy threshold, rates, should the levy be charged on gross telecommunications revenue from a Public Telecommunications Network etc)?

Yes

If you answered 'Yes', please provide your reason(s) below::

Method for calculating the levy

Which option(s) would you support?

Status quo – keep the levy-based proportion of total industry revenue

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages::

We consider this to be the most fair approach.

Could shifting from a revenue-based levy to a fixed-rate model lead to any unintended consequences? If so, what adjustments to the methodology could help address them?

Unsure

If you answered 'Yes', please provide your reason(s) below::

Could a tiered contribution structure help mitigate any unintended consequences of moving to a gross telecommunications revenue model?(E.g. would applying lower rates for smaller providers or differentiating rates between retailers and wholesalers support a more proportionate approach?)

Unsure

If you answered 'Yes' or 'No', please provide your reason(s) below::

### Auditing Requirements

Do you have a preferred option?

Remove the requirement for financial information to be externally audited

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages::

We note that this would provide a simplification and a cost saving. A director's certificate should ensure accuracy.

Are there any unintended consequences of removing the requirement for financial information to be externally audited every financial year?

Unsure

If you answered 'Yes', please provide your reason(s) below::

### Should the levies be merged

Do you have a preferred option? (Select one)

Status quo – keep the Telecommunications Development Levy (TDL) and Telecommunications Regulatory Levy (TRL) separate

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages::

Wireless Dynamics supports there being clear visibility of wholesale and retail costs, including levy costs.

Could there be any unintended consequences of merging the TDL and TRL?

Yes

If you answered 'Yes', please provide your reason(s) below::

LFCs not passing on the full levy savings that they would realise from this option.

### Who is required to pay the levy

Do you have a preferred option?

Status quo - charge the levies to both retailers and wholesalers

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages::

This makes sure there is clear visibility of wholesale and retail costs, including the levy costs.

Would there be any unintended consequences of charging the levies on retailers and not wholesalers (for example, would it risk increasing costs for retailers and/or consumers)?

Yes

If you answered 'Yes', please provide your reason(s) below::

The LFCs not passing on the full savings of them not having to pay a levy.

## Balancing the costs and benefits of regulation

Do you wish to skip this section?

No

## Consideration of costs and benefits

Do you have a preferred option?

Sectional purpose statements to require consideration of costs and benefits

Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages: :

If you prefer option 2, are there any unintended consequences to consumers or industry that might arise from having an overarching purpose statement:

Not Answered

If you answered 'Yes', please provide your reason(s) below::

If you prefer option 3, which parts of the Telecommunications Act 2001 should the sectional purpose statements apply to:

Retail service quality, Information and monitoring, Information disclosure (fibre services market monitoring)

If you answered 'Other', what sections and why?:

Are there any unintended consequences to consumers and industry that might arise from having sectional purpose statements?

Yes

If you answered 'Yes', please provide your reason(s) below::

it could prove to be useless, and in worst case could cause a reduction of innovation.



## Appendix C – Written submissions

Organisation	Subject line	Date
<b>Commerce Commission</b>	Commerce Commission New Zealand Te Komihana Tauhokohoko: Fibre unbundling price	04/06/2025
<b>Google</b>	Telecommunications Review Team	24/09/2025
<b>Tū Ātea</b>	Tū Ātea Telecommunications Sector Regulatory Review Submission	24/09/2025
<b>One NZ</b>	One NZ submission: telecommunications sector regulatory review	25/09/2025
<b>Spark NZ</b>	Ministry for Regulation telecommunications Act review recommendations	25/09/2025
<b>Telecommunications Forum</b>	Submission on the Ministry for Regulation consultation paper for the regulatory review of the telecommunications sector	25/09/2025
<b>Enable Networks</b>	Consultation on inclusion of wholesale telecommunications providers in “Consumer Protection Code”	07/10/2025
<b>Northpower</b>	North power Fibre Limited Submission on Ministry for Regulation consultation on: Telecommunications Sector regulatory Review	7/10/2025
<b>Tuatahi First Fibre</b>	Tuatahi First Fibre Limited feedback on the proposed expansion to the consumer protection proposal contained in the Telecommunications Sector regulatory Review consultation	7/10/2025
<b>Chorus</b>	RE: Additional information – Layer 1 unbundling – in confidence	09/10/2025

4 June 2019

Dear s 9(2)(a)

### **Fibre unbundling price**

1. Thank you for your letter dated 11 April 2019, setting out your concerns about the proposed layer 1 fibre unbundling price and pricing approach from Chorus, and supplying us with an expert report by Network Strategies. You have asked the Commission to consider intervening in the dispute between Chorus and your companies regarding the terms on which a layer 1 fibre unbundling service would be provided.
2. This letter outlines the Commission's initial response and our considerations in relation to your letter.

### **The context for the unbundling obligation**

3. Chorus and the Local Fibre Companies' (**LFCs**) have Deeds of Open Access Undertakings (**Fibre Deeds**) given under section 156AD of the Telecommunications Act 2001 (**Act**) which requires them to provide a point-to-multipoint layer 1 fibre access service (**PON Fibre Access Service**) from 1 January 2020 for UFB1.
4. The Fibre Deeds require Chorus and the LFCs to provide the PON Fibre Access Service on an equivalent and non-discriminatory basis (see clauses 5 and 6 of the Fibre Deeds). The Fibre Deeds do not stipulate the price that Chorus and the LFCs charge for the PON Fibre Access Service<sup>1</sup> and the Commission is not empowered to set a price.
5. The Commission expects that Chorus will release its final pricing offer and its response to the submissions on its pricing proposal for the PON Fibre Access Service in the coming weeks. We are interested in hearing your views when Chorus publishes its final pricing offer (and in any views that you might have on pricing proposals or offers from the LFCs).

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<sup>1</sup> Section 156AD(5)(b)

6. In addition to the Fibre Deeds, section 229 of the Act provides for the Governor-General, by Order in Council made on the recommendation of the Minister, to make regulations declaring a point-to-multipoint layer 1 service supplied to end-users' premises or buildings to be an unbundled fibre service, and allows for those regulations to set a maximum cost-based price for the service. Under section 200 of the Act, a regulated fibre service provider who is subject to price-quality regulation must provide an unbundled fibre service if declared.

### **Commission's initial response and our considerations in relation to your letter**

7. The Commission understands Vocus' and Vodafone's view that unbundling will be key to unlocking the future potential of New Zealand's fibre network.
8. The Act gives the Commission a particular role in the context of the PON Fibre Access Service. Firstly, we are permitted to assess whether offers made by Chorus and the LFCs comply with their respective obligations under the Fibre Deeds, and, secondly, if we consider that a breach of the Fibre Deeds is likely to occur or has occurred, we will decide whether to bring enforcement action. When exercising our powers to enforce compliance with the Fibre Deeds, we consider the purposes outlined in section 156AC of the Act.
9. Under the Act, there are various enforcement routes available if parties are unable to reach commercial agreement on the PON Fibre Access Service under the Fibre Deeds. The obligations in Chorus' and the LFCs' respective Fibre Deeds to offer the PON Fibre Access Service on an equivalent and non-discriminatory basis are enforceable by access seekers at their own initiative (see section 156P of the Act), as well as by the Commission (see sections 156AR, 156L, and 156P of the Act). However, the decision-maker on what the obligations in the Fibre Deeds actually require would be the High Court.
10. Given the range of parties potentially involved in the enforcement of the Fibre Deeds, we believe that there would be clear public benefit in the Commission developing, in a transparent way, our views on what the equivalence and non-discrimination obligations in the Fibre Deeds (and other deeds) involve. We have therefore begun developing guidance on our interpretation of these provisions.
11. We plan to consult on this guidance in the third quarter of this year. Until we finalise the guidance, we do not expect to be in a position to form a view on whether Chorus' proposed PON Fibre Access Service offer is likely in our view to comply with its obligations in the Fibre Deeds, let alone reach a decision on whether any enforcement action would be appropriate. We understand that the development of guidance will likely go beyond the time at which Chorus releases its final offer; however, we expect you to continue engaging with Chorus in relation to its PON Fibre Access Service proposal.

12. If the parties have specific concerns about the appropriate pricing of an unbundled fibre service outside the ambit of enforcement of the Fibre Deeds, we recommend these concerns be taken directly to MBIE on behalf of the Minister. As noted above, there is scope for the Minister to recommend section 229 regulations to introduce direct price regulation of a point-to-multipoint layer 1 service supplied to end-users' premises or buildings. Moreover, section 209 of the Act limits the Commission's ability to launch a review of any declaration of an unbundled fibre service until 2025.
  
13. In order to provide transparency regarding our correspondence with you, and to facilitate broader industry discussion regarding unbundling, I propose in the coming days to publish this response on the Commission's website, as well as publishing your letter and the public version of the Network Strategies report.
  
14. s 9(2)(a) [REDACTED], our Head of Telecommunications, is coordinating our response in relation to Chorus' PON Fibre Access Service proposal, and should be your point of contact for unbundling queries. He can be contacted at s 9(2)(a) [REDACTED]@comcom.govt.nz or on s 9(2)(a) [REDACTED]

Yours sincerely,

s 9(2)(a) [REDACTED]

s 9(2)(a) [REDACTED]

11 April 2019

s 9(2)(a)

## By Email Only

Dear s 9(2)(a)

### Fibre unbundling price

In June last year Vocus and Vodafone joined together to announce our intention to unbundle the fibre network. We firmly believe unbundling will be key to unlocking the future potential of New Zealand's fibre network. Competition on the network itself will ensure Kiwis have access to the best technology at reasonable prices, and will allow RSP's to innovate beyond the uniform bitstream access currently offered by wholesalers.

That has now all been put at risk by what is hard to see as anything other than a cynical and protectionist unbundling price from Chorus. The proposed price is constructed in a complex way, but the end result is a charge of around \$62 per connection. This makes it more expensive than most bitstream products.

It defies sense that an RSP wishing to access a smaller part of Chorus' network and invest in innovating for consumers should be charged more than the cost of a full bitstream service.

We believe the pricing approach by Chorus flies in the face of the original terms of the UFB build (which was largely funded by tax-payers) and the intention of the rules and regulations established by Government. We also expect the other LFCs to follow Chorus' lead on pricing.

We have asked Network Strategies, to provide an independent view on price based on their experience advising industry and regulators across Asia-Pacific, Europe and North America on similar telecommunications issues. They were asked to calculate what the unbundled fibre price would be if Chorus met all the obligations it agreed to as part of taking on the UFB build. They concluded the price would sit between \$27.22 and \$30.03 in 2020. This is less than half of that offered by Chorus. Their report is attached to this letter.

We are now forced to ask the Commission to intervene to help secure the future of fibre connectivity for our customers. We have attached a detailed paper to this letter demonstrating that Chorus' proposed price would breach various obligations that they agreed to as part of the UFB build.

We request that this issue is given urgent priority. Chorus was initially required to issue a price by the end of last year. Instead we have suffered continuous delays with no end in sight. For us to have any chance of practically unbundling from 1 January 2020 we need a compliant price in market urgently.

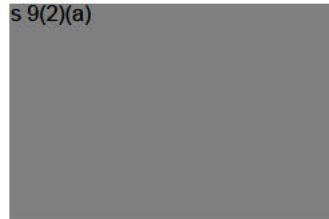
Chorus may argue the nature of fibre means innovation from unbundling is technically limited. Yet Chorus themselves have often argued that fibre will solve problems that are not yet known. As will unbundling. It cannot be left to die before even beginning.

Yours sincerely,

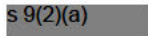
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# Guidance sought on the layer 1 price

Chorus has recently proposed a price for unbundled GPON fibre (**layer 1**) service at a level that makes any competition unfeasible. The price is inconsistent with a number of requirements across the Deed of Open Access Undertakings for Fibre Services (**the Deed**) and the Telecommunications Act 2001 (**the Act**) that the Commerce Commission (**the Commission**) has responsibility for enforcing.

It is now critical that the Commission steps into this process to avoid serious breaches occurring. We consider that if finalised, Chorus' proposed layer 1 price would breach the Deed and the Act in three ways:

- it breaches the equivalence of inputs obligation (**EOI**) requirement;
- It breaches the non-discrimination and geographic consistency requirements; and
- it is inconsistent with the Part 4AA purpose to 'promote competition' and 'facilitate investment'.

If Chorus finalises the layer 1 price as it currently stands the Commission will have an obligation to apply to the High Court to take enforcement action, including fines of up to \$10m.<sup>1</sup>

The Commission now has a limited window to avoid this outcome by providing clarity to the industry on how it will interpret the obligations in the Deed and the Act. This will provide valuable input into Chorus' consultation process, and give commercial negotiations a better chance of succeeding.

Acting now is also critical to ensure that a compliant price is available early enough to make unbundling viable from 1 January 2020, as has long been the policy intent. To allow for industry to get ready for unbundling by 2020, Chorus was required to make best-efforts to finalise a layer 1 price by the end of last year.<sup>2</sup> Instead they only began considering unbundling in September, and after numerous delays have only now started to talk about price. Further waiting for the consultation process to conclude is simply not practical, especially when considering the poor track record Chorus has in adjusting to industry views throughout the process to date.

We have attached a report from Network Strategies to this letter that calculates a layer 1 price consistent with Chorus' obligations in the Deed and the Act. They find that the price should sit between \$27.22 and \$30.03 in 2020, significantly less than the price offered by Chorus.

The summary report from Network Strategies is not confidential, we are happy for this to be published alongside this complaint. The full detailed report contains considerable amounts of confidential information, and is provided for the Commission's information only.

This request does not extend to more detailed concerns we also have with breaches of the regulatory requirements in the unbundling product construct. We reserve our right to raise any future clarifications on these matters as well if acceptable commercial resolution cannot be reached.

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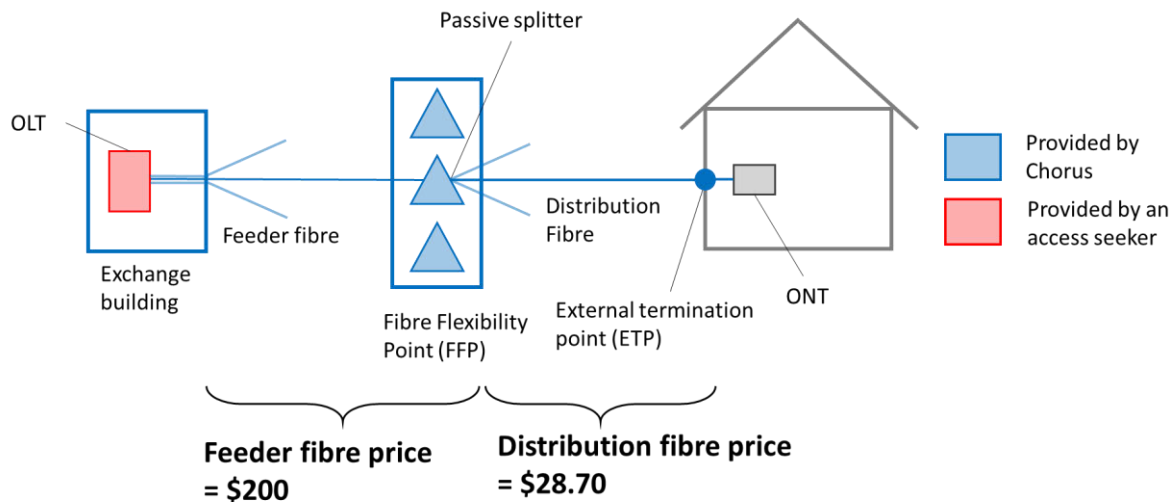
<sup>1</sup> S156AQ and s156AR.

<sup>2</sup>

## Clarifying the price

Chorus have configured the layer 1 price in a complex way based on two separate prices that an access seeker must pay for access to different parts of their network. However to be consistent with the requirements in the Act the price must be considered by the Commission on a per-connection basis.<sup>3</sup> The paragraphs below provide an estimate of a per-connection price.

The two components of the price proposed by Chorus are shown in the diagram below.



The cost of the feeder fibre is shared by each customer connected to a particular splitter. The splitters Chorus use can service up to 16 connections. However, it is unrealistic to expect every splitter to be fully utilized. In fact we estimate that on average Chorus itself only has about 12 customers connected to each splitter. The number of customers connected to each splitter is obviously much less for any access seeker.

The attached independent report from Network Strategies assumes a notionally efficient competitor with 20% market share. This notional competitor has about 5 - 6 connections per splitter on average. This is similar to what we expect the Vodafone-Vocus consortium to achieve. Whilst we have a larger market share, the way Chorus have designed the product means we expect only about 50% to take up unbundled fibre, even with a good price.<sup>4</sup>

The table below shows the per connection price with 12 connections per splitter and with 6 connections per splitter.

<sup>3</sup> The definition of 'fibre fixed line access service' in s5 of the Act refers to access to the fibre network from the end-user to the hand-over point at an exchange.

<sup>4</sup> As proposed, the layer 1 service would require a technician visit in every circumstance. This is because Chorus are not allowing access to the existing ONT at each premise. Each access seeker will need to install their own ONT and splice it to the fibre network. This will be disruptive and unwelcome for most customers, significantly reducing uptake of unbundling.

**Table 1: breakdown of Chorus' proposed layer 1 price**

Average connections per splitters	Per connection feeder fibre price	Per connection distribution fibre price	Per connection layer 1 price
12	\$16.67	\$28.70	\$45.37
6	\$33.33	\$28.70	\$62.03

This stands in stark contrast with the attached report from Network Strategies, which finds that a cost based layer 1 price compliant with the Deed would sit between \$27.22 and \$30.03 in 2020.

### Not an equivalent input

One of the key obligations placed on Chorus in the Deed is to set any input service, like the layer 1 service, on Equivalence of Inputs terms. This means that they must ensure that third-party access seekers have access to the input service on the same basis that the service provider does including in relation to pricing, procedures, operational support, supply of information, and other relevant matters.

In advice previously provided to the Commission, James Every-Palmer QC further clarified the EOI pricing requirement based on his considerable experience in these matters, and international precedents. He clarified that the EOI obligation doesn't allow Chorus to charge itself (and access seekers) any price it chooses. They must instead set price at a level that would allow them to earn a normal profit if it was receiving the layer 1 service from a third party. He goes on to conclude that:

*the key requirement is that there must be sufficient "economic space" between the Layer 1 and Layer 2 prices such that an **equally efficient access seeker** purchasing the Layer 1 service from the UFB provider **will be able to compete against the UFB provider** in respect of the Layer 2 service or against other RSPs at retail. This concept is variously described as the 'efficient component pricing rule (ECPR)', 'economic replicability' or an 'equally efficient rival' test.*

The table below shows the 'economic space' afforded by Chorus' proposed layer 1 price under the two scenarios considered: 12 customers per splitter (Chorus' average), and 6 customers per splitter (the average of an efficient access seeker).

**Table 2: Economic space afforded by Chorus' proposed layer 1 price**

Scenario	Per connection unbundled price	Network Strategies estimate of average bitstream price in 2020	Economic space
12 connections per splitter	\$45.37	\$47.38	<b>\$2.01</b>
6 connections per splitter	\$62.03	\$47.38	<b>-\$14.65</b>

This is a clear breach of the EOI obligation. Network Strategies estimate that the economic space for an efficient competitor would be between \$17.35 and \$20.16 in 2020. This is a far cry from the \$2.01 margin Chorus claims it offers to itself, or the ridiculous -\$14.65 negative margin offered to efficient access seekers.

The smaller number of connections per splitter for an access seeker does not indicate inefficient scale, it is simply an artifact of the pricing approach proposed by Chorus. In almost all circumstances, Chorus faces next to no incremental cost for provisioning additional feeder fibres. We understand that they have deployed 12 fibres to each fibre flexibility point. In most cases only three of those fibres are currently utilised. An access seeker using one of the 9 unused fibres is of no incremental cost to Chorus, and justifies no incremental charge.

However, in some rare cases Chorus may need to deploy more fibre for larger cabinets, or if unbundling became very popular. To be consistent with the Deed and maintain a competitive margin these small incremental costs must be included in the per-connection layer 1 price so it is equally shared amongst all users of layer 1 services, including Chorus itself. Any other arrangement would again be price discrimination, and hinder competition. This is the conclusion reached by Ofcom in their recent decision on duct and pole access.

### **The price discriminates against access seekers and breaches geographic consistency**

The other key requirement in the Deed is to ensure any service offered by Chorus is not discriminatory. This means Chorus must offer a service on the same terms and conditions, including price, between different access seekers, and between access seekers and themselves

As shown in Table 1, the result of the pricing approach proposed by Chorus is that the average layer 1 price will be different for Chorus and each access seeker. This is precisely the sort of behavior that the non-discrimination requirement is intended to prevent. It effectively shuts any access seeker out of the market, destroying any chance of competition.

The layer 1 price also breaches the geographic consistency requirements in the Act. The estimation of a per-connection price in Table 1 is based on an average across Chorus' footprint. The actual price for any individual connection will depend on how many customers are connected to each splitter. This means the per-connection cost will be vastly different in different geographic locations, and typically more expensive in less densely populated areas. This is a clear breach of the geographically consistent pricing requirement in s201 of the Act.

If this pricing approach is allowed to stand, it sets a dangerous precedent for the pricing of other fibre services when the new regulatory regime comes into effect after 2022. The logic Chorus have used to separate the layer 1 service into two prices could equally stand for bitstream services, allowing Chorus to shut smaller RSPs out from some services if it is in their interests to do so.

## **A price that obstructs competition**

The Deeds are established under Part 4AA of the Act, which includes its own purpose statement to guide any [decision]. This states:

### **156AC Purposes**

The purposes of this subpart are to—

- (a) promote competition in telecommunications markets for the long-term benefit of end-users of telecommunications services in New Zealand; and
- (b) require transparency, non-discrimination, and equivalence of supply in relation to certain telecommunications services; and
- (c) facilitate efficient investment in telecommunications infrastructure and services.

Beyond the breach of the EOI and non-discrimination requirements covered above, the price proposed by Chorus would also breach the other two arms of this purpose statement.

As above, taking up the layer 1 service at this price would cost us more than taking the bundled bitstream service. It is like paying more for a smaller block of chocolate. This is predatory pricing at its worst, preventing New Zealanders from gaining the advantages of competition deeper into the fibre network.

The price also means that efficient investment by access seekers will not occur. Allowing further private investment into New Zealanders fibre network through unbundling was a key plank of the original policy intent of the Ultra-Fast Broadband initiative. Chorus is now stopping that from occurring.

## **Getting to a compliant price**

Chorus' attempt at pricing the layer 1 service confirms that they are ill suited to this task. As we have argued countless times, they have all the wrong incentives to establish this product in the best interests of New Zealanders.

If Chorus is left with full discretion on pricing this service, there is no prospect of having a compliant unbundled product in the market by 1 January 2020. This would breach a number of the agreements between Chorus and the Crown, and bring into play the substantial penalties under s156L.

While the Act prohibits the Commission from proposing an unbundled price until 2025, there are a number of actions the Commission can take now to ensure the policy intent is fulfilled.

- Provide guidance on the Deed confirming:
  - James Every-Palmer's conclusion that the EOI obligation requires that "an equally efficient access seeker purchasing the layer 1 service" must be able to "compete against the UFB provider in respect of the layer 2 service"; and
  - That compliance with the non-discrimination requirements and geographic consistency rules requires a single price from a handover point at an exchange to the end user. This price should be the same for Chorus and all access seekers, and be consistent across different geographic locations.

- Confirm that the attached analysis from Network Strategies is consistent with the requirements in the Deed, and offers a cost-based layer 1 price that could be implemented by the Minister from January 2020 under s16 of Part 2 of Schedule 1AA of the Act.

Adopting the price proposed by Network Strategies would not impose any undue financial burden on Chorus. We consider that this price will allow sufficient return on layer 1 assets. However, if this price does not fully cover the costs of the layer 1 network, Chorus will be able to claim any shortfall through the losses that will be added to their regulatory asset base when the new fibre regulations come into force from 2022. After that point Chorus will have more flexibility to price services to fully recover its cost, but maintain an adequate margin between layer 1 and bitstream services.

## **Summary of recommendations**

- 1. Agree that if finalised the layer 1 price proposed by Chorus would breach a number of requirements in the Deed and the Act, specifically it would:**
  - a. breach the EOI requirement;**
  - b. discriminate against access seekers with a smaller scale than Chorus;**
  - c. breach the geographic consistency requirements in the Act;**
  - d. be inconsistent with the s156AC purpose statement, regarding the promotion of competition and facilitation of investment;**
- 2. Issue guidance on the Commissions interpretations of the Deed and the Act specifying**
  - a. that compliance with EOI requires sufficient economic space for an efficient access seeker to compete alongside Chorus;**
  - b. that compliance with non-discrimination requires the same handover-to-customer price for Chorus and each access seeker; and**
  - c. that compliance with the geographic consistency requirement in the Act requires the same handover-to-customer price in every geographic location.**
- 3. Agree that the layer 1 price determined by Network Strategies is consistent with the Deed and the Act.**

**VOCUS**



**Vocus Group New Zealand**

**and**

**Vodafone New Zealand**

Joint submission on compliance assessment  
of PON Fibre Access Service non-price terms

14 July 2020

Vocus and Vodafone welcome the Commission's investigation into the non-price terms of the unbundled GPON service offered by Chorus and the other local fibre companies (LFCs).

For the last seven months Chorus and the other LFCs have had in market the unbundled Passive Optical Network Fibre Access Service (PONFAS). For all this time they plainly have been in breach of their equivalence and non-discrimination obligations.<sup>1</sup> This, along with excessive pricing contained in the terms offered to date to retailers has blocked any ambitions to unbundle and bring greater network competition to New Zealanders.

Chorus and the LFCs have breached the equivalence and non-discrimination requirements in a number of ways. Most critically, they have not allowed access to the existing optical network termination (ONTs), and in doing so not allowed full access to the installation assets. Chorus and the LFCs have also:

- not allowed equal access to the distribution fibres;
- not allowed equal access to the roadside cabinets and fibre flexibility points (FFPs); and
- imposed timing requirements on an unbundled connection far in excess of what they provide to themselves.

These breaches are clearly unashamed attempts to make unbundling unviable. We therefore consider that the full penalties available under sections 156AR and 156AQ should be applied.

## Access to the existing ONTs

The most restrictive non-price term imposed by Chorus and the other LFCs is not allowing access seekers to access to the existing ONTs. Without a change of approach on this matter, or a substantial reduction in price to compensate, there is no chance of commercial unbundling ever succeeding.

Many customers will already have an ONT installed in their home, which is the equipment that decodes the signal and sends it through to an RSPs Wi-Fi gateway unit. To minimise the impact on customers, we have requested that for any unbundled connection the LFC either sells or rents the ONT to the access seeker. The LFCs have refused.

The LFCs have given a number of reasons over the last two years for refusing access.

- In initial discussions they claimed it was not technically possible. We tested this with our own equipment and can confirm that it *is* technically feasible.

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<sup>1</sup> Commerce Commission, 'Equivalence and non-discrimination – guidance on the Commission's approach for telecommunications regulation: Draft Version, 4 March 2020, para 3.3.

- Then in Chorus' first product construct document they claimed they had regulatory constraints requiring them to keep a functioning ONT in the home.<sup>2</sup> No such obligation exists. In specified fibre areas the TSO obligation is removed, and there is nothing in the UFB agreements with the Crown that requires this.
- The LFCs now simply claim it is a commercial decision, presumably to put them in a stronger position than any access seeker.

Therefore, to offer a competitive layer 2 alternative we would have to send a technician to every property, and a second ONT would have to be installed alongside the existing one from the LFC. At a later point customers would need to unplug their modem from the existing ONT and into the new ONT. This would be a terrible customer experience, unlikely to be acceptable to the vast majority of property owners, which would cause retailers to incur significant additional costs not faced by the LFCs themselves.

Whether this treatment is just bad customer service, or constitutes a breach of LFCs obligations will depend on how the Commission interprets the cost allocation of the installation of a fibre connection. This is considered below.

### *Access to the installation asset*

Installing layer 2 equipment in the premise is one of the most substantial costs we face as a potential access seeker. The call out fee for a technician when multiplied over hundreds of thousands of customers adds up millions of dollars of duplicative and wasteful deployment, which the LFCs themselves do not face and makes us completely uncompetitive in the existing arrangements.

Customer installations have been capitalised by the LFCs, so they are an asset that must be allocated between layer 1 and layer 2 services. How this allocation is made will have an important impact on the assessment of both the price and non-price terms. To the extent installation assets are allocated to layer 1, access seekers must have equal access to these assets as the LFCs themselves under the equivalence and non-discrimination requirements.

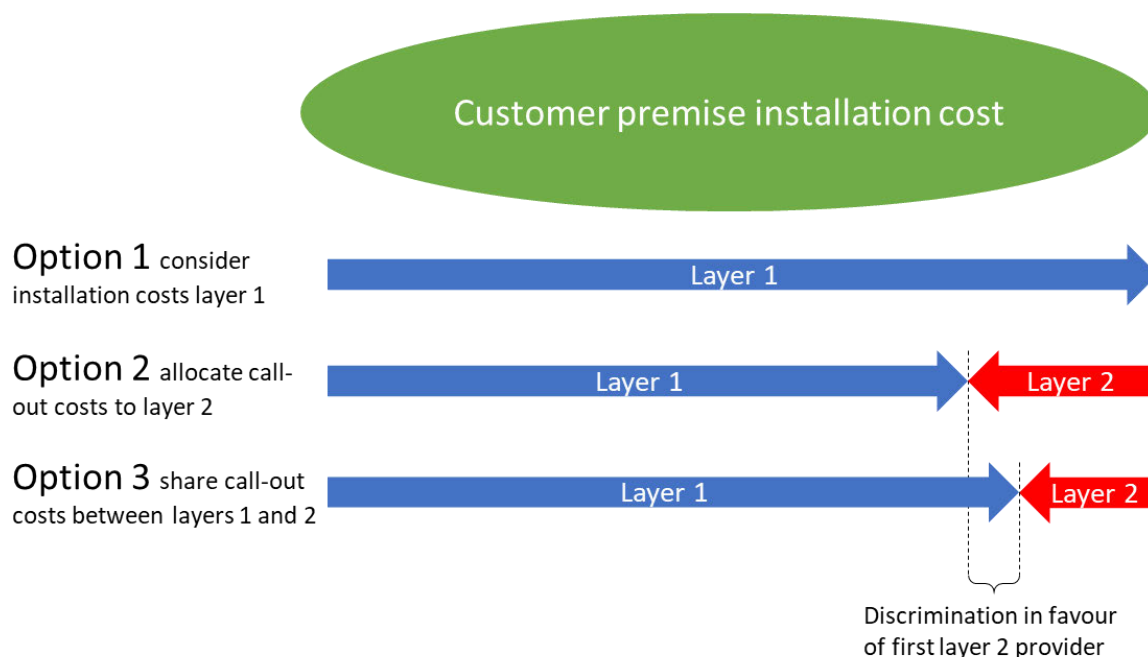
As an example, consider a premise that is unbundled from day one.<sup>3</sup> When installing the fibre at a customer's premise the LFC would have to partner with the access seeker to install their layer 2 equipment. If they did not it would not be an equivalent install experience for a customer compared to when the LFC was the layer 2 provider.

In this case the LFC would have three options for charging the layer 2 access seekers for installation costs as in the figure below.

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<sup>2</sup> Chorus 'High level Unbundling Product Construct v1', October 2018, p23.

<sup>3</sup> While this is a clearer example, it is conceptually no different than the LFC installing the layer 2 equipment themselves.



We consider that both options 1 and 2 are open to the LFC, while option 3 is discriminatory. Under option 3 any subsequent access seeker would face a substantially different cost profile for layer 1 access than the first access seeker. This is because the subsequent access seeker would have to incur the full costs of calling out a technician to replace the ONT, whereas the first access seeker was able to share this cost with the LFC. This would limit churn and breach the non-discrimination requirements.

Under option 1, all customer premise installation activities are considered layer 1 work. The LFC would perform this role both for the first access seeker, and for all subsequent access seekers at no charge. Costs for doing so are spread across all layer 1 connections (including those that are also served by the LFC at layer 2).

This may be the simplest approach, and it aligns with the nature of the activity. For example we consider all the following activities to be related to layer 1:

- Installation of the distribution fibre into the premise
- Installing and connecting the distribution fibres to the external termination point.
- Feeding the distribution fibre into the premise
- Installing the internal termination point, which usually doubles as the mounting bracket for the ONT
- Splicing the distribution fibre and installing it into the ONT.

The only installation activity that purely relates to layer 2 is unwrapping the ONT and clipping it into the wall bracket. This is unlikely to have caused the LFCs any incremental cost.

If all customer premise installation activity is considered layer 1, then access seekers must be given at least one of the following options:

1. Being allowed to buy or rent the existing ONT from the LFC, allowing us to gain access to the existing installation assets; or
2. Having customer premise installation costs for unbundling being covered in the costs of layer 1 access, and being equivalent to the cost the LFC charges itself.

Requiring access seekers to install their own ONT would require installation of their own layer 1 assets, such as a new wall mount, re-routing the distribution fibre, and splicing the distribution fibre. It would be equivalent to the LFCs only providing half the fibre necessary for unbundling and claiming that met their obligations.

The alternative interpretation in option 2 is that the call out costs for the installation are allocated entirely to the layer 2 service. This is consistent with our arguments in previous submissions.<sup>4</sup> Under this interpretation the costs of layer 1 services must be reduced as the call out costs are not part of the cost base that can be considered. In this case duplication of the ONT install is consistent with the LFC's obligations, but they must be able to prove that an access seeker incurring the costs of installation of a duplicate ONT can compete at the price they offer. Currently this is not the case.

## Other non-price breaches

### *Access to both distribution fibres*

As part of the UFB contracts, the LFCs were required to install two distribution fibres to each premise. This allows for leap-frogging of services to maintain continuity (for example, during an upgrade to newer generation equipment, or switching between layer 2 providers), or to offer two connections to the same premise in some circumstances.

The LFCs are now claiming exclusive use of one of those fibres, and access seekers must share the other fibre between themselves. This is a clear breach of the equivalence obligations as the LFCs are offering to themselves a far superior service to that offered to access seekers. It is not possible for LFCs to have exclusive use of one of the two distribution fibres and provide equivalent and non-discriminatory services to access seekers, unless there was only ever one access seeker. It is also critical for access seekers to gain access to the first fibre to efficiently utilise the existing ONT as discussed above.

Limiting access to both distribution fibres would also hurt the customer experience. For example, where a connection is already unbundled, there would be a significantly different

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<sup>4</sup> Vocus Group and Vodafone New Zealand, 'Joint Submission on expert report from Dr Ingo Vogelsang on equivalence and non-discrimination', 18 November 2019, p11.

experience for a customer churning back to the LFC, than churning to another layer 2 access seeker.

- If the customer churns back to the LFC then it would only require a back-office switch, and there will be no interruption of service.
- If the customer churns to another layer 2 access seeker then there would be significant downtime, as the one fibre is disconnected from the existing provider and then transferred to the gaining provider.

In discussions with Chorus they have highlighted some practical considerations that make using the first fibre difficult. This is not a sufficient rationale for breaching the requirements of the Act. Chorus and the other LFCs are required to construct a network in line with their requirements, not the other way around.

### *Access to cabinets*

The LFCs have all chosen not to allow any access seeker to access the roadside cabinets or fibre flexibility points (FFPs). This means the access seeker must send one truck roll to the premise to install the end-user ONT, and then the LFC must send a second truck roll to the cabinet to connect the fibre. This creates unnecessary delay, complexity and cost for access seekers, whereas the LFC faces none of these impositions. It is therefore another clear breach of equivalence.

We also find the reasoning from the LFCs to be implausible. They claim only their technicians are qualified to operate the fibres at the cabinet:

- Reports of poor workmanship and exploitative practices by LFCs have tended to suggest that LFCs do not value any special skill or qualification by the technicians working on its cabinets. Indeed, these technicians have been employed by third parties rather than LFCs themselves – in circumstances where LFCs do not exercise any apparent control over the standards observed by technicians. There is no justification for claiming that retailers would not use at-least equally qualified technicians and standards of work if they had access to cabinets.
- The technicians hired by any access seeker are likely to have also done work for the LFC themselves. There are only so many firms available to do this work.
- There has been no attempt made to create any certification or training to make sure technicians hired by access seekers are capable of doing the job.

### *Un-equal installation timing*

Chorus' PONFAS service can take up to 95 days to provision a simple install. In comparison Chorus is able to provision a layer 2 bitstream service in 30 days. This is a clear breach of

equivalence and non-discrimination and does not provide a level playing field for competition.

At clause 10.5 of the PONFAS operations manual, Chorus states:

*A PONFAS Distribution Service Request will be deemed invalid and may be rejected by the LFC if ... the Service Provider does not have a PONFAS Feeder Service at the Fibre Flexibility Point associated with the End User Premises. The PONFAS Feeder Service is required for a Service Provider to access and interconnect with the applicable PONFAS Distribution Service.*

That means the feeder service and the distribution service must be ordered sequentially at the timeframes below:

- Feeder fibre – 65 days to provision. An access seeker needs a feeder fibre for every 16 customers at each FFP. We are unsure why this is such a significant delay. In the vast majority of circumstances there are a number of spare feeder fibres already installed, they just need to be connected at the exchange and the FFP.
- Distribution fibre. Simple installs take 30 days, and complex installs take 65 days.

Based on Chorus' bitstream install timeframes, it appears they are allowing these services to happen in parallel for themselves, but denying this advantage to access seekers. This is a clear breach of the non-discrimination requirements as the LFCs are heavily favouring themselves compared to access seekers.

It also means any access seeker has to hold, and pay, for a feeder fibre for 30 days before a distribution fibre is installed and we can start charging an end-user. Another example of the LFCs pushing more costs on to access seekers than they face themselves.

24 September

Telecommunications Review Team  
Ministry for Regulation  
[TelcoReview@regulation.govt.nz](mailto:TelcoReview@regulation.govt.nz)

Dear Telecommunications Review Team,

Thank you for the opportunity to contribute to this review. We welcome the Government's intent to streamline and simplify the telecommunications rules in New Zealand.

Our comments relate to the proposed changes to New Zealand's telecommunication levy obligations.

We do not think the change from a qualified to a gross assessment of revenue would be effective in easing the compliance burden of this measure.

We support the proposal to limit levy obligations to telecommunications retailers. This will help the Government avoid unforeseen regulatory costs falling on the broader New Zealand business community.

Ngā mihi,

§ 9(2)(a)



§ 9(2)(a)





**TŪ ĀTEA**

**Telecommunications Sector Regulatory  
Review  
Submission**

**September 2025**

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## **Disclaimer**

Tū Ātea Limited (“Tū Ātea”) affirms its unwavering support for the Māori iwi and hapū in asserting their mana, rangatiratanga and aspirations in the management and allocation of radio spectrum. However, Tū Ātea is not a Crown entity, nor does it discharge the Crown’s obligations under Te Tiriti o Waitangi (the Treaty of Waitangi) or any statutory duties arising therefrom. Nothing in any communication, submission, advocacy or other engagement by Tū Ātea shall be construed as a substitute for the partnership, protection and participation obligations owed by the Crown to Māori under Te Tiriti o Waitangi, the Treaty of Waitangi Act 1975, or any other enactment.

Tū Ātea’s role is to advise, facilitate, support and represent Māori perspectives in telecommunications policy and spectrum governance. In no event shall Tū Ātea’s support or submission be deemed to limit, replace or diminish the Crown’s exclusive responsibility and legal duty to honour and give effect to Te Tiriti o Waitangi, including but not limited to active protection of Māori interests, equitable decision-making, and the duty to consult and act in good faith.

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## Executive Summary

Tū Ātea welcomes the Telecommunications Sector Regulatory Review. The current regime has expanded availability through policy programmes, yet persistent gaps remain in reliability, performance transparency, and affordability in thin rural markets—where Māori are disproportionately represented. Within the scope of this Review, we recommend clarifying the Act’s purpose and outcomes, strengthening retail service quality (RSQ) tools and transparency, enabling pro-competitive shared rural delivery models, and equipping the regulator with proportionate interventions for thin markets. These changes will lift measurable user outcomes—availability/uptime, busy-hour throughput consistency, latency/jitter, resilience, and fair pricing—without straying into out-of-scope issues (e.g., the existence/amount of the TDL, spectrum allocation law, or unrelated planning statutes). Our goal is a technology-neutral, outcomes-driven regime that reliably serves rural Aotearoa and Māori communities.

### Key recommendations (in scope):

- Clarify statutory purpose and user outcomes (reliability, affordability, resilience, safety) to guide decisions.
- Modernise RSQ and transparency: standard metrics, busy-hour reporting, plain-English FUP/throttling disclosures, and proportionate reporting paths for small/rural providers.
- Promote pro-competitive rural delivery: technology-neutral, standards-led settings that enable upgraded FWA, WISPs, and neutral-host/MOCN/MORAN sharing where efficient.
- Targeted protections in thin markets: time-limited, evidence-based interventions for persistent price/performance failures.
- System stewardship: public regional dashboards; periodic “rural and priority communities” stocktake.
- Managed transitions: clear “no-material-harm” tests, continuity safeguards, and migration support for legacy withdrawals.

### Scope Note (for the Review)

**In scope:** clarifying purpose/outcomes, RSQ and transparency, proportionate tools for thin markets, pro-competitive settings for shared rural models, stewardship/monitoring, consumer protections in technology transitions.

**Not sought here:** changes to the existence or amount of the TDL, spectrum allocation law/policy, or unrelated planning statutes.

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## 1 Introduction

1. Tū Ātea Ltd was founded following the 2022 Memorandum of Understanding between the Crown and the Māori Spectrum Working Group to oversee the spectrum allocated to Māori. Our kaupapa is to enhance Māori participation in spectrum-related industries and to utilise spectrum for the economic, cultural, environmental, and social well-being of Māori.
2. Tū Ātea aims to improve outcomes for Māori by ensuring fair access to telecommunications infrastructure. With many Māori living in rural areas, telecommunications and digital inclusion are key to attaining health equity.
3. The Telecommunication Sector Regulatory Review aims to “examine whether the sector’s current regulation remains fit for purpose in light of technology and market changes, noting the extensive work currently underway in this sector”.
4. It is recognised that “Telecommunications touch almost every part of modern life and are used every day by the majority of New Zealanders. The sector is as essential as electricity and water. From education and healthcare to e-commerce and entertainment, reliable digital infrastructure drives economic growth and daily life.”
5. The Telecommunications Sector Regulatory Review was initiated in response to concerns from the sector that specific regulations are outdated, which impedes innovation and investment.
6. Tū Ātea believes that the regulation hampers service delivery to rural areas. This disproportionately affects Māori.
7. As part of our objectives, we focus on improving outcomes for Māori. Since Māori are disproportionately represented in rural areas, where health, education, and economic consequences are poor, we believe that telecommunication and broadband are vital in enhancing these results. Tū Ātea’s submission concentrates on rural broadband services.

We specifically focus on:

- Whether the current Act has provided broadband to rural Aotearoa, New Zealand.
- Consider the causes of poor broadband performance in rural areas
- Propose amendments to the Act that could improve broadband deployment in rural areas.

## 2 Telecommunications are an essential infrastructure

8. The review committee recognises telecommunications services as essential as electricity and water. While telecommunication is an indispensable service, broadband is crucial for the future.
9. The part of telecommunication that touches almost every aspect of modern life and is used daily by the majority of New Zealanders is broadband. Even voice service is now delivered mainly over broadband.
10. All the advantages of telecommunication services have mainly been provided through broadband; however, the Telecommunications Act 2001 offers specific protections solely for Voice Services:
  - Local Residential Telephone Services (LRTS) have particular Telecommunications Service Obligation (TSO) provisions.
  - The Telecommunications Act 2001 (the Act) provides specific protections for voice services. Local Residential Telephone Service (LRTS) includes particular TSO provisions.
  - Universal obligation for access to voice services
  - Affordable pricing criteria for basic voice service
  - Funded through the Telecommunications Development Levy.
11. In contrast, broadband is regarded as a component of general telecommunications services. The legislation in New Zealand does not treat broadband services with the same level of importance or protection as voice services.

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12. General telecommunications services do not enjoy the same level of protection as voice services.
    - Competition regulation (interconnection, access services)
    - Consumer Protection (General Telecommunications Regulations)
    - Infrastructure access rights (designated services)
    - No universal service obligation
    - No guarantees of affordability
    - No requirements for geographic coverage.
  13. In summary, generalised telecommunication services do not receive the same legal and societal recognition as voice communication services. Meanwhile, water and electricity are legally recognised as essential services crucial for public health and safety, with the expectation that everyone has access (e.g., statutory/building code/public health bases, etc).
  14. The legislation effectively makes water and electricity mandatory for households, applying mechanisms different from a simple mandate approach. Public health justification renders both services *essential*:
    - Water: Essential for sanitation, disease prevention, and fulfilling basic human needs
    - Electricity: Essential for modern health and safety systems (lighting, refrigeration, medical devices)
  15. Regarding water, it is a public health requirement under:
    - The Health Act 1956 requires local authorities to provide water services for public health
    - The Water Services Act 2021 establishes mandatory water quality standards
    - The Building Code requirements under the Building Act 2004 mandate a potable water supply for new dwellings
  16. Furthermore, local authorities have obligations:
    - The Local Government Act 2002 requires councils to provide water services as a fundamental service.
    - Connection requirements for new developments typically mandate water connectivity.
    - Public health authorities have the authority to mandate water connections in particular circumstances.
  17. Similarly, regarding electricity services, building and safety requirements:
    - The Building Code requires electrical installations in new homes.
    - The Electricity Act 1992 and regulations require safe electrical supply systems.
    - The Residential Tenancies Act 1986 requires rental properties to have working electricity.
  18. Practical mandates further ensure that electricity remains available:
    - Building consent requirements effectively mandate electrical connections for habitable dwellings.
    - Fire safety regulations frequently require electrical systems for smoke alarms.
    - Health and safety standards in rental properties include electrical services.
  19. Telecommunications are recognised as essential for social and economic participation, but not traditionally considered vital for basic health and safety.
  20. Without broadband telecommunication being recognised as an essential service, it will not constitute a universal service.

### 3 Parallel Settings Created Gaps for Rural Users

21. Currently, we operate two parallel systems for telecommunications delivery services:
  - Voice services guaranteed by TSO provisions in the Act

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- UFB and RBI programmes are delivered through policy initiatives.
22. There are notable differences between the two systems.
  23. The TSO provisions in the Act ensure that all voice connections active on 20 December 2001 will continue to have access to these lines. Section 5 - Definitions (Part 1) defines "existing residential line" as:
    - (a) means a Telecom residential line (other than a party line or a second line) that was an active connection on 20 December 2001; and
    - (b) To avoid doubt, this includes any such line that has been replaced or altered since December 20, 2001.
  24. The TSO framework includes:
    - Subsidised universal service obligations
    - Industry-funded through Telecommunications Development Levy
    - Limited to lines active on December 20, 2001
    - Mandatory service obligations with guaranteed funding
    - TSO was tied to legacy copper infrastructure.
  25. In the case of UFB and RBI, instead of a guaranteed universal service obligation (USO), it was a market-facilitated infrastructure investment. Rather than expanding or replacing the USO framework, the government devised an entirely different model based on:
    - Commercial partnerships instead of regulatory obligations
    - Crown co-investment instead of industry cross-subsidisation
    - Technology neutrality instead of copper-based services
    - Geographic growth rather than preserving historical coverage.
  26. While both UFB and RBI shared the above commonalities, they also had slight differences based on the areas they served.
  27. This means New Zealand now has two separate but incompatible frameworks: the legacy TSO system, which still relies on 2001 infrastructure, and the newer UFB and RBI systems, which focus on commercial viability with government support.
  28. The practical effect was that UFB/RBI were never intended to expand or replace the 2001 TSO framework. They were developed as market-based solutions aimed at eliminating the need for subsidised universal service. The Act assumes that competitive markets in fibre areas will naturally provide voice services.
  29. The Act clearly states that UFB and RBI are intended to supplement, not replace, the 2001 TSO framework. There is no provision for transferring universal service obligations to new technologies - instead, the Act relies on market mechanisms (such as voice anchor services) to sufficiently serve consumers without the need for subsidised universal service obligations.
  30. As the market evolved with the introduction of UFB and RBI, discrepancies between the two systems started to surface.
    - Pre-2001 premises in copper areas where TSO voice protection was lost when fibre was introduced.
    - Post-2001 premises that lacked TSO protection continued to operate without it.
  31. In rural areas, where the RBI coverage pathway was the only option, market-based solutions existed without TSO protection.
  32. Neither provided comprehensive universal service coverage, leading to notable gaps in access to telecommunications services in rural areas.
  33. The following section describes how the two parallel systems have failed in rural areas.

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## 4 The Act Hasn't Delivered for Rural Aotearoa

34. The Commerce Commission carried out a study on rural connectivity. The results were published in the 2024 monitoring report. Here are some of the main findings:

### 4.1 Rural Households Pay More for Less

35. Rural consumers pay an average of 29% more than urban consumers for broadband. The typical price of rural broadband is \$113.52 per month, compared to the urban average of \$87.86 per month.
36. Rural 4G fixed wireless costs can be up to 49% higher than urban plans. Copper pricing differences of up to \$37 per month persist despite identical wholesale inputs.
37. Rural households in Northland spend nearly twice as much of their income on broadband (2.6%) compared to urban households in Auckland or Wellington (1.4%). In the West Coast, the figure is 2.4%, and it is 2.5% in Tasman.
38. The primary obstacle is affordability, particularly in regions with lower median incomes, a higher number of dependents, and less competition among service providers. These disparities are particularly evident in rural areas, where fewer affordable options are available. Based on the above results, it is clear that a subsidised, market-based system has failed in rural areas.

### 4.2 Coverage on Paper, Not on the Ground

39. Despite the increasing availability of broadband services, around 170,000 households in New Zealand – about 9.9% – still lack a fixed broadband connection, which widens the digital divide. Māori are disproportionately affected, as a larger proportion live in rural areas with limited-service options and higher costs.
40. While the RBI extends coverage to 99.8% of the population, the Commerce Commission noted that remote areas lack broadband, including poor cellular fixed wireless coverage in remote parts around the east coast of the North Island and more isolated regions of the West Coast of the South Island.
41. Only 52% of rural properties have access to copper broadband, indicating that the remaining rural properties rely on wireless options (cellular, fixed wireless access, or satellite). This emphasises the dependence on solutions that the TSO did not guarantee.
42. This emphasises the rural dependence on a variety of solutions that differ in consistency and rely on local resources.

### 4.3 Market Design Misses Rural Reality

43. The existing market framework fails to foster the right conditions to boost rural broadband adoption.
44. According to the Commission, 130,000 households in rural areas lack access to the copper network and have never had it.
45. RBI provides broadband coverage to 99.8% of the population. RBI 1 and 2 were intended to be the market solution for delivering fixed broadband.
46. However, the information in the 2024 Telecommunications Monitoring Report of 30 June 2025 indicates that most of the houses are not on RBI.
- 74,000 households are still on copper (as of June 2024)
  - About 50,000 on satellite
  - About 50,000 on WISPs
47. In summary, the solution designed to enhance rural broadband has failed because most customers are not depending on RBI. The WISPs investing in fibre to remain competitive further confirms this.
48. The absence of a managed transition for copper withdrawal is not supporting rural areas with existing copper services. 28% of rural residential consumers still rely on copper-based services. In rural regions,

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copper connections declined by 18% in 2024 (74,000 connections). As rural copper is phased out, having a managed withdrawal process will be essential to protect consumers and allow sufficient time for non-LEO networks to invest, expand, and compete.

#### 4.4 Slower, Costlier, Less Reliable Experience

49. Rural satisfaction is significantly lower than urban satisfaction: 69% of rural consumers are satisfied with their broadband service compared to 77% of urban consumers.
50. Rural services are often slower, less reliable, and more costly. Rural technologies tend to be slower than urban ones, more likely to have data caps, and still cost more.
51. The Commission also observed that satisfaction scores are declining, with pricing and customer service attracting the most criticism.
52. This highlights that the gap between rural broadband services and customer expectations is widening.

#### 4.5 RBI Didn't Solve Rural Broadband

53. RBI2 and MBSF (Mobile Black Spot Fund) expanded coverage to 99.8% of the population. With the completion of RBI2, it is estimated that 99.8% of the population now has broadband access.
54. Based on the information in the 2024 Telecommunications Monitoring Report 30 June 2025<sup>1</sup>, most households are not using RBI for broadband.
  - 28% of households are still on copper (as of June 2024).
  - About 16% on satellite and
  - Approximately 16% on WISPs
55. The Commission's 2024 monitoring report found that when people leave copper:
  - 40% switch to LEO satellite broadband.
  - 40% switch to 4G wireless broadband
  - 20% switch to non-cellular wireless (WISP) service
  - This highlights that only 40% of users utilise the RBI solution.
56. The data above show that most households are choosing non-RBI broadband options. Additionally, satellite is becoming more popular, and WISPs are deploying fibre to protect their market share against satellite competition.
57. In summary, although the RBI has enhanced overall cellular coverage, rural consumers do not regard it as the main option for broadband; that is, it has not played a significant role in improving rural broadband.
58. The fact that WISPs do not consider RBI cellular to be a better option than satellite highlights what is needed in rural areas.
59. The WISPs are now investing in fibre to stay competitive. However, fibre roll-out economics are only viable where there is adequate density. That is, fibre deployment will be a limited defence against losing customers to satellite.
60. In other words, rural households are becoming more reliant on a broadband solution over which the government cannot impose any performance or price conditions. There is limited competition for the satellite service.

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<sup>1</sup> [https://www.comcom.govt.nz/assets/pdf\\_file/0025/367054/2024-Telecommunications-Monitoring-Report-30-June-2025.pdf](https://www.comcom.govt.nz/assets/pdf_file/0025/367054/2024-Telecommunications-Monitoring-Report-30-June-2025.pdf)

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## 5 No USO for Broadband: Why Rural Aotearoa Missed Out

61. The Act failed rural areas because there is no Universal Service Obligation for Broadband. The government chose a market-based approach rather than a mandate.
62. Such a market-based approach led to market failure in remote areas. Low population density, high per-customer costs, rugged terrain, and maintenance complexity all contributed to limited competition and service delivery, resulting in poor outcomes.
63. Even government-subsidised RBI failed to deliver the necessary improvement in broadband performance, causing rural customers to opt for alternative options instead of RBI broadband.
64. Unlike TSO, which requires a minimum service to be provided, RBI undertakings do not guarantee a minimum broadband performance. RBI commitments involve offering a certain level of coverage, not guaranteed connections, which was evident in the eventual uptake of the service.
65. The Rural Broadband programme aimed to cover 9.8 per cent of land with a budget of \$430 million. The funding was insufficient for universal coverage and focused on populated rural areas.
66. The rural landscape and slow RMA procedures led to costly network rollouts and inadequate coverage.
67. In summary, the primary issue is that a Universal Service Obligation for broadband was never established. The UFB/RBI programmes were financially restricted infrastructure projects, not mandates for universal access. The government deliberately opted for a market-based approach that recognises some households will remain unserved, rather than committing to universal coverage at any cost.

## 6 Digital Disadvantage is a Rural Reality for Māori.

68. Government studies have shown that the lack of broadband negatively impacts education, health, economic, cultural, and social activities.
69. Rural broadband can be characterised as poor quality and more expensive.
  - Rural consumers pay an average of 29% more than urban consumers for broadband.
  - Rural 4G fixed wireless prices are up to 49% higher than in urban areas.
  - Rural households spend up to 4.8% of their income on broadband compared to 1.4% in Auckland and Wellington.
70. Rural students encounter obstacles to digital learning because of limited broadband access. The 2024 Telecommunication Monitoring Report offers case studies showing how inadequate broadband significantly restricts access to education. The report also emphasises improvements after transitioning from copper to satellite connectivity, with over 30 schools connected via satellite as part of the programme by 2023. Many health initiatives still depend heavily on broadband as a crucial element:
  - A rural telehealth service, called Ka Ora Telecare, was launched in late 2023. It offers virtual GP and nurse practitioner consultations, particularly outside regular working hours and on weekends. To date, 3,286 patients from 363 practices have benefited, enhancing access and supporting clinician sustainability.
  - A free 24/7 telehealth service offering phone, web chat, and image upload support. The image feature has reduced unnecessary emergency visits by enabling lower-acuity outcomes when photos are shared<sup>2</sup>.
  - Rural video consultation providers in remote towns (e.g., Opotiki) utilise video conferencing linked to hospitals to triage and consult patients locally, reducing travel and improving clinical accuracy<sup>3</sup>.
71. The expansion of these rural services will rely on the availability of dependable broadband connectivity.

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<sup>2</sup> <https://pmc.ncbi.nlm.nih.gov/articles/PMC10857879/>

<sup>3</sup> <https://www.telehealth.org.nz/news/telehealth-enhances-rural-healthcare/>

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72. There is a growing reliance on broadband for health services overall. Urban health services depend significantly on broadband for their daily operations.
  73. Modern applications of telehealth, such as remote patient monitoring and synchronous video visits, also require patients to have broadband at home to ensure maximum functionality and reliability.
  74. The shift to internet-based health consultations and the increased reliance on online connections due to the COVID-19 pandemic's impact have further boosted telehealth usage among individuals with existing health disparities.
  75. Poor connectivity hampers healthcare delivery: The quality of image uploads depends on device access and internet connection, which disadvantages lower-income and rural patients.
  76. If rural areas are to match urban health practices, reliable broadband is essential. Insufficient broadband will only intensify the difficulties encountered by rural health services and their delivery.
  77. The primary sector is a crucial part of Aotearoa, New Zealand; however, it faces numerous barriers due to the poor quality of broadband.
    - Modernising agriculture demands investment in digital technologies.
    - IoT applications play a crucial role in farming and agriculture, enhancing efficiency and productivity.
    - 29% of farmers still depend on 3G technology and will face connectivity issues when the 3G network is shut down at the end of 2025 or early 2026.
  78. Lack of broadband also results in poor business services and diminished competitiveness. Rural businesses face:
    - Service limitations: banking and financial services, professional services, and government services.
    - Structural disadvantages: e-commerce exclusion, supply chain inefficiencies, and customer service gaps
    - Lag in productivity improvements: limited automation, data analytics gaps, and collaboration barriers.
  79. Lack of broadband also has social impacts.
    - Poor connectivity hinders modern work setups, as rural areas struggle to attract and retain knowledge workers, resulting in limited business growth.
    - Poor connectivity leads to economic decline: young population migration, business relocations, and decreased investment.
  80. In summary, the lack of broadband is hindering rural growth and exacerbating the problems faced by rural communities.

## 7 Target the Most Remote, Not the Median

81. What we want to highlight here is that policies based on averages are not necessarily effective for Māori.
82. On average, around 25-30% of Māori live in rural areas. In comparison, 20% of NZ Europeans, 7% of Pacific peoples, and 5% of Asians live rurally. Furthermore, about a third (32%) of those residing in the most remote parts of Aotearoa, New Zealand, are Māori.
83. However, a closer look reveals that the Māori population is significantly higher in the most remote rural areas. Here are some examples:
  - Cape Runaway: 88%
  - Oponae: 70.8%
  - East Cape: 91.8%
  - Wharekaka: 66.9%
  - Herekino-Takahue: 60%

- 
- Russell Forest-Rawhiti: 67.1%
84. The New Rural Health Strategy (2023), released by the government to address rural health inequalities, explicitly acknowledges the greater presence of Māori in rural areas<sup>Error! Bookmark not defined.</sup>.
  85. Tū Ātea suggests that policies should be more targeted to rural areas, rather than relying on broad averages.

## 8 Connectivity Gaps are Holding Rural Māori Back

### 8.1.1 No Broadband, No Educational Parity

86. Limited broadband access hampers the ability of rural Māori to engage with online learning and educational resources—an essential issue given the needs of remote schooling.
87. Massey University (2016) found that digital competency is primarily developed at home, rather than in school. Students without home broadband access are clearly at a disadvantage.
88. Although it is challenging to measure precisely, research strongly associates low digital access with reduced NCEA participation rates, lower tertiary enrolment, and weaker completion of digital homework and remote learning readiness.

### 8.1.2 Health Access Falls Where Connectivity Fails

89. Broadband enables telehealth, which is crucial for communities with limited access to clinics. Poor connectivity obstructs virtual doctor consultations, access to health information, and mental well-being support. Data show that reliable internet is linked to higher subjective well-being among Māori<sup>Error! Bookmark not defined.</sup>.
90. A 2022 focus group of rural adults, including Māori participants, confirmed that poor connectivity, high costs, and low digital literacy were significant barriers to accessing video-based care. Broader global evidence suggests that telehealth in rural areas enhances access to specialists, facilitates the management of chronic diseases, and supports older adults in remaining in their communities.
91. The current urban emphasis and lack of targeted policies are negatively affecting rural health outcomes, and in the case of Māori, the impact is even more significant.

### 8.1.3 Weak Broadband, Weaker Productivity and Participation

92. Rural Māori entrepreneurs often miss out on e-commerce, online marketing, and access to digital Agri—tools, which impacts their growth, productivity, and income potential. A 2012 Te Puni Kōkiri report noted that ultra-fast broadband would help small Māori businesses reach broader markets<sup>4</sup>.
93. Limited home broadband reduces digital connections with relatives, iwi communications, access to cultural events, and opportunities for learning Te Reo and e-learning on marae.

## 9 Legislate Universal Broadband: What Must Change

94. When the current Act was enacted in 2001, it included a mandate for universal service. However, this mandate was limited to providing voice services.
95. The Government implemented UFB and RBI primarily through policy instruments, rather than amending the Act to set performance guarantees.
96. The amendments introduced in 2018 addressed the regulatory framework for operating UFB networks after their construction, rather than during the build phase of UFB/RBI. These changes included:
  - New regulatory regime for fibre networks (post-UFB completion)

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<sup>4</sup> <https://www.tpk.govt.nz/docs/BERL-NPW-Case-studies-2012.pdf?>

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- Retail Service Quality Framework
  - Enhanced capabilities for monitoring and reporting
  - Copper withdrawal protections
97. Therefore, the Act does not impose any universal obligation for broadband.
98. The legal frameworks for water and electricity could serve as a model for universal service obligations in telecommunications.
- Public interest justification (digital inclusion, emergency communications)
  - Building standards for broadband-ready infrastructure
  - Obligations of local authorities to guarantee connectivity
  - Health and safety rationale (emergency services, telehealth access)
99. This also indicates that New Zealand law recognises certain services as essential for households, primarily through public health, safety, and building standards, rather than through direct service mandates.
100. The current lack of guidance from the Act has led to inconsistent policy decisions, resulting in the effective neglect of rural areas.
101. In the remainder of this section, we propose several provisions that will enhance the delivery and adoption of broadband in Aotearoa, New Zealand.

## 10 Make Broadband a Right, Not a Nice-to-Have

102. Broadband should be designated as a universal service. At present, the TSO obligation is specified in Part 3 of the Act. This should be revised to encompass broadband.
103. This percentage of households covered by USO should match that set in the 2001 Act: approximately 98–99% of households.
104. Although a target of 98-99% may seem very high, it is worth remembering that the expansion of broadband services will rely on existing infrastructure.
- 87% of the population already has access to fibre.
  - RBI Programme
  - WISPS deploy subsidised wireless and fibre services
- Mandating broadband as a universal service will give clear guidance for policy initiatives and promote improvements in rural broadband.

## 11 Set Enforceable Minimum Service Standards

105. In Tū Ātea’s view, a key reason for the poor uptake of RBI broadband was the absence of a minimum service standard. The lack of minimum requirements meant there was no guarantee of performance.
106. With wireless services, it is necessary to define:
- Speed (both uplink and downlink)
  - Minimum percentage of times those speeds should be exceeded
107. The speed of the service should be based on the slowest fibre broadband; for example, download and upload speeds should be at least 50% of the slowest fibre broadband. This ensures the minimum service improves as fibre technology advances.
108. These speeds must be sustained for a specific percentage of time, e.g., 90%. Without such guarantees, the performance of wireless services can fluctuate significantly, resulting in poor consumer experiences.

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109. The current Act includes definitions in Schedule 1, where technical terms related to the service are clarified. The Act could offer clear guidelines for policymakers to set the minimum performance standards for rural services.

## 12 Define Fair Pricing in Law

110. The TSO obligation ensured that prices were not raised where competition is limited. Such a guarantee is essential to keep broadband affordable for everyone.
111. Affordability has been recognised as a key factor in boosting broadband adoption among those without it. Therefore, it is crucial to tackle affordability alongside other technical issues.
112. The current Act has defined terms in Schedule 1, where technical Service terms are specified. This could be an appropriate place to define pricing terms.
113. Tū Ātea does not hold a firm stance on the minimum price. s 9 (2)(b)(ii)

## 13 Any Tech, Same Standards – Satellites as Last Resort

114. New Zealand has generally adopted a technology-neutral approach: allowing delivery through fibre, cellular, or other wireless technologies.
115. Only services that meet the required quality standards and are subject to enforcement should be included in the technology mix. For example, satellite services like Starlink should not be part of the mix unless the Government cannot directly influence the service provided.
116. However, we see satellite services like Starlink as a solution for populations not covered by the universal service obligation. That is, it should only be a last resort and not part of the typical mix of technologies.

## 14 Beyond RBI: Invest to Close the Rural Gap

117. In the past, the Telecommunications Development Levy (TDL) has been used to fund projects such as the RBI. We support TDL being utilised to finance the implementation of the broadband obligation.
118. Nonetheless, the lesson from the RBI programme is that despite investing \$430 million in RBI 2, it did not deliver a service that made RBI the primary broadband choice in rural areas.
119. Further government funding is required for the government to resolve the existing rural broadband issues.

It is worth noting that broadband is crucial for addressing health, education, economic, and social issues in rural areas. Therefore, the funding assessment should be approached from a holistic perspective.

## 15 Give the Regulator Teeth: Monitor, Enforce, Protect

120. None of the above mechanisms will operate effectively without the support and enforcement capabilities provided by government institutions.
121. To ensure that rural consumers continue to receive fair deals, it is essential to grant the Commerce Commission the authority to regulate retail prices in areas where competition is lacking. The Commission should also actively monitor the performance of rural markets and have the capacity to intervene if it detects market failure.
122. The Commerce Commission should have the following powers:
- Price monitoring and intervention authority
  - Mechanisms for enforcing service quality
  - Regulation of market structures for emerging technologies

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- Consumer advocacy functions

## 16 Recommendations

### 16.1 Clarify Purpose and Outcomes in the Act

- Update/clarify the regime’s purpose and key outcomes so decision-making prioritises reliability, affordability, safety, and resilience alongside competition and innovation.
- Make user-centric outcomes explicit: availability (uptime), consistent busy-hour throughput, latency/jitter transparency, outage reporting, and resilience (backup power/backhaul for critical sites).

### 16.2 Modernise Retail Service Quality (RSQ) and Transparency

- Standardise public performance disclosures (busy-hour metrics, latency/jitter bands, congestion indicators, planned/unplanned outage reporting) to facilitate consistent comparisons.
- Require clear, straightforward English disclosure of fair-use policies, traffic management, throttling, and any performance tiers.
- Provide proportional RSQ pathways for small/rural providers to lessen the reporting burden while maintaining comparability.

### 16.3 Pro-competitive Settings for New Shared Rural Delivery Models

- Affirm technology-neutral, standards-led delivery (fibre, FWA, WISPs, neutral-host models) so any technology that meets quality standards can compete.
- Facilitate shared infrastructure where it is efficient (e.g., neutral host/MORAN/MOCN and open backhaul arrangements) to lower costs and enhance coverage and reliability in thin markets.

### 16.4 Targeted consumer protections where competition is thin

- Implement proportionate, evidence-based interventions for persistent price/performance failures in designated thin markets (time-limited, subject to review).
- Promote affordability measures using existing regulatory tools (e.g., improved plan transparency, social/low-income offers, or targeted safeguards) without proposing modifications to the existence or level of the TDL.

### 16.5 System Stewardship: Monitoring and Review

- Publish regional and rural performance dashboards (availability, busy-hour throughput, latency/jitter, complaint rates, fault restoration times).
- Implement a regular “rural and priority communities” stocktake to ensure the regime remains aligned with technological and market developments and to prompt corrective actions when gaps arise.

### 16.6 Managed Technology Transitions with ‘no-harm’ tests

- For legacy withdrawals or technology migrations, require no-material-harm tests for affected users, with clear migration support, continuity safeguards for critical services, and transparent timelines.
- Align RSQ/consumer protections to maintain continuity for safety-critical and essential services during transitions.

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## 17 Conclusion

Coverage on paper does not match real-world experience. For too many Māori and remote whānau, broadband remains slower, more expensive, and less reliable—locking people out of essential services such as health, education, safety, and employment. This Review offers us an opportunity to change that. By establishing clear outcomes (reliability, affordability, resilience), modernising RSQ and transparency, enabling shared rural delivery, and applying proportionate tools in thin markets, we can turn headline figures into genuine connectivity. Taking these steps will bridge the gap—not with empty promises, but with enforceable standards that reach marae, homes, clinics, and schools across the entire country.

25 September 2025

Dr Peter Clark  
Manager, Regulatory Reviews  
Ministry for Regulation

By email only: [Peter.Clark@regulation.govt.nz](mailto:Peter.Clark@regulation.govt.nz); cc: [telcoreview@regulation.govt.nz](mailto:telcoreview@regulation.govt.nz)

Dear Peter,

## One NZ submission: telecommunications sector regulatory review

### Cover note

1. We welcome the Ministry for Regulation's (**MfR**) telecommunications sector regulatory review (**the Review**), and the options published for consultation.
2. We have provided feedback via the online form but felt that this fuller submission was also required to articulate in detail the rationale behind One NZ's position and to highlight the risks with some of the proposed options. Our summary views on the proposed options are:
  - a. **Consumer protection:** we do not support MfR's proposal to create a new consumer protection code enforced by the Commerce Commission (**Commission**). This will result in more regulation without materially improved outcomes. We have proposed an alternative option which builds on the current co-regulatory approach, provides better consumer protection than status quo and ensures regulation is proportionate and meets the cost-benefit test.
  - b. **Fibre deregulation:** MfR proposes to roll back some critical elements of the fibre regulatory framework, including around geographic consistent pricing, anchor services, Layer 1 unbundling and exemption process for services above Layer 2. We are strongly opposed to any relaxation of these safeguards. Rolling back these key protections risks higher prices for consumers, reduced competition, and creating challenges currently seen in the electricity market.
  - c. **TDL:** We support the direction towards a simplified model for industry levies, which would enable levy costs to be made more transparent to end users and to allow transparent presentation of levies in the same way as now occurs in sectors like electricity and fuel. It is critical that the reform is carefully designed. We have proposed an approach for ensuring this.
  - d. **Cost and benefits considerations:** Requiring the Commission to consider costs and benefits as part of its regulatory processes is good regulatory practice. We believe a

targeted approach – rather than a blanket requirement – is the most practical way forward.

3. We expect to engage on this review further now that the written consultation process has concluded and will be in touch to arrange a time for a meeting.

#### Confidentiality

4. Confidentiality is sought in respect of the information in this submission that is contained within square brackets and is highlighted (**Confidential Information**). Confidentiality is sought for the purposes of section 9(2)(b) of the Official Information Act 1982 on the following grounds:
  - a. the Confidential Information is commercially sensitive and valuable information which is confidential to One NZ; and
  - b. disclosure of the Confidential Information would be likely to prejudice unreasonably the commercial position of One NZ.
5. We ask that the Ministry for Regulation (**the Ministry**) notify us if it receives any request under the Official Information Act 1982 for the release of any part of the Confidential Information, and that the Ministry seek and consider its views as to whether the Confidential Information remains confidential and commercially sensitive before it responds to such requests.

Yours sincerely,

s 9(2)(a)



s 9(2)(a)



One New Zealand

## One NZ submission

### Consumer protection and customer service

1. One NZ supports strong and effective consumer protections that ensure all New Zealanders can confidently participate in the digital economy. Consumers should have clear information and protections irrespective of the service they buy or the technology they use.
2. We understand that the MfR is proposing to replace the current mix of Commission guidelines and industry-led codes with a single Commission consumer protection code. The TCF would no longer play a role in connection with the category of codes that a single Commission consumer protection code replaces, although it could still choose to set voluntary codes for its members. The MfR's intention is that the Commission's code should be proportionate, and that a legislative objective requiring that benefits outweigh costs is being considered.
3. One NZ does not support Option 2. As currently proposed, this option would create a regime that is more complicated and burdensome for both industry and consumers than the status quo. We have outlined below the issues with Option 2 and proposed an alternative option, which is also supported by other major retail service providers including Spark and 2degrees.

#### *MfR's proposal would result in more regulation*

4. Under Option 2, industry-led retail service quality codes would be replaced by a single code developed and enforced by the Commission. This would result in a more onerous regulatory regime, contradicting the core purpose of this review. **We do not support this option.**
5. It is unclear what has driven MfR's view that having industry involvement in regulation and enforcement means that the system is 'not effective at protecting consumers.'<sup>1</sup> As far as we're aware, the Commission does not share this view and has previously deemed compliance with industry guidelines and TCF retail service quality codes as satisfactory.<sup>2</sup> This is supported by the fact that the Commission has not exercised its existing power under the Act to create a regulated retail service quality code.
6. The consultation document states: '[s]ome rules have helped make sure some businesses and consumers are not disadvantaged. But it isn't clear if ongoing consumer problems, for

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<sup>1</sup> Ministry for Regulation, Telecommunications Sector Regulatory Review - Consultation

<sup>2</sup> [https://www.comcom.govt.nz/assets/pdf\\_file/0027/362709/Marketing-Alternative-Services-Guidelines-Review-15-October-2024.pdf](https://www.comcom.govt.nz/assets/pdf_file/0027/362709/Marketing-Alternative-Services-Guidelines-Review-15-October-2024.pdf)

example around billing and service quality, are properly addressed.<sup>3</sup> It appears that these issues have not been properly understood by MfR:

- a. TCF retailer members provide services to approximately 95% of New Zealand's telecommunications consumers combined. All of these retailers are signatories to the TCF codes that deal with retail service quality matters. In addition, we understand that most medium to large size retailers that are not TCF members comply with the Commission's voluntary retail service quality guidelines. This means that the large majority of consumers receive protections provided for in the Commission's retail service quality programme. The key issue is not related to non-compliance by retailers, but the fact that fibre wholesale providers are out of scope of these rules despite engaging in extensive direct-to-consumer activities on a national basis. We've set out further detail on this issue and how it should be addressed below.
- b. MfR references billing and service quality as areas that may not have been 'properly addressed'. Both of these issues have been part of the Commission's retail service quality programme and associated consumer studies. The Commission's intervention on service quality and billing have been in the form of service quality and billing rankings that they are publishing on a quarterly basis. We believe that the intervention on billing, for example, is appropriate given that only 4% of consumers are dissatisfied with their provider's billing.<sup>4</sup> It is unclear what has driven MfR's suggestion that these issues potentially require further intervention.

#### *Setting the right scope for consumer protection*

7. This review presents a big opportunity to update telecommunications regulatory settings to ensure they are fit for the future. However, in reviewing the retail service quality framework, the focus appears to have been on the regulatory mechanism – industry-led versus Commission-led codes – rather than on the scope of this framework, clear definition of the boundaries of what is properly a “retail service quality” issue that should be regulated, and in each instance whether regulation is necessary, desirable and proportionate. Put simply, the review does not engage at all with the question of what retail service quality intervention should be for, when intervention is appropriate, when it is not (including when quality issues should be left to resolve through competitive processes) and what threshold tests ought to be met before regulation is selected as the way forward.

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<sup>3</sup> Ministry for Regulation, Telecommunications Sector Regulatory Review - Consultation

<sup>4</sup> Research New Zealand Consumer Telecommunications Survey 2021, 14 September 2021, p. 51

8. This is a missed opportunity and not what we expected as part of the MfR review. The real issue today is not who makes the rules, but that the legislation gives the Commission an open-ended ability to issue new retail service quality rules without a clear, rigorous and proportionate threshold for intervention. A proper threshold test would ask, for example, whether the size of the issue justifies regulatory intervention, whether desired outcomes could be more appropriately achieved through competition, and whether the cost and risk created by a proposed intervention outweighs the anticipated benefits of competition instead.
9. We acknowledge MfR's desire not to prescribe the content of the consumer code that would replace the current retail service quality regime. However, if MfR is to recommend specific changes to give effect to the options proposed, then it must ensure that any new code framework is fit for purpose. MfR's failure to engage with this point increases the risk that movement to the preferred option will increase the regulatory burden on industry, delivering none of the clarity and predictability for regulated businesses and consumers that should be primary goals of the review, and contrary to the objectives that the Ministry set out to achieve at the start of this review.

#### *Application of a consumer protection code*

6. This review is an opportunity to fix a regulatory asymmetry where some market participants are not bound by the current retail service quality requirements despite engaging in the same direct-to-consumer activities as retail service providers. For example, fibre wholesale providers (i.e. Chorus and other Local Fibre Companies (LFCs)) routinely engage in extensive direct-to-consumer marketing activities. They can talk about services and technology in a way that retailers cannot because while retailers are subject to strict rules set under a TCF code, fibre wholesalers such as Chorus are not and do not accept a requirement to comply with these codes. This is because currently the Commission's retail service quality guidelines, which the TCF codes address, do not apply to fibre wholesalers because they are issued under Part 7 of the Telecommunications Act, which is directed at retail service providers.
7. This legal construct assumes incorrectly that wholesalers like LFCs cannot and do not engage in activities that can directly affect end users, such as advertising specific products and technology and offering direct inducements to purchase specific products. This assumption is incorrect: in fact, there are multiple instances of fibre wholesalers taking steps that can and do affect consumers, including directly seeking to influence the services they buy. Part 7 needs to be properly understood as being about consumer protection – and, as such, it should apply to any business operating in the telecommunications sector that's engaged in activity that affects end users. It's disappointing that the review has missed this obvious point and has endorsed continuation of a *status quo* that means, for example, that Chorus can include comparisons between fibre and other broadband technologies in a way that is not permitted for retail service providers. MfR has an opportunity to correct this asymmetry but as it stands has missed the point.
8. Following the publication of the Commission's broadband marketing guidelines in 2022, Chorus and other LFCs sent a letter to the Commission suggesting a soft 'voluntary

commitment' to follow parts of the guidelines which they deemed were relevant to them<sup>5</sup>. LFCs have been able to pick and choose which rules they want to commit to, an approach that is not allowed for other industry participants, highlighting the asymmetric regulatory settings that currently exist. Indeed, Chorus has repeatedly breached those aspects of the guidelines that it has voluntarily committed to following. By failing to engage with this issue at all, MfR's review suggests it is unconcerned with a regulatory structure that applies unequally to different parts of the sector undertaking exactly the same activities and will tolerate continuation of this status quo despite obvious potential for consumer harm.

9. This potential for harm was recognised by the Commission most recently in its letter to Chorus following a Fair Trading Act investigation into Chorus' advertising (we've provided a copy with this submission). In its letter, the Commission states: 'We are disappointed that Chorus has engaged in advertising which we consider adds confusion, rather than clarity to consumer understanding of broadband services, and the applications which run across them' and notes that 'Chorus has not maintained' the principles it signed up to in its letter of commitment, adding that 'such commitments can have a place in the regulatory landscape, but to be meaningful, they must be practically applied, which does not appear to be the case.'<sup>6</sup>
10. In this respect, it is relevant that Chorus currently has a significant expenditure allowance of \$108.5m for product, sales and marketing. In a recent letter to One NZ, Chorus states: 'We are planning further marketing activities promoting the benefits of fibre, and you'll see those adverts in all the usual places soon.' Chorus' business strategy is predicated on increasing uptake of higher specification plans, e.g. >25% of end users on >1Gbps plans. Achieving this strategy will require Chorus to convince consumers to move to fibre plans that will simply exceed the needs of many. Putting these elements together, Chorus will very clearly continue to engage in direct-to-consumer advertising, talking about the benefits of fibre technology in a manner that is unconstrained by fibre regulation while retailers such as One NZ are most definitely subject to additional rules. There is no common-sense rationale for this distinct treatment, particularly in a scenario where Chorus is financially enabled and has the clear objective of upselling higher value fibre plans to consumers through continuing, well-funded marketing campaigns. It is therefore critical that Chorus and other LFCs are captured by a consumer protection code.

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<sup>5</sup> [https://comcom.govt.nz/\\_data/assets/pdf\\_file/0020/283601/Letter-to-Commerce-Commission-on-LFC-Commitment-6-May-2022.pdf](https://comcom.govt.nz/_data/assets/pdf_file/0020/283601/Letter-to-Commerce-Commission-on-LFC-Commitment-6-May-2022.pdf)

<sup>6</sup> Commerce Commission letter to Chorus, Fair Trading Act 1986: Compliance Advice, 9 July 2025

11. Chorus has previously argued that the retail service quality regime under Part 7 should not apply to fibre wholesalers because they are already subject to regulation relating to quality under Part 6 of the Telecommunications Act. They have claimed that including them under Part 7 scope would amount to double regulation. This argument is flawed. Part 6 covers only a small subset of activities compared to the scope of Part 7, which has been used to regulate a much broader range of service quality matters. Excluding fibre wholesalers may have made sense when Chorus and other LFCs were expected to have a narrow wholesale focus. However, that is clearly no longer the case. Today, fibre wholesalers engage in activities such as direct-to-consumer marketing that directly affect consumer experience. Applying Part 7 to them would not create duplication – it would close a regulatory gap that Chorus is currently exploiting, to the detriment of consumers.

#### *Alternative option*

12. We acknowledge that the current retail service quality framework has no single view of provider obligations. We agree that the framework could be updated so that there is a single TCF code and to clarify how the Commission and industry codes work together in the co-regulatory framework. In doing that, MfR should build on the current co-regulatory approach (which delivers better consumer outcomes in technical and dynamic sectors like telecommunications) and address concerns that the Act provides little guidance on where an intervention is warranted and therefore there is no logical end point to regulation.
13. We propose an alternative option, building on Option 2 and the current co-regulatory approach set out in the consultation paper. This alternative option would address the points raised above and result in a regulatory scheme that more fully protect consumer interests. This option is also supported by other major retail service providers, including Spark and 2degrees. Our preferred approach would incorporate the following changes:

#### **Scope**

14. The current section under Part 7 on retail service quality codes should be replaced with a section on consumer protection. The Act should make it clear that the TCF consumer code apply to all operators engaged in activities that affect end users, including fibre wholesalers.

#### **Frontier**

15. Section 233 of the Act currently states: ‘The purpose of a retail service quality code is to improve retail service quality to reflect the demands of end-users of telecommunications services.’ This is a very open-ended threshold. It does not specify whether demand must be held by a majority of end users and, based on practice to date, the demands of a substantial minority of end users have been considered a sufficient basis for action. There is no requirement to detail how requirements specified in a code would better address demand than measures that could be expected to be introduced through demand responses that should be expected in a competitive market.
16. In addition, there is no requirement to rigorously consider the costs of measures proposed against the benefits postulated. This has allowed the programme to evolve into what looks more like a “continuous service improvement” scheme (often based on subjective, partial assessments not compelling objective evidence) rather than a targeted regulatory tool. As noted above, there is no requirement for demand to reflect the position of a majority of end users, minority demand can and has been used to justify requests for industry to adjust

commercial practice. Evidence of demand has on occasion been unclear or anecdotal at worst. The purpose and threshold for intervention via the retail service quality/consumer protection framework needs to be more tightly defined. The Act should set a clear frontier that must be crossed before regulation is considered.

17. We recommend amending section 233 to require that the Commission must first establish that competition is not currently delivering effective outcomes demanded by the majority of telecommunications consumers and is unlikely to do so in the near term. This requires clear definition of exactly what demand is unmet. If this test is met, the Commission should then carry out a proportionate cost-benefit analysis before introducing new obligations. In practice, this would mean asking questions such as: Are the proposals proportionate? Are there other means of achieving the objective without intervention? Will they deliver outcomes that the market cannot deliver itself? Will the intervention effectively address the issue identified? Do the benefits clearly outweigh the costs? These should be set out as specific Commission considerations for exercising its consumer protection powers under the Act.
18. The potential for competition to deliver effective outcomes also needs to be considered with reference to any existing regulation that drives those outcomes. For example, generic consumer legislation places strict obligations on operators to disclose full and accurate information about their products. In determining where current regulation remains fit for purpose, it is expected that the review would consider whether multiple sources of overlapping regulation are necessary to achieve outcomes like transparency to end users. In other words, is additional regulation via Part 7 justified where it simply overlays legal requirements that already exist and where no compelling analysis has been done to show how and why this existing regulation is inadequate.
19. This issue goes squarely to the first principles framework that the Terms of Reference for this review said would be applied, in particular (for Part 7 intervention):
  - a. What is the rationale for intervention;
  - b. What is the proportionate regulatory response; and
  - c. What are the costs and benefits of regulation.
20. Addressing gaps in existing legislation is always preferable to layering duplicative requirements on operators. Additional drafting for section 233 should therefore reflect a principle that the purpose of a consumer protection code is to address consumer harms that cannot be addressed by existing regulation or by the operation of competition (noting that this consideration will not apply to monopoly wholesale providers).

### **Safeguards in the process**

21. Section 239, which sets out the process for making or amending Commission codes, should be amended to require the Commission to carry out a cost-benefit analysis (as proposed by MfR in a separate section) and to require it to test where proposed requirements overlap with existing regulation, including existing consumer law, and if so whether there is any necessity to overlay new regulation on existing rules.

### **Design**

22. Any future consumer protection code should continue to be developed by industry with the Commission having an oversight role to ensure that codes are consistent with other

legislation that the code has the function of supplementing. Removing industry from the code making process would likely result in requirements that are unworkable in practice and that deliver material cost and complexity for consumers rather than any benefit. Industry-led code development is the preferred approach in Australia, where industry develop consumer protection codes and they are then approved by the regulator, with the resulting code applying to all industry participants involved in activities covered by the codes (regardless of whether they contribute to development). As is the case today, we believe that any new consumer code should be a matter for industry self-regulation and enforcement in the first instance. This can be simply achieved by clarifying the relationship between codes and Commission endorsement as described above.

23. To give effect to this, the Act should be amended to enable the Commission to request the TCF to create a new or amend an existing consumer protection code. Initial scope of work in connection with any new consumer code would be for the TCF to consolidate existing Commission’s RSQ guidelines and TCF codes into a single draft document for Commission consideration. In exercising its power to approve the TCF codes, the Commission would need to apply the recommended s233 considerations (set out in paras 15-20 above). Upon Commission approval, the TCF code would apply to all operators, including non-TCF members. Consolidation provides consumers with a single authoritative source that they can readily identify and make sense of, consistent with good regulatory practice.

**Enforcement**

24. An effective compliance framework is an integral part of any code. The TCF consumer protection code would include compliance and enforcement provisions, which would need to be approved by the Commission.

**Clean-up of related sections**

25. If a single consumer protection code is implemented, section 234 of the Act (which enables the Commission to issue guidelines to industry) should be removed, as should section 235 (which enables the Commission to review industry retail service quality codes). Retaining these provisions would simply embed potential for overlapping and duplicative sources of regulation. This is not in the interests of consumers, who need to interpret and draw from multiple sources, and can’t be justified in terms of any principle of good regulatory practice or the objectives of the Terms of Reference.

*Advantages and disadvantages of our alternative proposal*

Advantages	Disadvantages
Simplified consumer protection regime, providing consumers with a single, authoritative source of rights and protections.	May not address all industry behaviour affecting end users, unless amendments are made to ensure every industry participant engaged in activities subject to the code – including fibre wholesalers - is bound by it.
Minimum standards would apply to all parties engaging in relevant consumer-facing activities (including fibre wholesalers), ensuring	Risk of increased regulatory burden on industry if legislative safeguards (e.g. clear thresholds, cost-benefit tests) are not developed and embedded in the Act.

consistency and enhancing consumer protections.	
Cost benefit analysis results in the Commission imposing less prescriptive regulation, resulting in a greater ability for retail markets to innovate competitively, and lower compliance costs, which would free up of business resources to work on competitive market initiatives.	Possibility of overlap or inconsistency with existing consumer protection laws if legislative drafting is not carefully aligned.
Greater clarity and certainty for industry. The current retail service quality framework is too open-ended; a tighter statutory purpose and thresholds for intervention reduce the risk of arbitrary or anecdotal requirements.	
Improved alignment with broader consumer law, reducing duplication and encouraging regulators to consider existing protections before adding new obligations.	
Co-development with industry ensures codes are practical, proportionate, and take account of commercial realities, reducing the risk of poorly designed rules.	
Approach is consistent with good international practice (e.g. Australia), providing assurance of regulatory oversight while leveraging industry expertise.	

*Unintended consequences of MfR's proposed Option 2*

26. The consultation asks whether there could be any unintended consequences (to consumers or industry) by creating a single enforceable Commerce Commission code for regulating retail service quality. We foresee the following unintended consequences if the Act is amended to require the Commission to implement an enforceable retail service quality code without appropriate legislative guardrails:

- a. Increased costs and regulatory burden on industry without materially improved outcomes for consumers. Increased regulatory costs will be passed through to end users through higher charges.
- b. Possibility of overlap or inconsistency with existing consumer protection laws if legislative drafting is not carefully aligned.
- c. Risk of the code being overly prescriptive, which could undermine innovation and differentiation across operators and so impact competition by restricting operators' ability to differentiate their services.
- d. Increased compliance costs on industry via more onerous reporting obligations.
- e. Need for increased resources for the Commission for enforcement activities, which will be passed through to industry via the Telecommunications Regulatory Levy (and ultimately to consumers using telecommunications services through higher prices).

- f. Limited consumer benefits if fibre wholesale providers engaging in direct-to-consumer activities (e.g. marketing) continue to be excluded from consumer protection requirements.

### **Fibre regulations – general comments**

27. MfR is consulting on options that would roll back elements of the fibre regulatory framework. We are strongly opposed to any relaxation of these safeguards. Fibre is not an ordinary product; it is the essential plumbing of the digital economy. Removing key protections risks higher prices, reduced competition, and creating challenges currently seen in the electricity market. We have provided views on each proposal below. In this section, we provide a general overview of the risks around unwinding the fibre regulatory regime.

*Fibre is still a monopoly service and needs proper safeguards*

28. Fibre regulation was the foundation for broadband competition after Telecom’s separation – and is why New Zealand now has more than 90 broadband providers. Undoing this risks shrinking competition, raising prices and the wider problems we’re currently seeing in other sectors like electricity.
29. Fibre is the dominant broadband technology in New Zealand, accounting for around 74% of all connections. Chorus has successfully positioned it as the “gold standard” for internet access. That dominance makes it extremely difficult for alternative technologies to provide an effective competitive check. Support for deregulation based on competition from alternative access technologies wouldn’t be in line with Chorus’ own prior arguments and campaigns claiming superiority of fibre compared to these alternatives.<sup>7</sup>
30. Fixed wireless access (FWA) and satellite are often held up as alternatives, but they are not a substitute at scale. FWA in particular is constrained by the need to share capacity with mobile services. Operators must carefully balance the demands of mobile and FWA customers to preserve service quality. Data volumes on mobile networks are growing exponentially, meaning spare capacity is quickly absorbed. Richard Feasey’s report on fibre regulation is clear that while FWA can play a role for some households, it does not provide a meaningful competitive constraint on fibre pricing and will remain a relatively weak substitute for the foreseeable future.<sup>8</sup> Relaxing the existing rules on Chorus in particular, which are rules that Chorus itself actively sought through 2018 amendments to the Telecommunications Act, would undermine fundamental structural settings of the telecommunications market on

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<sup>7</sup> For example, Chorus has run multiple advertising campaigns implying that consumers will experience buffering and glitches with broadband if they are not using fibre technology.

<sup>8</sup> [https://comcom.govt.nz/data/assets/pdf\\_file/0026/366326/Feasey-NZ-fibre-regime-final-report-20-February-2025.pdf](https://comcom.govt.nz/data/assets/pdf_file/0026/366326/Feasey-NZ-fibre-regime-final-report-20-February-2025.pdf)

which the existing highly competitive retail services market is based. While suggestions made by Chorus and LFCs that changes to this regulatory scheme are costless and have no effect on end users may be superficially attractive, any acceptance of these submissions is to misunderstand how existing market features operate and how retail service competition is maintained.

31. Meanwhile, LFCs like to portray themselves as small, regional players. But in reality, each is a monopoly in its territory. Once a fibre network is built in an area, households and service providers have no alternative wholesale fibre provider. As Feasey observed, the fundamental economics of fibre mean it will remain the superior and cheapest way to deliver large volumes of data, and alternative technologies will not discipline monopoly pricing in any meaningful way.<sup>9</sup>
32. New Zealand's fibre regulatory framework is not out of step with other jurisdictions. In the UK, Ofcom continues to designate Openreach as a fibre monopoly with 'significant market power', despite extensive fibre rollout by challengers. In Australia, NBN remains subject to monopoly-style regulation.
33. Furthermore, the consultation paper suggests that because the UFB build is complete and most Crown funding has been repaid, regulatory obligations may no longer be needed. This is premature. Chorus is actively lobbying for new rounds of Crown co-funding to extend the fibre footprint, and its proposal included in the Infrastructure Commission's Infrastructure Priorities Programme relies on external funding.<sup>10</sup> If the Government is expected to contribute again, it is only fair that consumers continue to be protected by strong regulation.

*Chorus has a history of seeking regulatory change*

34. Chorus has long argued that regulation is 'not fit for purpose' whenever it constrains its commercial ambitions. From its challenges to IPP benchmarking through to recent criticisms of the regulatory regime under Part 6 of the Telecommunications Act, Chorus has repeatedly sought to shift the regulatory playing field. Anyone conducting a review of regulation should be alert to this before removing features of existing regulation that are central to delivering affordable, high-quality broadband for consumers.

*Fibre deregulation risks the same problems we're currently seeing in electricity*

35. The proposals underestimate how interconnected the different fibre safeguards are. Anchor products, unbundling, geographically consistent pricing, and wholesale-retail separation

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<sup>9</sup> Ibid.

<sup>10</sup> <https://tewaihang.govt.nz/our-work/infrastructure-priorities-programme>

form critical foundations for competition. Removing any single one of them piecemeal is like playing Jenga: removing any one of them may collapse the existing tower of effective competition and enhance the ability to exercise market power. If there is a desire for a different regulatory framework for fibre, then this needs to be considered through a developed process that considers all elements of the ecosystem in detail, not by a truncated 3-month analysis that can only skim the surface and can't properly assess the full implications unpicking different parts of regulation in isolation.

*The current framework is working*

36. The fibre regulatory regime was carefully designed as part of the structural separation of Telecom and the UFB initiative. The current framework is working: Chorus earns steady, fair returns while consumers benefit from affordable, high-quality services. Regulation on Chorus and other LFCs is sensible and proportionate, and not out of step with what we see internationally. As Feasey concludes in its report on fibre regulation, the competitive constraints on fibre are weak and are likely to remain so; unwinding regulation now would be contrary to both evidence and international precedent.<sup>11</sup>

## Geographically Consistent Pricing (GCP)

*One NZ position*

37. We **disagree** with the recommendation that the Commerce Commission should review and assess the effectiveness of GCP. GCP is a core safeguard in monopoly regulation, and its removal would expose consumers and the industry to serious risks.

*Rationale*

38. GCP is a well-established tool in monopoly regulation. It prevents monopoly providers from charging different prices in different areas based on the level of local competition – a practice known as “pocket pricing.” In the absence of GCP, Chorus could raise prices in regions where fibre is the only viable option while cutting prices in areas where it faces a greater risk of losing customers. The result would be consumers facing a “postcode lottery” for fibre prices.

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<sup>11</sup> [https://comcom.govt.nz/\\_data/assets/pdf\\_file/0026/366326/Feasey-NZ-fibre-regime-final-report-20-February-2025.pdf](https://comcom.govt.nz/_data/assets/pdf_file/0026/366326/Feasey-NZ-fibre-regime-final-report-20-February-2025.pdf)

39. GCP is the norm for monopoly utilities. Other regulated sectors have long recognised that leaving regional monopolies free to set localised prices leads to unfairness and inefficiency:

- a. Postal services: New Zealand Post, like postal operators worldwide, is bound by a ‘universal service obligation’ that requires the same stamp price for delivering a letter to central Wellington as to rural Northland. Without this, remote customers would pay far more.
- b. Electricity transmission: Transpower’s charges for using the national grid are regulated and applied consistently across the country. Local differences in cost are not passed directly to households, recognising that all consumers benefit from a national grid.
- c. Telecommunications in Australia: NBN is required by law to charge the same wholesale broadband prices nationwide, regardless of location. The Australian Competition and Consumer Commission has called this “a central pillar” of fair broadband access.

40. Richard Feasey, in his 2025 report for the Commission, also stressed that GCP serves two purposes: ensuring households are not subject to unfair price differences based on location, and preventing regulated firms from using selective pricing to undercut competitors in contested areas while raising prices elsewhere. He recommended that GCP be maintained in New Zealand ‘for the foreseeable future’ on both fairness and competition grounds.<sup>12</sup>

41. Removing GCP would create material risks for both market structure and consumers:

- a. Consumers in some regions, particularly rural and regional New Zealand, would face higher fibre prices than those in urban centres. This would create inequitable outcomes and undermine the purpose of the UFB programme, which was built on the principle of universal, affordable access.
- b. While Chorus may save costs by being able to set regionally targeted prices, these costs would simply be shifted onto retail service providers. RSPs would be forced to create multiple fibre retail plans (e.g. one for Auckland, another for rural Waikato). This added complexity would increase provisioning costs and ultimately flow through to consumers.

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<sup>12</sup> Ibid.

- c. For consumers, the result would be confusion and mistrust. A family might see national advertising for “\$90 a month fibre” only to discover that in their town it costs \$110. It would be like a supermarket advertising national special, but at the checkout customers in some suburbs find the prices are higher than advertised.
42. The risks clearly outweigh any potential benefits. It is not prudent to direct scarce regulatory resources into reviewing GCP when the risks associated with tinkering with this regulation are substantial. Regulatory resources are better spent on considering deregulation where it is genuinely justified and GCP is not one of those areas. If the Government nonetheless decides a review is needed, it should be undertaken by MBIE, not the Commission. GCP is fundamentally a policy matter, not a technical regulatory question.
43. We also do not accept the argument in the consultation document that GCP potentially undermines incentives for fibre expansion by limiting the costs that LFCs can recover. Under the existing Maximum Allowable Revenue (MAR) model, Chorus is entitled to recover costs across its fibre asset: but there is a general requirement that these costs should align with those incurred by a prudent operator not having a monopoly position. Moreover, there are wider policy and social objectives at play in connection with GCP. It makes particular sense in a system where networks have been built with the significant benefit of government funding with the implicit assumption that the resulting fibre monopoly would not discriminate between categories of customers. Just as with postal services or electricity transmission, consumers (as taxpayers) have contributed to a national network on the basis that access and prices would be consistent. If further Crown funding is used to extend fibre coverage – something Chorus itself has been lobbying for – it would be unacceptable to allow Chorus to raise prices in higher-cost regions of regional New Zealand while still receiving public money.

## Basic fibre services

### *One NZ position*

44. We **disagree** with the recommendation to amend the Telecommunications Act 2001 to require the Commerce Commission to review anchor services and consider the option of a phased repeal as part of their next regulatory reset in 2027.

### *Rationale*

45. Anchor products are a cornerstone of the fibre regime. They provide a fixed reference point for price and quality, acting as a safeguard against monopoly pricing. Without an anchor product, Chorus would have no regulatory baseline against which its other wholesale services are constrained.
46. The consultation paper itself acknowledges that ‘the rules around anchor service pricing and quality might be supporting competition by helping keep prices lower for better services.

There is a risk that removing these rules increases prices for consumers.<sup>13</sup> This risk is not hypothetical – it is real. Consumers would be left exposed if anchor obligations were weakened or removed.

47. When the current framework was introduced, Parliament recognised the importance of anchor services to ensure consumers could access entry-level fibre products at affordable prices, and to set a benchmark that anchors the price and quality of the broader portfolio of services.<sup>14</sup> That need has not gone away. As Feasey’s 2025 report explains, anchor products in New Zealand served two statutory purposes: first, to ensure no end user was made worse off by the transition from copper to fibre; and second, to act as a pricing constraint on other fibre services. He concluded that while the role of anchor products has changed as copper is decommissioned, they still provide an important safeguard and should be retained as a form of social tariff that ensures affordability.<sup>15</sup>
48. Removing anchor product regulation would hand Chorus the ability to raise fibre prices without real constraint. The MAR under the Part 6 framework is not a sufficient safeguard – Chorus has consistently earned below the cap, which means there is headroom to increase prices if anchors are removed. Without an anchor product, Chorus would be free to lift its entry-level offers, pulling up the entire price ladder with them. As previously emphasised, alternative technologies are not strong enough to constrain Chorus’ pricing power.
49. Requiring the Commission to review anchor products with a presumption of repeal would not be an efficient use of regulatory resources. Regulatory effort should be directed towards areas where there is genuine evidence of over-regulation or competitive constraints, not towards dismantling core safeguards.
50. If the Government nonetheless decides to proceed with this recommendation, the review should not be limited to considering repeal. It should also examine whether different specifications of anchor services would be more suitable for the next phase of the market, for example setting the anchor at the most widely adopted product tier. This would be consistent with Feasey’s suggestion that anchor services may need to evolve but should continue to function as a backstop for affordability and fair pricing.<sup>16</sup>

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<sup>13</sup> Ministry for Regulation, Telecommunications Sector Regulatory Review - Consultation

<sup>14</sup> <https://selectcommittees.parliament.nz/view/SelectCommitteeReport/f6791f21-1e29-454f-b08f-8f6545a0eda2>

<sup>15</sup> [https://comcom.govt.nz/\\_data/assets/pdf\\_file/0026/366326/Feasey-NZ-fibre-regime-final-report-20-February-2025.pdf](https://comcom.govt.nz/_data/assets/pdf_file/0026/366326/Feasey-NZ-fibre-regime-final-report-20-February-2025.pdf)

<sup>16</sup> Ibid.

51. In short, anchor products remain a critical safeguard for consumers. Removing them would risk higher prices, reduced affordability, and greater complexity in the fibre market – all for little or no benefit.

## Layer 1 unbundling

### *One NZ position*

52. We support **Option 1: Status Quo – Retain Layer 1 unbundling requirements.**

### *Rationale*

53. Layer 1 unbundling is a fundamental building block of the fibre market structure. Removing it would take away a core principle of monopoly regulation: ensuring competitors can access essential infrastructure at fair terms. It was introduced so that retail service providers could compete not only on reselling Chorus' bitstream services, but also by innovating and differentiating at deeper layers of the network.
54. MfR suggests that because Layer 1 unbundling has not been taken up, the obligation is outdated. This is the wrong conclusion. The lack of uptake is not because of a lack of interest, but because the commercial terms set by Chorus are not viable. This is a critical misunderstanding of the position and the role that Layer 1 unbundling can play in unlocking new models of competition.
55. In 2019, Vodafone and Vocus sought access to Chorus' Layer 1 services. However, the commercial terms offered by Chorus made this unviable. Chorus' proposed price for unbundled fibre – around \$62 per line – was higher than the cost of a full bundled bitstream service. The outcome would have been like paying more for one of the ingredients of a dish than for the entire meal: the price offered by Chorus made competition impossible. Independent analysis by Network Strategies confirmed at the time that a compliant cost-based price should have been closer to \$27-\$30 per line. We have provided correspondence between Vodafone/Vocus and the Commission alongside this submission which include full detail on the issue.
56. The Commission itself acknowledged at the time that the principle of equivalence of inputs requires sufficient economic space between Layer 1 and Layer 2 prices so that an efficient competitor could realistically replicate Chorus' Layer 2 services. Yet Chorus' pricing allowed no margin for access seekers, denying the possibility of competition.
57. The issue went beyond price. Chorus' non-price terms further undermined unbundling: refusing access to existing ONTs, denying access to both distribution fibres, restricting cabinet access, and imposing provisioning delays of up to 95 days compared to 30 days for bitstream. These conditions made unbundling commercially and technically unattractive.
58. Unbundling was intended as a tool to enhance competition and service differentiation at Layer 2. In his report on the fibre regime, Feasey recognised that while take-up has been limited to date, that reflects the way the service was specified and priced, not a lack of policy

merit. Removing the requirement now would cement Chorus' dominance and extinguish any prospect of meaningful infrastructure-based competition over fibre.<sup>17</sup>

59. The advantages of removing Layer 1 unbundling regulation *do not* outweigh the disadvantages. The one disadvantage of proposed change listed in the consultation document says that it would be '[d]ifficult to restore obligation if found to be needed in the future to preserve competition'. This risk is real and not worth the 'reduced regulatory complexity and uncertainty' which MfR considers as the advantage of change.
60. The consultation document asks if there would be any unintended consequences of repealing all Layer 1 unbundling obligations. The answer is 'yes' and these are as follows:
- a. Loss of the only regulatory lever that allows competitors to innovate below the bitstream layer.
  - b. Undermining of the model that was a cornerstone of the UFB design.
  - c. Making it near-impossible to reinstate unbundling later.
61. We also do not support Option 3 – asking the Commission to consider repeal at the 2027 reset. The Commission has already acknowledged unbundling's importance to the fibre regulatory regime.<sup>18</sup> If MfR nonetheless proceeds, any such review should be undertaken by MBIE, as this is a fundamental policy issue rather than a technical regulatory question.
62. In short, the real lesson from the past decade is not that unbundling has failed, but that the implementation has been flawed. The answer is to improve it – for example, revisiting the specification of PONFAS, requiring genuine equivalence of inputs, and ensuring commercial terms that allow efficient competitors to enter – not to repeal it.
63. Unbundling remains a vital safeguard for consumers and for the long-term health of New Zealand's fibre market. Removing it would undermine the regime and erode the competition that underpins affordable, high-quality broadband.

## Exemption process for services above Layer 2

*One NZ position*

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<sup>17</sup> Ibid.

<sup>18</sup> Letter from the Commerce Commission to Vodafone and Vocus, 4 June 2019

64. We support **Option 1: Status Quo – retain current process.**

#### *Rationale*

65. Wholesale/retail separation has been the cornerstone of New Zealand’s fibre market structure since the separation of Telecom. It was also the defining feature of the UFB initiative, ensuring that LFCs would remain neutral wholesale providers and that retail competition would flourish on top. MfR has stated from the outset of this review that wholesale/retail separation is out of scope. Yet the proposal to ‘streamline’ the exemption process by fast-tracking certain services is, in reality, tinkering with that separation. In addition, absent any requests from wholesalers for exemption that have tested the existing process and show that it is unduly slow or complex such that it needs to be streamlined, there is no evidence base for suggesting that existing provisions needs to be changed.
66. The consultation document proposes that the Commission could more quickly approve exemptions for what it calls ‘low risk or non-core services.’ But how do we define those categories? What looks non-core today could easily become central to competition tomorrow. Cloud services and content delivery, for example, were once considered niche add-ons; today they are central to the digital economy. Allowing exemptions without full scrutiny risks undermining the neutrality of the wholesale layer. What clearly is at play here is enabling geographic monopolists with market power the ability to expand into adjacent markets, including through use of revenues derived from their ‘home’ markets. MfR should be extremely cautious about making recommendations that more readily enable this.
67. Stakeholder consultation must remain part of the process. Short-circuiting it may save time in the short term, but it risks unintended consequences in the long term.
68. The consultation document asks if there would be any unintended consequences of streamlining the exemption process. The answer is yes, and these include:
- a. Risk of services being approved that, in practice, are retail activities.
  - b. Risk of undermining investor and competitor confidence in the integrity of wholesale/retail separation.
  - c. Risk of sparking a gradual unwind of the market structure, leading to the same structural problems we currently see in electricity.

### **Fibre deregulation review process**

#### *One NZ position*

69. We support **Option 1: Status quo – retain two-step process.**

#### *Rationale*

70. The two-step process for fibre deregulation reviews is a standard feature of New Zealand’s regulatory framework. It is also applied in other contexts, such as Mobile Termination Access

Services (MTAS), co-location, and number portability. Any change to simplify the fibre review process would need to be mirrored in other areas where the Commission has a statutory duty to periodically consider deregulation. Selectively altering the process only for fibre would risk regulatory inconsistency and undermine confidence in the broader framework.

71. The consultation asks if there would be any unintended consequences of adopting a single step process for fibre deregulation reviews. We think the following need to be considered:
- a. **Premature reviews:** Deregulation could be considered too early, without sufficient evidence of sustained competitive constraints. A single-step process could force the Commission into repeating complex reviews with little prospect of different outcomes.
  - b. **Regulatory burden:** Full deregulation reviews are resource-intensive for both the Commission and industry. The most recent fibre deregulation review required extensive information requests and consultation rounds. For industry participants like One NZ, responding has meant devoting significant staff time and resources away from other priorities.<sup>s 9 (2)(b)(ii)</sup>  
[REDACTED]  
[REDACTED] Requiring this every cycle, without first establishing reasonable grounds, would create unnecessary compliance costs.
  - c. **Erosion of confidence:** A 'one-step' process could be seen as making deregulation the default, rather than a carefully considered decision. This risks undermining investor and consumer confidence that the Commission will only deregulate when the evidence clearly shows monopoly constraints no longer exist.

72. In practice, the current two-step process strikes the right balance. It ensures that deregulation is not ignored where competitive conditions genuinely justify it, but it also provides a filter to avoid wasting resources on full reviews where market conditions are unchanged. It is both cautious and efficient – this approach is needed when dealing with monopoly infrastructure at the heart of the digital economy.

### Governance settings in Local Fibre Company constitutions

73. One NZ does not have a strong preference on governance arrangements in LFC constitutions. Decisions relating to the Crown's protection of its UFB investment interests are ultimately matters for the Crown. However, if changes to the constitutions are made, it is essential that LFCs are fully brought under the fibre regulatory framework in the Act, with all relevant obligations carried across. Maintaining these safeguards is critical to protecting consumers and preserving the competitive retail market structure built on top of the LFC monopolies.
74. We recommend that, if the Government proceeds with this proposal, it undertakes consultation with relevant stakeholders on the detail. Without careful design, there is a risk that important regulatory safeguards could be weakened, with unintended consequences for the wider market.
75. The consultation asks if there would be any unintended consequences of removing the Government Share. There could be unintended consequences if the relevant regulatory safeguards, including line of business restrictions and open access requirements, are not appropriately transferred to legislation, including:

- a. LFCs being able to operate outside of the established fibre regulatory framework, weakening key consumer protections.
- b. Unequal treatment between Chorus and other LFCs, undermining regulatory consistency.
- c. Reduced transparency and oversight of LFC performance, particularly as they are not subject to price-quality regulation.
- d. Risks to the stability of the broader market structure.

### Ownership restrictions in Local Fibre Company constitutions

76. One NZ does not have a strong view on the proposed changes to ownership restrictions in LFC constitutions. However, it is important to carefully consider the implications for the Crown, given its role as an investor in these assets through the UFB programme. Existing legal mechanisms may provide sufficient protection, but this should be tested before any change is made.
77. Fibre is not an ordinary product – it is the essential plumbing of the digital economy. Ongoing Crown oversight may be particularly important if further public funding is provided for fibre expansion, as has been proposed by Chorus. Any change to ownership restrictions should therefore be considered in light of both the Crown’s past investment and the possibility of future public contributions.

### Legacy regulatory obligations in telecommunications

78. One NZ supports the streamlining and modernisation of legacy regulatory obligations. The existing Deeds are complex and contain significant detail, so any changes should be approached carefully. It will be important for the Government to consult fully with stakeholders before making adjustments, to ensure that critical safeguards are not lost and that the modernised framework remains clear, workable, and effective.

### Consideration of costs and benefits

#### *One NZ position*

79. We support **Option 3: Sectional purpose statement.**

#### *Rationale*

80. We agree with MfR’s assessment that, while the Commission’s oversight powers are essential, the rules are currently drafted in very broad terms. This can result in processes that are disproportionate or unclear in scope. As MfR itself notes, ‘more consideration could be given to ensure the work the Commerce Commission undertakes, e.g. information gathering, is proportionate and transparent.’ We strongly support the intent behind this statement – but the recommendation could be more specific. In particular, when performing discretionary activities that are permitted but not required by legislation, it is critical that the Commission rigorously and transparently explains why the action it is proposing to take is necessary, how

it proportionately addresses the specific issue or problem identified, and why the anticipated benefits of the action exceed its costs.

81. Requiring the Commission to consider costs and benefits as part of its regulatory processes is good regulatory practice. However, we believe a targeted approach – rather than a blanket requirement – is the most practical way forward. The approach that we proposed would not require a detailed cost–benefit analysis to be performed for every regulatory task. Imposing a blanket requirement in every instance would create processes that are slow, bureaucratic and burdensome, without materially improving outcomes. By contrast, requiring such analysis when the Commission is extending activities beyond what is strictly required by law, including where it can choose between a scale of non-intervention to extremely wide-ranging intervention (including where it imposes new retail service quality codes or undertakes major monitoring programmes) would deliver the benefits of discipline and transparency without unnecessary costs.
82. Those parts of the Act providing for information collection and monitoring, and retail service quality interventions, should be amended to include clear threshold tests for the use of discretionary powers and specific factors that should be considered when exercising discretion. This could include a clear legislative direction that the Commission must take account of proportionality and weigh up costs and benefits before imposing new requirements.
83. A cost–benefit framework should ask the following practical questions before regulatory intervention is pursued, or new information requests are issued:
  - a. Is there clear evidence of harm to consumers or competition that the intervention is intended to address?
  - b. Could the desired outcomes be delivered by existing consumer law or competition rather than new sector-specific rules?
  - c. Are the expected benefits of the intervention likely to outweigh the direct and indirect compliance costs for industry?
  - d. Is the proposed intervention proportionate to the scale and severity of the problem?
  - e. Are there alternative, less burdensome approaches that could achieve the same outcome more efficiently?
  - f. Has sufficient consultation been undertaken with affected stakeholders to test both the problem definition and the practicality of the proposed remedy?
84. Embedding these principles in legislation would ensure that the Commission remains accountable for the proportionality of its regulatory activities. It would also create greater certainty for industry participants, who need to be confident that requests for data or new obligations will be justified, targeted, and aligned with consumer benefit.
85. One of the questions in the consultation paper asks whether sectional purpose statements should extend to ‘information disclosure (fibre services market monitoring)’. If this refers to the information disclosure (ID) obligations applying to LFCs under Part 6 of the Act, we do not support applying a cost–benefit test to those requirements. Information disclosure is not a “nice to have” add-on – it is a cornerstone of effective monopoly regulation. Its purpose is

not to deliver immediate measurable benefits, but to provide ongoing transparency that allows the regulator, retailers, and consumers to see how monopoly providers are performing.

86. Introducing a cost-benefit hurdle for fibre services ID would risk undermining the entire framework. By design, the benefits of disclosure are broad and long-term – enabling benchmarking, deterring anti-competitive behaviour, and building trust in the regulatory system. They may be difficult to quantify in a single analysis, but they are no less critical. For LFCs that are not subject to price-quality regulation, ID is one of the few levers available to provide visibility and accountability. Weakening it would be a step backwards.
87. It is also worth noting that when the Government introduced ID requirements into legislation, a full regulatory impact statement was carried out to assess costs and benefits at that time. These obligations were not imposed lightly. To now add an additional cost-benefit filter risks second-guessing decisions that have already been tested through a rigorous policy process.

## TDL

88. The consultation paper outlines a range of potential models for reforming the TDL. It is good to see that industry's concerns around the complexity of the current regime have been considered and taken account in MfR's recommended reforms. We support a simpler model that would enable levy costs to be made more transparent to end users and to allow transparent presentation of levies in the same way as now occurs in sectors like electricity and fuel.
89. However, it is critical that the reform is carefully designed. Some of the options outlined in the consultation could, if adopted without sufficient consideration of all issues involved, lead to outcomes that are less efficient and more complex than the regime we have today. The timing constraints of the MfR review means that there are limitations to considering these issues in more detail under this process. The most effective next step to achieve real benefits would be for MfR to recommend that the relevant sections under Part 3 of the Telecommunications Act are amended to remove the specifics of how the TDL is calculated and allocated from primary legislation. Instead, the Act should simply state these details will be set out in regulations. The current regime would continue to apply until the regulations are developed. MBIE should then be tasked with developing the regulations in collaboration with industry, which should be required to give effect to specific key principles, including:
  - a. **Simplified allocation methodology:** The method for calculating and allocating the levy should be straightforward, with liability set in advance rather than retrospectively, enabling providers to pass through costs to end users in a transparent way.
  - b. **Reduced compliance burden:** The auditing requirements should be removed to reduce compliance costs while maintaining appropriate oversight using existing legislative mechanisms.
90. MBIE is already progressing changes to move the overall TDL amount and the process for changing it from legislation to regulation under a separate workstream. Making TDL calculation and allocation rules by regulation would be consistent with that approach, and with the model already used for the Telecommunications Regulatory Levy (TRL).

### *How revenue is defined*

91. We support an alternative option: revenue definition should be determined through the MBIE process recommended above and set out in regulation.

### *Method for calculating the levy*

92. We support an alternative option: the method for calculating the levy should be determined through the MBIE process recommended above and set out in regulation.

### *Auditing requirements*

93. We support an alternative option that builds on Option 2. The requirement for financial information to be externally audited should be removed. External audit would serve no useful purpose if regulations were amended simply to allow the value of a levy to be collected from each end user or connection to be specified. Government will have up to date information about each operator's connection numbers via the Commission's AMR processes (and this data is provided to the Commission subject to a legal obligation as to truth and accuracy). Provided operators application of a levy is consistent with this data, then there is no issue and no case for imposing the additional cost and complexity of external audit. We would support giving the Commission a power to investigate if there are reasonable grounds for suspecting that any operator is not properly applying a levy.
94. We do not support the suggestion under Option 2 that the Commission could also require Director certification to ensure the onus is still on companies to provide accurate information. The inevitable consequence of this requirement will be that companies will end up having to carry out external audits to give Directors confidence that they are signing off on accurate information and protect them from personal liability. This would result in a more burdensome process than what we have today.

### *Should the levies be merged*

95. We support an alternative option that builds on Option 2. The TDL should be merged with the portion of the TRL that funds the Commission's general enforcement activities. The portion of the TRL that currently funds regulation of fibre should remain separate and continue to be funded by Chorus and other LFCs. This will ensure that retail service providers don't end up subsidising the regulation of fibre companies.
96. As set out in our previous submission on the scope of the MfR review, we also recommend that Telecommunications Operators (Commerce Commission Costs) Levy Regulations 2011 are amended to enable the Commission to recover costs for mandatory activities only via the TRL. Currently, the TRL allows the Commission to recoup costs of discretionary activities and essentially operate to make these activities costless for the Commission (although clearly they are not for industry). This creates perverse incentives: the Commission simply passes the bill for regulation and has no incentive to reduce regulatory activity or redirect resources from telecommunications regulation to other areas that need more attention. Industry pays twice: once for the Commission's costs associated with these activities and

again for its own costs of responding to these actions. This dynamic also skews incentives to focus on higher priority matters across the Commission's entire portfolio of work across all sectors of the economy, as recognised by the Government in recent announcements made<sup>19</sup>. There is an opportunity to fix this issue through this MfR process.

#### *Who is required to pay the levy*

97. We support an alternative option: the decision on who is required to pay the levy should be reserved for the MBIE process, as set out in the introduction of this section. This question requires careful consideration to ensure that the new approach is workable. For example, while shifting levy responsibility entirely to retailers would appear to be the simplest way to enable a more transparent pass through of costs to end users, questions around how should companies that are both wholesalers and retailers be treated and how do we ensure that levy allocation is fair and equitable need further consideration. The timing constraints of the MfR review means that there are limitations to considering these issues under this process.

#### **Future of the Telecommunications Service Obligations arrangement**

98. We support Option 2: Phase out the requirement to provide home telephone service. The consultation raises some valid questions around ensuring access to basic telecommunications services and Option 3 raises some interesting ways in which this issue could be addressed once copper services are removed. However, these are ultimately policy questions that relate to affordability, not the regulation to provide services of specific quality under the TSO. We consider that the MfR review is not the right process for considering these policy questions.

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<sup>19</sup> <https://www.mbie.govt.nz/business-and-employment/business/competition-regulation-and-policy/reviews-of-the-commerce-act-1986/refreshing-competition-settings>

9 July 2025

██████████  
General Counsel  
Chorus Limited

By email to: ██████████

Dear ████████,

### **Fair Trading Act 1986: Compliance Advice**

1. The Commerce Commission (**Commission**) has been investigating Chorus New Zealand Limited (**Chorus**) under the Fair Trading Act 1986 (**Act**). The investigation was opened in response to complaints from industry about Chorus' 'freeze face' marketing materials.
2. We have now completed our investigation and are writing to inform you about matters that we consider raise concerns under the Act, and remind Chorus of the commitments it made to the Commission, in respect of alignment with the outcomes and principles of the Marketing Alternative Service Guidelines.
3. In summary, the Commission considers that Chorus, through its marketing materials, may have engaged in conduct which is potentially liable to mislead the public about the suitability for a purpose, and characteristics of fixed wireless and fibre broadband services.
4. Having considered the factors set out in our Enforcement Response Guidelines,<sup>1</sup> we have decided to conclude this investigation by issuing this compliance advice letter to Chorus for the possible breaches of section 11 of the Act.
5. The purpose of compliance advice is not to provide legal advice but to educate businesses, traders, and individuals about Fair Trading obligations; and to assist in the modification of behaviour and compliance with the Act, to avoid a potential breach in the future. We recommend you seek legal advice about your legal obligations and encourage you to regularly review your compliance procedures and policies.

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<sup>1</sup> The Commission's Enforcement Response Guidelines are available on the Commission's website [here](#).

### The Commission's role

6. The Commission is responsible for enforcing and promoting compliance with laws that promote competition in New Zealand, including the Fair Trading Act. We identify matters to investigate through various sources, including reports to us, and our own research and market monitoring.
7. The Commission is also responsible for improving retail service quality under Part 7 of the Telecommunications Act.

### The investigation

8. The Commission opened an investigation into Chorus in July 2024 following complaints from industry that Chorus was engaging in advertising which misrepresented the characteristics of both fixed wireless, and fibre broadband services.
9. We investigated marketing materials from Chorus headlined 'Farewell the freeze face with fibre', with a view to establishing whether this text and associated imagery was liable to mislead consumers about the suitability of fixed wireless and fibre services, specifically for the purpose of video calling. Examples of the advertising material are provided as **Attachment A** (postcard) and **Attachment B** (letter).
10. During our investigation we gathered information from Chorus on a voluntary basis to understand its approach to the advertising. In its response, Chorus explained that:
  - 10.1 it considers its advertising is supported by:
    - 10.1.1 reporting information from the Commission's Measuring Broadband New Zealand program (MBNZ), which describes the performance of fixed wireless and fibre broadband services, and factors which contribute to the relative performance of each service; and
    - 10.1.2 information in the Commission's Annual Monitoring Report.
  - 10.2 in its view, the advertising delivers a humorous message that an unsatisfactory video calling experience is more likely on fixed wireless than on fibre and that video calls do not lag or freeze in the way depicted when using fibre; and
  - 10.3 courts have recognised that in humorous advertisements ordinary and reasonable viewers will make significant allowance for what is readily discernible as exaggeration and parody aimed at making advertising entertaining and engaging.

### The law - section 11 - misleading conduct in relation to services

11. Section 11 of the Act states:

*No person shall, in trade, engage in conduct that is liable to mislead the public as to the nature, characteristics, suitability for a purpose, or quantity of services.*

### The Commission's view

12. The Commission has formed a view that Chorus' freeze face advertising may give rise to a possible breach of section 11 of the Act.
13. We consider Chorus' approach of drawing attention to aspects of fixed wireless network architecture and service delivery, without sufficient information about aspects of video calling which affect fibre and fixed wireless in the same way, means that there is potential for consumers to be misled about the suitability of fixed wireless for video calling, and the characteristics of fibre services.
14. Our view is based on:
  - 14.1 Chorus making the headline claim 'Farewell the freeze face with fibre', which appears inconsistent with the reality that consumers will sometimes experience 'freeze face' when using fibre, due to 'freeze face' sometimes being experienced for reasons other than the underlying technology used to deliver broadband services;<sup>2</sup>
  - 14.2 the imagery and headline claim providing a stronger impression than that of consumers being more likely to experience freeze face issues with fixed wireless/less likely to experience freeze face issues with fibre;
  - 14.3 the advertising giving the impression that during peak hours, fixed wireless services will, at least on some occasions, degrade in ways that impact the ability of consumers to complete video calls, due to the shared nature of the bandwidth available to end-users. Based on MBNZ testing information, our research and a lack of consumer complaints about the poor performance of fixed wireless services, we do not understand this to be the case; and
  - 14.4 while there may be a degree of humour in the advertisements, as the imagery involved is highly proximate to the headline representation, we consider that it acts to emphasise the message it contains. We consider that the imagery reinforces the potentially misleading headline rather than being clear exaggeration or puffery.

#### *Our understanding of the causes of 'freeze face'.*

15. We take the term 'freeze face', and the associated imagery used by Chorus to convey an experience of disruption to video calls. The use of the headline 'Farewell the freeze Face with fibre' conveys the impression that fibre technology will prevent this from occurring when using fibre instead of other non-fibre broadband technologies.
16. Disruptions in video calls can present in various ways, including pixelation/distortion, loss of sound quality, frozen images, and stuttering or sped up streaming.

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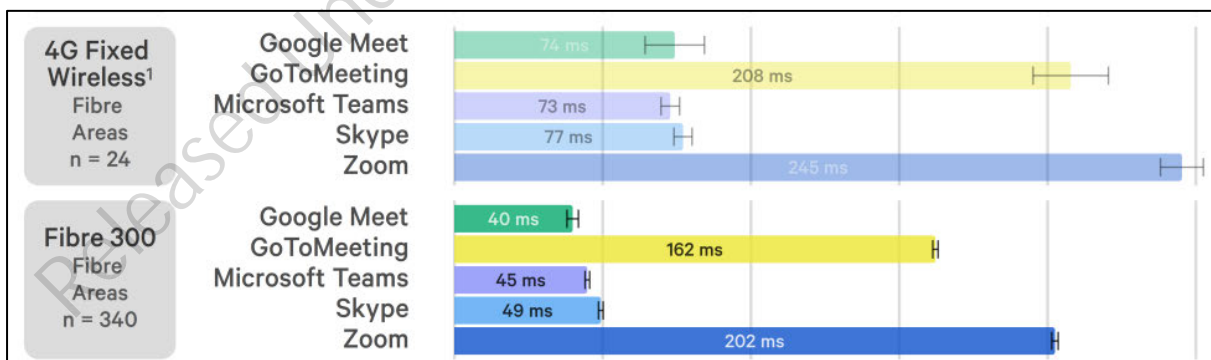
<sup>2</sup> For example, due to the hardware used by the consumer or the type of video conferencing plan purchased (if any)

17. This can happen for a variety of reasons beyond the quality of the underlying broadband network. Including due to home network issues, device limitations, or video calling services themselves.
18. We are concerned that Chorus' advertising fails to adequately inform consumers that the experience it conveys in advertising could often be caused by factors outside of the network technology used to deliver broadband services.
19. Chorus' disclaimers '*Fibre offers the fastest broadband plans available, but there's a lot that contributes to the actual speeds experienced*' & '*Learn more at [chorus.co.nz/broadband-performance](https://chorus.co.nz/broadband-performance)*' do not provide consumers with the necessary information to take the freeze face text and imagery in context.
20. We also note the small size of the font used, and the inability of consumers to easily access a website from paper-based marketing material. This is likely to have negatively impacted the ability of the disclaimer information to assist consumer understanding.

*Describing end-user experiences based on statistical reporting information*

21. Chorus has referred to MBNZ reporting as supporting its advertising, and in its position in response to the Commission's investigation.<sup>3</sup>
22. We are concerned that Chorus appears to have taken differences in statistics measuring the speed and latency of services, and translated those to the freeze face experience in ways we do not consider are any more likely to be experienced by users of fixed wireless, than fibre, at the speeds and latencies reported.
23. Figure 1. below shows latency measures to video calling servers for 4G fixed wireless (within fibre areas) and for fibre:

Figure 1.



24. As far as we are aware, Chorus has not attempted to establish whether a consumer receiving an average latency of 73ms on fixed wireless will experience freeze face using Microsoft Teams but will not if using fibre with an average latency of 45ms.

<sup>3</sup> In its response Chorus referred to various MBNZ reports. Figure 1 refers to the June 2024 MBNZ report.

25. As noted previously, there are latencies averaging out to 202ms recorded using fibre connections for video calls. If Chorus' claim of 'farewell the freeze face with fibre' is accurate, it follows that latencies lower than this on either fixed wireless or fibre should be less likely to be subject to freeze face, due to latency alone.
26. Despite this, Chorus' advertising appears to suggest consumers will have negative experiences of video calling using fixed wireless. We do not consider the MBNZ reporting statistics are sufficient to support that.
27. Similarly, the speed requirements for making video calls all fall well within the peak hour speeds reported for fixed wireless, and it is unlikely that fixed wireless speeds, as reported by MBNZ, would have a negative impact on a consumer's ability to make video calls.<sup>4</sup>
28. Chorus identified that our 2023 Annual Monitoring Report states '*Higher latency can also cause video calls to jump or dropout more often.*'
29. We view this as a general statement designed to inform at high level about an element of service which can negatively impact video calls. There is not a specific measure of latency identified as problematic, nor is a lower bound identified as 'good'. Despite this, Chorus' advertising makes claims that consumers will not experience freeze face on fibre, but may on fixed wireless.
30. Finally, MBNZ reporting includes the information that:
- 'The transparent bars show plans with a sample size lower than we would typically include within reporting. These plans have larger error bars due to the smaller sample size and care should be taken when comparing these plans against others. We recommend consumers factor in the error bars when comparing plan averages, especially those with smaller sample sizes.'*
31. As can be seen in Figure 1, the statistical information about fixed wireless Chorus has relied upon in support of its advertising is shown in MBNZ reporting using transparent bars, due to the small number of tested connections contributing to the results.
32. While our MBNZ reporting clearly discloses this important feature of the results reported, Chorus' advertising does not. Instead, MBNZ reporting is presented as robust support for the claims made by Chorus.

### **Our decision to issue Compliance Advice**

33. The Commission has considered what is an appropriate enforcement response in this investigation. Having considered our Enforcement Response Guidelines and the

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<sup>4</sup> MBNZ June 2024 report refers to fixed wireless in urban areas as achieving an average peak time download speed of 38Mbps. Providers of video conferencing services recommend download speeds between 3 and 20Mbps.

circumstances of this case, the Commission has decided to issue Chorus with a compliance advice letter for the possible breaches of section 11 of the Act.

34. When formulating its enforcement response, the Commission has taken several factors into account, including the dissemination of freeze face advertising materials appears to have been relatively low and text information provided in the advertising went some way to qualifying the impression provided by imagery.
35. The Commission does not intend to take further action against Chorus at this time in relation to the advertising involved in this investigation. We do however note that it is open to Chorus' competitors to take private action under the Act if the advertising has adversely impacted their fixed wireless business.
36. We will take this compliance advice into account if Chorus engages in similar conduct in the future and reserve our position in respect of Chorus advertising not mentioned in this letter.
37. We may also draw this compliance advice letter to the attention of a court in any subsequent proceedings.

#### **Penalties for breaching the Act**

38. Only the Courts can decide if there has been a breach of the Act. The potential penalties for breaching the Act are in the case of an individual, to a fine not exceeding \$200,000 and in the case of a body corporate, to a fine not exceeding \$600,000 per offence.

#### **Chorus' commitment to clear broadband marketing**

39. We are disappointed that Chorus has engaged in advertising which we consider adds confusion, rather than clarity to consumer understanding of broadband services, and the applications which run across them.
40. MBNZ provides an independent source of information about the quality of broadband services in New Zealand. It was always the Commission's intention that MBNZ information would be utilised in advertising and assist consumers in making informed decisions about the broadband services suitable to their needs.
41. As a Local Fibre Company (LFC), Chorus provided a letter of commitment to the Commission setting out that Chorus is *'committed to assisting the industry in ensuring that all consumers are treated fairly and are equipped to make fully-informed decisions about their broadband choices. It is essential that consumers are provided with clear and accurate information that does not mislead them about the type, quality or performance of services.'*<sup>5</sup>

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<sup>5</sup> [https://comcom.govt.nz/\\_data/assets/pdf\\_file/0020/283601/Letter-to-Commerce-Commission-on-LFC-Commitment-6-May-2022.pdf](https://comcom.govt.nz/_data/assets/pdf_file/0020/283601/Letter-to-Commerce-Commission-on-LFC-Commitment-6-May-2022.pdf)

42. This letter of commitment was provided by Chorus to confirm its commitment to the outcomes and principles of the Marketing Alternative Services Guidelines. The letter of commitment states:
- 42.1 *'When Marketing specific plans or products, LFCs must avoid using undefined speed-related descriptors or images without providing appropriate and clear information to help moderate the Consumers' understanding of these descriptors or images.'*
  - 42.2 *'Where appropriate, Consumers must be provided with information regarding the factors that may affect service performance that are outside the control of the LFC (such as positioning of in-home Wi-Fi modems, and Consumer equipment specifications and maintenance).'*
  - 42.3 *'Marketing comparisons made by LFCs must be objectively justified, demonstrably reasonable, and independently verifiable'*
  - 42.4 *'LFCs must avoid making claims or comparisons about one service that are liable to mislead Consumers directly or indirectly in relation to the performance or characteristics of another service'*
43. In our view, Chorus has not maintained these principles. The freeze face advertising:
- 43.1 uses a descriptive image without the information necessary for consumers to understand that factors beyond their underlying broadband connection are likely to cause of freeze face;
  - 43.2 fails to provide the same information in the form of a factor which may affect service performance that is outside the control of the LFC;
  - 43.3 conveys end-user experiences Chorus has not attempted to verify are regularly experienced by end-users of fixed wireless services; and
  - 43.4 makes claims which are potentially liable to mislead consumers about the ability of fibre to provide fault-free video calls.
44. Beyond the letter of commitment, Chorus' is also a signatory to the MBNZ Code of Conduct. This requires Chorus to *'Not misrepresent the MBNZ programme data, nor use it in false or misleading information or advertising. At all times comply with the Fair Trading Act in relation to the MBNZ programme.'*<sup>6</sup>
45. While we appreciate Chorus holds a different view of its advertising, we are disappointed that the letter of commitment and the MBNZ code of conduct do not appear to have influenced Chorus' approach to marketing. We consider such commitments can have a place in the regulatory landscape, but to be meaningful,

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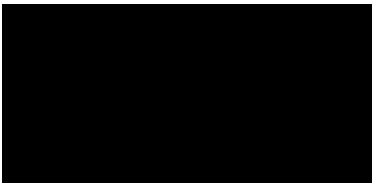
<sup>6</sup> <https://measuringbroadbandnewzealand.com/code-of-conduct>

they must be practically applied, which does not appear to be the case in respect of the freeze face marketing.

**Further information**

46. Chorus should be aware that our decision to issue this compliance advice letter does not prevent any other person or entity from taking private action through the court in relation to the possible breaches of the Act.
47. We encourage Chorus to review its approach to ensuring marketing collateral is clear, unambiguous, and capable of substantiation. If you remain unsure about your legal obligations under the Act, we recommend that you seek legal advice.
48. We have published a series of fact sheets and other resources to help businesses comply with the Act as well as the other legislation we enforce. These are available on our website at: [www.comcom.govt.nz](http://www.comcom.govt.nz).
49. You can also view the Act and other legislation at: <https://www.legislation.govt.nz/>.
50. Thank you for your assistance with this investigation. Please contact s 9(2)(a) on s 9(2)(a) or by email at s 9(2)(a) [@comcom.govt.nz](mailto:s 9(2)(a)@comcom.govt.nz) if you have any questions about this letter.

Yours sincerely



s 9(2)(a)



### Attachment A – Postcard

## Farewell the freeze face with fibre.



New Zealand Permit No. 245749 

If undelivered please return to:  
Chorus, PO Box 6640, Auckland 1010

<Code>

To The Householder  
<Sample Street>  
<Sample Suburb>  
<Sample City XXXX>

**NEW ZEALAND  
RUNS ON FIBRE**  
CHORUS

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**Get connected to fibre broadband for a fast, reliable internet connection.**

We've all been there. You're in the middle of an important video call and – bang – freeze face. You deserve better. And when it comes to better performance, reports<sup>A</sup> show that faster fibre broadband plans lead the way. That's because fibre's not subject to the peak hours and weather conditions that can impact other technologies like wireless broadband.

**Fibre plans available from as little as \$50 a month.\***

It looks like you've had a fibre connection in the past, but may have moved to a different technology. The good news is now's a great time to come back to the best, as fibre has never been more affordable. There are currently fibre plans from as little as \$50 a month,\* which means a better product for less than you might think.

So what are you waiting for? Broadband Compare is an easy way to check plans and prices. Visit them at [www.chorus.co.nz/get-fibre](http://www.chorus.co.nz/get-fibre) or call them on **0800 000 305**.

Fibre offers the fastest broadband plans available but there's a lot that contributes to actual speeds experienced. Learn more at [www.chorus.co.nz/broadband-performance](http://www.chorus.co.nz/broadband-performance)

<sup>A</sup>MBNZ Spring 2024 report.

\*Fibre plan cost indication based on availability as at 11 April 2024 of a fibre plan bundled with another service from the same provider.

**Your fibre box looks like this and is easy to activate.**

Fibre broadband plans from as little as

**\$50**

a month\*



C H O R U S

Attachment B – letter

C H O R U S

# Farewell the freeze face with fibre.



Hi there,

We've all been there. You're in the middle of an important video call and – bang – freeze face. It's not ideal – meaning a fast, reliable internet connection is more important than ever. And while it can be easy to think that all internet is the same, not all broadband is created equal.

**Get connected to fibre broadband for a fast, reliable internet connection.**

Recent reports<sup>^</sup> show that when it comes to performance, that faster fibre broadband plans lead the way. That's because as a direct and dedicated line, fibre hits your place with little interruption and interference. It might be that you're on wireless broadband right now, which might work just fine most of the time. However in peak hours when lots of households are online, performance can be impacted. That's because wireless broadband uses mobile data from the nearest cell tower, which gets shared between your neighbourhood.

Similarly, bad weather can also impact wireless technology, as the radio waves that carry the mobile data to households are unprotected and open to the elements.

**Find a fibre plan to suit you – from as little as \$50 a month.\***

With over 90 fibre providers out there, we know choosing one can feel a little overwhelming. Broadband Compare is an easy way to check plans and prices. Visit them at [www.chorus.co.nz/get-fibre](http://www.chorus.co.nz/get-fibre) or call them on **0800 000 305** and choose a fibre broadband plan that works for you.

Regards,  
The team at Chorus



Fibre offers the fastest broadband plans available but there's a lot that contributes to actual speeds experienced. Learn more at [chorus.co.nz/broadband-performance](http://chorus.co.nz/broadband-performance)  
<sup>^</sup>MBNZ Spring 2024 report.  
\*Fibre plan cost indication based on availability as at 11 April 2024 of a fibre plan bundled with another service from the same provider.

4 June 2019

s 9(2)(a)

### **Fibre unbundling price**

1. Thank you for your letter dated 11 April 2019, setting out your concerns about the proposed layer 1 fibre unbundling price and pricing approach from Chorus, and supplying us with an expert report by Network Strategies. You have asked the Commission to consider intervening in the dispute between Chorus and your companies regarding the terms on which a layer 1 fibre unbundling service would be provided.
2. This letter outlines the Commission's initial response and our considerations in relation to your letter.

### **The context for the unbundling obligation**

3. Chorus and the Local Fibre Companies' (**LFCs**) have Deeds of Open Access Undertakings (**Fibre Deeds**) given under section 156AD of the Telecommunications Act 2001 (**Act**) which requires them to provide a point-to-multipoint layer 1 fibre access service (**PON Fibre Access Service**) from 1 January 2020 for UFB1.
4. The Fibre Deeds require Chorus and the LFCs to provide the PON Fibre Access Service on an equivalent and non-discriminatory basis (see clauses 5 and 6 of the Fibre Deeds). The Fibre Deeds do not stipulate the price that Chorus and the LFCs charge for the PON Fibre Access Service<sup>1</sup> and the Commission is not empowered to set a price.
5. The Commission expects that Chorus will release its final pricing offer and its response to the submissions on its pricing proposal for the PON Fibre Access Service in the coming weeks. We are interested in hearing your views when Chorus publishes its final pricing offer (and in any views that you might have on pricing proposals or offers from the LFCs).

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<sup>1</sup> Section 156AD(5)(b)

6. In addition to the Fibre Deeds, section 229 of the Act provides for the Governor-General, by Order in Council made on the recommendation of the Minister, to make regulations declaring a point-to-multipoint layer 1 service supplied to end-users' premises or buildings to be an unbundled fibre service, and allows for those regulations to set a maximum cost-based price for the service. Under section 200 of the Act, a regulated fibre service provider who is subject to price-quality regulation must provide an unbundled fibre service if declared.

### **Commission's initial response and our considerations in relation to your letter**

7. The Commission understands Vocus' and Vodafone's view that unbundling will be key to unlocking the future potential of New Zealand's fibre network.
8. The Act gives the Commission a particular role in the context of the PON Fibre Access Service. Firstly, we are permitted to assess whether offers made by Chorus and the LFCs comply with their respective obligations under the Fibre Deeds, and, secondly, if we consider that a breach of the Fibre Deeds is likely to occur or has occurred, we will decide whether to bring enforcement action. When exercising our powers to enforce compliance with the Fibre Deeds, we consider the purposes outlined in section 156AC of the Act.
9. Under the Act, there are various enforcement routes available if parties are unable to reach commercial agreement on the PON Fibre Access Service under the Fibre Deeds. The obligations in Chorus' and the LFCs' respective Fibre Deeds to offer the PON Fibre Access Service on an equivalent and non-discriminatory basis are enforceable by access seekers at their own initiative (see section 156P of the Act), as well as by the Commission (see sections 156AR, 156L, and 156P of the Act). However, the decision-maker on what the obligations in the Fibre Deeds actually require would be the High Court.
10. Given the range of parties potentially involved in the enforcement of the Fibre Deeds, we believe that there would be clear public benefit in the Commission developing, in a transparent way, our views on what the equivalence and non-discrimination obligations in the Fibre Deeds (and other deeds) involve. We have therefore begun developing guidance on our interpretation of these provisions.
11. We plan to consult on this guidance in the third quarter of this year. Until we finalise the guidance, we do not expect to be in a position to form a view on whether Chorus' proposed PON Fibre Access Service offer is likely in our view to comply with its obligations in the Fibre Deeds, let alone reach a decision on whether any enforcement action would be appropriate. We understand that the development of guidance will likely go beyond the time at which Chorus releases its final offer; however, we expect you to continue engaging with Chorus in relation to its PON Fibre Access Service proposal.

12. If the parties have specific concerns about the appropriate pricing of an unbundled fibre service outside the ambit of enforcement of the Fibre Deeds, we recommend these concerns be taken directly to MBIE on behalf of the Minister. As noted above, there is scope for the Minister to recommend section 229 regulations to introduce direct price regulation of a point-to-multipoint layer 1 service supplied to end-users' premises or buildings. Moreover, section 209 of the Act limits the Commission's ability to launch a review of any declaration of an unbundled fibre service until 2025.
  
13. In order to provide transparency regarding our correspondence with you, and to facilitate broader industry discussion regarding unbundling, I propose in the coming days to publish this response on the Commission's website, as well as publishing your letter and the public version of the Network Strategies report.
  
14. s 9(2)(a) [redacted], is coordinating our response in relation to Chorus' PON Fibre Access Service proposal, and should be your point of contact for unbundling queries. He can be contacted at s 9(2)(a) [redacted]@comcom.govt.nz or on s 9(2)(a) [redacted]

Yours sincerely,

s 9(2)(a) [redacted]

s 9(2)(a) [redacted]  
[redacted]

11 April 2019

s 9(2)(a)

Telecommunications Commissioner  
Commerce Commission

s 9(2)(a) @comcom.govt.nz

## By Email Only

Dear s 9(2)(a)

### Fibre unbundling price

In June last year Vocus and Vodafone joined together to announce our intention to unbundle the fibre network. We firmly believe unbundling will be key to unlocking the future potential of New Zealand's fibre network. Competition on the network itself will ensure Kiwis have access to the best technology at reasonable prices, and will allow RSP's to innovate beyond the uniform bitstream access currently offered by wholesalers.

That has now all been put at risk by what is hard to see as anything other than a cynical and protectionist unbundling price from Chorus. The proposed price is constructed in a complex way, but the end result is a charge of around \$62 per connection. This makes it more expensive than most bitstream products.

It defies sense that an RSP wishing to access a smaller part of Chorus' network and invest in innovating for consumers should be charged more than the cost of a full bitstream service.

We believe the pricing approach by Chorus flies in the face of the original terms of the UFB build (which was largely funded by tax-payers) and the intention of the rules and regulations established by Government. We also expect the other LFCs to follow Chorus' lead on pricing.

We have asked Network Strategies, to provide an independent view on price based on their experience advising industry and regulators across Asia-Pacific, Europe and North America on similar telecommunications issues. They were asked to calculate what the unbundled fibre price would be if Chorus met all the obligations it agreed to as part of taking on the UFB build. They concluded the price would sit between \$27.22 and \$30.03 in 2020. This is less than half of that offered by Chorus. Their report is attached to this letter.

We are now forced to ask the Commission to intervene to help secure the future of fibre connectivity for our customers. We have attached a detailed paper to this letter demonstrating that Chorus' proposed price would breach various obligations that they agreed to as part of the UFB build.

We request that this issue is given urgent priority. Chorus was initially required to issue a price by the end of last year. Instead we have suffered continuous delays with no end in sight. For us to have any chance of practically unbundling from 1 January 2020 we need a compliant price in market urgently.

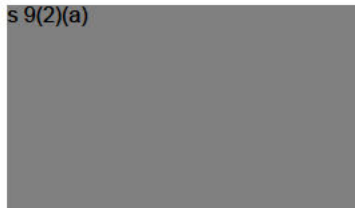
Chorus may argue the nature of fibre means innovation from unbundling is technically limited. Yet Chorus themselves have often argued that fibre will solve problems that are not yet known. As will unbundling. It cannot be left to die before even beginning.

Yours sincerely,

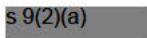
s 9(2)(a)

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s 9(2)(a)

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s 9(2)(a)

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# Guidance sought on the layer 1 price

Chorus has recently proposed a price for unbundled GPON fibre (**layer 1**) service at a level that makes any competition unfeasible. The price is inconsistent with a number of requirements across the Deed of Open Access Undertakings for Fibre Services (**the Deed**) and the Telecommunications Act 2001 (**the Act**) that the Commerce Commission (**the Commission**) has responsibility for enforcing.

It is now critical that the Commission steps into this process to avoid serious breaches occurring. We consider that if finalised, Chorus' proposed layer 1 price would breach the Deed and the Act in three ways:

- it breaches the equivalence of inputs obligation (**EOI**) requirement;
- It breaches the non-discrimination and geographic consistency requirements; and
- it is inconsistent with the Part 4AA purpose to 'promote competition' and 'facilitate investment'.

If Chorus finalises the layer 1 price as it currently stands the Commission will have an obligation to apply to the High Court to take enforcement action, including fines of up to \$10m.<sup>1</sup>

The Commission now has a limited window to avoid this outcome by providing clarity to the industry on how it will interpret the obligations in the Deed and the Act. This will provide valuable input into Chorus' consultation process, and give commercial negotiations a better chance of succeeding.

Acting now is also critical to ensure that a compliant price is available early enough to make unbundling viable from 1 January 2020, as has long been the policy intent. To allow for industry to get ready for unbundling by 2020, Chorus was required to make best-efforts to finalise a layer 1 price by the end of last year.<sup>2</sup> Instead they only began considering unbundling in September, and after numerous delays have only now started to talk about price. Further waiting for the consultation process to conclude is simply not practical, especially when considering the poor track record Chorus has in adjusting to industry views throughout the process to date.

We have attached a report from Network Strategies to this letter that calculates a layer 1 price consistent with Chorus' obligations in the Deed and the Act. They find that the price should sit between \$27.22 and \$30.03 in 2020, significantly less than the price offered by Chorus.

The summary report from Network Strategies is not confidential, we are happy for this to be published alongside this complaint. The full detailed report contains considerable amounts of confidential information, and is provided for the Commission's information only.

This request does not extend to more detailed concerns we also have with breaches of the regulatory requirements in the unbundling product construct. We reserve our right to raise any future clarifications on these matters as well if acceptable commercial resolution cannot be reached.

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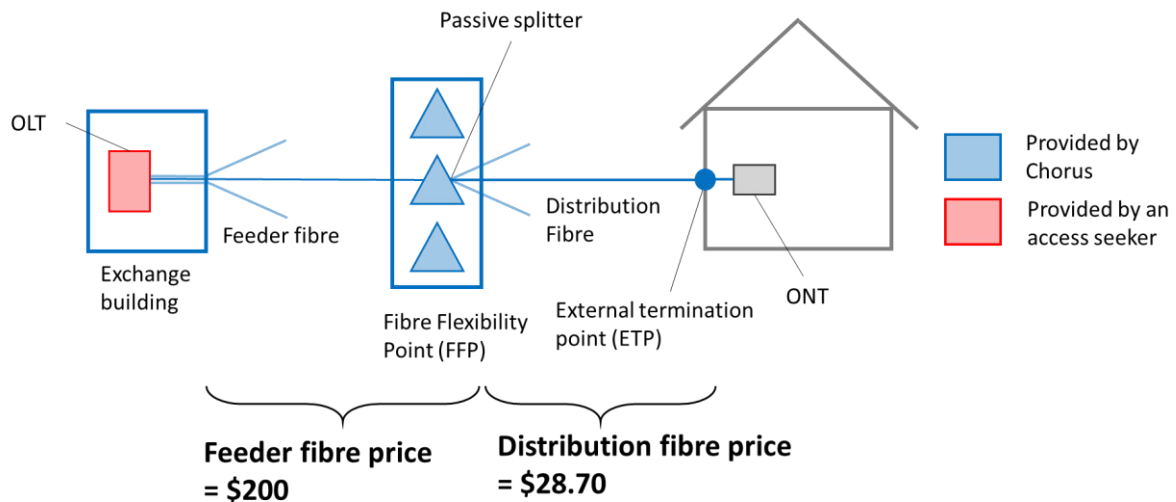
<sup>1</sup> S156AQ and s156AR.

<sup>2</sup>

## Clarifying the price

Chorus have configured the layer 1 price in a complex way based on two separate prices that an access seeker must pay for access to different parts of their network. However to be consistent with the requirements in the Act the price must be considered by the Commission on a per-connection basis.<sup>3</sup> The paragraphs below provide an estimate of a per-connection price.

The two components of the price proposed by Chorus are shown in the diagram below.



The cost of the feeder fibre is shared by each customer connected to a particular splitter. The splitters Chorus use can service up to 16 connections. However, it is unrealistic to expect every splitter to be fully utilized. In fact we estimate that on average Chorus itself only has about 12 customers connected to each splitter. The number of customers connected to each splitter is obviously much less for any access seeker.

The attached independent report from Network Strategies assumes a notionally efficient competitor with 20% market share. This notional competitor has about 5 - 6 connections per splitter on average. This is similar to what we expect the Vodafone-Vocus consortium to achieve. Whilst we have a larger market share, the way Chorus have designed the product means we expect only about 50% to take up unbundled fibre, even with a good price.<sup>4</sup>

The table below shows the per connection price with 12 connections per splitter and with 6 connections per splitter.

<sup>3</sup> The definition of 'fibre fixed line access service' in s5 of the Act refers to access to the fibre network from the end-user to the hand-over point at an exchange.

<sup>4</sup> As proposed, the layer 1 service would require a technician visit in every circumstance. This is because Chorus are not allowing access to the existing ONT at each premise. Each access seeker will need to install their own ONT and splice it to the fibre network. This will be disruptive and unwelcome for most customers, significantly reducing uptake of unbundling.

**Table 1: breakdown of Chorus’ proposed layer 1 price**

Average connections per splitters	Per connection feeder fibre price	Per connection distribution fibre price	Per connection layer 1 price
12	\$16.67	\$28.70	\$45.37
6	\$33.33	\$28.70	\$62.03

This stands in stark contrast with the attached report from Network Strategies, which finds that a cost based layer 1 price compliant with the Deed would sit between \$27.22 and \$30.03 in 2020.

### Not an equivalent input

One of the key obligations placed on Chorus in the Deed is to set any input service, like the layer 1 service, on Equivalence of Inputs terms. This means that they must ensure that third-party access seekers have access to the input service on the same basis that the service provider does including in relation to pricing, procedures, operational support, supply of information, and other relevant matters.

In advice previously provided to the Commission, James Every-Palmer QC further clarified the EOI pricing requirement based on his considerable experience in these matters, and international precedents. He clarified that the EOI obligation doesn’t allow Chorus to charge itself (and access seekers) any price it chooses. They must instead set price at a level that would allow them to earn a normal profit if it was receiving the layer 1 service from a third party. He goes on to conclude that:

*the key requirement is that there must be sufficient “economic space” between the Layer 1 and Layer 2 prices such that an **equally efficient access seeker** purchasing the Layer 1 service from the UFB provider **will be able to compete against the UFB provider** in respect of the Layer 2 service or against other RSPs at retail. This concept is variously described as the ‘efficient component pricing rule (ECPR)’, ‘economic replicability’ or an ‘equally efficient rival’ test.*

The table below shows the ‘economic space’ afforded by Chorus’ proposed layer 1 price under the two scenarios considered: 12 customers per splitter (Chorus’ average), and 6 customers per splitter (the average of an efficient access seeker).

**Table 2: Economic space afforded by Chorus’ proposed layer 1 price**

Scenario	Per connection unbundled price	Network Strategies estimate of average bitstream price in 2020	Economic space
12 connections per splitter	\$45.37	\$47.38	<b>\$2.01</b>
6 connections per splitter	\$62.03	\$47.38	<b>-\$14.65</b>

This is a clear breach of the EOI obligation. Network Strategies estimate that the economic space for an efficient competitor would be between \$17.35 and \$20.16 in 2020. This is a far cry from the \$2.01 margin Chorus claims it offers to itself, or the ridiculous -\$14.65 negative margin offered to efficient access seekers.

The smaller number of connections per splitter for an access seeker does not indicate inefficient scale, it is simply an artifact of the pricing approach proposed by Chorus. In almost all circumstances, Chorus faces next to no incremental cost for provisioning additional feeder fibres. We understand that they have deployed 12 fibres to each fibre flexibility point. In most cases only three of those fibres are currently utilised. An access seeker using one of the 9 unused fibres is of no incremental cost to Chorus, and justifies no incremental charge.

However, in some rare cases Chorus may need to deploy more fibre for larger cabinets, or if unbundling became very popular. To be consistent with the Deed and maintain a competitive margin these small incremental costs must be included in the per-connection layer 1 price so it is equally shared amongst all users of layer 1 services, including Chorus itself. Any other arrangement would again be price discrimination, and hinder competition. This is the conclusion reached by Ofcom in their recent decision on duct and pole access.

### **The price discriminates against access seekers and breaches geographic consistency**

The other key requirement in the Deed is to ensure any service offered by Chorus is not discriminatory. This means Chorus must offer a service on the same terms and conditions, including price, between different access seekers, and between access seekers and themselves

As shown in Table 1, the result of the pricing approach proposed by Chorus is that the average layer 1 price will be different for Chorus and each access seeker. This is precisely the sort of behavior that the non-discrimination requirement is intended to prevent. It effectively shuts any access seeker out of the market, destroying any chance of competition.

The layer 1 price also breaches the geographic consistency requirements in the Act. The estimation of a per-connection price in Table 1 is based on an average across Chorus' footprint. The actual price for any individual connection will depend on how many customers are connected to each splitter. This means the per-connection cost will be vastly different in different geographic locations, and typically more expensive in less densely populated areas. This is a clear breach of the geographically consistent pricing requirement in s201 of the Act.

If this pricing approach is allowed to stand, it sets a dangerous precedent for the pricing of other fibre services when the new regulatory regime comes into effect after 2022. The logic Chorus have used to separate the layer 1 service into two prices could equally stand for bitstream services, allowing Chorus to shut smaller RSPs out from some services if it is in their interests to do so.

## **A price that obstructs competition**

The Deeds are established under Part 4AA of the Act, which includes its own purpose statement to guide any [decision]. This states:

### **156AC Purposes**

The purposes of this subpart are to—

- (a) promote competition in telecommunications markets for the long-term benefit of end-users of telecommunications services in New Zealand; and
- (b) require transparency, non-discrimination, and equivalence of supply in relation to certain telecommunications services; and
- (c) facilitate efficient investment in telecommunications infrastructure and services.

Beyond the breach of the EOI and non-discrimination requirements covered above, the price proposed by Chorus would also breach the other two arms of this purpose statement.

As above, taking up the layer 1 service at this price would cost us more than taking the bundled bitstream service. It is like paying more for a smaller block of chocolate. This is predatory pricing at its worst, preventing New Zealanders from gaining the advantages of competition deeper into the fibre network.

The price also means that efficient investment by access seekers will not occur. Allowing further private investment into New Zealanders fibre network through unbundling was a key plank of the original policy intent of the Ultra-Fast Broadband initiative. Chorus is now stopping that from occurring.

## **Getting to a compliant price**

Chorus' attempt at pricing the layer 1 service confirms that they are ill suited to this task. As we have argued countless times, they have all the wrong incentives to establish this product in the best interests of New Zealanders.

If Chorus is left with full discretion on pricing this service, there is no prospect of having a compliant unbundled product in the market by 1 January 2020. This would breach a number of the agreements between Chorus and the Crown, and bring into play the substantial penalties under s156L.

While the Act prohibits the Commission from proposing an unbundled price until 2025, there are a number of actions the Commission can take now to ensure the policy intent is fulfilled.

- Provide guidance on the Deed confirming:
  - James Every-Palmer's conclusion that the EOI obligation requires that "an equally efficient access seeker purchasing the layer 1 service" must be able to "compete against the UFB provider in respect of the layer 2 service"; and
  - That compliance with the non-discrimination requirements and geographic consistency rules requires a single price from a handover point at an exchange to the end user. This price should be the same for Chorus and all access seekers, and be consistent across different geographic locations.

- Confirm that the attached analysis from Network Strategies is consistent with the requirements in the Deed, and offers a cost-based layer 1 price that could be implemented by the Minister from January 2020 under s16 of Part 2 of Schedule 1AA of the Act.

Adopting the price proposed by Network Strategies would not impose any undue financial burden on Chorus. We consider that this price will allow sufficient return on layer 1 assets. However, if this price does not fully cover the costs of the layer 1 network, Chorus will be able to claim any shortfall through the losses that will be added to their regulatory asset base when the new fibre regulations come into force from 2022. After that point Chorus will have more flexibility to price services to fully recover its cost, but maintain an adequate margin between layer 1 and bitstream services.

## **Summary of recommendations**

- 1. Agree that if finalised the layer 1 price proposed by Chorus would breach a number of requirements in the Deed and the Act, specifically it would:**
  - a. breach the EOI requirement;**
  - b. discriminate against access seekers with a smaller scale than Chorus;**
  - c. breach the geographic consistency requirements in the Act;**
  - d. be inconsistent with the s156AC purpose statement, regarding the promotion of competition and facilitation of investment;**
- 2. Issue guidance on the Commissions interpretations of the Deed and the Act specifying**
  - a. that compliance with EOI requires sufficient economic space for an efficient access seeker to compete alongside Chorus;**
  - b. that compliance with non-discrimination requires the same handover-to-customer price for Chorus and each access seeker; and**
  - c. that compliance with the geographic consistency requirement in the Act requires the same handover-to-customer price in every geographic location.**
- 3. Agree that the layer 1 price determined by Network Strategies is consistent with the Deed and the Act.**

**VOCUS**



**Vocus Group New Zealand**

**and**

**Vodafone New Zealand**

Joint submission on compliance assessment  
of PON Fibre Access Service non-price terms

14 July 2020

Vocus and Vodafone welcome the Commission's investigation into the non-price terms of the unbundled GPON service offered by Chorus and the other local fibre companies (LFCs).

For the last seven months Chorus and the other LFCs have had in market the unbundled Passive Optical Network Fibre Access Service (PONFAS). For all this time they plainly have been in breach of their equivalence and non-discrimination obligations.<sup>1</sup> This, along with excessive pricing contained in the terms offered to date to retailers has blocked any ambitions to unbundle and bring greater network competition to New Zealanders.

Chorus and the LFCs have breached the equivalence and non-discrimination requirements in a number of ways. Most critically, they have not allowed access to the existing optical network termination (ONTs), and in doing so not allowed full access to the installation assets. Chorus and the LFCs have also:

- not allowed equal access to the distribution fibres;
- not allowed equal access to the roadside cabinets and fibre flexibility points (FFPs); and
- imposed timing requirements on an unbundled connection far in excess of what they provide to themselves.

These breaches are clearly unashamed attempts to make unbundling unviable. We therefore consider that the full penalties available under sections 156AR and 156AQ should be applied.

## Access to the existing ONTs

The most restrictive non-price term imposed by Chorus and the other LFCs is not allowing access seekers to access to the existing ONTs. Without a change of approach on this matter, or a substantial reduction in price to compensate, there is no chance of commercial unbundling ever succeeding.

Many customers will already have an ONT installed in their home, which is the equipment that decodes the signal and sends it through to an RSPs Wi-Fi gateway unit. To minimise the impact on customers, we have requested that for any unbundled connection the LFC either sells or rents the ONT to the access seeker. The LFCs have refused.

The LFCs have given a number of reasons over the last two years for refusing access.

- In initial discussions they claimed it was not technically possible. We tested this with our own equipment and can confirm that it *is* technically feasible.

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<sup>1</sup> Commerce Commission, 'Equivalence and non-discrimination – guidance on the Commission's approach for telecommunications regulation: Draft Version, 4 March 2020, para 3.3.

- Then in Chorus' first product construct document they claimed they had regulatory constraints requiring them to keep a functioning ONT in the home.<sup>2</sup> No such obligation exists. In specified fibre areas the TSO obligation is removed, and there is nothing in the UFB agreements with the Crown that requires this.
- The LFCs now simply claim it is a commercial decision, presumably to put them in a stronger position than any access seeker.

Therefore, to offer a competitive layer 2 alternative we would have to send a technician to every property, and a second ONT would have to be installed alongside the existing one from the LFC. At a later point customers would need to unplug their modem from the existing ONT and into the new ONT. This would be a terrible customer experience, unlikely to be acceptable to the vast majority of property owners, which would cause retailers to incur significant additional costs not faced by the LFCs themselves.

Whether this treatment is just bad customer service, or constitutes a breach of LFCs obligations will depend on how the Commission interprets the cost allocation of the installation of a fibre connection. This is considered below.

### *Access to the installation asset*

Installing layer 2 equipment in the premise is one of the most substantial costs we face as a potential access seeker. The call out fee for a technician when multiplied over hundreds of thousands of customers adds up millions of dollars of duplicative and wasteful deployment, which the LFCs themselves do not face and makes us completely uncompetitive in the existing arrangements.

Customer installations have been capitalised by the LFCs, so they are an asset that must be allocated between layer 1 and layer 2 services. How this allocation is made will have an important impact on the assessment of both the price and non-price terms. To the extent installation assets are allocated to layer 1, access seekers must have equal access to these assets as the LFCs themselves under the equivalence and non-discrimination requirements.

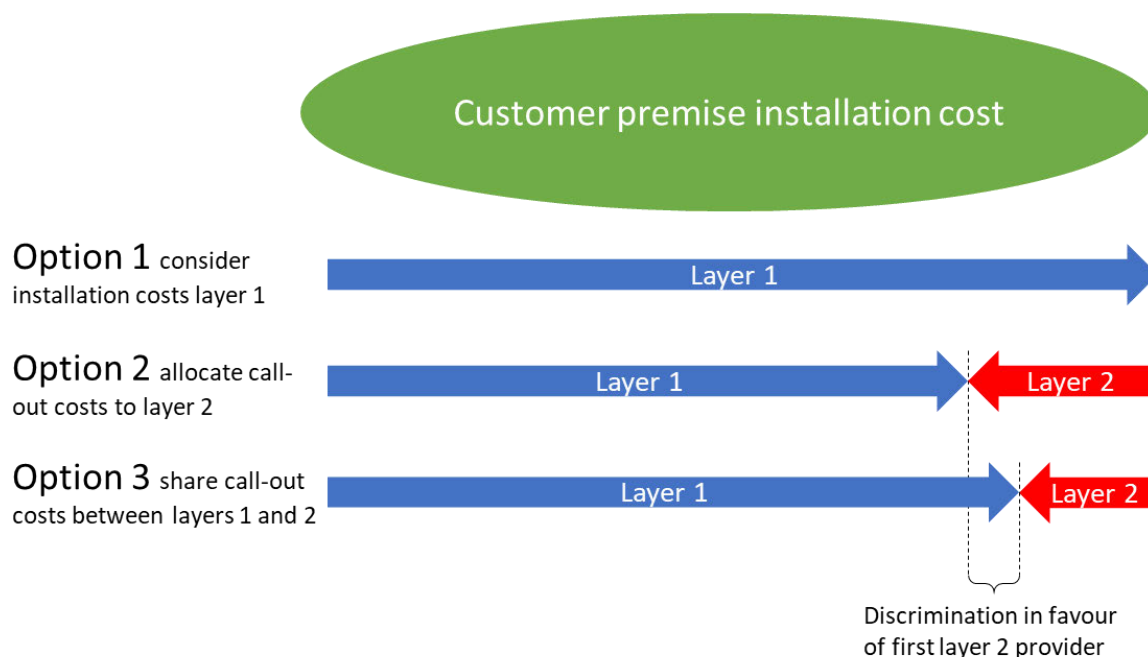
As an example, consider a premise that is unbundled from day one.<sup>3</sup> When installing the fibre at a customer's premise the LFC would have to partner with the access seeker to install their layer 2 equipment. If they did not it would not be an equivalent install experience for a customer compared to when the LFC was the layer 2 provider.

In this case the LFC would have three options for charging the layer 2 access seekers for installation costs as in the figure below.

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<sup>2</sup> Chorus 'High level Unbundling Product Construct v1', October 2018, p23.

<sup>3</sup> While this is a clearer example, it is conceptually no different than the LFC installing the layer 2 equipment themselves.



We consider that both options 1 and 2 are open to the LFC, while option 3 is discriminatory. Under option 3 any subsequent access seeker would face a substantially different cost profile for layer 1 access than the first access seeker. This is because the subsequent access seeker would have to incur the full costs of calling out a technician to replace the ONT, whereas the first access seeker was able to share this cost with the LFC. This would limit churn and breach the non-discrimination requirements.

Under option 1, all customer premise installation activities are considered layer 1 work. The LFC would perform this role both for the first access seeker, and for all subsequent access seekers at no charge. Costs for doing so are spread across all layer 1 connections (including those that are also served by the LFC at layer 2).

This may be the simplest approach, and it aligns with the nature of the activity. For example we consider all the following activities to be related to layer 1:

- Installation of the distribution fibre into the premise
- Installing and connecting the distribution fibres to the external termination point.
- Feeding the distribution fibre into the premise
- Installing the internal termination point, which usually doubles as the mounting bracket for the ONT
- Splicing the distribution fibre and installing it into the ONT.

The only installation activity that purely relates to layer 2 is unwrapping the ONT and clipping it into the wall bracket. This is unlikely to have caused the LFCs any incremental cost.

If all customer premise installation activity is considered layer 1, then access seekers must be given at least one of the following options:

1. Being allowed to buy or rent the existing ONT from the LFC, allowing us to gain access to the existing installation assets; or
2. Having customer premise installation costs for unbundling being covered in the costs of layer 1 access, and being equivalent to the cost the LFC charges itself.

Requiring access seekers to install their own ONT would require installation of their own layer 1 assets, such as a new wall mount, re-routing the distribution fibre, and splicing the distribution fibre. It would be equivalent to the LFCs only providing half the fibre necessary for unbundling and claiming that met their obligations.

The alternative interpretation in option 2 is that the call out costs for the installation are allocated entirely to the layer 2 service. This is consistent with our arguments in previous submissions.<sup>4</sup> Under this interpretation the costs of layer 1 services must be reduced as the call out costs are not part of the cost base that can be considered. In this case duplication of the ONT install is consistent with the LFC's obligations, but they must be able to prove that an access seeker incurring the costs of installation of a duplicate ONT can compete at the price they offer. Currently this is not the case.

## Other non-price breaches

### *Access to both distribution fibres*

As part of the UFB contracts, the LFCs were required to install two distribution fibres to each premise. This allows for leap-frogging of services to maintain continuity (for example, during an upgrade to newer generation equipment, or switching between layer 2 providers), or to offer two connections to the same premise in some circumstances.

The LFCs are now claiming exclusive use of one of those fibres, and access seekers must share the other fibre between themselves. This is a clear breach of the equivalence obligations as the LFCs are offering to themselves a far superior service to that offered to access seekers. It is not possible for LFCs to have exclusive use of one of the two distribution fibres and provide equivalent and non-discriminatory services to access seekers, unless there was only ever one access seeker. It is also critical for access seekers to gain access to the first fibre to efficiently utilise the existing ONT as discussed above.

Limiting access to both distribution fibres would also hurt the customer experience. For example, where a connection is already unbundled, there would be a significantly different

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<sup>4</sup> Vocus Group and Vodafone New Zealand, 'Joint Submission on expert report from Dr Ingo Vogelsang on equivalence and non-discrimination', 18 November 2019, p11.

experience for a customer churning back to the LFC, than churning to another layer 2 access seeker.

- If the customer churns back to the LFC then it would only require a back-office switch, and there will be no interruption of service.
- If the customer churns to another layer 2 access seeker then there would be significant downtime, as the one fibre is disconnected from the existing provider and then transferred to the gaining provider.

In discussions with Chorus they have highlighted some practical considerations that make using the first fibre difficult. This is not a sufficient rationale for breaching the requirements of the Act. Chorus and the other LFCs are required to construct a network in line with their requirements, not the other way around.

### *Access to cabinets*

The LFCs have all chosen not to allow any access seeker to access the roadside cabinets or fibre flexibility points (FFPs). This means the access seeker must send one truck roll to the premise to install the end-user ONT, and then the LFC must send a second truck roll to the cabinet to connect the fibre. This creates unnecessary delay, complexity and cost for access seekers, whereas the LFC faces none of these impositions. It is therefore another clear breach of equivalence.

We also find the reasoning from the LFCs to be implausible. They claim only their technicians are qualified to operate the fibres at the cabinet:

- Reports of poor workmanship and exploitative practices by LFCs have tended to suggest that LFCs do not value any special skill or qualification by the technicians working on its cabinets. Indeed, these technicians have been employed by third parties rather than LFCs themselves – in circumstances where LFCs do not exercise any apparent control over the standards observed by technicians. There is no justification for claiming that retailers would not use at-least equally qualified technicians and standards of work if they had access to cabinets.
- The technicians hired by any access seeker are likely to have also done work for the LFC themselves. There are only so many firms available to do this work.
- There has been no attempt made to create any certification or training to make sure technicians hired by access seekers are capable of doing the job.

### *Un-equal installation timing*

Chorus' PONFAS service can take up to 95 days to provision a simple install. In comparison Chorus is able to provision a layer 2 bitstream service in 30 days. This is a clear breach of

equivalence and non-discrimination and does not provide a level playing field for competition.

At clause 10.5 of the PONFAS operations manual, Chorus states:

*A PONFAS Distribution Service Request will be deemed invalid and may be rejected by the LFC if ... the Service Provider does not have a PONFAS Feeder Service at the Fibre Flexibility Point associated with the End User Premises. The PONFAS Feeder Service is required for a Service Provider to access and interconnect with the applicable PONFAS Distribution Service.*

That means the feeder service and the distribution service must be ordered sequentially at the timeframes below:

- Feeder fibre – 65 days to provision. An access seeker needs a feeder fibre for every 16 customers at each FFP. We are unsure why this is such a significant delay. In the vast majority of circumstances there are a number of spare feeder fibres already installed, they just need to be connected at the exchange and the FFP.
- Distribution fibre. Simple installs take 30 days, and complex installs take 65 days.

Based on Chorus' bitstream install timeframes, it appears they are allowing these services to happen in parallel for themselves, but denying this advantage to access seekers. This is a clear breach of the non-discrimination requirements as the LFCs are heavily favouring themselves compared to access seekers.

It also means any access seeker has to hold, and pay, for a feeder fibre for 30 days before a distribution fibre is installed and we can start charging an end-user. Another example of the LFCs pushing more costs on to access seekers than they face themselves.



# Ministry for Regulation Telecommunications Act review recommendations

**Confidential version**

Submission | Ministry for Regulation  
25 September 2025

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## Exec Summary

1. Thank you for the opportunity to provide feedback on the Ministry's draft regulatory review report into telecommunications (**the review**).
2. We have provided feedback via the online form and in this submission set out our thinking in more detail. We operate in a complex regulatory system and, accordingly, we are keen to engage further on the proposals.
3. The consultation paper covers a broad range of issues,

- a. **Consumer protection and customer service.** At this stage, the review focuses on simplifying the rules and – in doing this – misses an important opportunity to critically reconsider the extent to which current sector specific retail level regulation is required. While consumer surveys report that telecommunications is one of the least problematic sectors, more Commission resources are devoted to regulating retail telecommunications services than any other our sector.

We recommend an alternative model for simplifying industry codes based on the current co-regulatory model and specific regulatory guidance in the Act. The Act could be amended so that the Commission can approve a single TCF consumer code, which should then apply to all parties marketing directly to consumers.

- b. **Future of the TSO arrangements.** We support phasing out TSO obligations to provide a home telephone. However, this should be in accordance with a migration plan agreed by all stakeholders – Chorus and Spark as TSO Deed partners, the Crown and impacted consumers. We agree that digital equity is a concern with 250,000 households digitally excluded, but with broadband infrastructure widely available this is a broader conversation cutting across communities and regions.
- c. **Payphones.** We also propose that the Act be amended to clarify, for the avoidance of doubt, that the current provisions of Part 4 of the Telecommunications Act apply equally to phone booths incorporating digital screen advertising as a funding mechanism (in the same way it has applied to coin-and card operated phones).

Spark has operated public phone booths for over 40 years and – with our current phone booths reaching end of life with copper technology being withdrawn – we have an opportunity to modernise our phone booths, provide free connectivity, and provide resiliency points. However, this depends critically on having regulatory clarity on the rights of network operators and the powers of local roading authorities.

s 9 (2)(b)(ii)

- d. **Fibre Regulation.** While the Crown may consider changes to provisions that protect its UFB investment, we do not support changes to key elements of the framework such as geographic consistent pricing requirements, anchor services, availability of a layer 1 service and line of business restrictions. These protections were put in place for a specific purpose - with a specific place in the overall framework - and changes should only be considered in the context of a review of the overarching policy objectives and framework. We consider that it remains prudent to retain the current fibre regulatory framework.
- e. **TDL and TRL methodology.** We support the review implementing a simpler, less complex methodology for levying the sector. The industry has consistently advocated for an alternative approach based on a percent of the retail price for

broadband and mobile services – this would be significantly less complex to apply and more transparent to providers and consumers.

- f. **Balancing the costs and benefits of regulation.** We support adding section purpose statements that require consideration of the costs and benefits of the Commission exercising its regulatory powers. In our view, the lack of legislative guidance is a key contributor to the disconnect between the levels of consumer concerns we see and focus on our sector.

## Introduction

4. Thank you for the opportunity to provide feedback on the Ministry's draft regulatory review report into telecommunications (**the review**).
5. The review was initiated due to concerns that existing rules are outdated and no longer fit for purpose. These rules are increasingly seen as barriers to innovation and investment in a sector that is rapidly evolving. We support the Ministry seeking to streamline and simplify the rules, removing regulation wherever possible to promote innovation, competition and good services for consumers.
6. We have provided feedback via the online form and set out the thinking behind our recommendations in more detail in this submission. We operate in a complex regulatory system and, accordingly, we are keen to engage further on how the proposals may be implemented.
7. This submission contains confidential information. We would appreciate it if the Ministry would consult with us if it receives any request to release the submission, or any parts specifically designated as confidential.

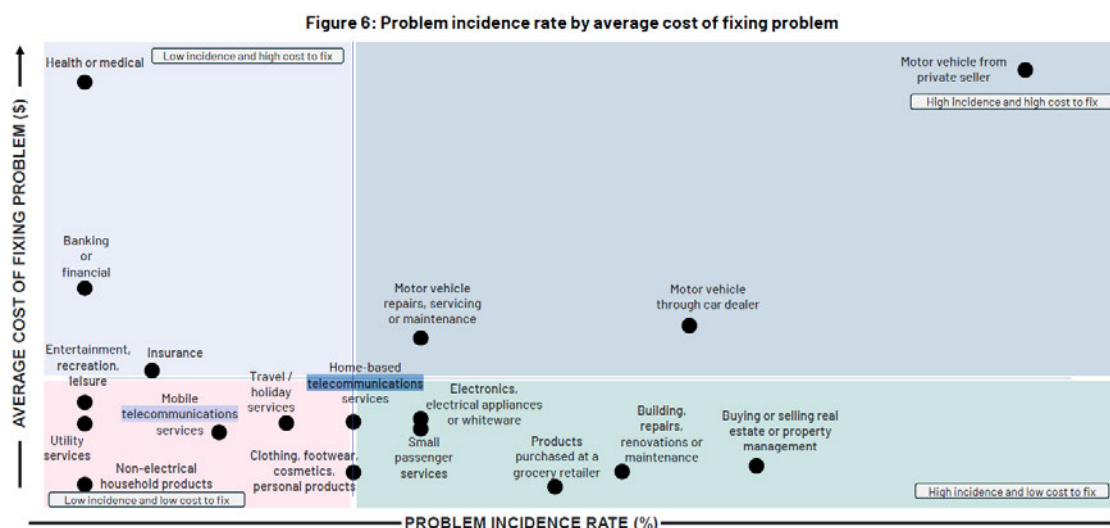
## Consumer protection and customer service

8. The consultation paper notes that the system for making retail service quality rules is complicated and not effective at protecting consumers and proposes instead that the Commerce Commission make a single, enforceable code for retail service quality without reviewing industry rules and to remove the TCF's role in the Telecommunications Act 2001.
9. The review hasn't considered whether current regulatory interventions can be rolled back, and in our view, the Ministry has missed an opportunity to deliver on its brief to critically review and remove unnecessary regulation. We recommend that, in transitioning to any new framework, a critical review of existing regulation occurs, applying good regulatory practice guidelines which should be codified in the Act.
10. Further, we don't support the Ministry's proposed option to simplify the rules and address regulatory gaps. A single Commission code - without the benefits of co-regulation, effective legislative guidance and effective Commission prioritisation – is likely to result in more rather than less unwarranted regulation.
11. The consultation paper notes that it is hard for businesses to understand and follow the rules, and there are few consequences for businesses that do break the rules. Because some retailers are not members of the TCF, the rules don't apply to all businesses, and the protections don't apply to all consumers.
12. In our view, these concerns can be resolved within the current co-regulatory model by simply amending the Act to clarify that the Commission may adopt a TCF code as a Commission code. For example, by adding this option to those set out in s236 of the Act. A single TCF code adopted by the Commission - applying the guidance in the Act to its considerations - would apply to all providers of telecommunications services.
13. The current framework doesn't apply to all providers marketing broadband services to consumers such as wholesaler fibre providers and comparison websites, and we agree this should be addressed by the review. The Act should be amended to ensure that Wholesale providers and comparison website operators comply with the code when engaging with consumers.

## Reviewing current regulation to ensure it is warranted

14. The sector operates in a significantly different environment to 2018 when Part 7 was added to the Act. Chorus and LFCs were rapidly rolling out and connecting customers to new UFB fibre networks. Wholesale fibre network providers and retailers were building services, processes and systems for these new networks.
15. In a period of significant network change, there was general dissatisfaction with wholesale and retail provider engagement with customers:
  - a. The 2018 amendment Regulatory Impact Statement<sup>1</sup> (**RIS**) noted that the telecommunications sector generates more consumer complaints than any other sector.
  - b. The 2016 National Consumer Survey (**consumer survey**) had earlier reported that consumers had more problems purchasing telecommunications services than any other sector, with complaints relating to fibre connections, incorrect, misleading or insufficient information about fixed-line telecommunications services, and hidden fees or unexpected costs.
16. The period up to 2018 was all about fibre rollout – a period characterised by a major overhaul of telecommunications infrastructure, new mass market consumer services, and a period of regulatory forbearance in regard to wholesale fibre providers - and the rapid growth in the volume of retail service providers.
17. There have been significant changes since 2016. Fibre connection processes have matured, and retailers have made significant investments in customer service. The 2024 consumer survey<sup>2</sup> reports that the number of consumers having problems with their telecommunications purchases has halved since 2016, and telecommunications services are now one of the least problematic sectors it tracks, with low average cost to fix when problems occur (Figure 1 from the report). The motor vehicle, grocery, real estate, property, consumer electronics and whiteware, build repairs and renovations and clothing sectors are all more problematic.

Figure 1: National Consumer Survey reported problem incidence



The 2024 consumer survey highlights that telecommunications services have a low incidence of consumer problems, and low cost to fix.

<sup>1</sup> <https://www.mbie.govt.nz/assets/512ad8c91a/telco-review-ris-consumer-matters.pdf>

<sup>2</sup> [New Zealand consumer surveys | Ministry of Business, Innovation & Employment](#)

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### An alternative model to simplify the system and strengthening consumer protection

22. We recommend an alternative option built on the current co-regulatory framework.
23. A co-regulatory framework is essential to enable providers technical and consumer expertise to be applied to issues and provides for better regulatory outcomes. Co-regulation is the best way for achieving enduring and effective sector-wide outcomes.
24. In the dynamic and innovative sector we operate in there is also a material real risk of unintended consequences. For example, our customer research indicates that the volume of detailed information we must provide to customers in the sales process undermines customer recall of key issues.
25. Under our preferred option, Commission would be permitted to adopt a single TCF consumer code as the regulated Commission code. In addition to providing for a regulate TCF consumer code, the Ministry should ensure any alternative:
  - a. **Addresses gaps in the current framework.** We agree that protections should apply to all parties marketing telecommunications services to end users, yet the current framework excludes fibre wholesalers and comparison websites marketing to consumers.

Chorus and LFC were exempted from the retail service quality framework on the assumption that Part 6 Price-Quality regulation would address any service quality concerns. However, in practice, Chorus and LFCs' broad marketing activities extend well beyond the scope of Price-Quality regulation and the Commission has

<sup>3</sup> From media reporting <https://www.thepress.co.nz/business/360787038/telcos-push-lighter-touch-government-reviews-sector-rules>

<sup>4</sup> <https://www.mbie.govt.nz/dmsdocument/31120-governance-and-effectiveness-review-of-the-commerce-commission-final-recommendations-report-proactiverelase-pdf>

taken a broader approach to consumer regulation than could reasonably be included in Price-Quality regulation. The Act should be amended to address this anomaly.

- b. **Provides specific legislative guidance for the Commission in exercising its regulatory powers.** The legislation provides no clear guidance on the Part 7 objectives and Commission considerations for intervening in competitive markets, and this means there is significant uncertainty relating to the materiality of the issues that are to be addressed through Part 7, and how far Part 7 regulation will go.

Further, the Commission's mandate in many ways *requires* them to continue to investigate and regulate retail service matters as there are no sensible tests or gates they need to apply before looking into or refrain from regulating something. As a result, the Commission finds itself chasing an impossible standard - under this mandate the Commission's work will never be done.

- 26. The review is also considering the form of legislative guidance in the costs and benefits section of the consultation paper. We believe that, in practice, broad considerations are unlikely to be effective, and specific guidance should sit within the relevant Part of the Act. For example, Parts 2 and 6 already provide for specific Commission considerations relevant to those parts of the Act, but do not exist in relation to retail service quality.
- 27. Specific legislative guidance should relate to the scope of potential regulation and Commission considerations when exercising its' legislative powers. Without legislative safeguards there is a real risk that the revised framework - rather than streamline and simplify regulatory rules as intended - increases the regulatory burden on the industry while delivering few additional benefits to consumers.
- 28. The Ministry could draw on the Australian co-regulatory approach for a system that includes the above features.

### Alternative proposal

- 29. Therefore, considering the principles above, we recommend a different option that builds on the current co-regulatory framework. Amending the Act to:
  - a. **Provide that the Commission can adopt or endorse a TCF consumer code as a Commission code<sup>5</sup>.** The current legislative framework already permits the TCF to develop a single industry consumer protection code.

Once endorsed by the Commission, the single TCF consumer code would be mandatory for all telecommunications providers. As it can today, if the Commission does not support the TCF code, or the TCF is unwilling to create a code where requested, it may create its own applying our proposed legislative guidance. The Commission can also ask the TCF to consider creating a TCF code or amend an existing code.
  - b. **Address key gaps by removing the wholesale exemption.** All providers marketing directly to consumers should comply with Commission code obligations.
  - c. **Provide specific legislative guidance for the Commission in exercising its powers under Part 7 of the Act.** Guidance should include:
    - i. The limits of potential interventions.

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<sup>5</sup> This could be added as another option at s236 of the Act.

- ii. The key considerations and precursors for intervention - such as where there is evidence of market failure, the lack of other options for addressing the market failure (including non-regulatory options), the likely benefits and costs, proportionality, and the benefits of the intervention exceeding costs.
- iii. Further Commission considerations such as the need to minimise the impact on providers and competition, the number of consumers benefiting from the proposal and recognition of existing regulatory requirements in related or supporting regulations.
- iv. Forbearance – regulators should be encouraged to refrain from exercising a regulatory power unless the market mechanisms are unlikely to resolve concerns over the long term.

## Future of the Telecommunications Service Obligations arrangement

### Phasing out the legacy TSO

30. The Ministry is considering proposals to phase out the TSO requirement to provide home telephone service in line with Chorus' plan to retire its copper network by 2030. This would include phasing out the associated services apart from 111 emergency calling, which would remain unaffected.
31. We support removing TSO requirements subject to an agreed migration plan. The TSO obligation makes little sense:
  - a. Spark and Chorus are obliged, among other things, to support basic voice, fax and dial-up services even though those services no-longer serve the needs of New Zealanders and retailers do not offer them.
  - b. Consumers now have access to more cost effective and better performing options which are widely available.
  - c. The Commerce Commission reported that rural consumers were able to access multiple telecommunication technologies and recommended to the Minister that copper broadband and voice services should be deregulated.
32. However, phasing out of the copper network must be in accordance with a migration plan agreed by all stakeholders – i.e., Chorus and Spark as TSO Deed partners, the Crown and impacted consumers – to ensure that the migration minimises costs to all parties and is acceptable to rural communities. For example,
  - a. Some Spark exchanges are serving very few customers and closing these exchanges during the initial phases of the TSO migration would allow us to remove expensive to maintain legacy equipment.
  - b. Further, legacy obligations that make little if any sense in today's context - such as the provision of directory assistance, fax, dial up internet calling and expensive auditing requirements - can be removed now to reduce costs to maintain residual infrastructure.

### Ensuring access to basic telecommunications services

33. We do not support the Ministry options to replace current TSO arrangements with digital inclusion proposals without a wider policy framework that links digital inclusion to other critical factors at a broader national level.

34. The Ministry is further considering options to replace the current TSO arrangement with either financial support direct to people so they can afford access to basic telecommunications services or contracting companies to make basic services available and affordable in places where it would not be profitable.
35. However, it is unclear what the purpose of these alternative arrangements would be beyond assistance to connect to an alternative provider. As set out in the Commission copper deregulation report, multiple infrastructures and technologies are available to rural consumers at affordable prices. For example, Starlink broadband plans are available from \$79 per month and Chorus has successfully migrated customers to Gravity \$60 landline service.
36. Nonetheless, we agree that digital equity is an issue for many families and communities across urban and rural areas. We support a broader policy process to consider digital equity issues, and how to ensure that all New Zealanders have the internet and device access, digital skills and confidence to function in an increasingly digital world. Rural connectivity issues are a subset of digital equity issues, but the challenges are broader. The telco sector, Digital Equity Coalition Aotearoa and other NGOs have been calling for work on digital equity issues for some time.
37. The removal of the existing TSO arrangements should proceed independently of this broader policy conversation, which is not a telco regulatory issue and not in scope for MFR review.

## Phone Booths

38. While not addressed in the consultation paper, a further concern is that the Telecommunications Act would benefit from enhanced clarity (for the avoidance of doubt) to enable the modernisation of assets designed to serve a public purpose, including opportunities to create a modern phone booth network. s 9(2)(f)(iv)  
[Redacted]  
[Redacted]  
[Redacted]
39. Spark has operated public phone booths in New Zealand for over 40 years. With the current technology now end of life, and Chorus decommissioning the copper lines connected to these booths, we face a choice: remove all ~2,000 booths or invest in a smaller subset of modernised versions.
40. Phone booths serve a public function and have always required a source of revenue to underpin their operation. Around the world, funding models have evolved from end-user coin and card revenue collection, to an integrated advertising-funded model. Today, integrated advertising in modern phone booths is commonplace in many major countries around the world – including Australia, the US and the UK. In New Zealand, phone booths are not government funded.

s 9(2)(f)(iv)

[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]

42. International examples demonstrate that modernised alternatives have strong appeal and uptake by the community. As an example, Telstra's deployment of free calling through its phone booths saw over 25 million free calls annually, including 300,000 emergency calls.

s 9(2)(f)(iv) [Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

s 9(2)(f)(iv) [Redacted]

[Redacted]

<sup>66</sup> Section 153(1) and (2), Telecommunications Act 2001

s 9 (2)(b)(ii)

s 9 (2)(b)(ii)

52. We think the issue can be resolved if the Telecommunications Act 2001 was amended to clarify, for the avoidance of doubt, that Part 4 of the Telecommunications Act 2001 applies to all modern equivalents of public phone booths. s 9 (2)(b)(ii)

s 9 (2)(b)(ii)

## Fibre Regulation

54. While the Crown may consider changes to provisions intended to protect its UFB investment, we don't support changes to key elements of the framework, i.e., geographic consistent pricing requirements, anchor services, availability of a layer 1 service and line of business restrictions. The proposed changes undermine the effectiveness of the overall regulatory framework and, accordingly, should only be considered in the context of a review of the overarching policy objectives and framework.

### The UFB regulatory framework

55. The current regulatory framework was intended to provide for the Crown UFB arrangements and to resolve years of industry conflict and public dissatisfaction. Policy makers implemented a regulatory framework to resolve these issues:

- a. Chorus and LFCs were established as standalone wholesale fibre only network providers and – recognising that these entities had the ability and incentives to exploit their market power – protections were put in place to protect competition and innovation (line of business restrictions).
- b. The provision of anchor products, layer one unbundling, geographically consistent pricing, and line of business restrictions are all important components of this framework.

56. Therefore, it is concerning that the Ministry is considering changes to core elements of the fibre regulatory framework without consideration of the overarching policy intent and desired outcomes. For example, removing the restriction on services above layer 2 facilitates fibre wholesale providers expanding further into competitive parts of the market, and further away from their intended open access fibre access provider role. These are more than simple tweaks to current framework and policy settings.

s 9 (2)(b)(ii)

57. Accordingly, while it is open to the review to consider changes to provisions intended to protect the Crown's UFB investment, changes to elements of the framework - such as geographic consistent pricing requirements, anchor services, availability of a layer 1 service and line of business restrictions – should only be considered in the context of a review of the overarching policy objectives and framework.

### **Geographically Consistent Pricing**

58. We don't support a standalone review of geographically consistent pricing (**GCP**) obligations.

59. The GCP rule was created to ensure UFB fibre services were uniformly priced across areas with different costs (largely relating to density) and to help prevent "pocket pricing". The GCP obligation limits Chorus' ability and incentive to expand into neighbouring LFC fibre areas.

60. As the review notes the GCP may reduce incentives for the regulated party to expand the fibre network into new areas by limiting the costs they can recover, although it is unclear whether this is a material factor limiting fibre expansion. The current roll out of UFB fibre was only possible with significant Crown funding and - in Commission proceedings - Chorus claims that UFB prices are already constrained by the anchor services and competition. It is unclear whether there are opportunities in practice for higher fibre prices in fibre expansion areas.

61. Importantly, the GCP forms part of the policy framework whereby the Government would consider and fund further UFB fibre expansion outside Part 6 of the Act. Under this framework Crown UFB subsidies recognise the increasing costs to deploy fibre in to less dense areas - i.e., UFB subsidies ranging from \$1,118 per premise passed in low cost to deploy UFB1 areas, through to \$1552, \$2,000 and \$2,300 per premise passed in UFB2 areas to reflect higher deployment costs – and consumers would benefit from uniform pricing.

62. In our view, any change to the GCP obligation - which would be expected to also result in higher prices for some end users - is a material change in the policy framework and a matter for policy makers rather than the Commission.

### **Basic fibre services**

63. We do not support reviewing anchor services outside the considerations of the Act and regulatory framework, or with an assumption that anchor services be repealed.

64. The review proposes that the Commission review anchor services and potential repeal as part of their next regulatory reset in 2027.

65. However, it is unclear what problem the review is seeking to resolve. The Commission is already empowered by s208 of the Act to review anchor services before the start of each regulatory period. The Minister may make regulations declaring an anchor service (following advice from the Commission) and Chorus is only required to offer an anchor service when one has been declared.

66. Accordingly, the Commission is arguably already able to review anchor services and - if it concludes in that review that no anchor service best supports the anchor product purposes – recommend that the anchor product be omitted from regulations. The Commission took a similar approach to the recent copper deregulation review where it recommended to the Minister that measures be put in place to facilitate customers migrating from the regulated copper service to other technologies.

67. In any case, even if the currently specified anchor services have little effect, anchor services with a different specification may better meet the purposes of anchor services. For example, submitters to the most recent Commission review of anchors services, recommended that the

Commission consider a higher specified broadband anchor service as this would better reflect most end user demand and provide a better anchor.

### **Constitutional changes and Ministerial approval for constitutional changes**

68. The Ministry proposes to make changes to the rules in LFC company constitutions that prevent LFCs from expanding outside core fibre activities.
69. The review reports that these rules were put in place to protect the Crown's investment during the Ultra-Fast Broadband initiative. Since then, most Crown funding has been repaid and protections, like open access and equal treatment of providers, are now covered by legislation and Deeds.
70. We have no view on the restrictions for the purpose of protecting Crown investment, this is a matter for the Crown. However, if the competition protections are also removed from the relevant constitutions, the Ministry should ensure that these are provided for in Deeds and amendments to the Act as proposed.

### **Layer 1 fibre unbundling**

71. The Ministry notes that while Layer 1 unbundling was intended to promote competition, in practice, no providers have used it in the years since the Ultra-Fast Broadband initiative was completed, due to the cost and technical complexity.
72. We do not support the proposed approach. While Layer 1 services have not been taken up, it remains an important option in the regulatory framework that potentially constrains Chorus behaviour. If the Layer 1 option were removed, then the means the only possible means to access the fibre network is at layer 2. The point at which wholesale customers connect to the fibre network is an important part of the regulatory design, balancing policy setting to promote competition and innovation, i.e., lower-level access is often seen as better promoting innovation and “deeper” competition.
73. If the Ministry decides to progress this proposal, it is critical that the point at which wholesale customers connect to the wholesale network is purposefully designed and supported by the framework.

### **Exemption process for services above Layer 2**

74. Chorus and LFCs are not permitted to offer services at levels above layer 2. We do not support a fast-track process for considerations of this nature.
75. The Commission may provide an exemption from this rule, but our expectation is that this would only be for services where layer 3 is incidental to the core layer 2 functionality. The exemption process requires the Commerce Commission to first consult with people it considers will be substantially affected by the exemption.
76. The Ministry proposes to amend the process to not require consultation on all new service proposals and introduce fast-track to ensure regulatory approvals are timely. However, the layer 2 limit is an important element of the line of business restrictions. A monopoly wholesale fibre provider suggesting that a proposal remain confidential for competition reasons should set alarm bells ringing.
77. Approving services above layer 2 is a significant change with complex implications for the market, with a high potential for unintended consequences that are not easily reversed. This is not the sort of decision made using a fast-track process.

### **The process for reviewing fibre service regulation**

78. We do not support removing the two-step process for reviewing fibre service regulation.
79. On the face of it, the two-step process was intended to provide for a quick review so that parties were not required to devote significant resources to a review where there was little prospect of change. The two-step process is common to all key review powers in the Act.
80. If the Ministry wishes to remove the two-step review model, this should be removed consistently throughout the Act.

### **Copper and operational separation deeds**

81. We support reviewing legacy Deed obligations relating to the provision of copper services, operational separation and the Rural Broadband Initiative.
82. A number of providers have entered legacy Deeds with the Crown – including Spark in the context of RBI – and redundant provisions should be removed. These arrangements provide for matters such as ownership restrictions and the provision of non-discriminatory/equivalent access to public funded infrastructure.
83. However, these are highly technical documents and it's unlikely to be clear cut what provisions are obsolete and can be deleted or consolidated into relevant legislation. Even then, it's unclear what the of consolidating backward looking and legacy infrastructure related commitments into legislation might be.
84. Accordingly, we recommend that officials consider all legacy Deeds in more detail with the view to removing obsolete obligations and consolidating the residual obligations to reducing and minimising residual obligations.

## **Telecommunications Development Levy & Telecommunications Regulatory Levy methodology**

85. We do not support the levy used to fund activities which, in our view, can be better funded through alternative funding mechanisms. For example, the TDL is primarily used to fund the Telecommunications Relay Service and that service would be better considered, and funded, alongside other support options as a core budget activity.
86. However, if the levy remains, we support implementing a more transparent, less complex methodology for recovering regulatory and development levies from the industry.
87. The current levy is expensive to administer (for both government and industry), unnecessarily complex (for what is essentially a special projects fund for public good investment), does not align with Treasury and Auditor General guidance on good levy design, and lacks transparency (making it impossible to be transparent with customers about how the levy contributes to the cost of services).
88. Accordingly, we support the alternative option set out in the TCF submission which has wide industry support.
89. That option is based on an earlier Martin Jenkins report that assesses the levy against government guidance and identifies more transparent and less administratively burdensome approaches. Martin Jenkins identified two options - a levy applied on a per connection or percent of the retail price basis - that are consistent with government guidelines, address the issues faced by the industry and could easily be applied in practice.

90. Under the industry proposed approach, the levy is based on a percentage of retail revenue, which translates to a percentage of retail prices for prescribed retail services. A levy described in this way would be transparent to providers and end-users. Further, the proposed approach is less complex and simpler to apply. For example:

- a. Officials would set the percentage using easily accessible data (any unders or overs could be dealt with in a memorandum account):
  - i. the forecast funding requirements from existing budget estimates, project business cases and reporting. In practice, “BAU” and major project funding requirements are known several years ahead of time.
  - ii. Forecasting product revenues and volumes from existing Commerce Commission industry reporting information. Telcos already provide line counts and revenue data to the Commerce Commission for annual market monitoring purposes.
- b. The levy would apply to all providers of prescribed retail services - broadband, standalone voice connections, pre-paid and post-paid mobile connections, and national data connections.
- c. The levy would accordingly be set up front (rather than applied retrospectively as with the current model) and apply to known and externally reported services. Providers and consumers can identify the contribution they are making to TDL funded services.
- d. A less complex methodology that uses already reported values is less costly for providers to apply and requires less assurance reporting to validate (as reviewers can compare returns with already reported data to test for discrepancies). These processes are already subject to existing assurance processes and so no additional audit, or review is needed.

91. In terms of the proposed parameters set out in the discussion paper:

Proposal	Comment
How revenue is defined	<ul style="list-style-type: none"> <li>• We don't support the status quo option as this does not resolve issues with the current approach.</li> <li>• The scope should be limited for simplicity to broadband, mobile and business data services. The clear demarcation this provides between levied and non-levied services significantly reduces the costs to administer the scheme.</li> <li>• A less complex and low cost to comply methodology means there is no a \$10M revenue threshold before the levy applies.</li> </ul>
Method for calculating the levy	<ul style="list-style-type: none"> <li>• We do not support the status quo approach which can only be applied retrospectively and fails to resolve issues with the current approach.</li> <li>• We support the fixed percentage approach and agree that any unders and overs can be easily managed through memorandum accounts.</li> <li>• We do not support a tiered approach. It is unclear what the purpose of a tiered approach is – a percent levy approach is proportionate in itself – and it would simply add complexity.</li> <li>• The beneficiary is the end user and there is no reason why an end-user on a small network should pay a different amount to an end-user on a large network.</li> </ul>

Proposal	Comment
Auditing requirements	<ul style="list-style-type: none"> <li>• A simplified levy based on reported prices and services would not require formal audit. Providers already provide the same validated data to the Commission and for financial reporting. If the Commission detected any material discrepancies it can investigate further.</li> <li>• We further do not support a Directors certificate as, in practice, this would require a similar level of work to the audit costs we're seeking to avoid through the data validated approach.</li> <li>• Auditing is only required from complexity – a simple percent approach has cross checks built in that will highlight discrepancies.</li> </ul>
Should the levies be merged (TRL and TDL)	<ul style="list-style-type: none"> <li>• We agree that the levy for general Telecommunications Act enforcement and TDL could be merged. However, this is not essential for implementing the updated model provided the same methodology applies to both. In which case, the total levy is simply the sum of the two components.</li> <li>• The fibre regulation levy should apply to wholesale fibre providers as it does today.</li> </ul>
Levy both wholesale and retail or just retail	<ul style="list-style-type: none"> <li>• We support option 2 as the least complex to apply, as otherwise you need a netting out process to remove double levy payments.</li> <li>• As noted in the consultation paper, the levy is a pass-through cost for the purposes of the regulatory cost model and we should see a equivalent reduction wholesale prices over time.</li> </ul>

## Balancing the costs and benefits of regulation

92. We support adding section purpose statements that require consideration of the costs and benefits of the Commission exercising its regulatory powers.
93. As noted above, in our view, these purpose statements should provide specific guidance on the scope of potential interventions and the specific Commission considerations relevant to the section when the Commission exercises its regulatory powers.
94. These considerations should highlight that the Commission must consider market failure, and costs and benefits of regulation and proportionality in regulatory proposals.

[END]



s 18(d)

**25 September 2025**

## **Introduction**

1. Thank you for the opportunity to comment on the options paper for the regulatory review of the telecommunications sector (the review). This submission is made on behalf of the New Zealand Telecommunications Forum (TCF).
2. The TCF is the telecommunications sector's industry body which plays a vital role in bringing together the telecommunications industry and key stakeholders to resolve regulatory, technical and policy issues for the benefit of the sector and consumers. TCF member companies represent 95 percent of New Zealand telecommunications customers. Our members include network operators, retail service providers and the tower companies that own and operate cell towers.
3. In this submission we provide sector context and feedback on the following topics:
  - a. Telecommunications Development Levy and Telecommunications Regulatory Levy methodology
  - b. Future of the Telecommunications Service Obligations arrangement
  - c. Consideration of costs and benefits
  - d. Simplifying rules and strengthening consumer protection.
4. The submission points in the above areas mirror what we have entered into the online survey tool. We also provide additional narrative and context that is not easily included using the online tool, because of the way the issues and options have been structured. This is necessary for officials to understand the industry perspective on what has been proposed.

## **Issue one: telecommunications development levy and telecommunications regulatory levy methodology**

### *Sector narrative*

5. The TCF has been calling for the Telecommunications Development Levy (TDL) methodology to be updated because it:
  - a. Is expensive to administer, for the sector and government. The revenue calculations needed for the TDL process are bespoke and not used for other reporting processes. Liable companies need dedicated inhouse resources to unpick revenue information for TDL purposes. They also need to pay external auditors to verify the information. Some member's estimates of the TDL costs range between \$50 000 and \$100 000 per year for this unnecessary accounting.
  - b. Is unnecessarily complex for what is essentially a special projects fund for public good investment.
  - c. Does not align with Treasury and Auditor General guidance on good levy design.
  - d. Lacks transparency, making it impossible to be transparent with customers about how the levy contributes to the cost of services.
6. Any replacement methodology needs to consider and address all of these issues, to ensure the MFR process makes the most of the opportunity to create better regulation. Some of the proposed options in the consultation could reduce some cost, but would not address the important need for transparency. Some proposed options (tiered levy liability, wholesale/retail reconciliations, expanded scope and requiring director certification in place of audit) would increase cost and complexity.
7. A careful pick and mix of the issues and options using the online tool could get us to a result that addresses all four issues. But we think there is a much simpler and effective approach, and way to describe it.
8. The simplest approach is to base the levy on a percentage of service price. This could be achieved as a percentage of retail revenue, which would translate to a percentage of retail price for prescribed retail services, or as an amount per connection. Under this option:
  - a. Officials would set the percentage by:
    - i. Forecasting the amount the Government needs to recover for telco projects (as provided for in the Telecommunications Act) over the period, drawing on existing budget estimates, project business cases and reporting. In practice, "BAU" and major project funding requirements are known several years ahead of time.
    - ii. Forecasting product revenues and volumes from existing Commerce Commission industry reporting information. Telcos already provide line

counts and review data to the Commerce Commission for annual market monitoring purposes.

- b. Any unders or overs could be dealt with in a memorandum account.
  - c. The levy would apply to all providers of prescribed services - broadband, standalone voice connections, pre-paid and post-paid mobile connections, and national data connections.
  - d. There is transparency. Setting the levy up front (before the start of the period) by reference to services acquired by end-users (e.g. as a percentage of retail revenue which translates to a percentage of retail price, or per connection) ensures the levy is transparent to providers and consumers. Providers and consumers can identify the contribution they are making to TDL funded services.
  - e. Data to forecast, apply and assure the levy can be derived from existing financial and regulatory reporting processes. Retailers already provide telecommunications volume and review reports to the Commission. These directly correspond to reported revenues. Wholesalers total regulated revenue is provided to the Commerce Commission as part of information disclosure. These processes are already subject to existing assurance processes and so no additional audit or review is needed.
9. We understand the Ministry does not have a lot of time to present its advice to ministers after the consultation closes. If this does not afford enough time to design a replacement methodology the Ministry could make an in principle recommendation that the levy methodology be changed (to address issues around transparency, complexity and cost) and recommend that the Telecommunications Act be amended so that the TDL methodology is set via regulation. This would provide more time for the policy work to be done (outside the review), and remove the need to find a vehicle to amend the primary legislation.

#### *How revenue is defined*

#### Preferred option

- 10. An option not included above (base levies on gross telecommunications revenue for defined services).

#### Explanation for selection

- 11. Retaining the status quo (option one), a calculation based on a share of qualified revenue, means the levy would continue to be calculated retrospectively, based on past earnings and other firms earnings. This makes it challenging to inform telecommunications end users about how the levy contributes to the cost of the services they receive, and so the levy cannot be passed on in a transparent way.
- 12. Option two (basing the levies on gross telecommunications revenue) will not be sufficient to reduce complexity and administrative burdens, and bring much needed transparency.

13. To make the gross revenue option work the calculation needs to be based on a clearly defined scope of services - broadband, stand alone voice, mobile and data connection services. Our preferred option is therefore to base the levies on gross telecommunications revenue for defined services.
14. However, we would not support this change to gross revenue if other levy issues are not addressed, including those needed to bring transparency. The levy issues need to be considered together.

#### *Method for calculating the levy*

##### Preferred options

15. Flat percentage (option two) and an option not included above (percentage of service price).

##### Explanation for the selection

16. The status quo (option one), continuing to calculate the levy based on a proportion of total industry revenue, will not address the problems concerning complexity and transparency.
17. Making the levy a fixed percentage (option two) will remove complexity, and if set in advance, will provide greater clarity and certainty around expected levy charges. This will also enable telcos to inform telecommunications end users about how the levy contributes to the cost of the services they receive, and so the levy can be passed on in a transparent way, should they choose.
18. Within option two we support the flat percentage sub-option, as a tiered approach would add additional complexity.
19. We have also ticked “an option not included above” as the method for calculating the levy should be a percentage of service price. As noted elsewhere in this submission, to enable transparency and simplicity the levy needs to be linked to prescribed services.

#### *Auditing requirements*

##### Preferred option

20. Another option not identified (alternatives to director certification are discussed).

##### Explanation for the selection

21. We support the removal of the requirement for financial information to be externally audited. External audit will not be needed if the complexity in calculating the TDL is removed, as has been proposed by the TCF (by applying the levy to revenue from defined services).
22. While we can support the regulator having investigative powers, we are not able to support option two because of the proposal to require director certification. Directors would require an external audit to meet such a legal obligation, which would make the process more

complicated and costly than the status quo, requiring companies to go through a director certification process plus an external audit.

23. An alternative approach could be to look at the power Inland Revenue has to do periodic audits or spot checks. But our view is that auditing isn't necessary due to the existing Commerce Commission annual monitoring process. Telcos already provide the necessary information and data as part of the Commission's data collection for its Annual Monitoring Report (AMR). To obtain this information the Commission issues a section 98 notice for AMR data which comes with legal consequences. If the Regulator notices any material discrepancy it can investigate. The rigour around this process means the data can be relied on and provides a good comparator for a TDL return.

*Should the levies be merged*

Preferred option

24. An option not included above (merge TDL with only part of the TRL).

Explanation for the selection

25. If the levy method is changed so it is calculated as a percentage of service price the general Telecommunications Regulatory Levy (TRL) sub-levy which is currently paid by all telecommunications operators could be merged with the TDL. However, the two TRL sub-levies related to fibre regulation, paid by the local fibre companies, should not be merged with the TDL and continue to be calculated and applied separately.

*Who is required to pay the levy*

Preferred option

26. An option not included above (apply levy to prescribed retail services).

Explanation for the selection

27. We have chosen the "other" option because any application to retailers only needs to be more nuanced, in two respects:
- a. Firstly, the application to retailers only, can only be supported if the transparency issues raised by the TCF are also addressed. As noted previously, the TDL issues need to be addressed as a package.
  - b. Secondly, if the levy applied to all providers of *prescribed retail services* - broadband, standalone voice connections, pre-paid and post-paid mobile connections, and national data connections. This approach would enable transparency and certainty relating to the TDL liability on a service basis and enable telcos to communicate this to end users should they choose.
28. Accordingly, the TDL would no longer form a component of wholesale prices. Our retail members have said they would expect this to flow through as an equivalent reduction in wholesale input prices.

## **Issue two: future of the telecommunications service obligations arrangements**

### Preferred option

29. Option two (phase out the requirement to provide home telephone service).

### Explanation for the selection

30. The existing telecommunications service obligation (TSO) arrangement is obsolete and should be removed.
31. The TSO service, a voice service that supports dial-up internet and analogue fax, is no longer relevant to modern connectivity needs. It also applies only to a limited set of addresses that had a phone line on 20 December 2001 and do not have access to fibre services. This creates inequities and confusion, as neighboring properties can have differing TSO status.
32. The telecommunications landscape is unrecognisable from what existed in 2001, when the TSO arrangements were fixed. Today, consumers have access to a wide range of superior services such as those provided by fibre, fixed wireless, improved mobile services, LEO satellites and GEO satellites. These services are widely available and have been broadly adopted by consumers.
33. The Commerce Commission has recently recommended the removal of copper regulation because it is no longer needed to promote competition. This recommendation was based on the comparative availability, affordability, and superior performance of modern alternatives to copper services in rural areas.
34. Maintaining the copper infrastructure and equipment used to supply legacy TSO services is increasingly challenging. Challenges include the cost of maintaining a network for a diminishing number of consumers, and the inability to procure parts and people with the necessary skills to fix faults when they occur. The sector's focus should not be on investing in and sustaining outdated systems and services.
35. We recognise the importance of a managed withdrawal process that applies to all remaining copper consumers, including those covered by the TSO. It is essential that those consumers receive the same benefits and protections through this process as all other remaining non-TSO copper consumers. The Commerce Commission is progressing work on an appropriate set of managed withdrawal commitments for rural consumers as outlined in the Telecommunications Commissioner's letter to the Minister for Media and Communications dated 21 August 2025, which delivered the final Copper Services Investigation report.
36. While we do not think the TSO needs to be replaced with a modern regulatory alternative (option 3), we do support a broader policy process to consider digital equity issues, including how to appropriately ensure New Zealanders have the internet and device access, digital skills and confidence to function in an increasingly digital world. Rural connectivity issues are a sub-set of digital equity issues, but the challenges are broader.
37. However, the removal of the existing TSO arrangements should proceed independently of this broader policy conversation, which is not a telco regulatory issue and not in scope for

MFR review. The removal of obsolete regulation should not be delayed by discussions about alternative approaches.

### **Issue three: consideration of costs and benefits**

#### Preferred option

38. No preferred option (members prefer different options).

#### Explanation for selection

39. We agree that robust and transparent analysis, including cost benefit assessments, should be undertaken before any exercise of regulatory powers.

40. Following several years of regulatory change and intervention, the telecommunications sector is now highly competitive. Yet in some areas the Commission has introduced regulatory interventions which raise questions about whether the benefits outweigh the costs, and which are insufficiently justified by evidence. While in some cases the Commission may ask the sector about costs, benefits to consumers are often assumed.

41. Like all government policy and regulatory agencies the Commission should work through a process to determine that an issue is significant enough to require intervention. While there needs to be an assessment of cost benefit, this doesn't necessarily need to be a resource intensive CBAX analysis (it will depend on the stage of the process and proposed intervention). But there does need to be a threshold level of cost benefit analysis, along with other standard regulatory practice including consideration of problem definition, magnitude of the problem, and options analysis.

42. Going through this standard process will also help the Commission to make decisions about resource allocation, ensuring resources are focused on areas where New Zealanders have concerns about markets and competition. The Commission has 29 employees working on telecommunications issues, 21 in the grocery division and only 9 working on electricity distribution regulation. These numbers are surprising when we consider the regulatory maturity and competitive environment in telecommunications relative to the grocery and electricity markets.

43. We have not selected a preferred option as TCF members have different opinions. Some support a legislative approach while others would prefer to see greater focus on cost benefit analysis in the letter of expectations.

## **Issue four: simplifying rules and strengthening consumer protection**

### Preferred option

44. No preferred option (members support different options).

### Explanation for selection

45. We understand the Ministry is looking to reduce complexity in the making of retail service quality rules, and to achieve universal compliance. Both can be achieved through a co-regulatory approach, and we urge the Ministry to ensure it factors in the broader benefits of a co-regulatory approach in making any recommendations in this area.
46. The TCF currently develops industry codes and regulated telecommunications access codes, and oversees the compliance of industry codes. This model has delivered tangible benefits for both consumers, industry and the regulator.
47. A co-regulatory approach offers several important advantages over a purely regulatory model:
- a. Industry expertise and practicality. Codes are developed and maintained by those with operational knowledge, ensuring rules are workable, practical, and efficient in real-world application.
  - b. Innovation and flexibility. Allows for innovative approaches and continuous improvement without the rigidity of more prescriptive regulation.
  - c. Responsiveness. Industry-led processes can adapt more quickly to technological change and emerging issues than formal regulatory processes.
  - d. Lower compliance costs. Industry-developed codes can reduce compliance complexity and cost, which ultimately benefits consumers through lower prices/better service.
48. In addressing complexity we would not want to lose the benefits to code quality that come from experts working in a sector playing a role in the development of codes. Tapping into the industry's collective expertise is more efficient than reproducing this at the agency level, and delivers more operationally achievable outcomes that can be efficiently implemented by service providers.
49. The TCF is therefore of the view that the Telecommunications Act should continue to enable the TCF to develop industry codes or regulated telecommunications access codes that relate to telecommunications services to support the sector and consumers.
50. TCF members are not opposed to the creation of a single code for consumer care that applies to all businesses and protects all consumers. All agree that industry should be involved to ensure quality code making, but have different views on the best process to achieve this. Some members will submit separately on options and alternatives.

51. If there are questions about this submission please contact [kim.connolly-stone@tcf.org.nz](mailto:kim.connolly-stone@tcf.org.nz) in the first instance.

7 October 2025

Telecommunications Review

Ministry of Regulation

Wellington

[Sent by email to TelcoReview@regulation.govt.nz]

Dear Cherie,

**Consultation on inclusion of wholesale telecommunications providers in “Consumer Protection Code”**

Thank you for the opportunity to comment on the Ministry of Regulation’s proposal to create new consumer protection making powers for the Commerce Commission and to extend those protections so they are also applicable to wholesale providers of telecommunication services.

**This submission contains confidential information and should not be disclosed.**

We understand the proposal to be:

- The role of the Telecommunications Industry Forum (being the TCF) in making industry retail service quality codes related to “Consumer Protection” is removed and the power transferred to the Commerce Commission.
- The Commerce Commission would then create a single Code (referred to in this submission as the “Consumer Protection Code” for ease of reference).
- This is not a “lift and shift” of existing Codes. The Commission would have to go through a process of assessing that there is an issue, where regulation is needed, and what a proportional response would be.
- Part 7 of the Telecommunications Act currently only applies to retail service quality, so does not apply to wholesale telecommunications providers. The new area of “Consumer Protection” would capture wholesalers, as determined by the Commerce Commission.

We also assume that the Ministry is intending that:

- The expansion of scope applies to all parts of the telecommunications supply chain, including telecommunications comparison websites, and also any wholesaler of telecommunications services (e.g. fibre network owners/ providers that are not Local Fibre Companies (LFCs) and Tower companies).
- The dispute resolution scheme for the “Consumer Protection Code” will be the industry dispute resolution scheme, currently the Telecommunications Disputes Resolution Scheme (TDRL).

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## The Consumer Protection Code should only be applicable to Retail Telecommunications Service Providers

Enable does not support including wholesalers in the scope of what could be regulated under the Consumer Protection Code. This is for the following reasons:

- 1) LFCs have very limited interaction with end-users. For example, under Enable's Wholesale Service Agreements with Retail Service Providers (RSPs), we have strict restrictions on when we can contact end-users. Clause 10.5 states:

**"No Contact:** *The LFC will not contact any Reseller or End User in relation to any service, which incorporates a Service, and is provided to that Reseller or End User without the Service Provider's prior consent, except:*

- a) *to the extent provided for in clauses 10.2(c) to (j) inclusive, 12.3 or the Operations Manual (in each case, including as regards Exempted End Users).*
  - b) *in the case of contact with End Users who are not Exempted End Users, in order for the LFC to enforce its rights under the LFC (End User) Terms or pursuant to clause 10.2(j); or*
  - c) *for the purpose of allowing the LFC to undertake marketing for the use of Fibre on the LFC Network"*
- 2) Being a wholesaler, our customers our large and sophisticated corporates, who do not need consumer protection regulation. We are expressly prohibited from retailing to end-users and therefore imposing consumer codes is disproportionate regulation.
  - 3) Best practice regulation is also to match the requirement with the ability to influence outcomes. The RSP owns and controls the customer experience, sets pricing and terms and determines how a customer complaint is managed. Enable has very little control over any of this.
  - 4) s 9 (2)(b)(ii)
  - 5) The "disputed charges" complaints relate to where an end-user has damaged the ONT box of fibre service leads on their property. It is reasonable for us to charge these end-users for rectifying this damage rather than cross subsidising from other end-users. The cost we charge is disclosed online in our standard pricing, is very reasonable given we have a strong incentives for these end-users to remain on fibre.

<sup>1</sup> <https://www.enable.net.nz/assets/Corporate-Publications/Enable-UFB-Services-Agreement-General-Terms-Ver-3-Jan-2022-FINAL.pdf>, page 20.



regulated by Part 6, and where price-quality regulation applies, there is a direct link between revenue allowances and quality paths.

**If the Ministry proceeds with its proposal, the policy should avoid over-lap with other regulation**

One of the Ministry's main rationales for one retail service quality code is to avoid duplication between the TCF and the Commerce Commission. Similarly, it should avoid duplication of regulation-making powers of Part 6 and the new Consumer Protection Code. We recommend the following to avoid this:

- 1) Part 6 of the Commerce Act should have precedent over the regulation-making powers of the Consumer Protection Code, given it is a more holistic regulatory mechanism.
- 2) The following areas should be excluded from the Consumer Protection Code:
  - a. All the excluded matters in Schedule 4 of the TDRL Terms of Reference<sup>3</sup>. For example:
    - i. the absence of network coverage (Enable also receives complaints that we have not extended the fibre network to other geographic areas. As a commercial company, we should have control of where we chose to invest)
    - ii. relating to broadband performance, unless the complaint relates to a material failure of a broadband service to meet performance standards that have been represented to the Customer as the applicable standards for the broadband service, and which is covered by the complaints process set out in the TCF Broadband Marketing Code
  - b. Regulations that apply to accessing shared property for fibre installations, as covered by Subpart 3 of Part 4 of the Telecommunications Act. Utilities Disputes Limited is the dispute resolution scheme for this area.

Thank you for considering the points raised in this letter.

<sup>3</sup> <https://www.tdr.org.nz/sites/default/files/2023-06/TDRL%20Terms%20of%20Reference%201%20July%202023.pdf>, page 30

**Northpower Fibre Limited  
Submission on Ministry for Regulation  
consultation on:**

**Telecommunications Sector Regulatory  
Review**

### Northpower Fibre Limited's Feedback

1. Northpower Fibre Limited (**NFL**) is a local fibre company and owns and operates the ultra-fast fibre network in the Whangarei and Kaipara districts of New Zealand and has over 26,000 connected customers.
2. NFL welcomes the Ministry for Regulation's regulatory review of the telecommunications sector (**Review**).
3. Northpower provided initial feedback on the terms of reference for the Review.
4. The telecommunications sector provides essential services which support communities, enables civil defence and emergency activities and drives efficiency and economic growth and development.
5. Regulation must not hamstring NFL unnecessarily, including as NFL builds extensions to reach rural communities and adds resiliency into its network. Recent events in New Zealand - including major weather events - have shown why these activities are critical.
6. NFL is not a large market player and has a limited ability compared to larger players to scale costs and resources. Regulation should not punish smaller players like NFL from effective and efficient delivery of services, for example by adding unnecessary cost, complexity or compliance obligations.

Thank you for the opportunity to provide submissions on the Telecommunications Sector Regulatory Review. NFL's specific submissions are in the attached Appendix.

**Northpower Fibre Limited**

25 September 2025

## Appendix: NFL Submissions

### General

I consent to the Ministry for Regulation sharing my contact details with another government agency and I am happy to be contacted if required	Yes
What is your email address?	s 9(2)(a) @Northpowerfibre.co.nz
Are you making a submission on behalf of an organisation or as an individual?	Organisation
What is the name of your organisation?	Northpower Fibre Limited
I consent to my organisation's name being publicly released by the Ministry for Regulation as a submitter to the Review.	Yes
What best describes the nature of your organisation in relation to telecommunication services?	Local Fibre Company
Are you happy for us to contact you if we have questions about your submission?	Yes





## Consumer protection and customer service

NFL has no specific submissions on this topic, although NFL generally supports consumer protection and customer service initiatives.

## Access to basic telecommunications services

NFL has no specific submissions on this topic.

## Fibre Regulation

NFL wishes to submit on this topic.

### Governance settings in Local Fibre Company constitutions

NFL's preferred option is:

Option	Description
<input type="radio"/>	Status quo – continue Ministerial approvals with no defined or time-limited process
<input checked="" type="radio"/>	Remove the Government Share and move line of business restrictions to legislation
<input type="radio"/>	An option not included above
<input type="radio"/>	No preferred option
<b>Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages:</b>	
All providers are now covered by legislation and the deeds of open access. NFL considers that the Government share is no longer required. This option would treat all providers equally. There should be an even playing field for all providers.	

Would there be any unintended consequences of removing the Government Share?

Option	Description
<input type="radio"/>	Yes
<input checked="" type="radio"/>	No
<input type="radio"/>	Unsure

## Ownership restrictions in Local Fibre Company constitutions

NFL's preferred option is:

Option	Description
<input type="radio"/>	Status quo – retain constitutional shareholder caps
<input checked="" type="radio"/>	Remove ownership restrictions and rely on existing legislation
<input type="radio"/>	An option not included above
<input type="radio"/>	No preferred option
<p><b>Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages:</b></p>	
<p>There are other laws in place that regulate NFL's ownership. The Government contracts are now finished and completed.</p>	

Would there be any unintended consequences of removing the ownership restrictions?

Option	Description
<input type="radio"/>	Yes
<input checked="" type="radio"/>	No
<input type="radio"/>	Unsure

## Layer 1 unbundling

Do you have any preferred option(s)?

Option	Description
<input type="radio"/>	Status quo – continue to require Layer 1 unbundled fibre
<input checked="" type="radio"/>	Repeal Layer 1 unbundling requirements
<input type="radio"/>	Consider repeal as part of the next regulatory reset in 2027
<input type="radio"/>	An option not included above
<input type="radio"/>	No preferred option
<p><b>Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages:</b></p>	
<p>With an open access network, there is no need to have physical unbundling. Unbundling makes the Layer 1 Network less efficient as fibres are unused within the cable just in case they need to be used for unbundling in the future. This restricts capacity and potentially resiliency as the unused fibres could be used for better purposes. NFL is not aware of any access seekers taking up the unbundled offer, to date.</p>	

Would there be any unintended consequences of repealing all Layer 1 unbundling obligations?

Option	Description
<input type="radio"/>	Yes
<input checked="" type="radio"/>	No
<input type="radio"/>	Unsure

## Exemption process for services above Layer 2

Do you have a preferred option?

Option	Description
<input type="radio"/>	Status quo – require full public consultation
<input checked="" type="radio"/>	Streamlined exemption process, fast-track for low-risk services
<input type="radio"/>	An option not included above
<input type="radio"/>	No preferred option
Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages:	
This will help with the fast-moving technology changes in the industry and get rid of red tape requirements needed to quickly adapt and innovate for the benefit of consumers and competition.	

Would there be any unintended consequences of streamlining the exemption process?

Option	Description
<input type="radio"/>	Yes
<input checked="" type="radio"/>	No
<input type="radio"/>	Unsure

## Fibre deregulation review process

Do you have a preferred option?

Option	Description
<input type="radio"/>	Status quo – Two-step process with no timeframe for decisions
<input checked="" type="radio"/>	Single step streamlined process for deregulation reviews
<input type="radio"/>	An option not included above
<input type="radio"/>	No preferred option
Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages:	
This would speed up the process and reduce delays in a fast-changing market.	

Would there be any unintended consequences of adopting a single step process for deregulation reviews?

Option	Description
<input type="radio"/>	Yes
<input checked="" type="radio"/>	No
<input type="radio"/>	Unsure

## Legacy regulatory obligations in telecommunications

Do you have a preferred option?

Option	Description
<input type="radio"/>	Status quo – retain legacy Deeds and agreements
<input type="radio"/>	Streamline and modernise
<input type="radio"/>	An option not included above
<input checked="" type="radio"/>	No preferred option
Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages:	
This is targeted at the deeds for Chorus and Spark.	

Would there be any unintended consequences of streamlining and modernising these Deeds?

Option	Description
<input type="radio"/>	Yes
<input type="radio"/>	No
<input checked="" type="radio"/>	Unsure

## Telecommunications Development Levy & Telecommunications Regulatory Levy methodology

NFL wishes to submit on this topic. NFL supports and repeats the matters raised in the NZ Telecommunications Forum (TCF) submission in relation to this section of the MfR consultation.

## Balancing the costs and benefits of regulation

NFL wishes to submit on this topic.

Do you have a preferred option?

Option	Description
<input type="radio"/>	Status quo – Continue use of Letters of Expectation
	Overarching purpose statement to require consideration of costs and benefits
<input checked="" type="radio"/>	Sectional purpose statements to require consideration of costs and benefits
<input type="radio"/>	An option not included above
<input type="radio"/>	No preferred option
Please explain the reason for your selection. If you identified another option, please include the advantages and disadvantages:	
NFL supports the Commerce Commission undertaking a cost and benefit analysis before exercising its regulatory powers. In the past, interventions are made whether or not the benefits outweigh the cost to the industry and consumers, or in circumstances where the materiality of a net benefit is not significant and does not justify the activity. NFL would support a threshold level of cost benefit analysis set along with other standard regulatory practices.	

If you prefer option 3, which parts of the Telecommunications Act 2001 should the sectional purpose statements apply to?

Option	Description
<input type="radio"/>	Retail service quality
<input type="radio"/>	Information and monitoring
<input checked="" type="radio"/>	Information disclosure (fibre services market monitoring)
<input type="radio"/>	Other sections
If you answered 'Other', what sections and why?	
N/a	



**Are there any unintended consequences to consumers and industry that might arise from having sectional purpose statements?**

Option	Description
<input type="radio"/>	Yes
<input checked="" type="radio"/>	No
<input type="radio"/>	Yes
<input type="radio"/>	Unsure
<b>If you answered 'Yes', please provide your reason(s) below:</b>	

## Maria Spencer

---

**From:** s 9(2)(a) @northpower.com >  
**Sent:** Tuesday, 7 October 2025 3:13 pm  
**To:** Maria Spencer  
**Cc:** Cherie Engelbrecht; Telecommunications Review; s 9(2)(a)  
**Subject:** RE: IN CONFIDENCE - Catch up with MfR

Kia ora Maria

Thank you for your time yesterday to explain a further proposal being considered by the Ministry to include additional regulation within the telecommunications industry. Northpower Fibre Limited's (NFL) submissions are as follows:

### General Comments

- NFL's parent company, Northpower Limited, is a consumer trust-owned entity and we reiterate that NFL supports consumer-focused initiatives.
- NFL supports targeted regulation where such regulation addresses an evidenced risk/issue and where regulatory outcomes are justified.
- NFL's customers are RSPs, not end users. The starting point is that NFL is not a retailer under the system and settings.

### Specific Comments

- The basis for introducing retail-focused regulation to apply to wholesalers is not clear and, to the extent there is any such issue associated with wholesalers marketing to end-users, NFL would encourage the Ministry to consider whether the incident improved end-user outcomes and whether other legislative rules provide minimum standards of assurance without the need for additional regulation (for example under the Fair Trading Act 1986).
- NFL supports the status quo:
  - The current approach, set by primary legislation, is appropriate. The Commerce Commission can intervene in an escalating manner through guidelines or by making a retail service quality code (where the statutory criteria for doing so is met), rather than regulating by default.
  - NFL does not support defaulting to a single enforceable Commerce Commission retail code, applicable to wholesalers.
  - NFL is not against joining the voluntary code where it is relevant and appropriate for wholesalers and targeted towards NFL's scope and activities.
- NFL supports a targeted set of rules: the application of the voluntary code must be specific to the relevant industry group. Wholesalers should not be subjected to general rules which are appropriate for retailers.

Please let us know if you have any further questions.

Best regards

**Johnny FOWLER**

Head of Legal

s 9(2)(a)  
[www.northpower.com](http://www.northpower.com)

**Northpower**

be mindful be present be safe

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**From:** Maria Spencer <Maria.Spencer@regulation.govt.nz>  
**Sent:** Monday, 6 October 2025 1:38 pm  
**To:** s 9(2)(a) @northpower.com>; s 9(2)(a) s 9(2)(a) @northpower.com>; s 9(2)(a) @northpowerfibre.co.nz>  
**Cc:** Cherie Engelbrecht <Cherie.Engelbrecht@regulation.govt.nz>; Telecommunications Review <TelcoReview@regulation.govt.nz>  
**Subject:** IN CONFIDENCE - Catch up with MfR  
**Importance:** High

Some people who received this message don't often get email from maria.spencer@regulation.govt.nz. [Learn why this is important](#)

IN-CONFIDENCE

Kia ora s 9(2)(a)

Thank you for your time this morning. As discussed, the review team is continuing to work at pace and have key deadlines in October, including providing Ministers with provisional findings and provisional recommendations this week.

We have consulted on a proposal to create a single enforceable Commerce Commission code for retail service quality and remove the code-making role of the TCF from the Telecommunications Act 2001. We have also given further thought to how the Commission should go about giving effect to this proposal. If there is such a code (if a regulatory gap exists), we are considering requiring the Commission to consider transparency and proportionality for any code activity.

In order to inform our analysis, we are interested in your views on whether the Commission should be given the ability to consider, if it is appropriate to do, binding wholesalers to such a code if they engage in consumer-facing activities.

As noted, we are yet to discuss any proposals with Ministers, and therefore we ask that you treat this request as confidential.

We ask that you please provide your feedback by close of business tomorrow (**Tuesday, 7 October**) as you can appreciate we are moving at pace.

We are happy to discuss further if you wish.

Ngā mihi nui

Maria

**Maria Spencer** (she/her)

**Senior Advisor, Reviews and System Capability**

Ministry for Regulation

**īmēra:** [maria.spencer@regulation.govt.nz](mailto:maria.spencer@regulation.govt.nz) | **waea pukoro:** s 9(2)(a)



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IN-CONFIDENCE

.....  
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IN-CONFIDENCE

# Tuatahi First Fibre Limited feedback on the proposed expansion to the consumer protection proposal contained in the Telecommunications Sector Regulatory Review consultation

07.10.2025

## **Introduction:**

Thank you for the call to discuss the evolution in policy thinking regarding the Consumer Protection section of the consultation, and the opportunity to respond in writing. As indicated on the call, we can understand how the policy thinking has evolved to broaden the scope of the proposal outlined in the Consumer Protection section of the consultation.

We have observed that there are deficiencies in the current voluntary code system, with gaps in both the retailers who sign up, and the coverage of the code. There is currently a substantial gap surrounding non-retailer direct consumer marketing such as broadband comparison websites. The initial proposal consulted on would only address the issue of gaps in retailers captured by a code, leaving the other gap in code coverage (other direct to consumer marketing such as broadband comparison websites) unaddressed.

We note that the description provided of the expanded policy is that a Commission administered Consumer Protection code would need to be proportionate, this is critical – as we will outline below how the fibre wholesalers are inherently constrained in their ability to have any direct consumer relationship, so it would be disproportionate to require the same code restrictions as retailers who have the direct relationship with consumers.

## **Background:**

As the Ultrafast Broadband Initiative was intentionally architected to structurally separate the supply of wholesale and retail fibre services, the fibre wholesalers have forgone the ability to have any direct relationship with consumers.

We do not have an ability to hold a direct relationship with consumers, both in terms of supplying fibre (or any other) telecommunications services, or invoicing consumers for other services related to their fibre telecommunications services. The restriction is reflected in both the Telecommunications Act 2001 (including the Deed of Open Access - Fibre Undertakings given by the fibre wholesalers under Part 4AA of that Act), and our wholesale supply agreement with retailers. The effect of these clear boundaries of communication has been a contentious topic between the fibre wholesalers and retailers.

Telecommunications Act have not needed to be applied to the fibre wholesalers due to the separation between wholesale and retail fibre. The factors in consumer satisfaction (or dissatisfaction) that fibre wholesalers can have influence on are already captured by quality provisions required to be reported on in the Information Disclosure (ID) regime that applies to the fibre wholesalers under Part 6 of the Telecommunications Act. For example, in our IDs we report on:

- End-user connection satisfaction (installation quality)
- End-user connection satisfaction (installation process satisfaction)
- End-user fibre broadband performance satisfaction
- Traffic performance
- Availability
- Faults
- Total number of connections provisioned
- Breakdown of connections provisioned that did not meet the agreed date

Therefore, any additional service quality code requirements would be duplicative.

**Communications & marketing permissible for Wholesalers to undertake:**

As we are prohibited from selling any telecommunications services directly to consumers, we are also prohibited from having any type of relationship directly with consumers. The retailer is the relationship holder. This heavily restricts the type of marketing we can undertake, as well as the purpose of any marketing. <sup>s 9 (2)(b)(ii)</sup>

[Redacted]	[Redacted]
[Redacted]	[Redacted]
[Redacted]	[Redacted]

[Redacted]

### **The existing consumer protection laws in place for fibre wholesale marketing (Fair Trading Act, Advertising Standards Code):**

As outlined above, fibre wholesalers can only undertake generic marketing campaigns, which are not directed at specifically selling a good or service to consumers. Our feedback to the question you have asked is that for fibre wholesalers, existing consumer protection laws and codes (in particular the *Fair Trading Act 1986 (FTA)* and the *Advertising Standards Code (ASC)*), provide an appropriate and proportionate legal framework to govern fibre wholesale marketing to protect consumers.

Under the FTA, consumers have the right to clear and accurate prices for products and services, and factual advertising. While Tuatahi does not offer services directly for sale to the consumer, we are captured effectively by the obligations to provide accurate information and avoid misleading customers. It is illegal for a business to mislead or deceive consumers. This includes writing or saying anything false or misleading about products or services; making claims about products if businesses don't have evidence to back them up; and unfair sales practices like bait advertising. In practice this means that although our marketing is informational, we are already obligated to satisfy the standards of accuracy and substantiation. An example of this in practice are any references to fibre broadband performance made in marketing, which we substantiate through reference to the Measuring New Zealand broadband performance monitoring reports run by the Commerce Commission.<sup>1</sup>

Further marketing protections, and a pathway for consumers to raise their concerns with advertising content, is provided by the Advertising Standards Authority. Under the ASC, all advertising must be legal, decent, honest and truthful and respect the principles of fair competition. There are two principles of the ASC: social responsibility (which means advertisements must be prepared and placed with a due sense of social responsibility to consumers and to society); and truthful presentation (which means advertisements must be truthful, balanced and not misleading to consumers). Several rules sit under these principles, which provide examples of how the principles are to be interpreted and applied. Compliance is measured with both the spirit and intention of the Code, meaning it is possible for advertising to be in breach of one or more of the ASC principles in the Code without being in breach of a specific ASC rule.

Tuatahi submits, as fibre wholesalers only undertake generic, informational, non-transactional marketing campaigns and does not sell products (goods or services) to consumers, the existing legal framework (FTA and ASC) provides appropriate and enforceable protection to consumers.

### **A first principles assessment of whether fibre wholesale providers need to be included:**

The framework outlined in the Terms of Reference for the Telecommunications Sector review provides consideration for the following questions at section 19:

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<sup>1</sup> <https://www.comcom.govt.nz/regulated-industries/telecommunications/monitoring-the-telecommunications-market/monitoring-new-zealands-broadband/>

from government (e.g., co-regulation)?

- what are the costs and benefits of regulation and the distribution of those across different parties?
- how are the regulations working, including compared to equivalent regimes in other countries?

Coming back to these first principles, we do not believe there has been any market failure, nor has there any present or increased risk or harm to consumers as a result of fibre wholesaler marketing under the current settings – and therefore it is not necessary for any recommendation for government intervention to include fibre wholesaler marketing. The regulatory (information disclosure (ID)) regime that applies to the fibre wholesalers is already comprehensive and covers matters of quality performance (which is where fibre wholesalers will impact the consumer experience); and if there were gaps, this could be amended through update to the ID regime rather than through an additional code obligation.

When it comes to retail marketing standards, which certainly contain gaps currently (given not all retailers sign up, and not all direct marketing agencies are obliged to sign up), we agree that generally there is a market failure in the current voluntary code regime. However, when we examine whether there is a market failure specifically for the fibre wholesalers, we do not believe this is the case. As outlined above, given we can only undertake fibre brand awareness (availability) and informational (fibre performance) marketing – the existing consumer protections in place via the FTA and ASC are more than appropriate and proportionate to protecting consumers.

These existing tools are sufficient in principle and have proven to be effective in practice.<sup>2</sup> Consumers already benefit from comprehensive rights to fair treatment, transparency, redress, and service continuity, supported by active enforcement and well-defined complaint pathways. In this context, new or overlapping obligations risk creating confusion or regulatory inefficiency without any prevailing risk or market failure to protect consumers – and without any evidence or rationale to justify any potential or assumed consumer benefit. Therefore we do not believe that fibre wholesalers are part of any market failure that needs to be addressed.

### **Alternatives to the proposed broadened consumer protection policy:**

Tuatahi suggest that the scope of any recommended reset of consumer protection policy be based on applying a single enforceable code for '*direct to consumer sales marketing*'. This would cover all businesses selling products directly to end consumers, or providing telecommunications service (e.g., plan) advice directly to consumers – which includes the broadband comparison websites, and offshore based telecommunications services (e.g., satellite). Importantly, it would exclude the fibre wholesalers who undertake generic informational marketing, and already have proportionate restrictions in place for this level of activity.

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<sup>2</sup> [https://www.comcom.govt.nz/news-and-media/news-and-events/2023/commerce-commission-action-delivers-3-675-million-sting-to-one-nz-for-kiwi-consumers/?utm\\_source=chatgpt.com](https://www.comcom.govt.nz/news-and-media/news-and-events/2023/commerce-commission-action-delivers-3-675-million-sting-to-one-nz-for-kiwi-consumers/?utm_source=chatgpt.com); [https://lawnews.nz/misc/commerce-commission-files-criminal-charges-against-noel-leeming/?utm\\_source=chatgpt.com](https://lawnews.nz/misc/commerce-commission-files-criminal-charges-against-noel-leeming/?utm_source=chatgpt.com); [https://www.dentons.co.nz/en/insights/articles/2025/july/10/commerce-commission-issues-compliance-advice-letter-regarding-unfair-contract-terms?utm\\_source=chatgpt.com](https://www.dentons.co.nz/en/insights/articles/2025/july/10/commerce-commission-issues-compliance-advice-letter-regarding-unfair-contract-terms?utm_source=chatgpt.com); <https://asa.co.nz/decisions/search-browse-decisions/>

We are concerned with the proposed use of the term “*proportionate*”, and how it will be applied, because it is inherently subjective and imprecise. Any application of a *proportionate* policy setting will rely on an official’s interpretation of what they consider is *reasonable* without any clearly defined measure. Effective regulation depends on clarity, consistency, and enforceability. Using the word *proportionate* as a guiding standard (even with or without a clear definition) risks substituting discretion for purposeful policy design. In practice, this can lead to regulatory uncertainty and inconsistency – especially where similar conduct by different companies may be treated differently if proportionality is subjectively assessed. It can also be a disincentive to innovation, because the indeterminate nature of the policy – and the real risk of interpretation inconsistency between a marketing party and a regulator – will result in the risk profile of a marketing decision too high or uncertain to proceed. In comparison, the Commerce Commission typically avoids using *proportionate* in its enforcement frameworks; preferring instead to support *risk-based*, *evidence-based* and *targeted* criteria and methodologies to anchor decision-making to objective criteria.

Given there is comprehensive existing coverage of fibre wholesaler activity that could impact consumers in the current Part 6 regulatory regimes, and limits already in place on fibre wholesaler interaction with consumers, it would be appropriate and proportionate to exclude the fibre wholesalers from any retail marketing or consumer code outcomes, in order to avoid creating regulatory overlap and further complication of the purpose of the consumer protection framework.

Regards,

s 9(2)(a)

A large grey rectangular redaction box covers the signature area of the letter.

Regulatory Manager

**Maria Spencer**

---

**From:** s 9(2)(a) @chorus.co.nz>  
**Sent:** Thursday, 9 October 2025 11:41 am  
**To:** Cherie Engelbrecht  
**Cc:** s 9(2)(a) Kevin Counsell; Telecommunications Review; Liam Taylor  
**Subject:** RE: Additional information -Layer 1 unbundling - in confidence

Hi Cherie

Thank you for your request for further information. We've provided additional detail below aimed at quantifying some of the costs associated with meeting Layer 1 unbundling requirements, particularly in relation to the PONFAS product.

As outlined in our 11 July submission, layer 1 unbundling obligations impose unnecessary cost and operational complexity with no discernible benefit to consumers and should be removed. These obligations disincentivise fibre network extension, inhibit innovation, and introduce inefficiencies. There is no case for unbundling in New Zealand, and specific ex ante interventions are unnecessary to ensure Chorus provides access services on reasonable terms.

In our view, the only reasonable outcome is removal of the layer 1 unbundling requirements.

s 9 (2)(b)(ii) [Redacted]

[Redacted]

s 9 (2)(b)(ii) [Redacted] noting that Chorus' obligations to offer layer 1 unbundling are unique worldwide and inconsistent with efficient industry practice. The report highlights that the PONFAS model requires bespoke provisioning steps and sequential processes which introduce inefficiency compared to global norms, where open access networks operate at Layer 2.

s 9 (2)(b)(ii) [Redacted]

- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]

s 9 (2)(b)(ii) [Redacted]

27 Distribution connections (representing only 0.007% of our GPON base). The SkeensMcDonell analysis confirms this outcome is consistent with global experience, where Layer 1 unbundling is not pursued internationally because it is economically inefficient and operationally complex. This is further reflected in how the service is currently being consumed: connections are deployed in a 1:1 Feeder-to-Distribution fibre ratio, which results in relatively inefficient use of the infrastructure and a departure from the intended point-to-multipoint model which PONFAS was designed to facilitate.

More broadly, competition in telecommunications markets is best facilitated through a stable Layer 1 infrastructure, with strong and dynamic competition at Layer 2. Bitstream services are already highly competitive, both among fibre retailers and between fibre and other technologies (notably fixed wireless), delivering consumer choice and innovation without the inefficiencies associated with Layer 1 unbundling.

**Additional factors (not readily quantifiable)**

- **Disincentive for rural fibre build:** Unbundling obligations create a risk of the unbundler cherry-picking low-cost urban connections, rather than encouraging competition at a mass market level. This dynamic adds cost without consumer benefit and is inconsistent with efficient industry practice, discouraging infrastructure investment in higher-cost rural areas while enabling margin capture in dense urban zones.
- **Project overhead:** Every internal project aimed at improving efficiency or innovating layer 2 operations must consider unbundling compliance. <sup>s 9 (2)(b)(ii)</sup>  
[Redacted]
- **Operational inefficiencies, including:**
  - Training field technicians and internal provisioning teams for rare PONFAS orders
  - Provisioning additional fibre strands when existing strands are at capacity. The inefficient use of existing fibre to supply low-volume unbundled connections (as today) means capacity will exhaust faster than if all fibres could be used efficiently. This accelerates the need for additional network investment far earlier than would otherwise be necessary, and
  - Complex coordination for each PONFAS order due to the bespoke nature in which PONFAS is being consumed (primarily for niche SME services rather than its intended mass-market supply), including understanding and catering to different splitter types, ONT types, and ONT management approaches.

These inefficiencies divert resources from initiatives that would benefit the mass market and ultimately flow through to consumer prices.

We understand that the information provided in this email will be used to inform a cost-benefit analysis and that a report on that analysis will be available for public release. Beyond that, we request that the Ministry for Regulation provides us with advance notice of any documents it proposes to publicly release which include, or draw on, this information so that we can consider our response and take any action as appropriate. This includes if Ministry for Regulation intends to disclose all or part of this information to any third party under the Official Information Act 1982. The information has the potential to be misinterpreted without appropriate context.

Many thanks

<sup>s 9(2)</sup>  
(a)

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**From:** Cherie Engelbrecht <Cherie.Engelbrecht@regulation.govt.nz>  
**Sent:** Wednesday, 8 October 2025 11:30 am  
**To:** <sup>s 9(2)(a)</sup> @chorus.co.nz  
**Cc:** <sup>s 9(2)(a)</sup> @chorus.co.nz; Kevin Counsell <Kevin.Counsell@regulation.govt.nz>; Telecommunications Review <TelcoReview@regulation.govt.nz>; Liam Taylor <Liam.Taylor@regulation.govt.nz>  
**Subject:** Re: Additional information -Layer 1 unbundling - in confidence

Many thanks for forwarding the report. In terms of timing, that works for us.

Again, thanks so much for your engagement in the review and for the ongoing responses to our requests.

Many thanks

Cherie

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**From:** § 9(2)(a) @chorus.co.nz  
**Sent:** Wednesday, October 8, 2025 10:57:10 AM  
**To:** Cherie Engelbrecht <Cherie.Engelbrecht@regulation.govt.nz>  
**Cc:** § 9(2)(a) @chorus.co.nz; Kevin Counsell <Kevin.Counsell@regulation.govt.nz>; Telecommunications Review <TelcoReview@regulation.govt.nz>; Liam Taylor <Liam.Taylor@regulation.govt.nz>  
**Subject:** RE: Additional information -Layer 1 unbundling - in confidence

Hi Cherie

§ 9 (2)(b)(ii) We believe the following key conclusions are particularly relevant to your review:

- Layer 1 unbundling is not pursued internationally
- Modern network architectures and software-based service differentiation make Layer 1 unbundling redundant, and
- Chorus' obligations are unique globally and impose unnecessary complexity and cost.

We are also preparing some supplementary material on Layer 1 unbundling costs, which we aim to share with you by midday Thursday. While this is slightly later than you requested, we hope it will still be workable from your end. Please let us know if that timing poses any issues.

We understand that the information provided in this email § 9 (2)(b)(ii) will be used to inform a cost-benefit analysis and that a report on that analysis will be available for public release. Beyond that, we request that the Ministry for Regulation provides us with advance notice of any documents it proposes to publicly release which include, or draw on, this information so that we can consider our response and take any action as appropriate. This includes if Ministry for Regulation intends to disclose all or part of this information to any third party under the Official Information Act 1982. The information has the potential to be misinterpreted without § 9(2)(a)

§ 9(2)(a) thanks  
§ 9(2)(a)

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**From:** Cherie Engelbrecht <Cherie.Engelbrecht@regulation.govt.nz>  
**Sent:** Monday, 6 October 2025 5:46 pm  
**To:** § 9(2)(a) @chorus.co.nz  
**Cc:** § 9(2)(a) @chorus.co.nz; Kevin Counsell <Kevin.Counsell@regulation.govt.nz>; Telecommunications Review <TelcoReview@regulation.govt.nz>; Liam Taylor <Liam.Taylor@regulation.govt.nz>  
**Subject:** FW: Additional information -Layer 1 unbundling - in confidence

Kia ora,

As signalled last week, we are still working through the issues and formulating our draft findings and provisional recommendations. As you are aware, one of issues that we consulted on was related to Layer 1 unbundling. We have identified that we need additional information to inform our analysis. The additional information that we are seeking relates to § 9 (2)(ba)(i)

that this opportunity cost may be able to be calculated is a price per unit of space that you might otherwise be able to charge for access, if it were not reserved for unbundled access.

We have reviewed your submission, and while you have noted some types of costs incurred, you haven't quantified the costs. Are you able to quantify these costs, including <sup>s 9 (2)(ba)(i)</sup> as set out above? In your submission, you also make reference to a report by 'SkeensMcDonnell Consulting Group' that you commissioned on unbundling – is it possible for you to send us a copy of his report.

As you appreciate, we continue to move at speed, and it would be really helpful if you are able to provide this information by mid-day on Wednesday.

Happy to discuss

Many thanks

Cherie

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**From:** <sup>s 9(2)(a)</sup> @chorus.co.nz  
**Sent:** Wednesday, 1 October 2025 4:22 pm  
**To:** Cherie Engelbrecht <Cherie.Engelbrecht@regulation.govt.nz>  
**Cc:** <sup>s 9(2)(a)</sup> @chorus.co.nz; Telecommunications Review <TelcoReview@regulation.govt.nz>; Liam Taylor <Liam.Taylor@regulation.govt.nz>  
**Subject:** RE: Chorus contact

Hi Cherie

Very happy to speak tomorrow - would 11am suit? It would be good if both <sup>s 9(2)</sup> and I could be on that call so, if that time works, please send us through a meeting request. ( )

Thanks

<sup>s 9(2)</sup>  
(a)

**C H O R U S** | <sup>s 9(2)(a)</sup>

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**From:** Cherie Engelbrecht <Cherie.Engelbrecht@regulation.govt.nz>  
**Sent:** Wednesday, 1 October 2025 4:06 PM  
**To:** <sup>s 9(2)(a)</sup> @chorus.co.nz  
**Cc:** <sup>s 9(2)(a)</sup> @chorus.co.nz; Telecommunications Review <TelcoReview@regulation.govt.nz>; Liam Taylor <Liam.Taylor@regulation.govt.nz>  
**Subject:** RE: Chorus contact

Hi <sup>s 9(2)(a)</sup>,

Your email is very timely, we were hoping that you would be available for a quick discussion ideally tomorrow between 9 am and 1 pm or after 3 pm (however as you are going to be on leave, although you may have other priorities). If this is not possible, we could leave it until Monday if that works for

<sup>s 9(2)</sup>  
(a)

The purpose of this quick teams' call is to discuss an additional proposal as a consequence of our further work.

Yes, at this stage, we are on track (so far).

Many thanks

Cherie

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**From:** s 9(2)(a) [redacted] <[redacted]@chorus.co.nz>  
**Sent:** Wednesday, 1 October 2025 3:38 pm  
**To:** Cherie Engelbrecht <Cherie.Engelbrecht@regulation.govt.nz>  
**Cc:** s 9(2)(a) [redacted] <[redacted]@chorus.co.nz>; Telecommunications Review <TelcoReview@regulation.govt.nz>  
**Subject:** Chorus contact

Hi Cherie

I hope you're well and that you received a good response to the consultation on options for telco regulation.

Just letting you know that I will be away on leave from this Friday until 20 October. If you need anything from Chorus during that time, please contact s 9(2)(a) [redacted] (copied).

The terms of reference for the telco review set out that a report (final or preliminary) was expected to be delivered to the Joint Ministers in October 2025. Are you able to share whether that timing is still on track?

As ever, we are available to offer any assistance we can.

Thanks

s 9(2)(a) [redacted]

[redacted signature block]

PO Box 632  
Wellington 6011  
[www.chorus.co.nz](http://www.chorus.co.nz)



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## Proposal to extend retail service quality regulation to wholesale-only providers

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From s 9(2)(a) @chorus.co.nz

Date Tue 10/7/2025 11:54 AM

To Cherie Engelbrecht <Cherie.Engelbrecht@regulation.govt.nz>

Cc s 9(2)(a) @chorus.co.nz; Kevin Counsell <Kevin.Counsell@regulation.govt.nz>; Liam Taylor <Liam.Taylor@regulation.govt.nz>; Telecommunications Review <TelcoReview@regulation.govt.nz>

Hi Cherie

Thank you again for the call on Thursday.

As indicated, Chorus strongly opposes the application of Part 7 retail service quality (**RSQ**) regulation to wholesale-only providers, or any proposal that would give the Commission discretion to do so.

Chorus fully supports the goal of ensuring end-users receive clear and consistent information about broadband performance. Any concerns about wholesaler advertising can already be addressed under existing consumer protections, including the Fair Trading Act. In addition, Chorus, alongside the other LFCs, has voluntarily aligned its marketing practices with the Commission's RSQ Guidelines where relevant to wholesale activities.

Part 7 was designed to improve service quality at the retail level, where consumers interact directly with retailers, including through retail marketing, product disclosure, switching, billing, and complaints. We consider the RSQ regime a vital and increasingly relevant part of the telecommunications regulatory framework, particularly given the continued deployment of 5G infrastructure used to supply fixed wireless broadband services.

Vertically integrated mobile network operators (**MNOs**) have strong commercial incentives to promote and sell fixed wireless services, a broadband technology which uses their own mobile networks. This incentive, coupled with persistent information asymmetries as to the relative performance of fixed wireless services against fibre, creates a genuine risk that consumers may be sold services that do not meet their needs or expectations.

The RSQ framework helps mitigate this risk by requiring retailers, including MNOs, to provide clear, accurate and comparable information about their retail offerings. This information empowers consumers to make informed choices and supports fair competition. It also helps ensure that MNOs cannot misrepresent the relative performance of their fixed wireless services relative to fibre. In doing so, the RSQ framework addresses potential conflicts of interest and contributes to a more level competitive playing field.

Chorus is legislatively prohibited from supplying fibre services directly to end-users, so it is both appropriate and consistent with the intent of the Act for retail regulation to remain focused on retailers. Extending retail service quality obligations to wholesale-only providers would:

- misalign regulation with the point of consumer risk (i.e. the retail sales journey, including point of sale)

- distort legislative intent, and
- risk imposing costs without demonstrable benefits.

We expand on this below.

### **Wholesale-retail split**

The post-2018 regulatory framework maintained separation between wholesale access and retail competition, with open-access obligations and utility-style oversight for fibre on one side, and retail service quality regulatory levers on the other. This design ensures clear accountability: wholesalers provide non-discriminatory inputs to retailers; retailers make promises to, and are responsible for, end-user experience and relationships.

The proposal to extend retail regulation to wholesale-only providers risks:

- **Misalignment of regulation:** RSPs design offers, set prices, advertise plans, manage switching, issue bills and resolve complaints. Wholesale-only LFCs do none of these things. Our marketing reflects this, appropriately promoting the general attributes of fibre technology, and not retail plans or pricing. Applying retail regulation to wholesalers would misplace obligations and obscure accountability for outcomes that only RSPs can deliver.
- **Departure from legislative intent:** Part 7 was enacted to address problems with retail conduct and consumer harms, including information asymmetry, sales practices, switching and complaints. [Cabinet's 2017 decisions](#) emphasised proportionate regulation targeted at market failure and avoiding unnecessary compliance burdens on fixed-line network operators, limiting regulatory interventions to address consumer issues at the retail level. Extending retail regulation to wholesalers inverts that logic.
- **Duplicative and confusing compliance:** Wholesalers already face non-discrimination/ open-access requirements, price-quality and information-disclosure regulation for fibre, and Fair Trading Act obligations for any advertising. Grafting retail regulation onto wholesalers would duplicate obligations, create conflicts between wholesale and retail duties, and confuse stakeholders about who is responsible for which outcome.
- **Costs without commensurate benefits:** Extending retail regulation to wholesalers adds compliance costs without shifting the consumer touchpoints where harm occurs, which would be disproportionate by design.

### **Existing protections are sufficient**

Wholesalers are already subject to consumer protection frameworks including those provided by the Fair Trading Act and the Broadcasting Act. These protections are proportionate to our role in the telecommunications sector – reflecting our inability to sell or market plans, set retail prices, or exert any meaningful influence over point of sale decisions.

If there are concerns about any wholesaler's advertising, they can and should be addressed under existing consumer law, not by shifting retail regulation onto wholesale-only providers.

Regards

s 9(2)(a)

s 9(2)(a)

**Regulatory & Policy**

**C H O R U S** s 9(2)(a)

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