

Review of the Commerce Commission's funding for the regulation of Telecommunications and Fibre under the Telecommunications Act 2001

Discussion paper

10 December 2020



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Executive Summary

1. Over the past decade our role in the telecommunications sector has evolved. Today, economic regulation involves more than examining investment in, and access to, infrastructure. The form and style of regulation needs to be increasingly dynamic to respond to new technology, consumer behaviour and the availability and accessibility of data and information.
2. Our funding does not currently reflect the recent growth in our regulatory responsibilities resulting from changes to the Telecommunications Act 2001 (the Act). Funding for our telecommunications work has not been reviewed since 2012, when levies were reduced from \$7.8M to \$6M per year. Additional time-bound funding was provided to implement the new regime for fibre broadband services. However, ongoing funding requirements for fibre regulation have not yet been considered and neither have the implications of other important legislative requirements.
3. In conjunction with our monitoring agency, the Ministry of Business, Innovation and Employment (MBIE), we are reviewing our ongoing funding requirements and are interested in understanding the views of industry levy payers and other stakeholders. The review is aimed at ensuring our funding levels allow us to fulfil our statutory functions and meet stakeholder expectations for our role. It is also an opportunity to confirm that the levy settings remain appropriate and proportionate to the benefits of the telecommunications regime overall.

Our proposal to deliver on regulatory responsibilities and meet increased expectations

4. As it stands, without an increase in our funding we will not be capable of undertaking the functions required of us and we will fail to meet the Government's expectations of our role.
5. In this paper, we have proposed an increase in our funding from July 2021 in response to the following cost drivers:
 - 5.1 Ensuring we are resourced to operationalise the new fibre regime, in addition to fulfilling our pre-existing and continuing responsibilities for regulating copper and mobile services;
 - 5.2 Giving effect to our new consumer and retail service quality provisions. There has been a clear direction through the 2018 amendments to the Act that the current outcomes for consumers of telecommunications services are not meeting expectations and consumer pain points need to be addressed.
 - 5.3 Increasing our compliance activity and taking enforcement action where necessary. We need to be more proactive and place greater emphasis on

educating and supporting the industry to comply with the rules we set and taking more timely enforcement action where appropriate.

- 5.4 Contribution of growth in our telecommunications responsibilities to cost pressures associated with growth in the overall size of the organization, including costs associated with corporate services and business management.

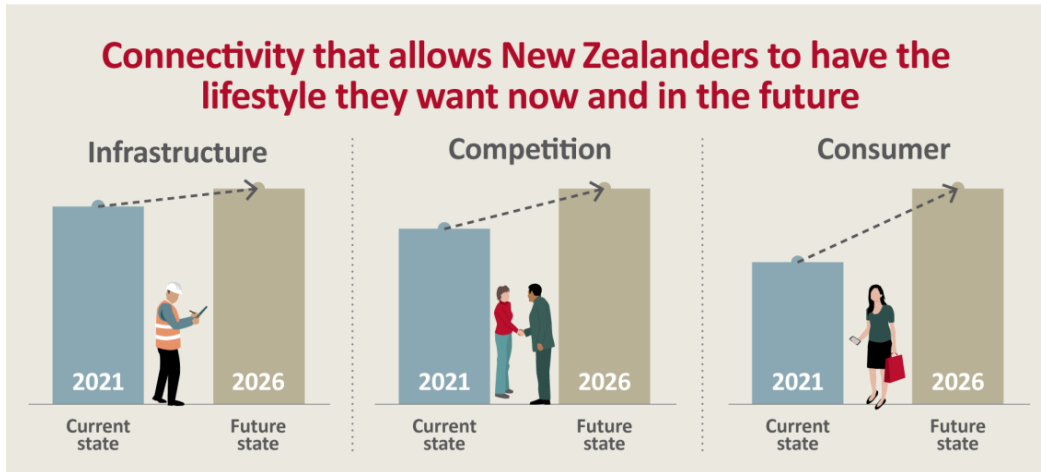
How much will it cost and who will pay

6. In 2019/20, we spent \$11.3M on regulation under the Act, made up of \$4.9M on fibre implementation, and the remainder in other areas.
7. In this paper we have proposed an increase to \$15M per year for the period 2021/22 – 2025/26 comprised of:
- 7.1 \$5.5M per year for the ongoing running of the fibre regime; and
- 7.2 \$9.5M per year for all other responsibilities under the Act.
8. We estimate the direct cost on NZ households under our proposed level of funding is 40 cents per month or 0.3% of their average monthly communications spend, which is up from 30 cents per month on our 2019/20 spend.
9. Under the proposal, the parties liable to pay for the fibre work would also be liable for their allocation of our other responsibilities under the Act.
10. We have separated out the work relating to fibre for two reasons:
- 10.1 The fibre regime is a new obligation, significant in scope and scale, and it is the first-time on-going costings have been developed, and
- 10.2 It is proposed that the levy payers liable for the fibre regime are a sub-set of the overall levy payers for the wider scope of work in the sector. This is in line with the approach that we took to the fibre implementation funding. The sub-set of liable parties for the running of the fibre regime are:
- Chorus Limited;
 - Enable Network Limited;
 - Ultrafast Fibre Limited; and
 - Northpower Fibre Limited

Outcomes that consumers and the industry can expect to see

11. The proposed level of funding has been informed by our medium-term priorities for the sector in three core domains – infrastructure, competition and consumer.

12. Within each of these domains we have made an assessment of where the sector currently is and the medium-term outcomes envisaged by policy makers. We call this 'bridging the gap', and it is our preferred funding option.



13. Our view is that infrastructure is in the strongest position currently. Today, through a combination of industry investment, Government investment and regulation we have a world class fibre to the premise network, continued upgrades in copper, and multiple mobile and wireless network operators investing in the latest technologies and expanding coverage to meet consumer demand.
14. However, maintaining this position relies on the effective running of the new fibre regulatory framework for fibre providers, promoting efficient investment where economic, as well as increasing the overall understanding of asset health and risks to supply.
15. For competition, there are several areas where we think we can increase our impact in helping the sector. These include incentivising new fibre products and services, ensuring wholesale and retail competition are at the forefront of decisions on 5G and other spectrum allocations and working more broadly to monitor and remove barriers to competition where they exist or emerge. All this will be supported by a more proactive and responsive approach to compliance.
16. The consumer domain is where there is the greatest opportunity for improvement. Extensive and wide-ranging new consumer powers were a significant inclusion under the 2018 amendments to the Act, and reflect a high level of complaints in the sector.
17. Working with a wide range of stakeholders to achieve the desired outcomes is a priority for us over the medium-term. This will include:
- 17.1 getting out and visiting consumer groups where they operate so we can ensure that consumer preferences are reflected in our decision making;

- 17.2 enabling consumers by arming them with information on retail service quality to help inform their purchasing decisions, including strengthening our fixed line testing and expanding it to include mobile services and coverage;
- 17.3 making sure that consumers are supported through the transition from copper to fibre;
- 17.4 where appropriate, working with industry to put in place Codes to address consumer pain points; and
- 17.5 promoting an effective and responsive disputes resolution scheme.
18. We consider the ‘bridging the gap’ funding option is needed to enable us to meet stakeholder expectations of our role.
19. During this review, we also considered three other funding options shown in the Table below. Having assessed all these options, we consider that ‘bridging the gap’ offered the most value to industry and consumers at this time.

| | |
|--|---|
| No new funding \$6M per annum | No new funding would render us unable to deliver on the functions we currently have, or properly manage the new fibre regime. As such, we do not consider this to be a feasible option |
| Hold the line \$13.5M per annum | This level of funding would maintain the status quo from a resourcing and output perspective but we would be unable to meet the increased stakeholder expectations on us, particularly in terms of the new consumer powers granted to us and increasing our monitoring and reporting on the market. |
| Bridging the gap \$15M per annum | This is the level of funding we need to deliver on the new and existing functions required of us and meet Government’s increased expectations of our role in the sector |
| Bridging the gap’+’ \$16.1M per annum | This level of funding would have all the benefits of ‘bridging the gap’ as well as; enable further investment in our internal skills and capabilities, consumer and industry engagement and an increased focus on international engagement to help anticipate regulatory needs in the face of global technological change |

We want your feedback

20. We want to hear from you on our preferred funding option and get your thoughts on the type of regulator you believe will best serve New Zealand into the future.
21. Your feedback will:
 - 21.1 inform MBIE's advice to the Minister for the Digital Economy and Communications on:
 - the appropriate level of funding for our regulatory work from July 2021 onwards;
 - the structure of the levies under the Act from July 2022 onwards, and in accordance with the Minister's obligation to consult under section 13 of the Act; and
 - 21.2 help shape the medium-term planning of our work programme.
22. You can upload your response by 5pm Friday 12 February 2021 by accessing this link: <https://comcom.govt.nz/file-upload-form-folder/file-upload-form>. Please select 'Levy consultations 2020' from the drop down for the **Submission Topic**.
23. The Commission, along with MBIE officials, is open to meeting with affected stakeholders to discuss this funding review in the new year. Any party that would like to meet in person can register their interest at regulation@comcom.govt.nz before 23 December 2020.

Chapter 1: Introduction

24. This consultation paper seeks your views on the proposed funding for the Commerce Commission's responsibilities under the Telecommunications Act 2001 (the Act) from July 2021 onwards, proposed changes to the structure of industry levies from July 2022.
25. Your feedback will inform advice by Ministry of Business, Innovation and Employment (MBIE) to the Minister for the Digital Economy and Communications on the appropriate level of funding for our work from July 2021 onwards and the structure of levies from July 2022.

Question 1

Do you have any feedback on the purpose and objectives of this consultation paper?

Period of technological and regulatory transition

26. The recent round of regulatory reform in the telecommunications industry has reflected technological change and emerging market trends. The market landscape has been transformed by major growth in the fibre network, and the relative decline in the copper network. These changes have been accompanied by consumer concerns about the quality of retail services.
27. As a result of the regulatory changes we now have a wider role in the sector. Key features of the 2018 amendments to the Act were:
 - 27.1 A new regulatory regime for fibre broadband services;
 - 27.2 Removal of regulation that was no longer necessary for copper services; and
 - 27.3 More regulatory oversight of retail service quality.
28. To enable us to implement the new regime for fibre broadband services, a four-year 'Fibre Implementation Appropriation' of \$12 million was created and recovered through levies on fibre access service providers. This funding has enabled us to determine the up-front rules, requirements and processes of regulation (known as input methodologies). New information disclosure requirements and price-quality paths will be put in place next year. However, this appropriation does not provide the ongoing funding required to administer the fibre regime.
29. Outside of the additional time-bound funding to implement the new fibre regime, industry levies for telecommunications regulation have not been reviewed since 2012. This appropriation is recovered through the Telecommunications Operators

(Commerce Commission Costs) Levy Regulations 2019. Following the review in 2012, the 'Telecommunications Appropriation' was reduced from \$7.8million to \$6million.

Risk to the constructive regulatory role envisaged by policymakers

30. In the absence of additional on-going funding, the Commission will be unable to continue to play the constructive regulatory role in the sector envisaged by policymakers. Technological advancement is contributing to increased regulatory complexity, and our regulatory responsibilities have evolved. Further funding is needed to enable us to keep pace and provide safeguards for sector outcomes.
31. Growth in our telecommunications responsibilities has also contributed to cost pressures associated with growth in the size of the organisation. Including the impact of telecommunications and other changes in our regulatory responsibilities, in the last five years we have grown from an organisation of 180 staff to 250 staff and we expect to grow further as we manage and support new functions, powers and duties. Each area of regulatory responsibility must contribute its fair share of the step-change in costs associated with the transition from a small to a medium-sized organisation.¹ For example, there are increased costs associated with corporate services and business management.
32. We project a financial deficit for our regulatory work from 1 July 2021. From that point on, annual funding of \$6million will be insufficient to administer the new regime for fibre as well as meeting our other obligations under the Act. In a relatively short period of time, important responsibilities under the Act would have to be substantially scaled back or stopped completely, in areas that include broadband testing, market surveys, consumer engagement and compliance.
33. The reduction in activity would run counter to purpose of the Act and the expectations of stakeholders.

Funding that reflects changes in the Act and increased expectations

34. In this paper we provide our assessment of the impact of growth in our regulatory responsibilities and the associated increase in expectations about our role in the sector.
35. We start from a position of optimism about what the sector can achieve in the coming years, and we understand the role we are expected to play as a regulator. Businesses and consumers must have confidence in us as we work to give effect to the regime that was envisaged by policymakers.

¹ <https://budget.govt.nz/budget/pdfs/wellbeing-budget/b20-wellbeing-budget.pdf>, p56

Question 2:

Please provide feedback on whether you agree with how we have characterised the operating context of our work - in terms of technological and regulatory transition and the risks to fulfilling policymakers' expectations - in relation to telecommunications and fibre networks.

How to provide your views

36. We want to hear from you on our preferred funding option and get your thoughts on the type of regulator you believe that will best serve New Zealand into the future and the appropriate structure of the levies.
37. Your feedback will inform advice to the Minister for the Digital Economy and Communications on funding for our regulatory work under the Act from July 2021 onwards and the industry levy structure from July 2022. It will also help shape our medium-term planning of our work programme.
38. The methodology MBIE uses to recover the costs of our work through industry levies is included in the scope of this paper.
39. Stakeholders are also encouraged to provide written responses on the proposal discussed in this document and the specific questions put forward. The questions are provided throughout the document and listed in Attachment C. Your submission does not necessarily need to answer all of these questions. Where possible, please include evidence to support your views, for example references to independent research, facts and figures, or relevant examples.
40. You can upload your response by 5pm Friday 12 February 2021 by accessing this link: <https://comcom.govt.nz/file-upload-form-folder/file-upload-form>. Please select 'Levy consultations 2020' from the drop down for the **Submission Topic**.
41. The Commission, along with MBIE officials, is open to meeting with affected stakeholders to discuss this funding review in the new year. Any party that would like to meet in person can register their interest at regulation@comcom.govt.nz before 23 December 2020.
42. The timeline for this consultation process and levy review is set out below:

| | |
|--------------|---|
| 10 Dec 2020 | Consultation opens for submissions |
| 12 Feb 2021 | Last day for submissions |
| Feb/Mar 2021 | Submission analysis and policy/budget development |
| Mar/Apr 2021 | Cabinet consideration |
| Jul 2021 | Any levy changes commence |

43. In addition to this consultation process, we are also currently consulting with stakeholders on levy funding requirements in relation to our work regulating electricity and gas networks under Part 4 of the Commerce Act 1986.

Chapter 2: Overview of our regulatory responsibilities and funding

44. In this chapter we provide an overview of our regulatory responsibilities under the Act following amendments to the Act in 2018 and how we are funded to undertake that work. Attachment B provides further information on the changes required under the Act.

Overview of our regulatory responsibilities

Pre-existing and continuing provisions of the Act

45. At the same time as implementing the 2018 amendments to the Act, we continue to have significant regulatory obligations under the pre-existing and continuing provisions of the Act. These include roles in promoting competition and transparency in telecommunications markets, and facilitating innovation in downstream markets for the benefit of consumers through:
- 45.1 regulation of certain fixed line and mobile services by setting the price and/or access terms for that service;
 - 45.2 monitoring and reporting on competition, performance and development in telecommunications markets; and
 - 45.3 compliance and enforcement.
46. There will be a significant period of transition as we move from an almost exclusively Copper based regulation to a combination of Copper and Fibre regulation.² In April 2020 we produced a paper titled 'Fixed line telecommunications regulation overview' which outlined the interplay between these new obligations including when the various fixed line obligations come into effect.³
47. We also remain responsible for determining who contributes to the Telecommunications Development Levy (TDL), including the impact of amendments that widened the definition of telecommunications to include broadcasting under the scope of the TDL.

A new framework for fibre regulation and changes to the copper regime

48. A new Part 6 of the Act puts in place a set of arrangements for regulating fibre networks. This Part 6 regulation is like the form of regulation for electricity and gas networks under Part 4 of the Commerce Act 1986. Under Part 6:

² Copper services will remain regulated for around 12% of New Zealanders, particularly those in rural areas.

³ https://comcom.govt.nz/__data/assets/pdf_file/0021/213960/Fixed-line-telecommunications-regulation-overview-02-April-2020.pdf

- 48.1 for all ultra-fast broadband providers we will set information disclosure requirements that require them to state their revenues and costs publicly; and
 - 48.2 for Chorus we are required to set a revenue cap and binding quality standards and monitor compliance against those obligations.
49. In addition to putting in place a new regulatory regime for fibre, the amendments to the Act also made a number of changes to the existing copper regulation. In particular, the Act now requires us to:
- 49.1 put in place and monitor compliance with two consumer protection Codes: the Copper Withdrawal Code and the 111 Contact Code; and
 - 49.2 review the pricing framework for copper services (no later than 2025) to ensure the new system remains fit for purpose.
 - 49.3 adjust the prices for a number of copper services by CPI each year;

Changes to improve retail service quality for consumers

50. To lift consumer service quality across the sector and improve responsiveness to consumer needs, the Government augmented consumer safeguards and provided the Commission with greater regulatory oversight of retail quality standards and dispute resolution processes. In particular:
- 50.1 the Commission is required to collect and report on the quality of retail service delivery in a way that is more accessible to consumers.
 - 50.2 if the Commission finds an areas of retail service quality lacking then it now has the powers to establish regulatory Codes to improve retail service quality, if industry self-regulation is inadequate.
 - 50.3 the Commission has a new role in periodically reviewing the existing consumer Telecommunications Disputes Resolution Scheme.

Broadcasting is now included as a telecommunications service for the purposes of the Act

51. The definition of “telecommunication” in the Act was updated with a new definition that includes broadcasting services. To understand the implications of this change we have been provided a one-off \$300k and we have assumed that any ongoing costs will be relatively minor and could be accommodated within the funding we have proposed.

Changes to the Act have coincided with increased expectations

52. The changes to the Act have coincided with an increasing expectation that public sector organisations such as ours work collectively and collaboratively with others to improve living standards for New Zealanders.
53. Part of the motivation for the Public Service Act 2020, for example, was to make the public sector more citizen-focused. This area of emphasis was also echoed in the findings of the Electricity Price Review in relation to the way we engage with consumers and the people that are impacted by our work.
54. Expectations of this nature are reflected in the desire of the Minister of Broadcasting, Communications and Digital Media “to improve New Zealand’s economic performance and New Zealanders’ wellbeing through the provision of high-quality communications infrastructure to both urban and rural regions.”^{4, 5}
55. Telecommunications now supports New Zealanders in all aspects of their lives and has arguably never been more important to their standard of living. The importance of the sector is expected to increase even further with the continued growth of machine-to-machine communications and the internet of things (IoT).
56. Against this backdrop, and following on from the changes to the Act, the then Minister of Commerce and Consumer Affairs, Honourable Kris Faafoi, wrote to us to emphasise the importance of “a robust and effective telecommunications regulatory regime with settings that incentivise investment in new technology and give consumers confidence.”⁶ This expectation was expressed in his annual letter of expectations in relation to his role as Minister of Broadcasting, Communications and Digital Media.
57. Since the Minister wrote to us to outline his expectations, the performance of the sector has come under added scrutiny as a result of COVID-19. A worsening economic outlook for consumers and the acceleration of societal changes – such as increased demand for remote working and online shopping – mean sector performance is now even more crucial and heightens the importance of adequately funding a regulatory framework that is designed to improve the quality and efficiency of telecommunications services delivered to New Zealand consumers and businesses.

⁴ https://comcom.govt.nz/__data/assets/pdf_file/0012/215211/Ministers-Letter-of-Expectations-2020-21-12-March-2020.pdf

⁵ These expectations are also reflected in the enduring expectation that Statutory Crown Entities operate as part of “a high performing public sector that is strongly focussed on improving current and future wellbeing”. https://comcom.govt.nz/__data/assets/pdf_file/0030/183990/Enduring-Letter-of-Expectations-to-all-Crown-Entity-Boards.pdf

⁶ See n 4

58. The Minister's specific priorities for 2020/21 draw particular attention to the long-term success of the new fibre regime, our work to promote competition between businesses, and the need for an increased focus on consumer engagement. In particular, the Minister expects that we:
- support the long-term regulation of fibre services by working to implement the revised regulatory regime resulting from the Telecommunications (New Regulatory Framework) Amendment Bill;
 - provide independent high-quality information, via the broadband speed testing system, on broadband performance across different providers, plans and technologies, to help consumers choose the best broadband for their household and also encourage telecommunications providers to compete on performance and not just price;
 - develop user-friendly consumer-oriented reports and services that allow telecommunication end-users to make informed choices on retail service quality; and
 - implement retail service quality Codes and new measure for review of dispute resolution functions in the sector, to support the demands of end-users.
59. Looking beyond 2020/21, the Minister signalled an expectation that we consult on the medium-term strategic priorities for the Commission in the telecommunications regulatory field, given the changing technological landscape.

The regulatory levy framework and the Commission's funding

How the levies work

60. The Telecommunications Regulatory Levy (TRL) is applied to the telecommunications industry to recover the costs for Commerce Commission telecommunications regulatory work performed under the Act. The TRL consists of three sub levies which recover costs for Commission telecommunications regulatory activities.
61. The main sub levy recovers Commission costs applicable for regulatory work generally ie "Regulation of the telecommunications sector" (other than information disclosure regulation and price-quality regulation). There are also two fibre sub levies recovering costs specific to the fibre regulatory framework ("Information disclosure regulation" and "Price-quality regulation").
62. The amount of TRL payable by a telecommunications operator is determined according to the requirements prescribed in the Telecommunications Operator (Commerce Commission Costs) Levy Regulations 2019 (the Levy Regulations) made under the Act.

63. The main sub levy of the TRL is allocated across the telecommunications industry to telecommunications operators that are liable persons identified through the Telecommunications Development Levy (TDL) determination process undertaken annually by the Commission. This process also calculates the final qualified revenue of each telecommunications operator that is used to calculate the proportional share of the main sub levy that is payable by the telecommunications operator.
64. The fibre sub levies are applied to specified telecommunications operators identified in the Levy Regulations. The information disclosure regulation sub levy applies to Chorus Limited, Enable Networks Limited, Northpower Fibre Limited, Northpower LFC2 Limited, and UltraFast Fibre Limited. The price-quality regulation sub levy is applied to Chorus Limited. The final qualified revenue of each telecommunications operator is used to calculate their proportional share of the fibre sub levies payable.
65. The amount of TRL payable by a telecommunications operator is calculated annually based on the actual Commission expenditure incurred in the relevant funding appropriation. The amount of TRL sub levy payable each year therefore depends on the budget funding allocation to the respective appropriation category for the particular sub levy.
66. MBIE bills telecommunications operators and collects levy revenue each year for the TRL in accordance with the Levy Regulations. This occurs after the TDL determination process has been completed by the Commission and the actual costs incurred against the relevant appropriations are known.

Amendment of the Levy Regulations

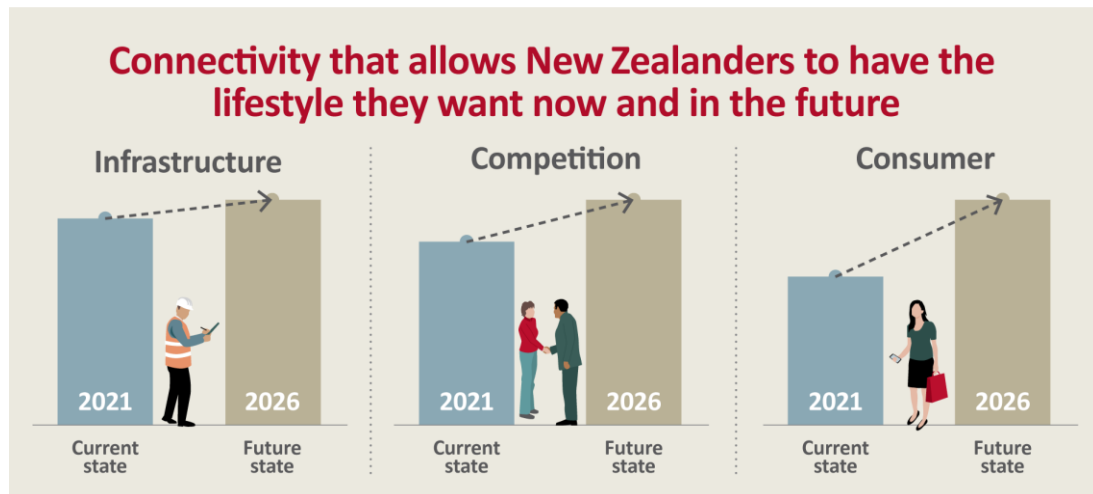
67. Unless the Levy Regulations are changed, the fibre sub levies of the TRL will cease as at 30 June 2022, and Commission costs for fibre regulation thereafter would be bundled in with other regulatory costs for recovery through the main sub levy of the TRL.
68. The Commission funding costs for fibre regulation going forward, as proposed, will remain a sizeable portion of the total overall Commission costs for telecommunications regulation. On this basis, it is reasonable that the fibre regulatory costs continue to be allocated exclusively to the fibre network telecommunications operators beyond June 2022, so that these costs can be passed on through their wholesale prices.
69. Based on the need to recover Commission funding for telecommunications regulatory costs as outlined, it is proposed that the Levy Regulations would be amended to enable continuation of all the fibre sub levies for recovering fibre regulation costs going forward. The telecommunications operators for each fibre sub levy would continue to be as named currently in the Levy Regulations. The scope of costs attributable (functions, powers and duties) to each sub levy would also continue as currently stated in the Levy Regulations.

Question 3:

Please provide feedback on whether you agree with the proposal that the current Levy Regulations are amended to enable continuation of all the fibre sub levies for recovering fibre regulation costs going forward.

Chapter 3: Our medium term priorities for Telecommunications

70. This chapter sets out our proposed medium-term priorities in the telecommunications sector. It is based on an assessment of where we are now, where we want to be, and what we need to do to 'bridge the gap'
71. Our medium term priorities for telecommunications are based on the two purpose statements of the Act which direct us to:
- 71.1 promote competition in telecommunications markets for the long-term benefit of end-users of telecommunications services; or in the case of fibre
- 71.2 promote the long-term benefit of end-users in markets for fibre fixed line access services by promoting outcomes that are consistent with outcomes produced in workably competitive markets.
72. So, what does competition or outcomes consistent with competition look like for end-users? In our view, the medium-term outcome in the sector if the regime is implemented as policy makers intended is:
- End-users benefit from improved performance in the telecommunications sector when they have connectivity that enables them to have the lifestyle they want now and in the future at a price and quality of service that meets their needs. Or put another way 'connectivity that allows New Zealanders to have the lifestyle they want now and in the future'.*
73. This medium-term outcome can be thought about across three domains:
- 73.1 Infrastructure;
- 73.2 Competition; and
- 73.3 Consumer.
74. Within each of these three domains we have made an assessment of where the sector currently is and the medium-term outcomes envisaged by policy makers. We call this the 'bridging the gap' funding option.



‘Bridging the Gap’: Where are we now, and where do we want to be in 2026?

Infrastructure

75. In our view, infrastructure markets in the telecommunication industry are working well when:
 - 75.1 capital is deployed for infrastructure efficiently through responding to market signals;
 - 75.2 infrastructure is reliable, resilient and adaptable; and
 - 75.3 connectivity is available in all parts of New Zealand
76. We can observe broadly good outcomes in the infrastructure domain. Today, through a combination of industry investment, Government investment and regulation we have a world class fibre to the premise network, continued upgrades in copper, and multiple mobile and wireless network operators continuing to invest in the latest technologies and expanding coverage to meet consumer demand.
77. However, maintaining this position relies on the effective running of the new fibre regulatory framework for fibre providers, promoting efficient investment where economic, as well as increasing the overall understanding of asset health and risks to supply.
78. For infrastructure, there are several areas where we think that the Commission can increase its impact in helping the sector.
 - 78.1 Embedding and administering the new fibre regulatory regime to ensure consumers continue to be protected against excessive profits and there are incentives to invest and innovate.

- 78.2 Ensuring that those that remain on legacy copper services continue to receive a service that meet their needs.
- 78.3 For mobile and wireless network operators continuing to promote competition and investment as well as supporting cooperation in areas where it is uneconomic for them to invest individually, for example infrastructure sharing.
- 78.4 Working with all industry participants and other Government agencies to deepen our understanding of:
- gaps in coverage including plans for upgrades in coverage, capacity and technology; and
 - asset management practices that are underpinned by an understanding of asset condition, criticality and risk.

Competition

79. In our view, competition in the telecommunication industry is working well when:
- 79.1 market players can enter, expand, compete and innovate without undue barriers;
- 79.2 any harm caused by market power is eliminated; and
- 79.3 market players have a clear and consistent understanding of regulation and are confident to act on it
80. For competition, there are several areas where we think that Commission can increase its impact in helping the sector:
- 80.1 Incentivising Chorus and the Local Fibre Companies to continue to bring products and services to the market that meet retail service providers and consumers' needs, whether that be for consumers of Fixed Line Access Services or those that use fibre as an input into other product offerings such as fixed wireless. Fibre is at the core of all connectivity services and it is important that those who have market power in the provision of aspects of those components continue to be incentivised to act in the best interest of consumers.
- 80.2 Continuing to monitor the development of competition and act where necessary to remove barriers to competition where they exist. Conversely the Commission will be looking to remove regulation in areas where the costs exceed the benefits of continued intervention. The ability to make these assessments relies on timely data and the ability to undertake analysis at a

sub national level to ensure that we build a fulsome picture of the level of competition in the market across technologies and providers.

- 80.3 With the three mobile network operators each having a network of similar technology with similar geographic and population coverage metrics, looking forward we consider the allocation of spectrum to be particularly important for future competition. In our view, there is a need for wholesale and retail competition matters to be at the forefront of decisions relating to MBIE's upcoming allocation of 5G spectrum.
- 80.4 The borderless nature of data and platforms means that the industry in NZ is impacted by developments and trends from other parts of the world and it is important that we continue to look outside of NZ to understand how those developments and trends have the potential to impact our market.
- 80.5 Strengthening our compliance capacity to ensure that market players have a good understanding of regulations they need to comply with and are confident to act is an area of particular importance going forward for the Commission.
- 80.6 The regulation of the sector is spread between the Act, Deeds and Codes. In addition, there are different provisions that come into effect at different times. A key component of a level playing field for competition is working with all industry players to have a common understanding of what the Act Deeds, and Codes can and cannot require and achieve, as well as ensuring compliance where obligations exist and that there is consistent and fair enforcement where parties are not meeting those obligations.

Consumer

- 81. In our view, consumers are being well served by the telecommunication industry when:
 - 81.1 the market responds appropriately to consumers' rights, needs and preferences;
 - 81.2 consumers understand the different offerings available so they can choose the best service and provider for them; and
 - 81.3 consumers can confidently switch between services and providers in a low cost and convenient way.
- 82. On one hand competition overall has delivered significant benefits for consumers through competitive pricing, high-speed connections, and a wide range of product

offerings. On the other hand, it is clear not all groups of consumers are benefiting from these competitive outcomes to the same extent.

83. MBIE noted in their Regulatory Impact Statement for the Telecommunications Act review that:⁷

Information from a number of sources indicates that the telecommunications sector generates more consumer complaints than any other sector. These complaints include issues of poor customer service, poor quality products (coverage and speed), difficulties with installations, misleading information and billing disputes. There have been some high profile and successful prosecutions of telecommunications providers under the Fair Trading Act. The level of consumer dissatisfaction suggests that market outcomes have been mixed at best.

84. The consumer area is where there is the greatest opportunity for improvements between where the industry currently is and stakeholder expectations. This was recognised through the new consumer powers which are extensive, wide ranging and a significant inclusion under the 2018 amendments to the Act.
85. Working with a wide range of stakeholders to bridge this gap will be a priority area for the Commission over the medium-term. This will include making sure that consumers are supported through the transition from copper to fibre, both through the 111 and Copper Withdrawal Codes as well as arming consumers with the appropriate information to make the right choice of products and services for them.
86. We will work with industry to put in place codes that address the frictions that consumers have navigating product offerings. Whether this be issues around switching processes, billing issues or services not meeting consumer expectations.
87. Another priority for the Commission will be providing consumers with independent information on the coverage and performance of the networks available to them to help demystify the options. Mobile coverage and performance data is an area where there needs to be greater transparency for consumers.
88. An effective and responsive disputes resolution scheme is foundational for overall consumer satisfaction and outcomes. We will be reviewing the disputes resolution scheme at least every three years to ensure that it is delivering on its objectives and if needed, make recommendations for improvement.
89. We are currently consulting on our approach to identifying and addressing consumer pain points and the outcomes, along with consumer surveys, will be a key input to our areas of focus in the short to medium term.

⁷ <https://www.mbie.govt.nz/assets/512ad8c91a/telco-review-ris-consumer-matters.pdf>

We propose that the levies be amended

90. For the purposes of this levy consultation we have separated the work that is required to administer the fibre regime from the rest of the obligations under the Act and priced the fibre work accordingly.

91. Separating out fibre is important for several reasons:

91.1 This is a new obligation wide in scope and scale and it is the first-time costings have been developed, and

91.2 It is proposed that the levy payers liable for the fibre regime are a subset of the overall levy payers for the wider scope of Commission work. This is in line with the approach that we took to the fibre implementation funding. The sub-set of liable parties for the running of the fibre regime are:

- Chorus Limited;
- Enable Networks Limited;
- Ultrafast Fibre Limited; and
- Northpower Fibre Limited

92. It is important to note that those parties liable to pay for the fibre work are also liable for the wider work under the Act.

Question 4:

Please provide feedback on whether you agree with the medium-term priorities for Telecommunications set out above and our focus on 'bridging the gap'. Are there other priorities that should be included?

Chapter 4: Implied workplan and costing for Telecommunications

93. Excluding the fibre work there is a significant programme of work required to deliver on consumer, stakeholder and government expectations. In this section we provide an overall summary of the costs and then break down the work that is required to 'bridge the gap' and how that work varies from historical averages in administering the regime
94. It is our assessment that it will cost \$9.5M per year to run the telecommunications regime excluding fibre. This is comprised of a head count of 24 full time equivalents and \$2.34M in external costs.

| Telecommunications | | | |
|-------------------------------------|------------------------------|-----------------------------|------------------|
| | <i>3 Year historic spend</i> | <i>Our preferred option</i> | <i>\$ Change</i> |
| Setting and removing rules | | | |
| <i>Internal costs</i> | <i>\$1.52M</i> | <i>\$1.90M</i> | <i>-</i> |
| <i>External costs</i> | <i>\$0.47M</i> | <i>\$0.18M</i> | <i>-</i> |
| <i>Sub total</i> | <i>\$1.99M</i> | <i>\$2.08M</i> | <i>\$0.09M</i> |
| Analytics & Insights | | | |
| <i>Internal costs</i> | <i>\$1.31M</i> | <i>\$1.34M</i> | <i>-</i> |
| <i>External costs</i> | <i>\$0.89M</i> | <i>\$1.74M</i> | <i>-</i> |
| <i>Sub total</i> | <i>\$2.20M</i> | <i>\$3.08M</i> | <i>\$0.88M</i> |
| Compliance & enforcement | | | |
| <i>Internal costs</i> | <i>\$0.78M</i> | <i>\$1.82M</i> | <i>-</i> |
| <i>External costs</i> | <i>\$0.03M</i> | <i>\$0.11M</i> | <i>-</i> |
| <i>Sub total</i> | <i>\$0.81M</i> | <i>\$1.93M</i> | <i>\$1.12M</i> |
| Outreach & Engagement | | | |
| <i>Internal costs</i> | <i>\$1.34M</i> | <i>\$2.10M</i> | <i>-</i> |
| <i>External costs</i> | <i>\$0.10M</i> | <i>\$0.31M</i> | <i>-</i> |
| <i>Sub total</i> | <i>\$1.44M</i> | <i>\$2.41M</i> | <i>\$0.97M</i> |
| TOTAL | \$6.44M⁸ | \$9.50M | \$3.06M |

95. Using the right tools at the right time to make sure we prioritise the work of greatest impact at a time of a changing landscape and stakeholder expectations is

⁸ The historic spent over the prior 3 years exceeds the \$6M appropriation due to transfers from prior years to enable us to manage the fibre implementation.

fundamental to ensuring we focus on delivering ‘bridging the gap’ and are able to bring the greatest value to New Zealanders.

96. To achieve the outcomes in the sector we have a number of tools available to us through the Act and Deeds, they consist of:

96.1 Setting and removing rules;

96.2 Analytics and Insights;

96.3 Compliance and Enforcement; and

96.4 Outreach and Engagement

Setting and removing rules;

97. 5-yearly reviews of schedule 1 services, including relooking at the need for continued SMS regulation in NZ.

98. Maintenance and revision of Commission Codes, the 111 Contact Code and Copper withdrawal Codes are two new Codes that set out the required consumer protections for New Zealanders as we transition from copper based services to fibre based services.

99. Annual assessment of specified areas, this assessment is a key input into whether Chorus is able to withdraw fibre from an area. We are required to undertake an annual assessment to determine which households have the ability to connect to Fibre.

100. Reviews or amendments to any determinations as required, either in response to a request or self-initiated we will need to undertake reviews of, or amendments to, the various determinations that are in place to enable competition.

101. Where appropriate, put in place retail service quality Codes.

102. Undertake a review of the pricing framework for copper services to ensure that the new system remains fit for purpose.

103. Administer and adjust the Telecommunications Development Levy, changes to the Act to include broadcasting mean that there is potential for an increase in the number of levy papers.

Analytics and Insights

104. Consumer information and behavioural work to understand preferences, including regular ongoing consumer surveys to help inform the pain points and areas where consumers may require more support.

105. Increasing the availability of network and service performance. Building on the success of the Measuring Broadband New Zealand we plan to continue with fixed line testing and expand testing to include mobile coverage and performance data.
106. Collection and publication of information to help consumers choose the best service and provider to suit their needs.
107. Better use of sub-national data. Including leveraging our GIS capabilities to build a more comprehensive picture of the state of infrastructure and competition in NZ to allow us to identify any areas which require further intervention, or areas that can benefit from a rolling back of regulatory interventions.

Compliance and Enforcement

108. Continue to increase our monitoring of compliance with the Act, Codes, Deeds to ensure that where obligations exist they are being complied with and where non-compliance occurs it is dealt with in a fair, impartial and timely manner.
109. Working with stakeholders on areas which would benefit from further guidance from the Commission. We have seen through the process of developing the guidance on equivalence and non-discrimination that there are certain areas which due to their complexity or interplay across different regulatory levers benefit from the Commission putting forward its views on how these may be interpreted.
110. As required under the Act, we will be undertaking at least a 3-yearly review of the disputes resolution scheme to ensure the scheme meets consumer demands, is effective and addresses all issues that consumers are unable to resolve directly with their providers.

Outreach and Engagement

111. A significant uplift in our consumer engagement programme including new ways of understanding consumer pain points and providing information to consumers in more targeted ways to enable consumer choice.
112. Build closer relationships across all industry players including the broadcasting sector to ensure we remain connected, accessible and able to respond to the needs of the industry earlier and in a more targeted way.
113. Working with stakeholders to build a common understanding of the interplay between the different regulatory instruments, including the staggered timings to when those obligations come into effect and under what conditions.
114. Leverage the strong relationships with the Minister for the Digital Economy and Communications, MBIE, Crown Infrastructure Partners, Infrastructure Commission and other agencies on common areas of overlap to continue to grow the sector for the benefit of all New Zealanders.

Question 5:

Does the additional funding we are seeking target the right areas of focus for our work in relation to telecommunications networks?

Question 6:

Please provide feedback on whether you think the additional funding we are seeking for our telecommunications work is appropriate, and if you think a different level of funding is warranted, why?

Chapter 5: Implied workplan and costing for Fibre

115. Over the past couple of years we have been working to establish the new fibre regime (determine input methodologies (IMs), set first price-quality path, determine information disclosure requirements) which has an implementation date of 1 January 2022.
116. In this section we provide a break-down of the work that is required to 'bridge the gap'.
117. It is our assessment that it will cost \$5.50M per year to deliver the fibre regime. This is comprised of 18 full time equivalents and \$500k in external costs.
118. This funding excludes the costs associated with the statutory review of the IMs which is required no later than 7 years after the publication of the IMs. Funding for the IM review will be addressed at a later stage.

| | <i>Our preferred option</i> |
|--|-----------------------------|
| <i>Setting and removing rules</i> | |
| <i>Internal costs</i> | <i>\$2.52M</i> |
| <i>External costs</i> | <i>\$0.15M</i> |
| <i>Sub total</i> | <i>\$2.67M</i> |
| <i>Analytics & Insights</i> | |
| <i>Internal costs</i> | <i>\$1.24M</i> |
| <i>External costs</i> | <i>\$0.05M</i> |
| <i>Sub total</i> | <i>\$1.29M</i> |
| <i>Compliance & Enforcement</i> | |
| <i>Internal costs</i> | <i>\$0.62M</i> |
| <i>External costs</i> | <i>\$0.10M</i> |
| <i>Sub total</i> | <i>\$0.72M</i> |
| <i>Outreach & Engagement</i> | |
| <i>Internal costs</i> | <i>\$0.62M</i> |
| <i>External costs</i> | <i>\$0.20M</i> |
| <i>Sub total</i> | <i>\$0.82M</i> |
| <i>TOTAL</i> | <i>\$5.50M</i> |

119. Using the right tools at the right time to make sure we prioritise the work of greatest impact at a time of a changing landscape and stakeholder expectations is fundamental to ensuring we focus on delivering ‘bridging the gap’ and are able to bring the greatest value to New Zealanders.
120. To achieve the outcomes in the sector we have a number of tools available to us under the Act and Deeds, they consist of:
- 120.1 Setting and removing rules;
 - 120.2 Analytics and Insights;
 - 120.3 Compliance and Enforcement; and
 - 120.4 Outreach and Engagement

Setting and removing rules

121. For Chorus, which is subject to price-quality regulation, we set maximum revenues that it can recover from consumers and minimum quality standards it must meet.
- 121.1 Consumers will continue to be protected against excessive profits through setting and enforcing Chorus’ price path.
 - 121.2 The quality of service consumers receive will be maintained through the setting and enforcing of quality standards.
122. Maintaining the information disclosure requirements and IMs.
- 122.1 We expect that the IMs, and the information disclosure requirements will need to be reviewed and amended following implementation as these rules will be new and transitional issues will arise as the regime becomes embedded.
 - 122.2 We are required to review IMs at least every seven years. We also have the ability to add a new IM should it be necessary or desirable. For the purposes of this levy consultation we are not seeking additional funding to undertake the IMs review at this stage. We expect to come back to the industry and consumers closer to the time to outline our expectations of costs and timeframes for undertaking the IM review.

Analytics and Insights

123. We will monitor the performance of Chorus, Enable, Northpower and Ultrafast by analysing the information they provide under the information disclosure requirements. As we build up a database of information through their disclosures, we will be able to publish independent information on their performance with the aim of incentivising them to act in the consumers interest.

- 124. We will develop a deeper understanding of the regulated businesses and how they operate. We will have capacity to address problems whilst also working to understand their context. This will put us in a position to be more proactive in addressing systemic issues.
- 125. Infrastructure is reliable, resilient, and adaptable. Analysis and reporting on the performance of regulated businesses will lead to stronger incentives on the businesses in performance areas such as efficiency, innovation, investment and quality of service.

Compliance and Enforcement

- 126. For fibre, we will monitor compliance with the information disclosure requirements, price paths and quality standards we set. Where these requirements are contravened, we have a range of enforcement options available, including seeking pecuniary penalties in court (this includes considering compliance with Deeds).
- 127. Through a strong focus on compliance and enforcement, we will support the long-term interests of consumers. We will investigate when breaches of the rules take place, taking into account the conduct of the supplier, detriment to consumers and public interest.
- 128. Review regulatory settings for Unbundling/Anchor/DFAS services and deregulation reviews (section 210 of the Act)
 - 128.1 Unlike our regulatory role under Part 4 of the Commerce Act, Part 6 requires us to review regulatory settings and recommend regulation or deregulation for certain services. We are required to take account of wider competition impacts in telecommunications markets

Outreach and Engagement

- 129. Continue to build closer relationships across all industry players to ensure we remain connected, accessible and able to respond to the needs of the industry earlier and in a more targeted way.
- 130. Work with stakeholders to build a common understanding of the interplay between the different regulatory instruments, including the staggered timings of when those obligations come into effect and under what conditions.
- 131. Leverage the strong relationships with The Minister of the Digital Economy and Communications, MBIE, Crown Infrastructure Partners, Infrastructure Commission and other agencies on common areas of overlap to continue to grow the sector for the benefit of all New Zealanders.
- 132. This work will ensure that we are well placed to work towards meeting the Government's expectations to implement regulation under the new Part 6 in a way that encourages innovation among fibre network operators and realise the benefits to New Zealanders of the Government funded ultra-fast broadband rollout.

Unique attributes of the fibre regime

133. There are several unique attributes that mean this regime will have a level of complexity that has yet to be encountered in the Part 4 of the Commerce Act context:

133.1 The first price-quality reset is due in 2023. Therefore we will be rolling into starting the work for setting the second regulatory period shortly after the completion of setting the first price-quality path.

133.2 Inter and Intra network competition; fibre and mobile networks compete against one another but fibre is also a key input into mobile services.

133.3 Anchor services.

133.4 The requirement to set a quality IM; and

Question 7:

Does the additional funding we are seeking target the right areas of focus for our work in relation to fibre networks?

Question 8:

Please provide feedback on whether you think the additional funding we are seeking for our fibre work is appropriate, and if you think a different level of funding is warranted, why?

Chapter 6: Strengthening the Commission's role in the telecommunications industry

134. This chapter:

134.1 highlights that the Commission will need to invest in key areas to strengthen its role in the telecommunications sector;

134.2 explains why the proposed level of funding is lower than it would be on a stand-alone basis;

134.3 outlines the approach we will take to bridging the gap including how the industry can expect us to act and what the benefits will be to industry and consumers; and

134.4 outline a series of reasonableness checks.

135. Looking across both funding streams we will be required to change our approach in some areas of work and develop new skills and way of working in others. Examples of areas in which we will need to invest to improve our capability include:

135.1 Enhanced use of data and lifting our analytical capability across the board, including:

- modernisation of our data collection, storage and manipulation;
- enhanced use of GIS data for monitoring and production of insights;
- enhanced standing capacity for financial analysis including cost of capital; and
- greater use of behavioural economics to understand consumer purchasing decisions

135.2 Greater focus on communication, engagement with the entire range of stakeholders in the sector, and providing information in a form that best suits their needs:

- across central Government as part of our role in the wider regulatory system;
- forming new relationships with small to medium businesses with which we have had limited interactions to date;
- greater stakeholder engagement around the rules and obligations so businesses know their rights and obligations;

- extending our reach into a wider range of community groups to help us form a view on whether competition in the market is delivering the outcomes we would expect; and
 - strengthening our existing, and developing new, information channels to ensure that our message is reaching the right people in the right way.
136. The funding that we have proposed for telecommunications regulation is lower than it would be if we were investing in these areas on a stand-alone basis. The Commission's activities are funded through a combination of revenue from the Crown (general taxes) as well as levies in a number of industries, including telecommunications.
137. The areas of investment that are required in regulation of the telecommunications industry are consistent with the areas of focus that have been identified for the Commission's other areas of regulatory responsibility.
138. New Crown funding was announced at Budget 2020 to enable the Commission to start investing in the areas necessary to strengthen our impact in the areas of our work that are Crown funded (such as fair trading and markets studies). We have also proposed increases in levies for the regulation of energy networks that would help address similar areas of investment.
139. Levy payers in the telecommunications industry are therefore being asked to pay a share of the costs. Equally, however, growth in our telecommunications responsibilities has also contributed to cost pressures associated with growth in the size of the organisation. As noted in the introduction, including the impact of telecommunications and other changes in our regulatory responsibilities, in the last few years we have grown from an organisation of 180 staff to 250 staff. Each area of regulatory responsibility must contribute its share of the step-change in costs associated with the transition from a small to a medium-sized organisation. For example, there are increased costs associated with corporate services and business management.
140. Knowing what tools to use at what times and making sure we prioritise the work of greatest harm at a time of changing industry dynamics and stakeholder expectations is fundamental to ensuring we focus on delivering the greatest value to New Zealanders.
141. In the remainder of this section we outline the approach we take to bridging the gap including how the industry can expect us to act and what the benefits will be to industry and consumers.

Trusted to do the job

- 142. The fibre networks deployed across NZ have necessitated new regulations, Deeds, and Codes, which facilitate wholesale access on non-discriminatory terms, promote competition and provide consumer protections during migration from copper to fibre.
- 143. We will be trusted to develop regulations and Codes and enforce Deeds for the long-term benefit of consumers.
- 144. We will continue to be trusted by:
 - 144.1 ensuring our regulations allow fibre networks an opportunity to earn a fair return on efficient investments;
 - 144.2 providing guidance on Deed compliance, and taking effective enforcement action where necessary; and
 - 144.3 developing consumer-focused Codes that are proportionate

Outcomes

- 145. For businesses, this means that wholesale fibre investments and associated pricing will have independent oversight and ensure a level playing field for competition.
- 146. For consumers, this means that the process of switching from copper to fibre is as painless as possible.

Proactive

- 147. Our studies are often a snap-shot of the market, and/or analysis of trends leading up to the present day. There has been criticism that we could be more forward-looking in our various studies. We have also been asked to be more responsive to particular issues.
- 148. We will be more proactive and forward-looking in our studies, and more timely in the delivery of our findings.
- 149. We will become more proactive by:
 - 149.1 more proactive market monitoring, positioning ourselves to undertake studies (avoiding time consuming set-up costs by collecting a base set of information) – NZ and international (surveys, subscriptions, and consultants);
 - 149.2 leveraging our centre – provision of data storage and tools that support the market monitoring function; and

149.3 lifting analytical capacity to address timeliness of delivery.

Outcomes

150. For businesses, this means we will be more aware of competition issues that may emerge as networks evolve and become more virtualised (e.g. network slicing and eSIM). Greater proactivity will mean we can address potential harms (i.e. upstream market power) before they materialise between networks and/or within networks.
151. For consumers, this means they should enjoy the benefits of market and technological developments earlier than if market power were left to develop or operate.

Targeted in our actions

152. Our activities - market monitoring, consumer communications, regulatory interventions are almost exclusively at an aggregated, national level, which has the potential to leave particular/specific harms unaddressed.
153. We will be more targeted and granular in our analysis, communications, and interventions.
154. We will become more targeted by:
- 154.1 leveraging our centre – provision of geographic data and analytics (e.g. GIS, Data automation and better use of artificial intelligence), including better data integration from other agencies e.g. Statistics NZ;
 - 154.2 identification, development and use of new channels e.g. seniors, Pacifica, low-income etc;
 - 154.3 developing behavioural understanding of different consumer groups to improve our effectiveness; and
 - 154.4 expanding our Measuring Broadband New Zealand programme to include mobile performance across providers and geographies.

Outcomes

155. For businesses, this means we will have the ability to look at competition and (de)regulation at more granular geographic levels. Our intervention (determinations, Codes etc) can be better tailored to support competition in a particular market.
156. For consumers, this means they will get more relevant information for their age, culture, living situation (disability, language etc) to support their telecommunications purchasing decisions.

An independent voice

157. Our independence is of great value to all our stakeholders – but, outside of a small number of large providers, the level of awareness about what we do, and the helpful information we provide, is low.
158. We will leverage our independence more effectively for smaller market participants (regime understanding) and consumers (information supporting choice and switching).
159. We will increase our independent voice by:
- 159.1 leveraging our centre – increased support for developing more consumer-appropriate materials
 - 159.2 partnering with third-parties to make our independent data more widely available e.g. Measuring Broadband NZ and other Retail Service Quality materials; and
 - 159.3 engaging positively with MBIE to ensure the regime (Act, Deeds, Regulations) is fit for purpose, and well understood by market participants.

Outcomes

160. For businesses, this means greater awareness of our role (e.g. Deed enforcement – EOI / Non-Discrimination) for smaller market participants (customers of larger wholesale providers), which supports increased confidence to enter, operate and expand.
161. For consumers, this means they have a stronger, independent voice they can trust for information on their telecommunications services.

Intentional

162. We could do much better in articulating the specific change our interventions are intended to produce, and assessing the effectiveness of the intervention.
163. In addition to being more proactive and targeted, we will also be more intentional about our activities by committing resources to more regular quantitative and qualitative reviews of our regulations, Codes and other tools.

Outcomes

164. For businesses, this responds to criticism that we do not look regularly enough at the effectiveness of our interventions including whether there are opportunities to make improvements or amendments where appropriate.

Connected with our stakeholders

165. Historically, our engagement has centred around market participants directly involved in formal processes.
166. We want to build wider and deeper connections with market players and consumer groups alike. We want to hear points-of-view in less formal settings. We can also help educate stakeholders on more complicated regime/compliance matters.
167. We will be more connected by:
- 167.1 getting out of Wellington and visiting stakeholders where they operate;
 - 167.2 developing different ways of reaching out to, and connecting with, consumers; and
 - 167.3 continuing to build out our network of contacts both locally and internationally.

Outcomes:

168. For businesses, this means they have a more collaborative channel to work through aspects of the regime that apply directly to their operation.
169. For consumers, this means we are more proactive, visible, and accessible to understand their needs, preferences, and concerns.

Reasonableness checks

170. In this section we outline a series of reasonableness checks to help put the costs of running the regulatory regime under our preferred option in perspective against consumer spend and benchmark against other agencies with similar mandates.

New Zealand's annual household expenditure on communications

171. Information on New Zealand households' expenditure, income, and material well-being is based on data collected as part of Statistics NZ household economic survey (HES). Household expenditure is collected every three years.
172. The data released on expenditure estimates that the average household monthly spend on Communications is \$141. From that information we can also establish that there are 1.757M households.
173. In 2019, total estimated household expenditure on telecommunications services, as measured by the HES, was approximately 56% of total telecommunications industry retail revenue, as measured by our annual industry questionnaire.
174. We can assume that 56% of the costs of running the regime under our preferred option will come from New Zealand households. This equates to 40 cents per month

for the average New Zealand household, or 0.28% of average monthly communications bills. This is up from 30 cents per month on the 2019/20 spend.

ComReg: Regulation of Telecommunications in Ireland

175. ComReg is responsible for promoting competition, protecting consumers and for encouraging innovation in Ireland.⁹ Their role includes:
- 175.1 Ensuring compliance by operators with obligations;
 - 175.2 Promoting competition;
 - 175.3 Contributing to the development of the internal market;
 - 175.4 Promoting the interests of users within the European Community;
 - 175.5 Ensuring the efficient management and use of the radio frequency spectrum and numbers from the national numbering scheme;
 - 175.6 Promoting the development of the postal sector; and
 - 175.7 Protecting the interests of end users of premium rate services.
176. The population size of Ireland is comparable to New Zealand, however the role of ComReg is broader than that of our role in New Zealand's telecommunications sector. In particular, the roles of spectrum management and postal services sit within other New Zealand Government organisations. The annual reports for ComReg separate out the costs of postal and premium rate services but not spectrum. In 2019 ComReg had 118 staff employed to undertake its Electronic Communications work.
177. The expenditure for ComReg's Electronic Communications activities (excluding postal and premium rate service) over the period 2017 to 2019 was:
- 177.1 2019: €32.304M
 - 177.2 2018: €30.370M
 - 177.3 2017: €29.177M

The ACCC: Australia's competition and economic regulatory authority

178. The ACCC is the statutory authority whose role is to enforce the Competition and Consumer Act 2010 and a range of additional legislation, promoting competition and fair trading, and regulating national infrastructure for the benefit of all Australians by:

⁹ <https://www.comreg.ie/media/2020/09/ComReg-Annual-Report-2018-2019-ENG.pdf>

- 178.1 maintaining and promoting competition by preventing anti-competitive mergers and cartels, intervening when misuse of market power is identified, and implementing the Consumer Data Right;
 - 178.2 protecting the interests and safety of consumers and supporting a fair marketplace—addressing misleading behaviour, removing unsafe goods and tackling unconscionable dealings;
 - 178.3 driving efficient infrastructure through industry-specific regulation and access regimes; and
 - 178.4 undertaking market studies and inquiries to support competition, consumer and regulatory outcomes.¹⁰
179. The scope of the ACCC’s responsibilities is close to the role of the Commerce Commission as a whole. There are population and geographical differences between the two countries.
180. The expenditure for the ACCC in the 2019/20 year was AUD\$237M with an average staffing level of approximately 900.

Question 9

Please provide feedback on whether you think the funding we are seeking will strengthen our capability and impact leading to the right mix of business and consumer outcomes?

Question 10

Are there other outcomes you would expect to see with the additional funding we are seeking in the proposal?

¹⁰ <https://www.accc.gov.au/system/files/ACCC%20and%20AER%20Annual%20Report%202019-20.pdf>

Chapter 7: Other options we considered

181. In the process of developing the case for the preferred level of funding we considered three alternative scenarios:

181.1 no new money;

181.2 holding the line; and

181.3 bridging the gap+.

No new money

182. In this scenario the Commission would have \$6M of funding per year to deliver on all obligations under the Act, including the new obligations around fibre and retail service quality. It is our assessment that with no new money we will not be able to meet our statutory obligations or meet stakeholder expectations.

183. Whilst we do not think we can deliver on our obligations within this funding envelope we would continue to prioritise those pieces of work which would address the biggest harms, which in this case would focus almost exclusively on setting price quality paths for Chorus and information disclosure requirements for the other Local Fibre Companies.

184. Under this scenario we would see a significant reduction in resourcing and we would expect to cease our broadband testing programme as well as consumer facing engagements. We would have limited capacity to advance retail service quality or undertake market studies like our recent 'mobile market study' which provide valuable pulse checks on the state of competition in the sector and identify areas that are performing well or areas that may require further investigation or intervention.

185. The main benefit of this approach over 'bridging the gap' is:

185.1 Industry continues to see a reduction in regulatory costs in real terms. A position that has been in place since 2012.

186. The main costs of this option are:

186.1 we are unable to meet our statutory obligations which puts the Commission in an untenable position reputationally of choosing which obligations we would choose not to do;

186.2 we miss the opportunity to deliver on the biggest opportunities in the sector. Consumers are likely to continue to be frustrated by aspects of retail service

quality and dissatisfaction in the industry is likely to increase as our compliance and investigations move back to a reactionary approach; and

186.3 opportunities for further engagement with consumers and the wider industry will remain limited as will our ability to focus on guidance and other types of advice at a time the regime is in significant transition.

187. This option was ultimately discounted as we don't consider it is viable for the Commission to be in a position where it is trading off which statutory obligations it won't be delivering on and as a consequence not meeting expectations set by policy makers.

Holding the line

188. In this scenario we aim to maintain the same outcomes in each of the three areas of infrastructure, competition and consumer as we see today. So, where the industry is in 2020 is where we would aim to be in 2026.

189. To hold the line there would still be the same level of resourcing and effort required for the running of the fibre regime but there would have been a significant reduction in our data and insights functions, compliance and investigations and use of new consumer provisions.

190. The main benefits of this option over 'bridging the gap' is:

190.1 fibre work is adequately funded which addresses a major policy change resulting from the 2018 amendments to the Act.

190.2 cost pressures are addressed which means we can maintain the current level of work in the consumer and competition space but there are limited additional obligations put on the industry to address consumer pain points or requirements to participate in our processes or provide additional data over and above what is required today.

191. The main costs of this option are:

191.1 we miss the opportunity to deliver on the biggest opportunities in the sector;

191.2 consumers are likely to continue to be frustrated by aspects of retail service quality and the levels of dissatisfaction with the industry are likely to remain; and

191.3 opportunities for further engagement with consumers and the wider industry will remain limited as will our ability to focus on guidance and other types of advice at a time the regime is in significant transition.

192. It is our assessment that under the 'holding the line scenario' it will cost \$8.0M per year to run the telecommunications regime excluding fibre. This is comprised of 21 full time equivalents and \$1.5M in external costs. The fibre regime costs would remain the same at \$5.50M per year to run the regime, this is comprised of 18 full time equivalents and \$500k in external costs
193. This is not our preferred option as it misses some of the greatest opportunities to deliver on stakeholder expectations.

Bridging the gap+

194. In this scenario we aim for the same outcomes as 'bridging the gap' but would bridge the gap at a faster rate, in particular in the 'competition' and 'consumer' outcomes. There would also be a greater focus on capability building and an increased focus on international engagement to be at the forefront of anticipating regulatory needs in the face of global technological change.
195. For 'bridging the gap+' there would still be the same level of resourcing and effort required for the running of the fibre regime but there would be an increase in our head count and external costs to bridge the gaps in 'competition' and 'consumer'.
196. The main benefits of this option over 'bridging the gap' are:
- 196.1 Consumers would see a further increase in our consumer facing activities as well as a greater number of tools and services to help with consumer decision making, including: availability, service mapping and performance information linked to price and retail service quality information.
- 196.2 Industry would see a greater presence in compliance, education and engagement. For example, bridging the gap+ would see a greater focus on guidance around different obligations like the recently released 'Equivalence and Non-discrimination' guidelines.
- 196.3 There would be a greater focus on engagement with some of the small to medium service providers which are large in numbers but have a smaller proportion of total connections, including visiting the regions to understand different business models. We would also spent additional effort maintaining existing, and building new international relationships to make sure we keep up with best practice and can contribute to the debate on the impact of new technologies and business models on the regulatory system.

197. The main costs of this option are:
- 197.1 Consumer campaigns may exceed ours and stakeholder's capacity to adapt to the change in approach at that speed. Taking this approach may have the effect of over saturating consumers with information and add to the consumer confusion around products and services leading to disengagement.
 - 197.2 There would be an increased burden on stakeholders to provide information and participate in regulatory consultations.
198. It is our assessment that under the 'bridging the gap+' it will cost \$10.6M per year to run the telecommunications regime excluding fibre. This is comprised of 27 full time equivalents and \$2.8M in external costs. The fibre regime costs would remain the same at \$5.50M per year to run the regime. This is comprised of 18 full time equivalents and \$500k in external costs
199. While we consider we should have many of the aspirations described above, and that there are real benefits in pursuing those initiatives, this option was ultimately discounted because:
- 199.1 We are conscious that it may ask too much too quickly from businesses and consumers – particularly in terms of the consultation burden.
 - 199.2 We are mindful of imposing additional short-term costs on consumers in the current financial climate.
 - 199.3 It remains uncertain whether domestic travel will remain viable in the short to medium term, and international collaboration remains restricted due to the varying impacts of COVID-19.

Question 11

Please provide feedback on whether you think one of the other funding options set out above is more appropriate, and why?

Attachment A: Resourcing breakdown

Resourcing running the telecommunications regime excluding fibre

200. Below we outline the people requirements to deliver on all of our obligations under the Act excluding the fibre regime.

Estimated FTEs required for running the telecommunications regime excluding fibre

We estimate that 24 full time equivalents (FTEs) would be required over the period, including:

- one Head of Telecommunications
- two managers;
- two project managers;
- one principal adviser;
- one staff member to provide administrative support;
- two economists;
- two legal advisers;
- three compliance staff;
- one stakeholder engagement specialist; and
- nine analytical staff members including chief advisers/senior analysts/analysts/assistant analysts.

201. Staff would be supported by:

201.1 external economic and legal advice, and internal and external technical expertise on complex issues such as network performance, financial modelling, geographic mapping and consumer behaviour experts; and

201.2 shared central services.

Resourcing for ongoing running of the fibre regime

202. Below we outline the people requirements to deliver on the obligations under the Act relating to the ongoing running of the fibre regime.

Estimated FTEs required for ongoing running of the fibre regime

We estimate that 18 full time equivalents (FTEs) would be required over the proposed period, including:

- two managers;
- one project manager;
- one principal adviser;
- two economists;
- two legal advisers;
- two compliance staff and
- eight staff members including chief advisers/senior analysts/analysts/assistant analysts.

203. Staff would be supported by:

203.1 external economic and legal advice, and internal and external technical expertise on complex issues such as network performance, financial modelling, geographic mapping and consumer behaviour experts; and

203.2 shared central services.

Attachment B – Summary of changes to Telecommunications Act 2018

| Obligation | Timeframe | Reference |
|--|---|-----------|
| Fixed line fibre services | | |
| Consult on and determine IMs: <ul style="list-style-type: none"> • cost of capital • valuation of assets • allocation of common costs • treatment of taxation • quality dimensions • regulatory processes and rules • methodologies for capital expenditure projects¹¹ | Not later than the implementation date [s177] Implementation date means 1 January 2020, which may be extended for up to 24 months on request to the Minister | Subpart 3 |
| Consult on and determine ID determinations <ul style="list-style-type: none"> • Chorus + LFCs | After the date the relevant IMs are determined, but before the implementation date [s171] | Subpart 4 |
| Consult on and determine price-quality determination for the first 3 year regulatory period <ul style="list-style-type: none"> • Chorus | After the date the relevant IMs are determined, but before the implementation date [s171] | Subpart 5 |
| May review whether, and how effectively, Anchor Services meet the purpose (Anchor Services review) | Before the start of each regulatory period (including the first regulatory period) | s207 |
| May review price-quality regulation (Price-quality review) | On or after the date that is 3 years after the implementation date and at intervals of no less than 5 years thereafter | s208 |
| May review how fibre fixed line access services should be regulated (Deregulation review) | At any time after the implementation date | s209 |
| Must review the input methodologies (IMs review) | No later than 7 years after publication date and at intervals of no more than 7 years | S182 |

¹¹ These are only the mandatory IMs listed in the Act – ie, a minimum requirement. Other IMs may be required.

| | | |
|---|---|----------------------------|
| Removal of existing requirement for the Commission must require disclosure by LFCs (including Chorus) | Were previously annual. Replaced with Part 6 ID regime from 2022 | s 156AU Schedule 1AA 10 |
| Deregulating copper fixed line access services | | |
| Determine specified fibre areas | Before 1 January 2020 and at least annually thereafter | s206 |
| Consequential changes to standard terms determinations (STDs) and the subsequent s30R review freeze | No later than 31 December 2019 | s69AB |
| Implement annual CPI adjustments to all Charges in the STDs | Annually from 1 January 2020 <ul style="list-style-type: none"> • 16 December: UBA + UCLF • 1 January: UBA Backhaul, UCLL Backhaul, UCLL colo | s69AG |
| The Commission, or the Forum if requested to do so by the Commission, must prepare a code to be known as the copper withdrawal code | Before the implementation date | s69AG |
| Removal of 2 regulated copper services form Schedule 1 <ul style="list-style-type: none"> - Unbundled copper local loop Unbundled copper local loop network backhaul (distribution cabinet to telephone exchange) | From 1 January 2020 | Schedule 2A |
| Requirement for the Commission to review 5 regulated copper services in Schedule 1 removed <p>(a) copper fixed line access services: (b) Chorus's unbundled copper local loop network co-location: (c) Chorus's unbundled copper local loop network backhaul (telephone exchange to interconnect point): (d) Chorus's unbundled bitstream access backhaul.</p> | Were previously due June 2021 | Schedule 1 |
| Schedule 3 modified investigation of certain copper services (Copper review) | No later than 31 December 2025 | Schedule 3 (8) |
| Determine specified fibre areas | Before 1 January 2020 and at least annually thereafter | s69AH |
| Consequential changes to standard terms determinations (STDs) and the subsequent s30R review freeze | No later than 31 December 2019 | s69AB |
| Consumer matters | | |

| | | |
|--|--------------------------------|----------------------|
| Commission review of industry dispute resolution schemes | At least once every 3 years | s240 |
| Monitor retail service quality (RSQ) in a way that informs consumer choice Includes new information gathering powers | Ongoing | s 9A(e) s 10A |
| Report on retail service quality (RSQ) in a way that informs consumer choice | Ongoing | s 9A(f) |
| The Commission must make a code for the purpose of ensuring that vulnerable consumers, or persons on their behalf, have reasonable access to an appropriate means to contact the 111 emergency service in the event of a power failure (Commission 111 contact code) | Before the implementation date | s 238 |
| Monitor compliance with the Commission 111 contact code | Ongoing after implemented | s 9A(c) |
| The Commission may make a retail service quality code in relation to the provision of 1 or more types of telecommunications service | Ongoing as required | s 236 |
| General | | |
| Amended definition of 'telecommunication' to remove exclusion of broadcasting | Ongoing | s 5 Various |

Attachment C - Consultation Questions

204. The Commission is interested in general feedback on the funding proposals.
205. It is also interested in your views about the relative priority the Commission should give to different regulatory activities anticipated under the funding proposals. We have therefore developed the following questions aimed at helping us review and refine our view of future funding requirements. The questions are included where relevant in the consultation paper above but are summarised below for reference.

| | |
|---|--|
| Introduction | |
| Question 1 | Do you have any feedback on the purpose and objectives of this consultation paper? |
| Question 2 | Please provide feedback on whether you agree with how we have characterised the operating context of our work - in terms of technological and regulatory transition and the risks to fulfilling policymakers' expectations - in relation to telecommunications and fibre networks. |
| Overview of our regulatory responsibilities and funding | |
| Question 3 | Please provide feedback on whether you agree with the proposal that the current Levy Regulations are amended to enable continuation of all the fibre sub levies for recovering fibre regulation costs going forward. |
| Our medium-term priorities for Telecommunications | |
| Question 4 | Please provide feedback on whether you agree with the medium-term priorities for Telecommunications set out above and our focus on 'bridging the gap'. Are there other priorities that should be included? |
| Implied workplan and costing for Telecommunications | |
| Question 5 | Does the additional funding we are seeking target the right areas of focus for our work in relation to telecommunications networks? |
| Question 6 | Please provide feedback on whether you think the additional funding we are seeking for our telecommunications work is appropriate, and if you think a different level of funding is warranted, why? |
| Implied workplan and costing for Fibre | |
| Question 7 | Does the additional funding we are seeking target the right areas of focus for our work in relation to fibre networks? |
| Question 8 | Please provide feedback on whether you think the additional funding we are seeking for our fibre work is appropriate, and if you think a different level of funding is warranted, why? |
| Our strengthened capability and impact | |
| Question 9 | Please provide feedback on whether you think the funding we are seeking will strengthen our capability and impact leading to the right mix of business and consumer outcomes? |

| | |
|-----------------------------|---|
| Question 10 | Are there other outcomes you would expect to see with the additional funding we are seeking in the consultation document? |
| Other options we considered | |
| Question 11 | Please provide feedback on whether you think one of the other funding options set out above is more appropriate, and why? |

Attachment D – Our funding structure (Telecommunications and Fibre)

206. Overall the Commission is funded from eight appropriations across our regulatory, competition and consumer work (including litigation funding). The revenue for these appropriations is derived from a mixture of Crown funding (general taxes), levies on regulated industries, interest revenue, determination applications and cost recoveries.
207. Our regulation work is primarily funded through the appropriations shown below, with our work under Part 4 of the Commerce Act 1986 funded by three multi-year appropriations (MYA), each for a 5-year period (2019/20 being the first year of the next 5-year period).

| Sector | Appropriation type | Cap (Annual or MYA) (\$m) |
|----------------------------|---|---------------------------|
| Telecommunications | Annual | 6.000 |
| Fibre (and Broadcasting) | Multi-year appropriation (4-year: 2018/19 – 2021/22) | 12.300 |
| Electricity lines services | Multi-year appropriation (5-year: 2019/20 – 2023/24) | 28.311 |
| Gas pipeline services | Multi-year appropriation (5-year: 2019/20 – 2023/24) | 9.684 |
| Specified airport services | Multi-year appropriation (5-year: 2019/20 – 2023/24) | 2.763 |
| Dairy | Annual | 0.757 |
| Fuel | Annual - one-off for 2019/20 year (Part of a Multi-Category Appropriation which includes the Competition and Consumer categories) | 0.500 |

Telecommunications and Fibre

208. Our work in relation to telecommunications and fibre regulation is funded through two separate budget appropriations approved by Parliament: an annual appropriation for telecommunications and a 4-year MYA for Fibre regulation (and broadcasting).

Annual appropriation

209. MBIE recovers the cost of this funding from industry through the Telecommunications Regulatory Levy (TRL), under section 11 and 12 of the

Telecommunications Act. The TRL is paid by companies that provide services in New Zealand via a public telecommunications network, including wholesale providers and retailers.

210. Previous to 2012/13 telecommunications regulation was covered by a single annual appropriation of \$7.79M. In 2012 we gained approval to reduce the Vote Communications appropriation to \$6.0M from 2012/13 onwards. In recent years the telecommunications appropriation has remained at \$6.0M, with some fluctuation to allow for the carry-over of funds from one year to the next.

Fibre implementation and Broadcasting

211. With the passage of the Telecommunications (New Regulatory Framework) Amendment Bill in 2018 a one-off 4-year MYA of \$12M was established to cover the development implementation phase of the new regulatory framework for fibre services.
212. The fibre implementation is paid for by Chorus, Enable, Ultrafast Fibre and North Power.
213. Fibre implementation funding will be spent by the end of June 2021, which means the remaining work on the fibre implementation will need to be funded from the existing annual telecommunications appropriation or the Commission's reserves.
214. In 2019 we also received additional one-off funding of \$300K for new responsibilities in relation to broadcasting created by the amendment Bill. The 2021/22 financial year is the last of the 4-year MYA applying to fibre (current funding profile below).

| Funding profile – Telecommunications and Fibre (including Broadcasting) | | | | | |
|---|----------------------|----------------------|----------------------|----------------------|--------------------|
| Sector/appropriation | 2018/19 (\$m) | 2019/20 (\$m) | 2020/21 (\$m) | 2021/22 (\$m) | Total (\$m) |
| Telecommunications | 6.000 | 6.300 | 6.000 | 6.000 | N/A |
| Fibre (and Broadcasting) | 3.200* | 5.000 | 3.300 | 0.800 | 12.300 |
| *Prior to the introduction of the Fibre regulation MYA, the initial fibre regime work was funded through the annual Telecommunications appropriation in 2018/19, set at \$9.6M. | | | | | |

215. As noted above the Minister for the Digital Economy and Communications is responsible for recommending the regulations on the amount of the TRL and the classes of service providers who will be liable to contribute to it. The Minister must consult those persons and organisations that they consider appropriate having regard to the subject matter of the proposed regulations.