COMMERCE COMMISSION
NEW ZEALAND

Liability allocation determination for the Telecommunications Development Levy for 1 July 2011 to 30 June 2012

Telecommunications Development Levy (TDL) liability allocation determination under section 84 of the Telecommunications Act 2001 (the 'Act') of matters set out in section 85 and 88 of the Act for the period 1 July 2011 to 30 June 2012.

The Commission:

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Date of determination: 27 June 2013

Contents

List of defined terms and abbreviations

Act	Telecommunications Act 2001
Amendment Act	Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011
CFH	Crown Fibre Holdings
liable person	a person who provides a telecommunications service in New Zealand by means of some component of a PTN that is operated by the person
LFC	Local fibre company
minimum telecommunications revenue	is defined in section 80 of the Act as meaning $10 million of gross revenue (as may be determined by any specifications set by the Commission) that a liable person receives during a financial year for supplying either or both of the following: (a) telecommunications services by means of its PTN; and (b) telecommunications services by means that rely primarily on the existence of its PTN or any other PTN
NZ GAAP	New Zealand Generally Accepted Accounting Principles
PDN or public data network	a data network used, or intended for use, in whole or in part, by the public
PSTN or public switched telephone network	a dial-up telephone network used, or intended for use, in whole or in part, by the public for the purposes of providing telecommunication between telephone devices
PTN or public telecommunications network	a network used, or intended to be used, in whole or in part, by the public for the purpose of telecommunication, and includes a PSTN and a PDN
qualifying liable person	a liable person that has met the minimum telecommunications revenue threshold and has attracted liability under a TDL LAD
TDL	Telecommunications Development Levy
TSO	Telecommunications Service Obligations in relation to a TSO instrument

Executive summary

Allocation of levy

X1. This is the Telecommunications Development Levy liability allocation determination (LAD) for the period 1 July 2011 to 30 June 2012, required by section 84 of the Telecommunications Act 2001 (the 'Act'). It allocates the amount each qualifying liable person is required to pay of the total Telecommunications Development Levy (TDL) of $50 million as shown in the following table.

Qualifying liable person	TDL qualified revenue	% of total	Amount payable - TDL
Telecom Corporation of New Zealand Ltd, and Telecom New Zealand Ltd	$2,249,518,000	50.75%	$25,375,078.91
Vodafone New Zealand Ltd	$973,020,000	21.95%	$10,975,888.74
Chorus Ltd and Chorus New Zealand Ltd	$567,427,000	12.80%	$6,400,706.68
Vodafone Fixed Ltd	$345,423,000	7.79%	$3,896,450.65
Two Degrees Mobile Ltd	$102,852,000	2.32%	$1,160,194.15
Orcon Ltd	$29,723,000	0.67%	$335,282.26
Teamtalk Ltd, Araneo Ltd, and Citylink Ltd	$26,027,000	0.59%	$293,590.53
Vector Communications Ltd	$22,485,000	0.51%	$253,635.96
FX Networks Ltd	$22,267,000	0.50%	$251,176.87
Call Plus Ltd and 2Talk Ltd	$19,969,000	0.45%	$225,254.90
Bay City Communications Ltd	$15,060,000	0.34%	$169,880.25
WorldxChange Communications Ltd	$11,715,000	0.26%	$132,147.89
Snap Ltd	$9,925,000	0.22%	$111,956.28
Kordia New Zealand Ltd	$7,622,000	0.17%	$85,977.91
Compass Communications Ltd	$7,368,000	0.17%	$83,112.73
Woosh Wireless (NZ) Ltd and Woosh Ltd	$6,122,000	0.14%	$69,057.56
Trustpower (Kinect) Ltd	$4,902,000	0.11%	$55,295.68
Woosh Wireless Ltd (now Railway St Industries)	$4,517,000	0.10%	$50,952.80
Transpower New Zealand Ltd	$4,185,000	0.09%	$47,207.76
REANNZ (Research & Education Advanced Network New Zealand Ltd)	$2,407,000	0.05%	$27,151.51
Total	**$4,432,534,000**	**100%**	**$50,000,000**

X2. This determination explains our methodology for determining the amount of levy payable by each qualifying liable person.

Summary of methodology

X3. In keeping with subpart 2 of Part 3 of the Act, we determined the above allocations by apportioning the $50 million TDL between liable persons, based on their qualified revenue.

X4. The key parts of our methodology are:

X4.1 **Identifying qualifying liable persons for the 2011/12 TDL**. After identifying the liable persons we considered could potentially qualify for the TDL, we distinguished the qualifying liable persons who will contribute to the 2011/12 TDL based on gross telecommunications services revenue.

X4.2 **The approach to calculating qualified revenue.** Each firm's qualified revenue was assessed using a net revenue approach, which subtracted from gross telecommunications services revenue:

X4.2.1 total payments made to other qualifying liable persons for telecommunications services;

X4.2.2 total payments made to non-qualifying liable persons for telecommunications services initially provided by another qualifying liable person; and

X4.2.3 the total cost of any non-telecommunications goods and services that were included in gross telecommunications services revenue.

This approach was also used in the previous Telecommunication Service Obligations (TSO) cost allocation determinations.

X4.3 **Compliance and assurance.** To ensure the accuracy and integrity of our LAD, each liable person had to provide us with an assurance report prepared by an independent auditor. We also reviewed each firm's qualified revenue calculation for compliance and followed up on several issues that we identified.

Introduction

1. The Act regulates the supply of telecommunications services in New Zealand.

2. Subpart 2 of Part 3 of the Act prescribes our annual procedure for determining the amount of TDL payable by each qualifying liable person. The TDL was established under the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (the 'Amendment Act') to assist the government in paying TSO charges and funding improvements to New Zealand's telecommunications infrastructure.

3. This document is the TDL liability allocation determination (LAD) for the period 1 July 2011 to 30 June 2012, required by section 84 of the Act. This determination allocates the amount each qualifying liable person is required to pay of the total TDL amount of $50 million.[1]

Outline

4. This document also presents:

    4.1 The legislative background including terminology and the prescribed liability allocation process.

    4.2 Our methodology and reasoning including:

        4.2.1 How this year's TDL process differs from what we will apply in the future.

        4.2.2 How we identified qualifying liable persons for the 2011/12 TDL.

        4.2.3 The approach used to calculate qualified revenue.

        4.2.4 The compliance and assurance process implanted to improve the accuracy and integrity of our LAD. This included a review of each qualifying liable persons' calculations of their qualified revenue by both us and independent auditors.

    4.3 Our allocation of the levy between the qualifying liable persons.

5. We prepared the LAD after a lengthy policy development process, which included consultation on several discussion papers and a draft LAD, and a workshop involving telecommunications service providers and other key stakeholders.

6. Due to this being the first TDL year, the need to both develop a robust methodology and allow qualifying liable persons time to implement it, has meant that the process this year differs from what will be applied in the future.

[1] $50 million is the total TDL levy amount that applies to the 2011/12 TDL financial year as provided for in Schedule 3B of the Act.

Legislative background

The TSO and the TDL

7. The TDL was introduced by the Amendment Act. It replaced the net cost calculation and allocation process for the TSO, and requires the Crown to pay TSO charges from the TDL. It also streamlines the process for industry contributions to government-led improvements to New Zealand's telecommunications infrastructure.

8. Schedule 3B of the Act stipulates that the TDL is $50 million dollars per annum from the 2010/11 financial year through to the 2015/16 financial year. The TDL for the 2016/17 financial year will be $10 million, and subsequent years will be an inflation-adjusted value based on the preceding year's TDL amount.

9. A statement about the purpose for introducing the TDL is included in the explanatory notes at the beginning of the first draft of the Telecommunications (TSO, Broadband, and Other Matters) Bill (the 'Bill') on Part 1 (which covers the TDL and TSO amendments):

> The Bill—
>
> …
>
> streamlines the legislative funding mechanisms for TSO instruments by introducing a new telecommunications development levy (the TDL), which will be collected from industry participants annually and be used for the payment of TSO-related compensation, non-urban telecommunications infrastructure development, and upgrades to the emergency services calling system.

10. In the first reading of the Bill, The Hon. Steven Joyce (then Minister for Communications and Information Technology) summarised the relevant TDL changes as follows: [2]

> The bill also implements the government's telecommunications service obligation reforms. …
>
> The bill amends payment of compensation to a telecommunications service provider by requiring the Crown to pay compensation due to telecommunications service obligation providers as assessed by the Commission. That compensation is funded from a new levy called the Telecommunications Development Levy. The annual amount to be collected for the telecommunications development levy is specified in the bill, and the money collected will first pay for any telecommunications service obligation charges, and then rural telecommunications infrastructure development and upgrades to the emergency-calling services.

11. The regulatory impact statement also provides a useful indication of the scope of the legislative changes introduced by the TDL. It concluded that: [3]

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[2] See Hansard Debates, Volume 669.

.... a supply-side levy should be the preferred option for funding subsidies within the telecommunications sector. The primary reasons for this decision were:

a that it leveraged an established and generally accepted allocation and collection process (the TSO charge allocation regime in the Telecommunications Act 2001); and

b that it appropriately provided for the allocation of the levy across the most direct beneficiaries of the funded activities.

Terminology

Defining the term 'liable person'

13. Liable person is a term integral to the operation of the TDL provisions in the Act. The starting point is the statutory definition, in which the Act defines liable person as:

> …a person who provides a telecommunications services in New Zealand by means of some component of a PTN that is operated by the person.

14. The TDL is allocated among liable persons who:

    14.1 have been trading in the year prior to Year A;[4] and

    14.2 have derived telecommunications revenue of $10 million or more from operating their public telecommunications network (PTN) or any other PTN during the year prior to Year A.[5]

15. To provide greater clarity, we use the term 'qualifying liable person' to describe the liable persons meeting these criteria (ie, those that must pay a portion of the TDL).

16. Another key concept is the TDL year. This is defined in the Act as a 1 July to 30 June year. The Act sometimes refers to this as Year A. For clarity we generally refer to it as the TDL year. This year, Year A refers to the 2011/12 June financial year.

17. The liable persons required to provide this information are telecommunications service providers that derive $10 million or more from supplying telecommunications services by means of a component of a public telecommunications network (PTN) in the year preceding the TDL year.

18. In some instances, we are required to assess the telecommunications revenue of two or more liable persons, to determine if the $10 million threshold has been

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[3] Regulatory Impact Statement, *Reform of the Telecommunications Service Obligation Framework and Industry Levy Arrangements*, dated 23 November 2010, paragraph 81.

[4] Section 81(1)(a) of the Act.

[5] Section 81(1)(b) of the Act.

met. This requirement only applies to liable persons who are connected by significant shareholding arrangements.[6]

19. It is important to note for this process, that information for the year preceding the TDL year is used to identify *if* a party is required to pay, and that information from the TDL year (sourced later in the year) identifies *how much* a party is required to pay.

20. Following submissions on the February 2012 discussion document, we clarified who was a liable person (or potentially liable person) in our July 2012 notification. A service provider is a potentially liable person for the purposes of the TDL if it:

    20.1 provides a telecommunications service, which may include the transmission of voice, data, SMS, or any other content, but excludes broadcasting (ie, the transmission of programmes for the reception by the public);

    20.2 provides the telecommunications service in New Zealand;

    20.3 operates a component of the PTN over which the telecommunications service is provided;

    20.4 operates a component of a PTN that falls within the public side of the network demarcation point – the component must be operated by the service provider, not a third party; and

    20.5 operates a network that is publicly available ie, not limited to private use.

21. As the term 'operates' became a key aspect of identifying a potentially liable person, we clarified what constitutes this term. We indicated in the July 2012 notification that a party operates a component of the PTN where that party does one or more of the following:

    21.1 owns the component or has rights similar to ownership, such as a long-term lease, or exclusive licence;

    21.2 has a right to exclude use of the component by other parties; or

    21.3 can authorise third party use of, and access to, the component to provide a telecommunications service.

22. The third of the above criteria was later clarified during the liable persons identification process by including the requirement that a party must be able to *independently* authorise third party use of, and access to, the component to

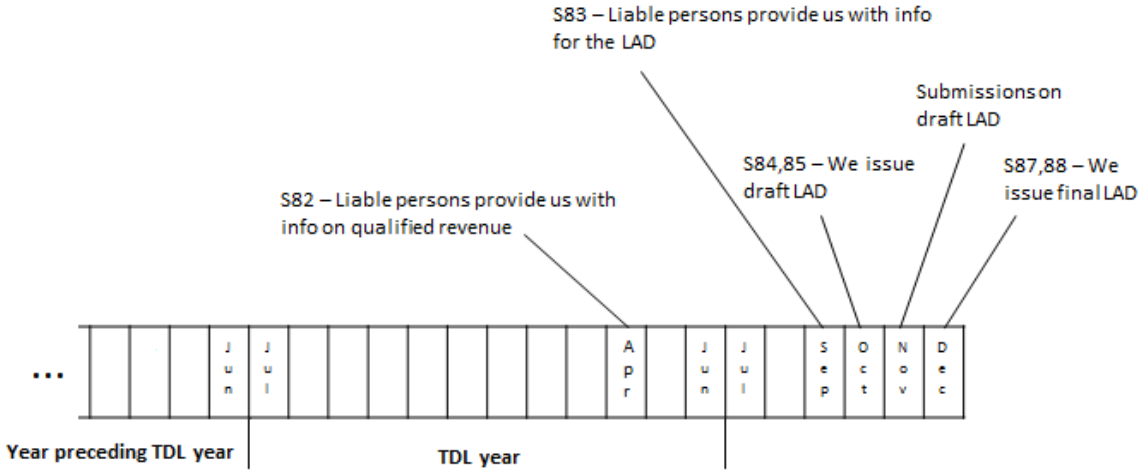
[6] Section 79 of the Act applies in situations similar to the following scenarios: one or more liable persons is a subsidiary of another liable person; or one liable person has a 20% or more shareholding interest in one or more other liable persons; or a third-party has a 20% or more shareholding in two or more persons.

provide a telecommunications service. This was so pure resellers and service aggregators (who do not operate a component of a PTN, but act as agents for parties who do) could be more explicitly excluded from the TDL process.

The liability allocation determination process

23. Subpart 2 of Part 3 of the Act requires us to complete an annual LAD. The process commences before the end of the TDL year that the obligation applies to. In a usual year, the process is expected to commence in April and last approximately eight or nine months.

TDL Timeline



Identifying qualifying liable persons

24. Section 82 of the Act requires that qualifying liable persons provide the Commission with information to verify their liability to pay a portion of the TDL. This financial and shareholding information is required 60 working days prior to the end of the financial year (which usually equates to the first week of April), and relates to the year preceding the TDL year.

25. We collate the information received from liable persons complying with section 82. At that time, we may also undertake an additional process of serving notices to require information under section 81 of the Act. This may be done with telecommunications service providers who we:

    25.1 suspect may have met the criteria and should have complied with section 82; or

    25.2 do not have sufficient financial or shareholding information to assess their status in terms of the criteria.

26. We then analyse all the information that we receive from liable persons complying with section 82 requirements (and notices under section 81), to confirm those liable persons that qualify to pay a portion of the TDL that year.

Requesting further information

27. Towards the end of June of the TDL year, the qualifying liable persons will be notified that we require information from them, with instructions on the type and format of that information. This information will relate to the TDL year (the full financial year just completed). We refer to this as the qualified revenue notice.

28. Under section 83, qualifying liable persons (who are also known as respondents) must provide us with specific financial information. The information is due 60 workings days after the end of each TDL year, which is late September. We use this information to confirm the qualifying liable persons' qualified revenue and then calculate the portion of the TDL they are required to pay.

29. The Act requires that this information is accompanied by a report, prepared by a qualified auditor, which includes a statement of the extent that the information provided by the qualifying liable person is correct and complete.[7]

Preparing and completing the liability allocation determination

30. We are required to make reasonable efforts to complete the draft LAD no later than 80 working days after the end of the TDL year, which is in mid-October. The draft LAD needs to contain:[8]

    30.1 each qualifying liable person's qualified revenue;

    30.2 each qualifying liable person's TDL liability, calculated in accordance with section 85(1)(b); and

    30.3 our reasoning, and the methodology we used.

31. We are required to give public notice when the draft LAD is released.[9] The Act provides that the closing date for submissions cannot be more than 20 working days after the date of public notice.[10]

32. In addition to submissions, we may convene a conference to discuss matters related to the draft LAD.[11] We can invite to a conference any person who has a material interest in the draft LAD. Conferences are generally reserved for situations where there is a need, such as where issues arise that require further discussion among the parties.

33. Once we have completed the consultation on the draft LAD, we will complete a final LAD. We are required to make reasonable efforts to complete a final LAD no later than 20 working days after the closing date for submissions on the draft

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[7] Section 83(2)(b) of the Act.
[8] Section 85 of the Act.
[9] Section 84(1)(b) of the Act.
[10] Section 84(1)(c) of the Act.
[11] Section 86 of the Act.

LAD, which could be as late as mid-December.[12] As required by section 88, the final LAD has the same content requirement as the draft, except there will be a summary of any submissions or consultative processes, and any resulting changes.[13]

[12] Section 87(2) of the Act.
[13] Section 88 of the Act.

Methodology and reasoning

Introduction

Seeking a workable pragmatic approach

34. The purpose of the TDL process is to allocate a fixed levy amount between qualifying liable persons in proportion to each one's qualified revenue. In consultation, parties agreed that additional precision in measuring the components of qualified revenue would not necessarily change the allocation of the levy appreciably.[14]

35. Two Degrees made the following comments on a late draft of our TDL qualified revenue calculation:

> Notwithstanding the above, we do recognise that the proposed approach is less costly to administer, and that, at the current time, the outcome of the different approaches may not be significant.[15]

36. For this reason, and to reduce compliance costs, we have sought an approach to calculating qualified revenue that relies on information that is readily available across a wide range of firms. We consider that the approach to calculating qualified revenue must be applicable across a wide range of firms with varying products, business models, and reporting capabilities, rather than being designed to meet the business practices and concerns of any one firm.

37. Chorus' submission on our draft LAD noted the need to ensure consistency between qualifying liable persons.[16]

38. In addition, where possible we have sought to rely on common auditable information that qualifying liable persons are likely to keep for other purposes (such as statutory reporting and billing).

39. Telecom submitted that our draft LAD: [17]

> proposes practical rules for potential(ly) complex allocations

40. The on-going use of a consistent approach from year to year should reduce future compliance costs, as qualifying liable persons may reuse the same processes. In its submission on the draft LAD, Telecom supported maintaining our approach on *"a consistent basis from year to year".*[18]

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[14] Commerce Commission, *TDL Qualified Revenue Workshop,* Wellington, 13-14 November 2012. Day 1.

[15] Email from Two Degrees to Commerce Commission, 17 December 2012.

[16] Chorus, Comments *on the Commission's draft TDL liability allocation determination*, 5 June 2013, Page 1.

[17] Telecom, *Submission on draft TDL liability allocation determination 2011/12*, 5 June 2013. Page 1.

[18] Telecom, *Submission on draft TDL liability allocation determination 2011/12*, 5 June 2013. Page 1.

Outline

41. The rest of this section:

    41.1 provides an overview of the consultation that we undertook in 2012 to develop and implement a robust TDL framework;

    41.2 sets out how we identified the qualifying liable persons for the 2011/12 TDL;

    41.3 explains our net revenue approach to calculating qualified revenue, our reasons for this approach and the accounting practices supporting its implementation; and

    41.4 explains the compliance and assurance process used to improve the integrity and accuracy of the information used in the TDL process.

42. The approach presented in this section was developed specifically for the TDL process and should not be taken as guidance for compliance with any other notice, determination or other requirements we may issue.

Overview of our consultation and timeline in 2012 and 2013

43. As 2011/12 is the first TDL year, we had to develop a robust TDL framework and take a more active role in identifying parties that needed to disclose information similar to that provided under section 82, than would be the usual process.

44. Work on identifying the qualifying liable persons for the 2011/12 TDL commenced at the beginning of 2012, and continued through to December 2012. During this period we also consulted on our TDL framework.

45. In February 2012, we released a paper entitled *Determining the liability allocation for the Telecommunications Development Levy for 2011/12 and beyond*, outlining our preliminary views on how the new TDL regime would operate.

46. As a result of the time needed to develop a robust TDL framework, in March 2012 we advised those telecommunications service providers that we thought would attract an obligation under section 82, that they were excused from complying with those information disclosure requirements. We also advised that the 2011/12 TDL information would be requested under a statutory notice issued under section 98 of the Commerce Act 1986 and section 15(f) of the Act.

47. In July 2012, we released the *Notification of potential liability for the Telecommunications Development Levy 2012*, which identified the liable persons whom we considered could potentially qualify to pay for the 2011/12 TDL. We sourced a variety of information to help identify these parties.

48. On 19 October 2012, we issued the consultation document *Establishing the Qualified Revenue Framework for the Telecommunications Development Levy* (qualified revenue paper). This document outlined our proposed approach to calculating qualified revenue. Submissions on the issues considered in the document were invited and were further discussed in a two-day workshop held in Wellington on 13 and 14 November 2012. The workshop involved Commissioners and Commission staff, telecommunications service providers and other interested parties.

49. In November 2012, we confirmed our list of 24 qualifying liable persons.

50. On 16 January 2013, we issued qualified revenue notices to 24 firms (qualifying liable persons), requiring the provision of information necessary to determine the qualifying liable persons' qualified revenue for the 2011/12 TDL period. Ordinarily this information would be required under section 83 of the Telecommunications Act, but due to the changed timing of this first TDL year, the information was sourced under statutory notice. We also advised qualifying liable persons that they were excused from complying with section 83 of the Act.

51. The deadline for qualifying liable persons to provide information to us in response to our qualified revenue notices was 12 April 2013.

52. Between February and April 2013, we issued several clarifications in response to questions from qualifying liable persons about the qualified revenue notices.

53. Chorus submitted that our clarifications were *"a valuable step in promoting consistency."*[19]

54. On 20 May 2013, we issued our draft LAD for the 2011/12 TDL and called for submissions. We received four submissions and considered them before reaching our final decision. We also considered further technical information provided by qualifying liable persons and their auditors.

55. The following sections expand on this outline.

Identifying qualifying liable persons for the 2011/12 TDL

Identifying liable persons

56. To identify qualifying liable persons we followed a three-step process.

    56.1 Step 1 – We identified a pool of potentially liable persons from:

        56.1.1 previous TSO/TDL determinations;

        56.1.2 the Register of Chorus' non-retail customers;

[19] Chorus, Comments *on the Commission's draft TDL liability allocation determination*, 5 June 2013, Page 1.

56.1.3 Telecom's interconnection agreements;

56.1.4 exchange peering agreement information;

56.1.5 a topological internet service provider map (available on the internet – created by Barry Murphy – currently chief operations officer at Vibe Communications); and

56.1.6 information provided by other liable persons.

56.2 Step 2 – We then confirmed the status of parties as potentially liable persons by:

56.2.1 researching each party to identify the focus of their operations and the types of services they provide (this involved internet searches and/or emails requesting clarifying information from the company itself); and

56.2.2 collating information and testing it against the criteria for liable persons (as provided in the Act and in our notification).

56.3 Step 3 – We then confirmed a list of qualifying liable persons by:

56.3.1 serving more than 50 statutory notices (issued under section 81 of the Telecommunications Act 2001, and section 98 of the Commerce Act 1986/section 15(f) of the Act) on potentially liable persons for whom we did not have either financial or shareholding information, in November 2012; and

56.3.2 using the information received in response to these notices to confirm the list of 24 qualifying liable persons.[20]

57. Chorus' submission on our draft LAD supported our approach to identifying liable persons and submitted that it is important for us to take steps to ensure that all qualifying liable persons are captured in future TDL years.[21]

Approach to calculating qualified revenue

58. The qualified revenue notices served on 16 January 2013 required qualifying liable persons to calculate their qualified revenue in a specified way. The use of a defined approach simplifies compliance with the Act and encourages consistency between qualifying liable persons.

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[20] Subsequent to the service of these notices, Whangarei Local Fibre Company Ltd (trading as North Fibre) provided the Commission with evidence that they were not operating a component of a PTN in the 2010/11 year. This meant their company was not a liable person for the purposes of the 2011/12 TDL, making them ineligible to pay a portion of the TDL.

[21] Chorus, *Comments on the Commission's draft TDL liability allocation determination*, 5 June 2013.

59. Specifically, the qualified revenue notice required that calculations of qualified revenue:

59.1 calculate gross telecommunications services revenue by applying the directions provided on the inclusion and exclusion of common revenue streams; [22] and

59.2 apply the net revenue assessment method, which assesses a qualifying liable person's telecommunications revenue and subtracts:

59.2.1 total payments made to other qualifying liable persons for telecommunications services

59.2.2 total payments made to non-qualifying liable persons for telecommunications services initially provided by another qualifying liable person; and

59.2.3 the total cost of any non-telecommunications goods and services that were included in gross telecommunications services revenue.[23]

60. Qualified revenue is defined in section 5 of the Act as follows:

> **qualified revenue** means the revenue (as determined in accordance with any specifications set by the Commission) that a liable person receives during a financial year for supplying either or both of the following (excluding any amount paid to the liable person by the Crown as compensation for the cost of complying with a TSO instrument that contains a specified amount):
>
> (a) telecommunications services by means of its PTN:
>
> (b) telecommunications services by means that rely primarily on the existence of its PTN or any other PTN.

61. This definition anticipates that we will determine qualifying liable persons' qualified revenue in accordance with any specifications we choose to use. Section 85(2) allows us to determine what revenue basis to use.

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[22] These directions were provided in the form of an attachment, which is Attachment C of this document.

[23] Revenue from the sale of a non-telecommunications good or service can only be included in the gross telecommunications services revenue if the qualifying liable person does not have separately identifiable revenue stream relating to the sale. Hence for equipment retailed in bundles, the equipment must have been sold in a bundle by the qualifying liable person (eg, through its own retail outlets). If equipment is wholesaled unbundled at an arms-length price and later bundled by an independent retailer, then the qualifying liable person must value the sale at the wholesale price (and treat it as non-telecommunications services revenue).

Qualified revenue conventions

62. This section presents our framework for calculating qualified revenue, which is used to determine the proportion of the TDL payable by each qualifying liable person. This section explains:

    62.1 the reasons for using the net revenue method to calculate the qualified revenue for each qualifying liable person; and

    62.2 our formula for calculating each qualifying liable person's qualified revenue.

63. Given the legislative context above, our approach is to build on the logic of the TSO allocation process. In this section we recall the arguments that were raised during the development of the TSO mechanism and note the conventions adopted. Then we assess whether changes in the market would warrant a change in approach. We conclude that the net revenue method (as explained below) used in the TSO remains relevant.

Submissions on our framework as presented in the draft LAD

64. We presented our framework for calculating qualified revenue in our draft LAD. Telecom and Kordia both supported our framework. Vodafone and Chorus submitted on specific aspects of our draft LAD that we discuss later in this determination.

65. Kordia's submitted:

> We agree with the Commission's approach and have no additional points to make at this time.[24]

66. Telecom submitted:

> We support the approach set out in the draft determination and recommend the Commission now finalise the draft.[25]

Revenue method under the TSO regime

67. Similarly to the TDL, the TSO regime included a provision requiring liable persons to provide qualified revenue information. This requirement related specifically to revenue derived from supplying telecommunications services by means of a liable person's public switched telephone network (PSTN), or by means of Telecom's PSTN.

68. The Commission confirmed in the 2001/02 TSO Cost Allocation Determination that the cost of the TSO would be levied across liable persons (in accordance

[24] Kordia *Submission on draft TDL LAD*, 5 June 2013.

[25] Telecom, *Submission on draft TDL liability allocation determination 2011/12*, 5 June 2013, page 1.

with specifications in the Act) based on each liable person's percentage of the total liable revenue.

69. The Commission identified three possible methods of assessing the relative proportion payable by liable parties: [26]

    69.1 *gross revenue method*: includes all relevant revenues received by each liable person, regardless of whether the revenue is from sales to end-users or not;

    69.2 *retail revenue method*: includes only the revenues earned by each liable person from selling services directly to end-users; and

    69.3 *net revenue method*: includes all revenues received by each liable person after the deduction of payments between liable persons for the sale/provision of telecommunications services.

70. Attachment A provides an example to illustrate the differences between the three possible revenue assessment methods.

71. The Commission determined that the net revenue method was the most appropriate to calculate the proportion of each liable person's share of the TSO levy because it:[27]

    71.1 reduced the potential customer distortion compared to the other revenue methods;

    71.2 minimised the disadvantageous position of liable persons compared to pure non-liable resellers who would not be subject to the levy; and

    71.3 better suited both the structure of the New Zealand telecommunications market and the purposes of the Act.

72. The Commission excluded the gross revenue method for the TSO, because it was considered to:[28]

    72.1 lead to double counting, discouraging the use of efficient resale mechanisms;

    72.2 reduce the choice available to end-users; and

    72.3 put liable persons in a disadvantageous position compared to pure non-liable resellers providing the same service.

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[26] Commerce Commission, *Determination for TSO Instrument for Local Residential Service for period between 1 July 2002 and 30 June 2003*, 24 March 2005, p105, paragraph 448.

[27] Cited in Commerce Commission, *Determination for TSO Instrument for Local Residential Service for period between 1 July 2002 and 30 June 2003*, 24 March 2005, p105, paragraphs 448 and 510-513.

[28] Ibid at p108, paras 449-503.

73. The Commission also ruled out the retail revenue method because it would distort relative costs for providing the same service, and could distort customer choice.[29]

Changes since the TSO regime

74. In our qualified revenue paper, we identified three key changes since the TSO regime when we reviewed the application of the revenue assessment methods.[30]

74.1 *Changes in market structure:* the key change is the structural separation of Telecom and the establishment of Chorus. Telecom, previously the wholesale company under the TSO regime, was split into two companies. Chorus was created as a network/wholesale company and Telecom became the retail company. Chorus is not permitted to provide services directly to end-users. Most regulated wholesale services are provided by Chorus.

74.2 *Changes in the Act:* the purpose of the TDL is different to the previous TSO regime.[31] The Act was amended to include revenue derived from operating a component of a PTN in calculating liability. PTN includes PSTN previously used for TSO but expands the criteria to include public data networks (PDN). The inclusion of PDN services mean that more firms now qualify as liable persons.

74.3 *Changes in market developments:* operators are increasingly selling services to consumers in bundles. The availability of faster broadband speeds provides the opportunity for telecommunications companies to bundle broadcasting services (and video on-demand content) with their traditional broadband and voice services, which is known as "triple play". It is possible that bundling will increase in the future.

75. Despite these changes, we see no reason to change the TSO revenue assessment method for the TDL.

Conclusions on the appropriate revenue method for TDL

76. In submissions on our qualified revenue paper, most parties indicated that their preferred method is the net revenue method because, among other factors, it provides the fairest allocation and provides certainty.

77. However, Chorus, Enable and Ultra-Fast Fibre submitted that the decision to adopt the net revenue method is at the expense of economic efficiencies, and

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29 Ibid at p109, paras 505-508.

30 Commerce Commission, *Establishing the Qualified Revenue Framework for the Telecommunications Development Levy,* 19 October 2012, para. 66.

31 The TSO regime compensated the service provider for providing uneconomic services.

that we should adopt the retail revenue method. These submissions indicated that the retail revenue approach would avoid double marginalisation and avoid distortions between network technologies.

78. Telecom's submission on our draft LAD supported the net revenue method and stated that this method *"remains the least distortionary"*.[32]

79. Our view is that the net revenue method is still the appropriate revenue method because it captures revenues earned by both wholesale and retail service providers, which is the intention behind the definition of qualified revenue. We also consider that the net revenue method avoids double taxation.

80. The gross revenue method is ruled out because it taxes some revenue streams twice.

81. The retail revenue method is also ruled out because a segment of the qualifying liable persons will not contribute to the TDL as this method will not capture revenue for wholesale service providers. This does not reflect the intention behind the definition of qualified revenue and the objectives of subpart 2 of Part 3 of the Act.

<u>Formula to calculate qualified revenue based on the net revenue method</u>

82. The qualified revenue notice included a formula for how each qualifying liable person should calculate their qualified revenue. The formula is set out in Table 2 below.

83. The formula directs qualifying liable persons to:

    83.1 calculate qualified revenue based on the net revenue approach; and

    83.2 allow for non-telecommunications goods and services revenue, which was sold in a bundle, by subtracting it at cost, as explained below.

[32] Telecom, *Submission on draft TDL liability allocation determination 2011/12*, 5 June 2013, page 1.

Table 2: Formula to calculate qualified revenue[33]

Step		Disclosed Items	Value	Value	Formula
a		Operating revenue as per the relevant statutory accounts		$ a	
b		Non-telecommunications services revenue,(if any)	$ b		
c		Other non-telecommunications services revenue	$ c		
d	less	Total non-telecommunications service revenue, sold separately		$ d	d = b + c
e	plus	Timing adjustment (if required)		$ e	
f		**Gross telecommunications services revenue**		**$ f**	f = a - d + e
g	less	Total payments made to other respondents		$ g	
h	less	Total payments made to non-respondents for services initially provided by a respondent		$ h	
i	less	Total cost of non-telecommunications goods and services included in gross telecommunications services revenue		$ i	
j		**Qualified revenue**		**$ j**	j = f –g – h- i

84. We provided each qualifying liable person with templates to implement this formula, and our qualified revenue notice included instructions to help them complete the templates. These instructions can be found in Attachment B and explain what each line item represents and how it should be determined.

85. In developing this formula we consulted on how to treat bundles that include both telecommunications and non-telecommunications goods and services.[34]

86. We reconsidered the treatment of bundles including handsets both in response to a question from Vodafone regarding our qualified revenue notice and Vodafone's concerns about our draft LAD.[35,36]

87. This issue is discussed in detail in the next section.

88. In forming our view, we considered submissions and inquired about industry practices for bundling mobile handsets. We specifically reviewed mobile operators' accounting practices and NZ GAAP standard NZ IAS 18 which deals with revenue recognition, reviewed the structure of commercial contracts, met with Vodafone's auditor, and observed how handsets and bundles were sold on the internet and in shops.

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33 Step (e) 'timing adjustment' is only required if the company has a statutory year end other than 30 June. The timing adjustment will typically represent the effect on gross telecommunications revenue from the statutory accounts and TDL financial year having different year ends and thus relating to different revenue periods.

34 For example. Commerce Commission, *Establishing the Qualified Revenue Framework for the Telecommunications Development Levy,* 19 October 2012, para 77-97.

35 Commerce Commission, *Handset revenue clarification for qualified revenue for 2011/12 TDL,* 25 March 2013. This response is on our website.

36 This includes Vodafone's submission on our draft as well as confidential feedback.

Allowing for non-telecommunications services revenue when bundled with telecommunication services

89. Operators are increasingly selling services to consumers in bundles and in particular, triple play bundles.[37] Vodafone noted this trend in its submission on the draft LAD.[38] The bundled price is typically less than the combined prices of purchasing all the products in the bundle separately.

90. If telecommunications goods and services and non-telecommunication goods and services are sold by a qualifying liable person in a bundle, the qualified revenue calculation needs to subtract the revenue for non-telecommunications goods and services. Therefore, we need to impute the revenue for non-telecommunications goods and services. This problem does not arise if the non-telecommunications goods and services are sold separately (such as when a handset is sold standalone/unbundled to a prepay customer, or a handset is wholesaled to an indirect channel at an arms-length price).

91. Under the TSO, the Commission considered that revenue attributed to handsets sold in a bundle that included PSTN services revenue was qualified revenue. However, revenue from handsets sold separately was not considered to be qualified revenue. The following advice was provided in the 2009/10 TSO qualified revenue instructions:

> Access and calling revenue earned by the respondent is qualified revenue even if part of that revenue is attributed by the respondent to the recovery of the cost of discounted handsets.

92. The rationale for this position was that whether the qualifying liable person treats some portion of its access and calling revenue as attributable to the cost of handsets is not relevant and does not alter the nature of the revenue. The attributing of the cost was an accounting mechanism conducted after the revenue had been earned by means of operating a PSTN.

93. We considered it may be difficult to maintain that revenue for a bundle that included a handset is qualified revenue, especially now that broadcasting revenue will be exempt from bundles that include telecommunication services.

94. In addition, the TDL qualified revenue was expanded to include PDN revenue, so we needed to consider how to deal with modems, routers and other non-telecommunications services equipment offered to end-users via a discounted bundle.

95. For the TDL we have considered the following options.

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[37] Bundling refers to a situation where two or more goods are sold together. Most cases that we will deal with in TDL are mixed bundling which is where components of the bundle are available on a standalone basis and available in a bundle.

[38] Vodafone, *Submission on draft liability allocation determination for the TDL*, 5 June 2013, page 1.

95.1 Option 1: allow for all revenue attributed to non-telecommunications services revenue (provided in bundles with telecommunications services) by excluding it at cost (as a proxy for revenue). This option will use the approach indicated in the analysis below, to identify and allow for revenue from that type of good or service, when it is bundled with telecommunications services.

95.2 Option 2: continue with the TSO convention that the good or service is provided at no charge as an incentive to the end-user to purchase the telecommunication services. Therefore, the revenue is qualified revenue and the cost of the bundled non-telecommunication goods and services are treated as costs of sale of the telecommunications services.

96. Most bundles are incentive based, in that it is more appealing for a customer to buy the bundle rather than buying the components separately. Therefore, the bundling of a handset for no upfront charge could be considered comparable to the convenience of bundling broadcasting with a telecommunications service.

97. Similarly, even if a free device (eg, handset) is offered, it still costs the qualifying liable person in the same way as services in a discounted bundle, which includes broadcasting or video on-demand services.

98. Taking these points into consideration, it is difficult to maintain a legitimate distinction between attributing revenue value to a device sold separately from one sold in a packaged bundle. Therefore, option 2 was not adopted.

99. The approach we have adopted is option 1, ie, to make an allowance for all non-telecommunications goods and services revenue sold in bundles.

<u>Approaches to valuing the non-telecommunications component of a bundle</u>

100. To determine how we should value non-telecommunications goods and services revenue sold in bundles, we considered what forms of bundling occur and the implications of different approaches to making the allowance.

101. Telecommunications services are being bundled with:

101.1 broadcasting or content;

101.2 end-user equipment, such as handsets and tablets;[39] and

101.3 other services, such as maintenance services.

[39] Examples of handsets can be divided into further categories. For example, the handset price is included in the bundled price over the duration of the contract, or the handset is purchased at the commencement of the contract in order to qualify for a monthly discount on telecommunications services.

102. To develop an approach that will capture all the forms of bundling, we considered the following two approaches to valuing non-telecommunications services:

102.1 Remove the non-telecommunications services component(s) of the bundle based on observable value, such as its recommended retail price (RRP).

102.2 Remove the non-telecommunications services component of the bundle based on input cost, assuming no margin.

103. We considered the following points when deciding on the appropriate approach to calculate the non-telecommunications services component of the bundle.

103.1 What approach would be practically feasible?

103.2 What information is readily available and reliable?

103.3 Will the approach lead to a fair allocation between liable persons?

104. We chose the input cost approach because it provides a benefits in terms of both compliance costs and the objectivity of the TDL allocation. All parties also indicated at the workshop held in November 2012, and technical consultation held in December 2012, that this approach is practically feasible.[40] Therefore, our view is that this approach:

104.1 is fair and will ensure relativity between qualifying liable persons;

104.2 avoids (or minimises) manipulation in the calculation of the value for the non-telecommunications services component;

104.3 ensures a consistent approach between qualifying liable persons due to consistency across business models in relation to input costs;

104.4 can be calculated using existing accounting records; and

104.5 avoids some of the implementation problems of the observable value approach, such as the lack of an observable price for some components of a bundle or there being a large spread in the observable prices for one component of a bundle.

105. Several submissions on our October 2012 qualified revenue paper proposed using the RRP approach, because this approach reflects the treatment of how 'subsidies' on non-telecommunications components (particularly mobile handsets, data modems and tablets) are treated for accounting purposes.

[40] For example, Commerce Commission, *TDL Qualified Revenue Workshop*, Wellington, 13-14 November 2012, Day 1.

However, our view is that the RRP approach is not the appropriate approach for the purposes of the TDL for the following reasons.

105.1 This approach is difficult to cross check because qualifying liable persons follow different approaches on RRP, and prices are also constantly moving.

105.2 The inconsistent treatment of RRP between liable persons implies that this approach may benefit some liable persons. Accordingly, the RRP approach may not result in an appropriate allocation of the TDL between liable persons.

105.3 We also found the RRP is not always relevant and available in the corporate sector. For example, Kordia indicated that the RRP is not always available for the bundled components and they would need to work on assumptions to determine the RRP.[41] This implies that the approach is not practically feasible for all qualifying liable persons.

105.4 Many non-telecommunications goods and services are available below RRP. Using an RRP which is greater than the items 'discounted' price would result in a value greater than the 'discounted' price being deducted from qualified revenue, which would have a distorting effect.[42]

105.5 RRP includes allowance for retail, and in some cases wholesale, margins earned by the liable person.[43] Allowing a deduction for both retail costs and profit margins is inconsistent with the net revenue approach, which focuses on revenue.

105.6 In practice, the link between subsidies and RRP is not always direct. For example, in many retail offerings the size of the subsidy is linked directly to the monthly spend and term of the plan, and therefore the subsidy may not equal the RRP.[44] Furthermore, it is possible that a subsidy could exceed the RRP.

106. We consider that the value of non-telecommunications goods and services sold in a bundle with telecommunications services should be deducted based on their input cost. This is a practical solution, which is based on costs that qualifying liable persons should have recorded for other purposes (such as paying suppliers) that can be applied across multiple business models.

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41 Commerce Commission, TDL Qualified Revenue Workshop, Wellington, 13-14 November 2012, day 1.

42 By using an RRP which is greater than the available price the deduction from qualified revenue would consist of both the selling price and the 'discount'.

43 The retail margin may be earned by either the liable person or an independent channel.

44 The Commission has seen confidential material which identifies several practical issues with the use of RRP in some contexts.

107. Chorus' submission on our draft LAD supported this input cost based approach, considering it to be a pragmatic approach.[45]

108. It should be noted that this approach is only for TDL purposes, to determine relativity between qualifying liable persons, and does not reflect our previous or future decisions.

109. Our qualified revenue notice included instructions as to how the qualifying liable persons should calculate the input costs for the different types of non-telecommunications goods and services. Each approach sought to capture the relevant direct or directly attributable costs as calculated in accordance with NZ GAAP. These approaches were designed to promote consistency across qualifying liable persons and to tie the cost to readily available information, such as invoices, to reduce compliance costs.

Handset subsidies and rebates

110. A major area for bundling is mobile handsets and tablets. Customers who sign up with a mobile operator for a term contract can often receive a 'subsidised' handset. Sometimes the handset is provided to the customer by the mobile operator, such as when the customer signs up directly with the mobile operator. At other times the handset is provided by an indirect channel (independent retailers such as national electronics shops and franchisees) from its own inventory and a rebate (also known as a 'top up') may be paid by the mobile operator to the indirect channel.

111. Vodafone had a concern about how our draft LAD treated handset bundles sold to about this issue. Vodafone submitted that we misunderstood its indirect channel operations.[46]

112. We have considered the issue of handset subsidies and rebates paid to indirect channels several times during the TDL process, including at our November 2012 workshop.

113. Our consultation gave qualifying liable persons several opportunities to explain those aspects of their business model which they consider relevant to the TDL before we issued our qualified revenue notice, and subsequently, our draft LAD.[47]

114. On 26 February 2013, we received a request for clarification from Vodafone about the treatment of handset rebates paid to indirect channels. We contacted

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45 Chorus, *Comments on the Commission's draft TDL liability allocation determination*, 5 June 2013.

46 Vodafone, *Submission on draft liability allocation determination for the TDL*, 5 June 2013, Page 2.

47 For example Vodafone, *Submission on the qualified revenue framework for the TDL*, 2 November 2012, the section headed "customer premises equipment and handset revenue" does not mention indirect channels or the rebates paid to these channels when discussing the retailing of handsets, Vodafone's own accounting for handset revenue, and how handset revenue and customer acquisition costs should be treated in the TDL.

Vodafone requesting further information to help us better understand their concern, and subsequently discussed the issue with Vodafone. We also contacted other mobile operators about industry practices to better inform our response. The information received is confidential.

115. Some qualifying liable persons expressed concern that because they subsidise the handset, which was sold by the indirect channel, they are effectively deducting less than the actual cost of the handset. Other qualifying liable persons submitted that the lack of information and/or compliance costs limit how they can address these issues.[48]

116. We asked qualifying liable persons to complete their qualified revenue accounts consistent with the existing qualified revenue notice. For all handsets sold by a qualifying liable person, where there is fully identifiable revenue related to a handset (for example revenue from wholesaling phones to indirect channels), the revenue was to be treated as non-telecommunications services revenue and deducted from the firm's general operating revenue.

117. After considering submissions on our draft LAD, and other information provided to us, we retain our view that handset rebates paid to indirect channels (or a value derived from the rebates) cannot be deducted from gross telecommunications revenue.

118. Reasons for our view include:

118.1 Information provided to us indicates that mobile operators wholesale handsets at arm's length values to indirect channels and retain information on the invoices. This identifiable revenue should be treated as non-telecommunications revenue, and excluded from gross telecommunications revenue. Therefore, these handsets are excluded from qualified revenue in the same manner as the qualifying liable person's other non-telecommunications activities are excluded.

118.2 The handsets on which rebates are paid are typically supplied to the end customer by the indirect channel and not the qualifying liable person.

118.3 Handset rebates are typically not set at the arm's length wholesale price of a handset.[49] Numerous other commercial factors determine the value of rebates, including expenses that would not be allowable deductions

[48] For example, issues were identified in separating out the portion of a rebate which related to the respondent's cost of the phone and that which related to reimbursing the indirect channel for 'lost' retail profits.

[49] Information provided to us and available in retail outlets indicates that rebates are often based on the value and term of the mobile access plan that the customer signs up to.

for TDL purposes, if the handset had been sold through a qualifying liable person's own outlet.[50]

118.4 One common accounting treatment, allowable under NZ GAAP, is for rebates to be treated as a reduction in revenue, and not as an expense. This reflects that rebates reduce the revenue that a firm receives from selling goods.[51] Our qualified revenue notice allowed for this accounting treatment.

118.5 To allow a firm that treats rebates as an expense, to separately deduct the rebate when calculating their qualified revenue, would give them an unfair advantage relative to firms that treat rebates as a reduction in revenue.[52]

119. We intend to revise our instructions for the 2012/13 TDL to make it clearer that deductions for the cost of non-telecommunications equipment are only allowable for bundled sales made by the qualifying liable person where the qualifying liable person provided the non-telecommunications equipment to the end customer.

Other matters: accounting practices

120. The qualified revenue notice required qualifying liable persons to calculate their qualified revenue in accordance with a set of regulatory reporting principles and several prescribed accounting practices. These provided guidance on issues that we had identified as requiring further clarity, and sought to ensure that the information disclosed was sufficiently objective, accurate and reliable for the objectives of the TDL.

<u>Reporting principles</u>

121. Our qualified revenue notice required qualifying liable persons to apply the following five overarching reporting principles when preparing the disclosed information. The principles were correct(ness), complete(ness), objectivity, consistency and data retention.[55]

122. In developing these principles, we consulted with industry and considered the requirements of the Act. Industry was generally supportive of these principles. We revised the definition of correctness to make it clearer that the level of

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[50] For example a rebate paid above the wholesale fair value of the handset may allow an indirect channel to recover retail margins including 'lost' retail profits.

[51] NZ IAS 18 (the accounting standard relating to revenue), provides guidance on measuring revenue including the treatment of two or more linked transactions and when revenue should be recognised.

[52] If the rebate is treated consistently as a reduction in revenue there would be offsetting reductions in template 1 for both the operating revenue as per the relevant statutory accounts, and the non-telecommunications services revenue, and no deduction for it as cost of sale. If the rebate was treated as an expense, then it will only appear on template 1 as a deduction, which would give the firm an advantage.

[55] Refer to Attachment B of this document for the definition of each principle.

accuracy required was not beyond that required under NZ GAAP, to address a concern raised in submissions.

123. These principles provide our interpretation on the extent to which the information generally requested under section 83 (or via other means) must be correct and complete.

124. We consider that these interpretations mean that the assurance reporting requirements provided for the TDL LAD will be similar to the audit reports provided under the TSO regime. This is appropriate because the information being provided for the TDL LAD process, and the way that information is to be used, is very similar to previous TSO cost allocation processes.

July to June financial year

125. The qualified revenue notice required qualifying liable persons to provide the disclosed information for the TDL financial year of 1 July 2011 to 30 June 2012. We included this requirement as the Act specifically requires that liable persons must produce qualified revenue for the financial year 1 July to 30 June.

126. The notice included instructions for firms with statutory year ends other than 30 June, on how to complete the required disclosures. We sought to balance the compliance costs of making the adjustments, with the need for a reasonable level of accuracy. For example, the instructions recognise that a qualifying liable person may need to make estimates of which TDL year specific revenue is recognised in. However, the instructions also have provisions to ensure that these estimates do not result in revenue never being counted as qualified revenue (which would disadvantage other liable persons).

127. For most qualifying liable persons, the TDL financial year is the same period as they use for statutory reporting, and therefore does not present any difficulties. FX Networks, who have a different statutory year end, proposed using its statutory year end as a proxy for the TDL financial year.

Legal requirements

128. Subpart 2 of Part 3 of the Act is clear in a number of places that we must calculate the TDL on an annual basis and in respect of the TDL financial year (1 July to 30 June).[56]

129. The Act specifically requires that liable persons must produce qualified revenue information for the entire TDL financial year (1 July to 30 June).[57] Sections

[56] For example, Section 81(2) provides that the Commission may request certain financial information from liable persons "for the purpose of determining whether a person is a liable person to whom this subpart applies *in respect of a financial year*". Section 81(2)(b) also states that the Commission may request any further information "for the purpose of enabling it to verify the telecommunications revenue of that person *for the year preceding financial year A*".

[57] Section 83 of the Act.

85(1)(a) and 88(a) also state that the allocation determination must include "the amount of each liable person's qualified revenue".

130. 'Qualified revenue' is defined in section 5 of the Act as the revenue a liable person receives during a financial year (1 July to 30 June). 'Financial year' is defined in section 5 of the Act as meaning "a period of 12 months beginning on 1 July in any year and ending on 30 June in the following year". This definition was added to section 5 by the Telecommunications (TSO, Broadband, and Other Matters) Act 2011.

131. The amount of each liable person's qualified revenue is a direct input into the calculation of each liable person's TDL, in accordance with the formula specified in section 85(1)(b) of the Act.

132. Therefore, there is a direct relationship between the qualified revenue earned by the qualifying liable person, and the ultimate amount of the TDL that is paid by the same person. If a qualifying liable person uses a different financial year to the TDL financial year when reporting their liable revenue, a party could conceivably pay a different levy amount than they normally would when using the TDL financial year. This would lead to disparities between qualifying liable persons in terms of their overall liability for the TDL. We do not believe that this outcome, which would occur if alternative periods were used as a proxy for the TDL financial year, was intended by the Act.

<u>Changes in accounting practices</u>

133. The qualified revenue notice required firms to make reasonable efforts regarding the effects of changes in accounting practices on qualified revenue. This was included to reflect that firms have valid reasons for changing their accounting practices, but also to require them to make reasonable efforts to ensure that these changes do not result in them under-reporting their long-term qualified revenue.

Other matters: particular revenue streams

134. Our qualified revenue notice included guidance on how qualifying liable persons should classify common types of telecommunications revenue when calculating their qualified revenue. This guidance is found in Attachment C of this document and includes our rationale for including or excluding these revenue streams from qualified revenue.

135. We consulted on the status of common types of revenue earned by qualifying liable persons before issuing our qualified revenue notice. The rest of this subsection explains our view on several of the revenue streams that were raised in submissions.

Revenue from building, maintaining and renewing network infrastructure

136. The Act requires qualifying liable persons to pay the levy on revenue received from providing services by means of the PTN or which rely primarily on the existence of the PTN. This requires us to identify what payments (capital contributions) towards the construction and enhancement of the PTN should be deductible when calculating qualified revenue, and which one-off payments should be included in qualified revenue.

137. The qualified revenue notice instructed qualifying liable persons to treat:

137.1 capital contributions made towards developing a PTN by a qualifying liable person's customer, as deductible when calculating gross telecommunications revenue, subject to several conditions;[58] and

137.2 revenue from operational contribution for building, maintaining and renewing the PTN as qualified revenue.

Capital contributions

138. Our October 2012 qualified revenue consultation document, proposed that all revenue from building, maintaining and renewing network infrastructure could be deducted from qualified revenue. However, a review of industry practices identified that the proposed definition may have unintended consequences, by giving qualifying liable persons who adopted an upfront pricing model a more favourable treatment than qualifying liable persons who recovered routine set-up costs via on-going charges. Accordingly, we revised our guidance so that these deductions should only apply when the payment is made towards major non-routine additions or enhancements of the PTN network's ability to serve the public.

139. Accordingly, capital contributions made towards material non-routine additions or enhancements of the PTN network's ability to serve the public are deductible from qualified revenue. These payments provide benefits to users other than the person making the payment, and may include contributions such as those by developers to run infrastructure through new subdivisions, by commercial users for providing new capability which benefits other users in the area, and payments from Crown Fibre Holdings (CFH) to the local fibre companies (LFCs).

Revenue from operational contributions

140. The qualified revenue notice required revenue from operational contributions for building, maintaining and renewing the PTN, to be included as qualified revenue. This could include routine telecommunications service connection fees,

[58] Our qualified revenue notice also included requirements that qualified liable persons record related asset(s) as a fixed asset(s) under NZ GAAP to claim the capital contribution as a deduction.

maintenance charges and fees for routine changes to a customer's telecommunications service offerings.[59]

141. This approach is consistent with the Act's intent that the TDL covers revenue from providing services based on the PTN, as such revenue is earned (largely) from the existing capability of the PTN to provide service to that customer. This approach is also consistent with NZ GAAP and provides equity as some operators may recover the cost of these activities via monthly tariffs. To allow some firms to separate out these operational contributions (and exclude them from qualified revenue) would result in inconsistency and inequitable outcomes.

Satellite revenues

142. Our qualified revenue notice required qualifying liable persons to include in qualified revenue any revenue from telecommunications services provided in New Zealand via satellite. This reflects that the TDL is a revenue based levy, and the services provided using satellite technology are telecommunications services provided by means of a PTN.

143. Bay City Communications Ltd (Bay City) made several submissions requesting that revenue from satellite services not be included in qualified revenue, or that a deduction could be claimed for their payments to their satellite provider.[60]

144. The services Bay City derives revenue from (which include the use of satellite technology) are telecommunications services provided by means of a PTN in New Zealand, to customers located in this country. While the satellite may be considered to be outside of New Zealand, the part of the PTN operated by Bay City relevant to the delivery of those services is located in New Zealand. Therefore, this revenue fulfils the statutory definition of qualified revenue in section 5 of the Act.

145. The payments that Bay City makes to its satellite services provider is not permitted to be deducted because the satellite services provider is not, at this stage, a qualifying liable person. If we permitted a deduction for payments for these services it would be inconsistent with the net revenue approach, and create an inequality with other qualifying liable persons who use alternative non-contributing technologies to deliver their services.

Video on-demand

146. We consider that revenue derived from video on-demand content is not qualified revenue. We only consider the revenue that clearly related to this

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[59] Examples include payments to connect a customer to the network when the PTN already passed their property (eg, residential drop leads), and payments to upgrade to a service which was already available to the customer (such as upgrading to ADSL when the customer's exchange was already ADSL capable).

[60] For example, Bay City, *Submission on the Liability Allocation for the Telecommunications Development Levy for 2011 / 2012 and Beyond*, 28 February 2012.

content is exempt, whereas revenue related to the conveyance of this content is qualified revenue.

147. Video on-demand content can be distinguished from broadcasting as it is content provided to a single user for use at their discretion. Broadcasting revenue is also not qualified revenue as the definition of 'telecommunication' defined in section 5 of the Act excludes *any conveyance that constitutes broadcasting*.

Private versus public telecommunications network

148. As per our qualified revenue notice, we consider that revenue earned from operating a physically private telecommunications network is not qualified revenue. This is because, and only when, the private network is not physically able to connect to another telecommunications network, and therefore is not part of the PTN.

149. We consider that if the network is physically capable of being accessed by the public for any purpose (even private uses of the public network) then revenue that the qualifying liable person derives from providing the services by means of a PTN (or that rely primarily on the existence of a PTN) is qualified revenue.

150. This means that the qualifying liable persons do not need to know (or incur the costs of knowing) how their clients use the services they provide. If the qualifying liable person derives revenue from providing telecommunications services over a publicly accessible telecommunications network, then it is qualified revenue.

151. As explained in our qualified revenue notice, this means revenue from providing services via layer one and above (including ducting and dark fibre) is qualified revenue. Revenue from fibre or copper dedicated to a single user is also included in qualified revenue, unless that fibre or copper is part of a physically separate telecommunications network that does not connect to a PTN.

Co-location

152. On 2 April 2013, we issued a clarification regarding how a qualifying liable person should account for co-location revenue. This is revenue a firm earns from selling other firms the right to place their equipment in its premises and/or on its towers or other similar facilities.

153. The clarification advised that revenue from selling co-location services on wireless towers for TDL purposes must be included in qualified revenue. This was because the co-location revenue is earned by means of a public telecommunications network (PTN) which is located in New Zealand.

154. To provide greater clarity to qualifying liable persons when completing the 2012/13 TDL templates and to promote consistency, we intend to include co-

location revenue in the 2012/13 version of attachment C which lists the qualified revenue status of common types of revenue. This will provide clarity as to which types of co-location revenue are considered to be qualified revenue and allowable as deductions for payments to other respondents (or payments to non-respondents for services initially provided by a respondent).

Other matters: ability of Chorus to pass through the TDL

155. In its submission on our qualified revenue paper, Chorus expressed concern about its inability to recoup the levy through increased regulated prices and prices for other services, in the manner that other liable persons would be able to.[61] Enable also claimed that it is unable to pass through the TDL cost, and the imposition of TDL reduces investment returns.[62]

156. Chorus also submitted that it would need a separate line item allowing pass through of the TDL to avoid an outcome where one set of investors are taxed and others not. TelstraClear indicated at the workshop that the ability to pass through TDL is the same for all qualifying liable persons, irrespective of whether the liable person is at a wholesale or retail level of the market.

157. In terms of fibre services, most parties submitted that Chorus was aware of TDL at separation and the contractually negotiated UFB prices include a reasonable return and should limit the constraint on Chorus' profitability.[63,64,65]

158. The regulatory regime has separate processes for setting the prices for regulated services, while Chorus is able to set the price for non-regulated services itself. Issues relating to the setting of the price for copper based LLU services and UBA should be considered as part of a separate process under the Act. The price of UFB based services is a matter between Chorus and the other local fibre companies (LFCs) and Crown Fibre Holdings (CFH).

159. Chorus, in submitting on the draft LAD, noted that it had concerns about its ability to pass through the TDL cost and that it had previously raised these concerns. Chorus stated that it will take up our invitation to raise their concerns in the separate processes relating to copper based LLU services and UBA.[66]

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61 Chorus, *Submission in response to the Commerce Commission's Telecommunications Development Levy Qualified Revenue Framework Discussion*, 2 November 2012, para 5.1.

62 Enable, *Submission from Enable Networks Limited on the Commerce Commission's "Establishing the Qualified Revenue Framework for the Telecommunications Development Levy"* 2 November 2012

63 Two Degrees, *Submission on Establishing the Qualified Revenue Framework*, 2 November 2012, para 2.

64 Vodafone, *Submission on the Qualified Revenue Framework (QRF) for the Telecommunications Development Levy*, 2 November 2012, para 15, 16.

65 TelstraClear, *Submission on establishing the qualified revenue framework for the Telecommunications Development Levy consultation document,* 2 November 2012, para 12.

66 Chorus, *Comments on the Commission's draft TDL liability allocation determination*, 5 June 2013.

Compliance and assurance

160. This section discusses the TDL process applying to the compliance for the identification of qualifying liable persons and timing of when information is provided to us, and the assurance requirements relating to the accuracy of the calculation of qualified revenue.

Timing and identification of qualifying liable person

161. Generally, the information supporting this assessment would be provided by liable persons 60 working days prior to the end of the financial year, in accordance with the requirements set out in section 82 of the Act. However, in late March 2012 we notified likely affected parties that they would have a reasonable excuse not to comply with the section 82 requirements.

162. Ordinarily, the section 82 requirement is a statutory obligation on liable persons for which we are not required to identify parties who are required to comply. However, because of the need to devote time to developing a robust framework for the first TDL year, the section 82 requirements were excused. Therefore, we had to rely on statutory notices to secure the same information. This meant we needed to identify all parties we wished to require information from, so the notices could be properly served.

163. While we devoted resources to identifying qualifying liable persons for the 2011/12 TDL year, we do not intend to do so to the same extent in the future. Rather, we expect firms to inform us of their being a qualifying liable person as required under section 82, and for the industry to inform us of firms which may be qualifying liable persons during our consultation processes.

Compliance and assurance for the qualified revenue calculations

164. We required qualifying liable persons to provide us with an assurance report by an independent qualified auditor, providing opinion on the information each company provided to us in response to our qualified revenue notice.

165. This included requirements that the assurance report included statements by the auditor:

    165.1 that it was prepared in accordance with the relevant professional standards (Standard on Assurance Engagements 3100 – Compliance Engagements (SAE 3100) and International Standard on Assurance Engagements 3000 (ISAE (NZ) 3000);

    165.2 whether proper accounting records have been kept by the company to enable the complete and accurate compilation of required information; and

    165.3 whether the information provided by the company is prepared in all material respects in accordance with our notice.

166. The Act requires that all information requested under section 83 must be accompanied by a report prepared by a qualified auditor that details the extent to which this information is *correct* and *complete*. The Act provides us with discretion in specifying the scope of the auditor's report (the assurance report).

167. Assurance reports prepared by independent qualified auditors provide regulatory bodies, such as us, with confidence as to the reliability of information, and the processes used to prepare this information. An independent auditor is expected to identify and correct deficiencies in processes and information, and provide reassurance of its reliability.

168. We determined the scope of the assurance reports after considering the requirements of the Act, relevant auditing standards, feedback from our consultation process, and our assurance requirements for other disclosures (such as under Part 4 of the Commerce Act) that some of the qualifying liable persons must provide us.

169. Our requirements for the assurance report included that the auditor recognise that we and the qualifying liable person's directors are the intended users of the assurance report. This recognises that the audited information was prepared for us (and is not subject to scrutiny by other interested parties) to use when preparing our TDL LAD.

170. The Office of the Auditor-General proposed that in the future our definition of an independent qualified auditor is revised to explicitly include an auditor appointed by the Auditor-General.[67] We intend to implement this proposal for future TDL years as such auditors will meet the Act's intent for having an independent and qualified auditor. This will make it explicit that qualifying liable persons that are audited by Audit NZ for other purposes may engage Audit NZ for TDL assurance purposes.

Our compliance review

171. We reviewed all information received from qualifying liable persons for compliance with the qualified revenue notice. This included checking the disclosures for completeness, the reasonableness of the information provided, and the consistency of how different qualifying liable persons addressed comparable issues.

172. Our review identified several issues which we have raised with the relevant qualifying liable persons. These issues were technical in nature, related to the specifics of the individual qualifying liable persons, and therefore did not require consultation. Some issues resulted in changes to the qualifying liable person's qualified revenue and others did not. These issues did not receive specific comment in the submissions on the draft LAD.

[67] Email from Roy Glass, Office of the Auditor-General to Neville Lord, Commerce Commission 12/4/2013.

173. The issues included the following.

173.1 Clarifying the nature of several non-telecommunications revenue streams (the qualifying liable persons provided information to our satisfaction that the revenue was from non-telecommunications activities).

173.2 Two qualifying liable persons having to resubmit their assurance report. These qualifying liable persons responded promptly to address our concern and provided us with assurance reports that met our requirements.

173.3 Revising the value of one qualifying liable person's non-telecommunications revenue earned from distributing a third party's non-telecommunications service. This qualifying liable person had included the costs paid to this supplier (as a negative value) under non-telecommunications services revenue. This had the effect of understating their non-telecommunications services revenue and therefore, overstating their qualified revenue. We adjusted the qualified revenue by removing what we understand is the cost component from the calculation. The amount involved is a relatively small proportion of this qualifying liable person's levy.

173.4 Removing deductions for payments to other qualifying liable persons that did not clearly relate to the qualifying liable person's provision of telecommunications services to its customers. We had issued a clarification on this issue.[68] We intend to revise our instructions for the 2012/13 TDL year to provide more explicit guidance on this issue.

173.5 Removing deductions for payments to Whangarei Local Fibre Company as this firm is no longer a qualifying liable person for the 2011/12 TDL year.

173.6 Delays in providing all or some of the required information.

Rebates paid to indirect channels

174. Vodafone had a specific concern about how our draft LAD treated handset bundles sold to end customers through indirect channels. Vodafone described the sale of handsets by indirect channels as "*part of its handset bundles sold*".[69]

175. Our qualified revenue notice and clarification of 25 March 2013 stated that if a qualifying liable person could identify its wholesale revenue from the sale of equipment to indirect channels, then the invoice amounts should be deducted as non-telecommunications services revenue when calculating gross telecommunications service revenue. This notice and clarification also stated that a deduction for the cost of non-telecommunications equipment could only

[68] Commerce Commission, *Response to Transpower re clarification on Notice requiring provision of qualified revenue for 2011/12 TDL, 4 March 2013*. This response is on our website.

[69] Vodafone, *Submission on draft liability allocation determination for the TDL*, 5 June 2013, Page 3

be made if the revenue from the sale of the equipment was included in gross telecommunications services revenue.[70,71] This has the effect of allowing equipment to be deducted once, either via non-telecommunications services revenue, or as the cost of end-user equipment (sold in a bundles), but not twice when calculating qualified revenue.[72]

176. As explained in paragraphs 110 to 118, after further investigation and consideration of submissions and other material, we maintained our view on rebates in general. Accordingly such payments to indirect channels cannot be treated as the cost of end-user equipment included in gross-telecommunications services revenue or otherwise deducted from gross-telecommunications services revenue.

177. After reviewing submissions on our draft LAD, we concluded that we had not been provided with sufficient evidence to vary the approach that we took in our draft LAD for the treatment of Vodafone payments to indirect channels. We also considered who owned the handsets at different points in the supply chain, the accounting treatment of wholesale and retail revenues, how the rebate paid is calculated, where the risks and incentives lie, and other commercial arrangements.

178. As a result Vodafone has not been allowed to treat its payments to indirect channels as a cost of end-user equipment.

179. Our compliance review suggests that our decision promotes consistency in the TDL calculation across qualifying liable persons.[76] We consider that the TDL process should be robust across business models and not tailored to attributes of one qualifying liable person's business model.

180. We consider that our decision to exclude a deduction for this payment to indirect channels does not commercially disadvantage Vodafone. Vodafone submitted that its indirect channels offer cost savings, and are a *"necessary"* part of its business.[77] The corresponding increase in Vodafone's TDL payment is small relative to Vodafone's revenues and profits.

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70 Appendix A, paragraph 24.1. This can be found in Appendix B of this document.

71 Commerce Commission, *Handset revenue clarification for qualified revenue for 2011/12 TDL,* 25 March 2013. This response is on our website.

72 The deduction for non-telecommunications services revenue is effectively a deduction for the cost of the goods or services sold plus any margin earned on the sale.

76 This is the decision to remove the deduction based on the value of rebates paid to indirect channels.

77 Vodafone, *Submission on draft liability allocation determination for the TDL*, 5 June 2013 at page 1 describe indirect channels model as "*in order to mitigate the costs … franchising and partnering … saves some of the cost involved with having a retail store footprint".*

Consistent definition of operating revenue as per statutory accounts

181. Our draft LAD noted our concern about how one qualifying liable person had calculated operating revenue as per statutory accounts. We noted the need for consistency in the TDL calculation including for the treatment of bad debt.[80]

182. We subsequently met with this qualifying liable person and discussed its disclosures and our draft LAD. The qualifying liable person then provided technical clarification about its disclosure and a revised estimate of its qualified revenue. This included making a deduction for the cost of end-user equipment provided in bundles.

183. After comparing the revised figures to audited information, we added the revised figures to our TDL calculation. This change improved consistency in the TDL calculation, and reduced this qualifying liable person's qualified revenue. The amount involved was relatively small to the overall TDL calculation.

Compliance

184. We consider that these issues (as outlined in paragraphs 172-183) were generally immaterial, and in the context of this being the first TDL year, do not require further formal compliance action.

REANNZ's assurance report

185. REANNZ did not provide us with an assurance report and submitted that the cost was not justified given the size of their TDL payment.

186. For this TDL year we have decided not to take further action in seeking an assurance report from REANNZ. This recognises that they have the lowest TDL payment and that any possible issues would be fairly immaterial. We compared REANNZ's qualified revenue calculation to its audited statutory accounts and made inquiries to confirm our understanding of several line items.

187. Our decision not to take further action this year with regard to REANNZ's non-delivery of an assurance report, should not been seen as indicative of our position on the need to provide an assurance report for future TDL years.

[80] Our qualified revenue notice does not allow for bad debt to be deducted in calculating qualified revenue. The NZ GAAP definition of revenue (NZ IAAS 18) and the normal definition of operating revenue as per statutory accounts, envisage that bad debt and provision for bad debts are treated as expenses, and not negative revenue.

Allocation of levy

188. The proportion of the TDL required to be paid by each qualifying liable person is determined by their share of the total qualified revenue earned by all qualifying liable persons for the TDL period.

189. In accordance with section 85(1)(a) and (b) of the Act, the following table shows the qualified revenue amounts that we have determined, and the amount of the TDL payable by each liable person.

Qualifying liable person	TDL qualified revenue	% of total	Amount payable - TDL
Telecom Corporation of New Zealand Ltd, and Telecom New Zealand Ltd	$2,249,518,000	50.75%	$25,375,078.91
Vodafone New Zealand Ltd	$973,020,000	21.95%	$10,975,888.74
Chorus Ltd and Chorus New Zealand Ltd	$567,427,000	12.80%	$6,400,706.68
Vodafone Fixed Ltd	$345,423,000	7.79%	$3,896,450.65
Two Degrees Mobile Ltd	$102,852,000	2.32%	$1,160,194.15
Orcon Ltd	$29,723,000	0.67%	$335,282.26
Teamtalk Ltd, Araneo Ltd, and Citylink Ltd	$26,027,000	0.59%	$293,590.53
Vector Communications Ltd	$22,485,000	0.51%	$253,635.96
FX Networks Ltd	$22,267,000	0.50%	$251,176.87
Call Plus Ltd and 2Talk Ltd	$19,969,000	0.45%	$225,254.90
Bay City Communications Ltd	$15,060,000	0.34%	$169,880.25
WorldxChange Communications Ltd	$11,715,000	0.26%	$132,147.89
Snap Ltd	$9,925,000	0.22%	$111,956.28
Kordia New Zealand Ltd	$7,622,000	0.17%	$85,977.91
Compass Communications Ltd	$7,368,000	0.17%	$83,112.73
Woosh Wireless (NZ) Ltd and Woosh Ltd	$6,122,000	0.14%	$69,057.56
Trustpower (Kinect) Ltd	$4,902,000	0.11%	$55,295.68
Woosh Wireless Ltd (now Railway St Industries)	$4,517,000	0.10%	$50,952.80
Transpower New Zealand Ltd	$4,185,000	0.09%	$47,207.76
REANNZ (Research & Education Advanced Network New Zealand Ltd)	$2,407,000	0.05%	$27,151.51
Total	**$4,432,534,000**	**100%**	**$50,000,000**

Attachment A - The differences between three possible revenue methods

1. The following example illustrates the differences between the three possible revenue methods, detailed in paragraph 64. For this example assume there are four liable firms.

   1.1. Firm A: a pure wholesaler providing services to retailers B and D.

   1.2. Firm B: a pure reseller and on-sells Firm A wholesale services to end-users (assume a zero retail margin). This reseller is considered as a qualifying liable person for the purposes of this example.

   1.3. Firm C: a vertically integrated firm that exclusively sells its own services to end-users.

   1.4. Firm D: a retailer, with its own network, that on-sells Firm A wholesale services to end-users with value added services.

2. Table 4 below provides a summary of the telecommunication services revenue for each firm:

Table 4

	A	B	C	D
Wholesale revenue earned from firm B	$10			
Wholesale revenue earned from firm D	$10			
Retail revenue		$10	$8	$10
Retail costs/profit margin		0	$2	$2
Total revenue for telecommunication services	**$20**	**$10**	**$10**	**$12**

3. Table 5 below shows the outcome for each approach to calculate qualified revenue, applied to the revenue for telecommunication services in the table above.

Table 5

Qualified revenue	**A**	**B**	**C**	**D**	**Total**
Gross revenue approach	$20	$10	$10	$12	**$52**
Net revenue approach	$20	0	$10	$2	**$32**
Retail revenue approach	0	$10	$10	$12	**$32**

4. Table 5 shows the following:

   4.1. the use of the gross revenue method amounts to nearly double the amount of qualified revenue compared to the other approaches and double-counts the services that A sells to both firms B and D;

   4.2. the retail revenue method excludes revenue for wholesale telecommunications services, namely, the services that A provides to both firms B and D, and captures B's revenue which is pure reselling with zero retail margin; and

   4.3. the net revenue method captures all the liable firms, without the effect of double counting and only considers the retail proportion of revenue for downstream firms, on selling wholesale services.

Attachment B - Instructions to qualifying liable persons

This attachment sets out our instructions to qualifying liable persons and was Attachment A of our qualified revenue notice.

Rules and instructions for calculating qualified revenue

1. For the purpose of this notice, 'qualified revenue' means the amount of revenue that, during the 2011/12 financial year (01 July to 30 June), the company received from supplying all or any of the following:

    1.1 "telecommunications services" by means of its public telecommunications network (PTN); and

    1.2 "telecommunications services" by means that rely primarily on the existence of its PTN or any other PTN.

2. The Telecommunications Act 2001 expressly excludes revenue acquired by payment from the Crown to a respondent as compensation for the cost of complying with a TSO instrument that contains a specified amount.

3. It is considered that "telecommunications services" (as defined in section 5 of the Act) can only be services (rather than goods, equipment and facilities) as goods, equipment and facilities cannot be supplied by means of a PTN or by means that rely primarily on the existence of a PTN.

4. All qualified revenue must be calculated on an accruals basis.

5. For the purpose of this notice, 'end-user equipment' means any or all handsets, tablets, USB modems, other consumer equipment, and business and other office end-user equipment.

6. Except where otherwise expressly provided, all information provided to the Commission in accordance with this notice must be prepared in accordance with the following principles.

    6.1 Correct: the information has been prepared by the company in all material respects in accordance with this notice, and disclosure must occur in accordance with New Zealand generally accepted accounting practice (NZ GAAP).

    6.2 Complete: the company has provided all the information requested, in an appropriate format.

    6.3 Objectivity: the company must apply regulatory reporting processes which are objectively justifiable and reasonable. These processes, any changes to them, and any supporting assumptions or data must be documented in such a way that an informed reader can easily judge their reasonableness.

6.4 Consistency: the company must treat similar types of information consistently, both within a reporting year and from year to year.

6.5 Data retention: the company must retain copies of all documentation detailing the processes related to information disclosed for seven years.

Operational changes for respondents

7. The Commission acknowledges there will be situations where a respondent may cease trading during a financial year, or cease to operate the telecommunications component of their business.

8. If a respondent ceased trading or operating a component of a PTN in the 2011/12 financial year they will continue to have liability for the TDL in that year. This is because the respondent would have met the qualifying criteria in the preceding financial year, and has some qualified revenue for the 2011/12 year. Only the revenue earned during the period that the provider was a liable person (as defined in section 5 of the Act) needs to be counted as qualified revenue.

Instructions for completing the templates

Template 1: Consolidated Return & Qualified Revenue Calculation

9. Template 1 requires the company to:

9.1 provide information about whether the disclosure is a consolidated return which applies to more than one respondent; and

9.2 provide a calculation of the company's qualified revenue for the 2011/2012 financial year.

Template 1a: Consolidated Return

10. Under the heading 1a: Consolidated Return respondents (captured by section 79 of the Act) are required to identify in the drop-down box, if they are filing a consolidated return, and if so, state which parties are included in the consolidated return. Section 79 of the Act identifies when the Commission must treat two or more corporate bodies as one person.[82] The List of Respondents (provided in Attachment D) shows whether the company is captured by section 79 and if so, who the other parties are that the company is associated with.

Template 1b: Qualified Revenue

11. To calculate qualified revenue the company must first calculate gross telecommunications services revenue, that is, the company's operating revenue:

[82] For example, section 79(1)(e) of the Act provides that any two or more bodies corporate must be treated as one person if a third person owns or controls shares in each of them that carry the right to exercise, or control the exercise of, 20% or more of the voting power at meetings of each of them.

11.1 less any non-telecommunications services revenue, and

11.2 allowing for any timing adjustments which arise should the company have a statutory year end which differs from the financial year ending 30 June 2012 that is used for calculating qualified revenue.

12. The company must then net off the gross telecommunications services revenue, the following items:

12.1 the total of any payments made to other respondents (which is calculated in Template 2);

12.2 the total of any payments made to non-respondents for services initially provided by a respondent (which is calculated in Template 3); and

12.3 the cost of any non-telecommunications goods and services (eg handsets) for which the revenue is included in gross telecommunications services revenue.

13. The company's qualified revenue for the 2011/12 financial year is calculated in accordance with the formulas in Template 1, which are summarised in Table 1.

14. Table 1 is provided to assist the company in calculating its qualified revenue and as such, is for information and explanation purposes only. The information required to be provided to the Commission is that set out in Template 2.

Table 1: Calculating Qualified Revenue

Step		Disclosed Items	Value	Value	Formula
a		Operating revenue as per the relevant statutory accounts		$ a	
b		Non-telecommunications services revenue,(if any)	$ b		
c		Other non-telecommunications services revenue	$ c		
d	less	Total non-telecommunications service revenue, sold separately		$ d	d = b + c
e	plus	Timing adjustment (if required)		$ e	
f		**Gross telecommunications services revenue**		**$ f**	f = a - d + e
g	less	Total payments made to other respondents		$ g	
h	less	Total payments made to non-respondents for services initially provided by a respondent		$ h	
i	less	Total cost of non-telecommunications goods and services included in gross telecommunications services revenue		$ i	
j		**Qualified revenue**		**$ j**	j = f –g – h- i

Calculating gross telecommunications services revenue

15. To calculate gross telecommunications services revenue (step f), the company must identify the following features.

15.1 In step (a), the operating revenue. The relevant statutory accounts are the company's statutory accounts (or equivalent information if the company does not publish statutory accounts) that have the most overlap with the financial year ending 30 June 2012. For a company with a 31 December year end, the operating revenue is to be for the period ending 31 December 2011.

15.2 In step (d), the value of total non-telecommunications services revenue. This is the sum of the disaggregated major non-telecommunications revenue streams individually disclosed in step (b) under the heading 'non-telecommunications services revenue (if any)', and the value of any other revenue streams that are disclosed in aggregate in step (c) as 'other non-telecommunications services revenue'. These are calculated in the following manner.

15.2.1 Under the heading, 'non-telecommunication services revenue', the company must disclose each of its major disaggregated non-telecommunications revenue streams. When the information is reasonably available and appropriate, the company must use the revenue types listed in Attachment B.[83,[84]] If this information is not readily available, then the company must provide sufficient detail that an informed reader can reasonably identify the major activities that generate the non-telecommunication services revenue.

15.2.2 Under the heading, 'other non-telecommunications services revenue' the company may disclose the non-telecommunications services revenue earned from minor activities as a combined value. This value must not exceed 10% of the company's operating revenue as disclosed in step (a).[85]

16. In step (e) the 'timing adjustment'. This is only required if the company has a statutory year end other than 30 June, and allows the company to make adjustments for the effect of both (i) that the statutory accounts report operating revenue for a different period than the TDL's financial year ending 30 June year, and (ii) estimates of when revenues and costs should be recognised for TDL purposes. If the timing adjustment results in an increase (decrease) in gross telecommunications services revenue, it should have a positive (negative) value.

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83 Such as revenue derived from outside New Zealand, revenue earned from the standalone sales of handsets and other end-user equipment, and revenue earned from non-telecommunications products that were not bundled with telecommunications services.

84 [This refers to Attachment B of our qualified revenue notice. In this draft LAD it is Attachment C.]

85 The option of disclosing revenue earned from these minor activities as a combined 'other' value, rather than separate line items, is provided to reduce the company's compliance costs. The 10% threshold exists to provide transparency in the calculation.

17. The timing adjustment will typically represent the effect on gross telecommunications revenue from the statutory accounts and TDL financial year having different year ends and thus relating to different revenue periods.[86] It may also include some of the adjustments relating to past assumptions about timing, which were made in accordance with clause 25.2 and which relate to estimates of gross telecommunications services revenue (step (f)), total payments made to other respondents (step (g)), total payments made to non-respondents for services initially provided by a respondent (step (h)), and total cost of non-telecommunications goods and services included in gross telecommunications services revenue (step (i)).[87]

18. The company must provide explanations of any material differences between the revenue disclosed in the most recent statutory accounts and the revenue disclosed in Template 1, that are not due to the timing adjustment disclosed in step (e).

19. If the company does not have separate statutory accounts, it must disclose the total audited revenue of its business for the financial year and reconcile this to the gross telecommunications services revenue disclosed in step (f).

20. The Commission currently proposes to use the 'gross telecommunication services revenue' value in step (f) to identify if the company remains liable for the 2012/13 TDL financial year.

Deducting the cost of non-telecommunications goods and services

21. The cost of non-telecommunications goods and services for which the revenue is included in gross telecommunication services revenue may be deducted in step (i). This includes the cost of end-user equipment (such as handsets and modems), broadcasting services and video on-demand that were provided in a bundle with telecommunication services.

22. It may also include the cost of any end-user equipment that was sold separately, and for which the revenue has been included in gross telecommunication services because the company is not reasonably able to separate both the revenues and costs of this end-user equipment from the revenues and costs of similar end-user equipment sold as part of a bundle.

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[86] For example, if a company with a 31 March year end earned $10m more telecommunications services revenue in the quarter ending 30 June 2012 than it did in the quarter ending 30 June 2011, the timing adjustment would be $10m.

[87] For example, if a company with a March year end, in its TDL year 1 templates assumed that the revenue from a shipment of handsets sold in April was included in the March statutory accounts, later recognises the sale as an April transaction, could address this as a timing adjustment in TDL year 2. Whether this effect is disclosed as a timing adjustment or addressed elsewhere on template 1 depends on how the company calculates the values in template 1.

23. The cost of these non-telecommunications goods and services must be disaggregated into one of the four categories listed in Template 1b and calculated in the following manner.

    23.1 For end-user equipment that was sourced in New Zealand, the direct cost paid to the external supplier(s) in accordance with NZ GAAP.

    23.2 For end-user equipment that was sourced outside New Zealand, the direct cost paid to the external supplier(s) in accordance with NZ GAAP, plus direct freight costs and customs duties.

    23.3 For broadcasting services and video on-demand, the direct cost paid to the external supplier(s) in accordance with NZ GAAP.

    23.4 For other non-telecommunications goods and services that were sold as part of a bundle with telecommunications services, the directly attributable costs in accordance with NZ GAAP. This category is likely to include services such as maintenance services, which were sold as part of a bundle with telecommunication services.

24. For the avoidance of doubt, in step (i) the cost of non-telecommunication goods and services:

    24.1 can only be deducted if the associated revenue was included in the company's gross telecommunications services revenue

    24.2 must not include any allocation of corporate overhead, charges for the cost of capital, or mark up for indirect costs.[88]

Changes in accounting practices and the treatment of estimates

25. In calculating qualified revenue, the company must make reasonable efforts to ensure that the reported value of its qualified revenue is accurate both within a year and in aggregate across years. This includes, but is not limited to:

    25.1 when a change in accounting practices impacts when revenues or costs are recognised, the company must make reasonable efforts to ensure that the affected qualified revenue is reported either in the year that the change in accounting policy is made, or in the year when the revenue or cost is first recognised; and

    25.2 when a company with a statutory year end other than 30 June makes estimates as to which of two TDL financial years an item of revenue (or cost) should be recognised in, then the company must make reasonable efforts to ensure that a revenue (or cost) item, if not recognised in the first

[88] These accounting practices are specific to this notice and the calculation of qualified revenue for TDL purposes. This should not be taken as guidance for compliance with any other notice, determination or other requirements issued by the Commission.

of the two TDL financial years, is recognised in the later of the two TDL financial years regardless of how it is recognised for other purposes.

26. For the avoidance of doubt the above clause 25.2 may result in the timing recognition of revenue or input costs for TDL purposes being different to that used for statutory reporting under NZ GAAP or other reporting requirements.

Template 2: Payments Made to Other Respondents

27. This template requires the company to disclose the total amount payable to other respondents that is being deducted in accordance with this notice for the 2011/12 financial year. Amounts payable to each of the respondents to whom payments are made must be disclosed separately.

Template 3: Payments Made to Non-respondents for Services Originally Purchased from a Respondent

28. The company can deduct payments made to a non-respondent but only if that non-respondent is acting as an intermediary for another respondent, ie, payments to a non-respondent for the provision of telecommunications services which the non-respondent has purchased from another respondent. The intention of this exception is to deal with situations where a non-respondent is effectively acting as an intermediary between a liable upstream provider and a liable downstream provider for telecommunications services. This is likely to be rare and the Commission needs to be convinced that any deduction claimed is genuine.

29. Template 3 requires the company to disclose details about payments claimed in Template 1 (step (h)) as a deduction for payments made to non-respondents for services originally purchased from another respondent in the 2011/12 financial year.

30. The company is required to name the non-respondent(s) from whom it purchased the services, the respondent(s) the non-respondent purchased the services from originally, a description of the service(s) provided, the value of transaction(s) and the allocated value of the payments deducted from TDL qualified revenue. Any allocations are to be calculated in accordance with the principles in clause 6. The value of transactions(s) should reconcile to invoices and must include both the allocated value deducted for TDL qualified revenue and non-deductible amounts (such as payments for non-telecommunications services).

The qualified revenue status of common revenue streams

31. In general, telecommunications services can be divided into two groups; voice services, and data services. This reflects the definition of the network these services are to be provided over. PTN is defined in the Act as meaning *a network used or intended to be used, in whole or in part, by the public for the purposes of telecommunication* including a PSTN and a PDN.

32. Voice services are generally those services provided over a PSTN, and what is captured in this category is largely unchanged from the previous TSO cost allocation processes. Common types of voice based telecommunication services include:

32.1 local and residential telephone services;

32.2 long distance direct dial and toll calls; and

32.3 calling cards.

33. Data services are generally those services provided over a PDN. Common types of data based telecommunication services include:

33.1 mobile broadband services;

33.2 business data services; and

33.3 xDSL services, Naked DSL services and services provided using an unbundled copper local loop.

34. Revenue earned from the sale of end-user equipment may be included in gross telecommunications services revenue (in step f) if the company is not reasonably able to separate both the revenues and costs of this equipment from the revenues and costs of similar equipment sold as part of a bundle.

35. Further information on the qualified revenue status of common types of voice and data telecommunications services is provided in Attachment B.[89]

What does not constitute qualified revenue for the purposes of this notice?

36. Revenue earned from international transit arrangements for calls neither originating nor terminating in New Zealand is not qualified revenue.

37. Revenue earned from the provision of end-user equipment (including handsets discounted or otherwise) is not qualified revenue as it is not revenue relating to the supply of telecommunications services by means of the company's PTN or the supply of telecommunications services by means that rely primarily on the existence of the company's or any other PTN.

38. Any revenue received by a company from the Crown as compensation for the cost of complying with a TSO instrument containing a specified amount, is not included in the calculation of qualified revenue.

39. Revenue from providing broadcasting is not qualified revenue. The definition of 'telecommunications' in section 5 of the Act excludes *any conveyance that constitutes broadcasting*.

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[89] [This refers to Attachment B of our qualified revenue notice. In this draft LAD it is Attachment C.]

40. Revenue derived from video on-demand content is not qualified revenue. Video on-demand is distinguished from broadcasting as it is provided to a single user for use at their discretion. Furthermore, video on-demand content revenue is distinguished from conveyance revenue, and only revenue related to the conveyance of this content is qualified revenue.

41. Receipts from capital contributions which were made towards assets which develop the PTN are not qualified revenue if the company records the asset(s) as a fixed asset(s) under NZ GAAP. The value of any deduction must not exceed the value of the related asset as recorded in the fixed asset register under NZ GAAP.

Qualified revenue and the public telecommunications network

42. Revenue earned from operating a physically private telecommunications network (a network that is not physically able to connect to another telecommunications network) is not qualified revenue. If the network is physically capable of being accessed by the public for any purpose (even private uses of the public network) the revenue the respondent derives from providing the telecommunications service is qualified revenue.

43. This means that a respondent is not required to know how their clients use the services they provide. If the company derives revenue from providing telecommunications services by means of a PTN (or that rely primarily on the existence of a PTN) then that revenue is qualified revenue.

44. This means revenue from providing services via layer one and above (including ducting and dark fibre) is qualified revenue. Fibre or copper dedicated to a single user is also included unless that fibre or copper is part of a physically separate telecommunications network that does not connect to a PTN.

Assurance report requirements

45. The company must provide to the Commission an assurance report by an independent qualified auditor in respect of all prescribed information, that is prepared in accordance with the Standard on Assurance Engagements 3100 – Compliance Engagements (SAE 3100) and International Standard on Assurance Engagements 3000 (ISAE (NZ) 3000) or their successor standards, that is signed by the auditor (either in his or her own name or that of his or her firm), and that:

    45.1 is addressed to the directors of the company and to the Commission as the intended users of the assurance report;

    45.2 states-

        45.2.1 that it has been prepared in accordance with Standard on Assurance Engagements 3100 – Compliance Engagements (SAE 3100) and International Standard on Assurance Engagements 3000 (ISAE (NZ) 3000) or their successor standards;

45.2.2 the work done by the independent qualified auditor;

45.2.3 the scope and limitations of the assurance engagement;

45.2.4 the existence of any relationship (other than that of auditor) which the independent qualified auditor has with, or any interests which the independent auditor has in, the company or any of its subsidiaries;

45.2.5 whether the independent qualified auditor has obtained sufficient recorded evidence and explanations that he or she required and, if not, the information and explanations not obtained;

45.2.6 whether, in the independent qualified auditor's opinion, proper accounting records have been kept by the company so as to enable the complete and accurate compilation of required information, and if proper accounting records have not been kept by the company, identify the records not so kept; and

45.3 states whether or not in the independent qualified auditor's opinion the information provided by the company in templates 1 to 3 is prepared in all material respects in accordance with this notice.

46. For the purposes of this notice, an independent qualified auditor means, in relation to any information, a person who:

46.1 is qualified for appointment as auditor of a company under the Companies Act 1993;

46.2 has no relationship with, or interest in, the company that is likely to involve the person in a conflict of interest;

46.3 has not assisted with the compilation of the information or provided advice or opinions (other than in relation to audit reports or in respect of the interpretation of this determination) on the methodologies or processes used in compiling the information; and

46.4 is not associated with nor directed by any person who has provided any such assistance, advice, or opinion.

Attachment C – Qualified revenue status of common types of revenue

This attachment was Attachment B of our qualified revenue notice.

Revenue stream	Rationale	Status
Revenue from building, maintaining and renewing network infrastructure	The criteria for qualified revenue as defined in section 5 of the Act require telecommunications services to be provided by means of a public telecommunications network (PTN) or by means that rely primarily on the existence of the PTN. Therefore, the Commission considers revenue from operational contributions for building, maintaining and renewing PTN infrastructure, recorded by the respondent accordingly under NZ GAAP, is qualified revenue, because it is part of the telecommunications service provided by means of a PTN. Receipts from capital contributions made towards assets which develop the PTN are not qualified revenue (and can be deducted) if the respondent records the asset(s) as a fixed asset(s) under NZ GAAP. This is because the building, maintaining and renewing activity is significant enough to define it as the creation of an asset rather than the operation of one. However, the value of any deduction must not exceed the value of the related asset as recorded in the fixed asset register under GAAP.	Operational revenue is qualified revenue and receipts from capital contributions are legitimate deductions.
Revenue from the sale of mobile phone handsets that is not recovered through mobile access or calling charges (ie, sold separately)	The Commission considers that this revenue is not captured by the definition of qualified revenue in section 5 of the Act.	Non-qualifying telecommunications services revenue.
Revenue from the sale of mobile phone handsets recovered through mobile access or calling charges (sold as part of services provided in a bundle)	The Commission considers that this revenue is not captured by the definition of qualified revenue in section 5 of the Act. Due to difficulties in identifying the true value of this revenue stream, the Commission has allowed respondents to deduct the cost of handsets which were provided as part of a bundle which includes telecommunication services.	Non-qualifying telecommunications services revenue.
Revenue derived from	The criteria for qualified revenue as	Non-qualifying

Revenue stream	Rationale	Status
services provided in other countries	defined in section 5 of the Act still require telecommunications services to be provided by means of a PTN operated in New Zealand. These services fall outside the definition of qualified revenue.	telecommunications services revenue.
Expenditure on purchasing telecommunications services from other respondents	The Commission considers that the avoidance of double counting of revenue is a concern and allows a deduction for this type of expenditure as the value of the service is picked up in the respondent providing the service.	Legitimate deduction.
Expenditure on purchasing telecommunications services from a non-respondent that on-sells those services it purchased from another respondent	The Commission considers that this situation is analogous to purchasing services from another respondent directly. Respondents can claim this expenditure as a deduction but they will need to provide detailed information to support these claims.	Legitimate deduction.
Prompt payment discounts and credits for billing errors and omissions	The Commission allows deductions for prompt payment discounts and credits for billing errors and omissions as this allows the respondent to represent their true revenue totals.	Legitimate deduction.
Revenue from calling cards and prepay credits	The Commission considers all calling card and prepay credit revenue, whether used or expired is qualified revenue as it was acquired for the purposes of providing a telecommunications service .	Qualified revenue.
Inbound roaming revenue	The Commission considers that revenue from inbound roaming is a telecommunications service as defined in the Act and is therefore qualified revenue.	Qualified revenue.
Mobile access and calling revenue	The Commission considers that this revenue stream is a telecommunications service as defined in the Act and is qualified revenue.	Qualified revenue.
Revenue earned from voice over IP calls that terminate or originate on a PSTN (PTN)	The Commission considers that this revenue stream is a telecommunications service as defined in the Act and is therefore qualified revenue.	Qualified revenue.
Revenue earned from mobile voice and SMS – a PTN includes that part of a mobile network that facilitates voice and SMS calls	The Commission considers that this revenue stream is a telecommunications service as defined in the Act and is therefore qualified revenue.	Qualified revenue.
Revenue earned from toll	The Commission considers that this	Qualified revenue.

Revenue stream	Rationale	Status
by-pass/ direct dial calls by the respondent	revenue stream is a telecommunications service as defined in the Act and is therefore qualified revenue.	
Revenue earned by the respondent from late payment fees levied on customers for the late payment of outstanding accounts for telecommunications services	The Commission considers that this revenue stream is a telecommunications service as defined in the Act and is therefore qualified revenue.	Qualified revenue.
Revenue earned from dial-up ISP service (Including modem banks)	Revenue from telecommunications services using a PTN is captured – PTN includes public data networks (PDN) and this service is captured under the PDN definition.	Qualified revenue.
xDSL services, Naked DSL services and services provided using a UCLL	The Commission considers that this revenue stream is a telecommunications service as defined in the Act and is therefore qualified revenue.	Qualified revenue.
Mobile broadband services	Revenue from telecommunications services using a PTN is captured – PTN includes PDNs and this service is captured under the PDN definition.	Qualified revenue.
Business data services	Revenue from business data telecommunications services using a PTN is captured.	Qualified revenue.
Revenue derived from the supply of video on-demand content	The Commission considers that video on-demand content revenue is not captured as a telecommunications service as it can be distinguished from the conveyance revenue which is the intended focus of the definition of telecommunications services.	Content revenue is non-qualifying telecommunications services revenue, and conveyance revenue is qualified revenue.
Mobile radio services (campus networks)	Revenue derived from providing telecommunications services by means of a PTN are qualified revenue, irrespective of how a respondent's client uses the services. Therefore, because the mobile radio network fits within the definition of a PTN the fact that a respondent's client uses it for a private purpose is not relevant to its qualified revenue status.	Qualified revenue.
Broadcasting services	The definition of 'telecommunications' in section 5 of the Telecommunications Act expressly excludes broadcasting.	Non-qualifying telecommunications services revenue.

Revenue stream	Rationale	Status
Dark fibre, layer one, two and above services	Revenue from telecommunications services using a PTN are captured – revenue from providing telecommunications services by means of a PTN are captured regardless of the ISO layer.	Qualified revenue.
Satellite revenues	Telecommunications services provided in New Zealand via a satellite are supplied by means of the qualifying liable person's PTN.	Qualified revenue.
Revenue from selling customer premises equipment	Revenue from selling customer premises equipment is revenue from selling goods that are not considered to be related to a PTN.	Non-qualifying telecommunications services revenue.
Revenue from dumb caches, servers, content delivery networks (CDN)	Revenue derived from operating this equipment relies on the existence of a PTN and is therefore within the definition of qualified revenue.	Qualified revenue.
Revenue from fibre dedicated to a single user	Revenue derived from providing telecommunications services by means of a PTN is qualified revenue, irrespective of how a respondent's client uses the services.	Qualified revenue.

Attachment D – Relevant statutory references

Relevant extracts from the Telecommunications Act 2001

Section 5 Interpretation

Liable person means a person who provides a telecommunications service in New Zealand by means of some component of a PTN that is operated by the person

PTN or **public telecommunications network –**

(a) means a network used, or intended to be used, in whole or in part, by the public for the purpose of telecommunication:

(b) includes –
  (i) a PSTN:
  (ii) a PDN.

Qualified revenue means the revenue (as determined in accordance with any specifications set by the Commission) that a liable person receives during a financial year for supplying either or both of the following (excluding any amount paid to the liable person by the Crown as compensation for the cost of complying with a TSO instrument that contains a specified amount):
(a) telecommunications services by means of its PTN:
(b) telecommunications services by means that rely primarily on the existence of its PTN or any other PTN.

Telecommunications service means any goods, services, equipment, and facilities that enable or facilitate telecommunication

Section 79 When 2 or more bodies corporate must be treated as 1 person

(1) For the purposes of this Part, any 2 or more bodies corporate must be treated as 1 person if—

(a) 1 of them is a body corporate of which the others are subsidiaries; or
(b) all of them are subsidiaries of the same body corporate; or
(c) all of them are associates of each other; or
(d) 1 of them owns or controls shares that in the aggregate carry the right to exercise or control the exercise of 20% or more of the voting power at meetings of the others; or
(e) a third person owns or controls shares in each of them that carry the right to exercise or control the exercise of 20% or more of the voting power at meetings of each of them.

(2) For the purposes of subsection (1)(c), a body corporate is an associate of another if that body corporate is able, whether directly or indirectly, to exert a substantial degree of influence over the activities of the other.

(2) A body corporate is not able to exert a substantial degree of influence over another body corporate for the purposes of subsection (2) just because—

(a) those bodies corporate are in competition in the same market; or
(b) 1 of them supplies goods or services to the other.

Section 80 Interpretation

In this subpart, unless the context otherwise requires,—

financial statements,—

(a) except if section 79 applies, has the same meaning as in section 8 of the Financial Reporting Act 1993; and

(b) if section 79 applies, means a consolidated statement of financial performance of the 2 or more bodies corporate required by that section to be treated as 1 person, prepared in accordance with generally accepted accounting practice, as defined in section 3 of the Financial Reporting Act 1993

minimum telecommunications revenue means $10 million, or such other amount, as may be prescribed by regulations made under section 101(1)(a), of gross revenue (as may be determined in accordance with any specifications set by the Commission) that a liable person receives during a financial year for supplying either or both of the following (excluding any amount paid to a liable person by the Crown as compensation for the cost of complying with a TSO instrument that contains a specified amount):

(a) telecommunications services by means of its PTN:
(b) telecommunications services by means that rely primarily on the existence of its PTN or any other PTN.

Section 81 Subpart does not apply to certain liable persons

(1) This subpart does not apply to a liable person in respect of a financial year (financial year A) if –
(a) the liable person was not trading in the financial year preceding year A; or
(b) the liable person's telecommunications revenue for the year preceding financial year A was less than the minimum telecommunications revenue.

(2) For the purpose of determining whether a person is a liable person to whom this subpart applies in respect of a financial year, the Commission may, by written notice to that person, require the person to provide to the Commission, within the time specified in the notice,—
(a) a copy of the person's financial statements for the year preceding financial year A; and
(b) any further information specified by the Commission for the purpose of enabling it to verify the telecommunications revenue of that person for the year preceding financial year A; and
(c) a certificate that complies with subsection (3).

(3) A certificate complies with this subsection if—
(a) it certifies the person's telecommunications revenue for the year preceding financial year A; and
(b) it is signed by 2 directors of the person with the authority of the other directors.

Section 82 Liable persons must produce information on qualified revenue

Not later than 60 working days before the end of each financial year (**financial year A**), each liable person must provide to the Commission a copy of—
(a) its financial statements for the financial year preceding financial year A; and
(b) any further information specified by the Commission for the purpose of enabling it to verify the qualified revenue of that person for the financial year preceding financial year A.

Section 83 Liable persons must produce information for purposes of liability allocation determination

(1) Not later than 60 working days after the end of each financial year, each liable person must provide to the Commission—
(a) all prescribed information or, if there is no prescribed information, information specified by the Commission, for the purpose of enabling the Commission to make its determination in accordance with section 88(a); and

(b) a report that complies with subsection (2).

(2) A report complies with this subsection if—

(a) it is prepared by a qualified auditor; and

(b) it includes a statement of the extent to which the information provided by the liable person under subsection (1)(a) is correct and complete.

Section 84 Commission to prepare draft liability allocation determination

(1) The Commission must—

(a) prepare a draft liability allocation determination for each financial year; and

(b) give public notice of that draft determination; and

(c) include in the public notice the closing date for submissions, which must be not later than 20 working days after the date of giving public notice.

(2) The Commission must make reasonable efforts to do the things referred to in subsection (1) not later than 80 working days after the end of the financial year.

Section 85 Matters to be included in draft liability allocation determination

(1) A draft liability allocation determination must include—

(a) the amount of each liable person's qualified revenue; and

(b) the amount of the telecommunications development levy payable by each liable person for the financial year, calculated in accordance with the following formula:

$$\frac{a}{b} \times c$$

where—

a is the amount of the liable person's qualified revenue

b is the sum of all liable persons' qualified revenue

c is the telecommunications development levy specified for the relevant year in Schedule 3B; and

(c) the methodology applied by the Commission in preparing the determination; and

(d) the reasons for the determination.

(2) To avoid doubt, the Commission may determine what revenue basis to use for the purposes of subsection (1)(a) (for example, a net revenue basis).

Section 86 Conferences on draft liability allocation determination

The Commission may—

(a) hold conferences in relation to the draft liability allocation determination; and

(b) invite to those conferences any person who has a material interest in the determination.

Section 87 Commission to prepare final liability allocation determination

(1) The Commission must—

(a) prepare a final liability allocation determination; and

(b) give public notice of that final determination; and

(c) give a copy of that final determination to all liable persons.

(2) The Commission must make reasonable efforts to do the things referred to in subsection (1) not later than 20 working days after the closing date for submissions specified in accordance with section 84(1)(c).

Section 88 Matters to be included in final liability allocation determination

A final liability allocation determination must include—

(a) the amount of each liable person's qualified revenue; and

(b) the amount of the telecommunications development levy payable by each liable person, calculated in accordance with the formula set out in section 85(1)(b); and

(c) the methodology applied by the Commission in preparing the determination; and

(d) the reasons for the determination.

Attachment E - List of qualifying liable persons

This attachment sets out the list of qualifying liable persons which was Attachment D of our qualified revenue notice. Since we issued our qualified revenue notice, Whangarei Local Fibre Company Ltd has been removed from the list.

List of Respondents

The Commission's view is that the following parties are respondents.[90]

These parties meet the criteria for "liable person" as defined in section 5 of the Telecommunications Act 2001. They have also met the minimum telecommunications threshold as set out in sections 80 and 81 of the Act (meaning they earned more than $10 million in the year preceding year A, which in this case is the 2010/11 financial year) and they have also traded in the 2010/11 financial year.

The groups of parties appearing in shaded boxes were treated as one person as required by section 79.

• Bay City Communications Ltd. • Compass Communications Ltd. • FX Networks Ltd. • Snap Ltd. • TelstraClear New Zealand Ltd. • Trustpower (Kinect) Ltd. • Two Degrees Mobile Ltd. • Vector Communications Ltd. • Vodafone New Zealand Ltd. • Woosh Wireless Ltd (now Railway Street Industries Ltd). • Woosh Wireless (NZ) Ltd. • WorldxChange Communications Ltd.	• Chorus Ltd; and • Chorus New Zealand Ltd. • CallPlus Ltd; and • 2Talk Ltd. • Kordia New Zealand Ltd; • Orcon Ltd; • Transpower New Zealand Ltd; • REANNZ (Research & Education Advanced Network New Zealand Ltd); and • Whangarei Local Fibre Company Ltd (trading as Northpower Fibre) • Teamtalk Ltd; • Araneo Ltd; and • Citylink Ltd. • Telecom Corporation of New Zealand Ltd; and • Telecom New Zealand Ltd.

[90] Other related corporate bodies may also need to be treated as a liable person if section 79 of the Act applies.