

Public version



Northpower Fibre Limited
Submission on:

**Draft assessment framework for a fibre
fixed line access service deregulation
review (Assessment Framework)**

Introduction

1. Northpower Fibre Limited (**NFL**) welcomes the opportunity to provide feedback on the Commerce Commission’s (**Commission**) fibre fixed line access service deregulation review draft assessment framework (**Assessment Framework**) under the Telecommunications Act 2001 (**the Act**).
2. NFL is a local fibre company (**LFC**) and owns and operates the ultra-fast fibre network in the Whangarei and Kaipara districts of New Zealand and has over 24,000 connected customers.

Submissions

3. NFL **supports** the Commission’s proposed Assessment Framework. NFL agrees with the Commission’s proposal to consider whether there is evidence that any circumstances have changed. There is evidence supporting the need to undertake a reassessment (see paragraphs 5 onwards below).
4. NFL considers that the Commission’s Assessment Framework should not restrain itself solely to the above consideration. The Commission should also consider whether the services should be regulated (in relation to the purpose in section 162 of the Act), regardless of whether there are evidenced changes in circumstances. Section 210 of the Act does not require the Commission to only consider changes in circumstances. In particular, section 210(4) is a permissive and non-exhaustive description of what the Commission *may* consider.
5. NFL submits that, as part of the Assessment Framework and any further review of regulation that the Commission undertakes as a result of an assessment, the Commission should consider the following:
 - a) **Proportionality:** NFL’s customers make up a very small percentage of the fibre wholesale market. NFL’s annual revenue is substantially less than the other LFCs. For context, for the purpose of calculating the telecommunications development levy allocation for 2022/2023, the Commission reported the following data:

Qualifying Liable Person	Qualified Revenue	% of industry qualified revenue
Tuatahi First Fibre	\$119,360,000	2.59%
Enable Service Ltd	\$100,819,000	2.18%
NFL	\$16,197,000 0	0.35%

Despite NFL’s much smaller enterprise size, under the current regulatory regime NFL’s regulatory requirements (and therefore the internal resource required in order to meet them) is fixed and not proportionate to NFL’s size. Any review of the regulatory regime should take into account proportionality of regulatory requirements (if any) to the size of the entity being regulated and should balance the need for any reporting against this.

- b) **Limited ability to influence market:** Given NFL’s proportionately small share of the wholesale market, it has very limited, if any, ability to influence the market. What NFL might do in a deregulated wholesale fibre market is very unlikely to impact larger market participants. While NFL understands the taking of a precautionary approach to the initial regulation of NFL during the first regulatory period, NFL does not have a significant market influence to justify continued regulation. NFL understands that NFL’s 24,000 connections, make up 1% of the market and its market share is significantly lower than the next larger supplier, Tuatahi Fibre. NFL understands the relative market share to be approximately:

Chorus	80%+
Enable	5%+
Tuatahi Fibre	5%+
NFL	~1%

- c) **Other participants in the market aren’t regulated:** The broadband market is much broader than fixed line fibre and the wider broadband market has grown in terms of technology and customer uptake since the regulatory regime was put in place. In particular, end users can now choose between FLAS, 4G, 5G, satellite internet and, in some cases, embedded networks. These other market participants compete against fibre, yet are not regulated in the same way.
- d) **NFL’s community ownership:** NFL is owned by Northpower Limited which is, in turn, owned by the electricity consumers in the Whangārei and Kaipara districts via elected trustees. Northpower Limited and NFL have a vested interest in serving the community to which it is accountable. This ownership model influences the way in which NFL operates in the market. An Assessment Framework should consider this aspect in determining whether regulation remains appropriate.

Conclusion

6. NFL supports the Commission's Assessment Framework. NFL strongly encourages the Commission to expand its threshold for assessment beyond whether changes in circumstances have occurred. NFL considers that the Commission should have regard to matters such as:
proportionality of regulation of NFL, NFL's ability to influence market and the fact that other participants in the market are not regulated.

7. NFL believes the Commission should consider whether a smaller market participant like NFL could be deregulated as an interim step including to assess deregulation of the market more broadly in future regulatory periods.

I would love the opportunity to have a further discussion with you on this opportunity.

Yours sincerely

Chief Executive

Northpower Fibre Limited

