COMMERCE COMMISSION NEW ZEALAND
Te Komihana Tauhokohoko

2021/22 Telecommunications Development Levy

Information that qualifying liable persons must provide to the Commission under section 83 of the Telecommunications Act 2001

30 June 2022

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Introduction

1. This document is issued under s 83 of Telecommunications Act 2001 (the **Act**) and specifies for the 2021/22 Telecommunications Development Levy (**TDL**) the:

   1.1 financial information that qualifying liable persons (**QLPs**) must provide to the Commerce Commission (**Commission**); and

   1.2 assurance that QLPs must provide to the Commission in regard to the financial information disclosed.

2. Each QLP must provide specified information and assurance under s 83 of the Act for the 2021/22 TDL to the Commission by **21 September 2022** to enable us to produce the 2021/22 TDL liability allocation determination.

   2.1 The specified information and assurance should be provided via email to market.regulation@comcom.govt.nz (CC'ing jordan.hamilton@comcom.govt.nz).

3. General information on how the TDL process works can be found in the *2021/22 TDL process* document which can be downloaded from the 2021/22 TDL project page.

Compliance with s 83

4. The Act makes it a breach to fail, without reasonable excuse, to comply with s 83 of the Act. It is also a breach to knowingly provide false or misleading information or documents under s 83 of the Act.

5. All QLPs are responsible for ensuring that they comply with s 83 of the Act. Where we identify a likely breach of s 83, we must consider the appropriate enforcement response. Any failure to immediately rectify identified non-compliance may increase the seriousness of the breach, and will be taken into account in determining the appropriate enforcement response.

6. The Commission uses enforcement criteria to assist in deciding whether to take enforcement action in response to a potential breach and to assist it in deciding what enforcement action to take.[1]

7. In response to a potential breach of s 83 of the Act, the Commission may:

   7.1 issue compliance advice;

   7.2 issue a warning letter;

   7.3 serve a civil infringement notice under s 156D of the Act, incorporating a penalty of $2,000;

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[1] The Commission's enforcement criteria are set out at https://comcom.govt.nz/about-us/our-policies-and-guidelines/investigations-and-enforcement/enforcement-criteria

7.4 agree to an out of court settlement; or

7.5 apply to the High Court for an order requiring payment of a pecuniary penalty (of up to $300,000) to the Crown under s 156L of the Act.[2]

Contact

8. If you have any questions about the information contained in this document or on the TDL more generally please contact market.regulation@comcom.govt.nz (CC'ing jordan.hamilton@comcom.govt.nz).

[2] Section 156L(3)(c) of the Act empowers the High Court to impose a penalty of up to $300,000 for a breach of s 156A(1)(k).

Financial information QLPs must provide to the Commission

9. QLPs must provide the following financial information under s 83 of the Act for the 2021/22 TDL:

   9.1 completed information templates (1-4), which are available at the 2021/22 TDL project page; and

   9.2 financial statements that the QLP is required to register under the Financial Reporting Act 2013 or is required to send to shareholders under the Companies Act 1993 for the 1 July 2021 to 30 June 2022 period or relating to part of it.

10. It is important that QLPs use the 2021/22 TDL information templates as they have been designed to meet our requirements and differ from those provided in previous years.

11. QLPs are also reminded to not modify the formulas in the templates as this could result in errors.

12. Each of the four templates are explained below and the attachments to this document provide additional guidance and information:

    12.1 Attachment A outlines the qualified revenue status of common revenue streams;

    12.2 Attachment B outlines how broadcasting related revenue streams should be treated;

    12.3 Attachment C lists the 2021/22 TDL QLPs; and

    12.4 Attachment D provides the relevant statutory references.

Disclosure principles

13. Except where otherwise expressly provided, all information provided to the Commission in accordance with these instructions must be prepared in accordance with the following principles.

    13.1 ***Correct***: the information has been prepared by the QLP in all material respects in accordance with these instructions, and disclosure must occur in accordance with New Zealand generally accepted accounting practice (**NZ GAAP**).

    13.2 ***Complete***: the QLP has provided all the information requested, in an appropriate format.

    13.3 ***Objective***: the QLP 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.

13.4 ***Consistent***: the QLP must treat similar types of information consistently, both within a reporting year and from year to year.

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

Changes in accounting practices and the treatment of estimates

14. In calculating qualified revenue, the QLP 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:

    14.1 when a change in accounting practices impacts on when revenues or costs are recognised, the QLP must make reasonable efforts to ensure that the affected qualified revenue is disclosed in the year that the change in accounting policy is made (if the change requires this or the change would result in under reporting), or failing that in the year when the revenue or cost is first recognised; and

    14.2 when a QLP 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 QLP must make reasonable efforts to ensure that a revenue (or cost) item, if not recognised in the first 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.

15. For the avoidance of doubt, paragraph 14.2 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.

Operational changes

16. The Commission acknowledges that there will be situations where a QLP may cease trading during a financial year, cease to operate the telecommunications component of its business, or dispose of assets used to generate qualified revenue.

17. If a QLP ceased trading or operating a component of a public telecommunications network (**PTN**) in the 2021/22 financial year, it will generally continue to have liability for the TDL in that year. This is because the QLP would have met the qualifying criteria in the preceding financial year, and will have some qualified revenue for the 2021/22 year.

18. Should a QLP dispose of all assets used to generate qualified revenue to a non-liable person, then the acquirer would assume responsibility for the TDL and must pay the amount of the TDL resulting from the revenue associated with those assets as required by s 81A of the Act. Hence the acquirer of these assets must provide the specified information and assurance required under s 83 of the Act.

19. If a QLP only disposes of some of these assets to a non-liable person, then both the QLP and the non-liable person may have responsibilities for the 2021/22 TDL, such as

providing the Commission with the specified information required under s 83 of the Act. Section 81A of the Act provides guidance for the non-liable person acquiring the assets.

Template 1: Consolidated return & qualified revenue calculation

20. Template 1 requires the QLP to:

    20.1 provide information about whether the disclosure is a consolidated return which applies to more than one QLP and/or includes bodies corporate that earned qualified revenue and were connected to the QLP via s 79;[3] and

    20.2 provide a calculation of the QLP's qualified revenue for the 2021/22 financial year.

Template 1a: Consolidated return

21. If a QLP is connected to other companies via s 79 that earn qualified revenue, then it will need to agree with each of its connected bodies corporate if they will:

    21.1 provide a consolidated disclosure; or

    21.2 provide separate information disclosures and assurance reports.

22. Under the heading 1a: Consolidated return for s 79 purposes, the QLP is required to identify in the drop-down box, if it is filing a consolidated return. If so, the QLP must list which parties are included in the consolidated return.

Template 1b: Qualified revenue

23. To calculate its estimate of qualified revenue, the QLP must first calculate its gross telecommunications services revenue. This is the QLP's operating revenue:

    23.1 less any non-telecommunications services revenue;

    23.2 less any non-qualifying telecommunications revenue; and

    23.3 allowing for any timing adjustments which arise should the QLP have a statutory year end which differs from the financial year ending 30 June 2022 that is used for calculating qualified revenue.

24. The QLP must then deduct the following items from the gross telecommunications services revenue total:

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

    24.2 the total of any payments made to non-QLPs for services initially provided by a QLP (which is calculated in Template 3);

[3] See paragraphs 56 to 62 for further information on connected bodies corporate.

24.3 the total revenue received in relation to free-to-air broadcasting service activities;[4] and

24.4 in specified circumstances, the cost of any non-telecommunications goods and services (eg, handsets in discounted bundles with telecommunications services) for which the revenue is included in gross telecommunications services revenue.

25. The QLP's qualified revenue for the 2021/22 financial year is calculated in accordance with the formulas in Template 1, which are summarised in Table 1.

26. Table 1 is provided to assist the QLP calculate 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 1.

Table 1: Calculating qualified revenue

Step		Disclosed items	Value	Value	Formula
a		Operating revenue as per the relevant statutory financial statements		$a	
b		Non-telecommunications services revenue (if any)	$b		
c		Other non-telecommunications services revenue	$c		
d	less	Total non-telecommunications service revenue		$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 QLPs		$g	
h	less	Total payments to non-QLPs for services initially provided by a QLP		$h	
i	less	Free-to-air broadcasting services revenue		$i	
j	less	Total cost of non-telecommunications good and services included in gross telecommunications services revenue		$j	
k		**Qualified revenue**		**$k**	k = f - g - h - i - j

Calculating gross telecommunications services revenue

Step (a)

27. In step (a), the QLP discloses its operating revenue as per the relevant statutory financial statements being the QLP's most recent statutory financial statements (or equivalent information if the QLP does not publish statutory financial statements) that have the greatest overlap with the financial year ending 30 June 2022. For a QLP with a 31 December year end, the operating revenue is determined for the period ending 31 December 2021.

Step (b)

[4] This is limited to free-to-air broadcasting revenue that has not been deducted as part of 24.1 or 24.2.

28. Under the heading, 'non-telecommunications services revenue', the QLP must disclose each of its major disaggregated non-telecommunications and non-qualifying telecommunications revenue streams.[5] When the information is reasonably available and appropriate, the QLP must use the revenue types listed in Attachment A of these instructions.[6] If this information is not readily available, then the QLP must provide sufficient detail so that an informed reader can reasonably identify the major activities that generate the non-telecommunications services revenue.

Step (c)

29. Under the heading, 'other non-telecommunications services revenue' the QLP may disclose the non-telecommunications services revenue earned from minor activities as a combined value. This value must not exceed 2.5% of the QLP's operating revenue as disclosed in step (a).[7]

Step (d)

30. Step (d) is automatically calculated from the values inputted in steps (a), (b) and (c).

31. The values deducted for non-telecommunications services revenue must:

    31.1 be consistent with those used in calculating operating revenue as per the relevant statutory financial statements; or

    31.2 be calculated in accordance with NZ IFRS 15, if the non-telecommunications services revenue was earned from a bundle that included telecommunication services.

Step (e)

32. Step (e), the 'timing adjustment', is only required if the QLP has a statutory year end other than 30 June. This allows the QLP to make adjustments for the effect of both:

    32.1 the statutory financial statements reporting operating revenue for a different period than the TDL financial year ending 30 June; and

    32.2 estimates of when revenues and costs should be recognised for TDL purposes.

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[5] In subtracting any non-telecommunications services revenue, QLPs must consider the treatment of revenue from providing telecommunications services to non-liable persons that are interconnected bodies corporate (or other related parties).

[6] 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.

[7] 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 2.5% threshold exists to provide transparency in the calculation.

33. If the timing adjustment results in either an increase or decrease in gross telecommunications services revenue, it should have a corresponding positive or negative value.

34. The timing adjustment will typically represent the effect on gross telecommunications revenue of differences in the revenue periods under the statutory financial statements and the TDL financial year.[8] It may also include some of the adjustments relating to past assumptions about timing, which were made in accordance with paragraph 32.2, which relate to steps (f), (g), (i) and (j).[9]

<u>Step (f)</u>

35. Step (f) is automatically calculated based on steps (a), (d) and (e).

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

37. If the QLP does not have separate statutory financial statements, 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).

Calculating qualified revenue

<u>Step (g)</u>

38. Step (g) is automatically populated from the calculation in Template 2. See paragraphs 46 to 51 for further explanation.

<u>Step (h)</u>

39. Step (h) is automatically populated from the calculation in Template 3. See paragraphs 52 to 55 for further explanation.

<u>Step (i)</u>

40. Step (i), 'free-to-air broadcasting services revenue' deducts revenue excluded under s 85A(1)(a) of the Act.

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8 For example, if a QLP with a 31 March year end earned $10m more telecommunications services revenue in the quarter ending 30 June 2022 than it did in the quarter ending 30 June 2021, the timing adjustment would be $10m.

9 For example, if a QLP, 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 financial statements, 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 QLP calculates the values in Template 1.

41. Section 85A(1)(a) excludes from qualified revenue, any broadcasting service revenue that is supplied to end-users free of charge. The exclusion covers revenue that is received by the QLP for:

  41.1 supplying telecommunications services as part of a broadcasting service which it supplies to end-users free of charge; and

  41.2 providing broadcasting transmission services to a free-to-air broadcaster which the broadcaster then uses to broadcast its content to end-users free of charge.

42. Only free-to-air broadcasting revenue that has not been deducted in step (g) or (h) may be deducted in step (i).

<u>Step (j)</u>

43. If revenue from non-telecommunications goods and services can be identified separately it must be deducted at step (b).

44. However, the Commission will permit a QLP to deduct the cost of purchasing non-telecommunications goods and services at step (j) if:

  44.1 the revenue from these non-telecommunications goods and services is not reasonably identifiable (such as when they are sold in a discounted bundle with telecommunications services).

  44.2 the associated revenue is included in the gross telecommunications services revenue total at step (f). Typically, this means the entire revenue value of the bundle is included in the total at step (f).

  44.3 the goods or services fall into one the categories listed below and the cost is calculated in the following manner:

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

    44.3.2 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.

    44.3.3 for music on-demand, video on-demand content and similar services, the direct cost paid to the external supplier(s) in accordance with NZ GAAP.

    44.3.4 for other non-telecommunications goods and services that were sold as part of a bundle with telecommunications services, and which have a primary function related to the provision of or connection to a telecommunication service, the directly attributable costs in accordance with NZ GAAP. This category is likely to include accessories

(eg, cables), installation work, and maintenance services relating to end-user equipment.

45. For the avoidance of doubt, in step (j) the cost of non-telecommunications goods and services:

    45.1 can only be deducted at this point if the associated revenue could not reasonably have been identified and deducted as non-telecommunications services revenue at step (b);

    45.2 can only be deducted if the associated revenue was included in the QLP's gross telecommunications services revenue;

    45.3 must not include any allocation of corporate overhead, charges for the cost of capital, or mark up for indirect costs;[10]

    45.4 for end-user equipment and other non-telecommunications goods specifically, can only be deducted if at the time when the associated revenue transaction occurred, the QLP had legal ownership of the goods; and

    45.5 for end-user equipment and other non-telecommunications goods specifically, cannot be the price charged by a party (eg, retailer) who had purchased the same good in a previous transaction from the QLP; if the QLP had repurchased the good from such a party, then the revenue from the first sale must be fully reversed in calculating gross telecommunications revenue, and the cost of the non-telecommunications good must be set at the original cost the QLP incurred in acquiring it as allowed under paragraphs 44.3.1 and 44.3.2.

Template 2: Payments made to other QLPs

46. Template 2 requires the QLP to disclose the total amount payable to other QLPs that is being deducted in accordance with these instructions for the 2021/22 financial year.

47. Amounts payable to each of the QLPs to whom payments are made must be disclosed separately. In doing so the name of each of the other QLPs must be selected from the pull-down menu in the column "Other QLPs".

48. Deductions are only permitted when the telecommunications services acquired were used by the QLP to provide telecommunications services to its own customers in New Zealand.

Template 3: Payments made to non-QLPs for services originally purchased from a QLP

49. The QLP can deduct payments made to a non-QLP for telecommunications services, but only if that non-QLP is acting as an intermediary for another QLP, ie, payments to

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[10] These accounting practices are specific to these instructions 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.

a non-QLP for the provision of telecommunications services that the non-QLP purchased from another QLP.

50. The intention of this exception is to deal with situations where a non-QLP is effectively acting as an intermediary between a liable upstream provider and a liable downstream provider of telecommunications services. This is likely to be rare and the Commission needs to be convinced that any deduction claimed is genuine.

51. Again, deductions are only permitted when the telecommunications services acquired were used by the QLP to provide telecommunications services to its own customers in New Zealand.

52. Template 3 requires the QLP to disclose details about payments claimed as a deduction for payments made to non-QLPs for services originally purchased from another QLP in the 2021/22 financial year.

53. To claim a deduction in Template 3, the QLP is required to provide:

    53.1 the name of the non-QLP(s) from whom it purchased the services;

    53.2 the QLP(s) the non-QLP(s) purchased the services from originally. The name of the QLP(s) must be selected from the pull-down menu;

    53.3 a description of the service(s) provided; and

    53.4 the value of transaction(s) and the allocated value of the payments deducted from the qualified revenue.

54. Any allocations are to be calculated in accordance with the principles in paragraph 13. 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).

55. All payments over $1 million disclosed in Template 3 must be supported by auditable documented evidence that is retained and available for disclosure to the Commission.

Template 4: Information for bodies corporate that earned qualified revenue and were connected to liable persons via section 79

56. This template requires the QLP to disclose whether or not it is connected to one or more bodies corporate that earned qualified revenue, and if so to provide further details.

57. For the purposes of the TDL provisions in the Act, s 79(1) requires us to treat two or more bodies corporate as one person if:

    57.1 one of them is a body corporate of which the others are subsidiaries; or

    57.2 all of them are subsidiaries of the same body corporate; or

57.3 all of them are associates of each other; or

57.4 one 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

57.5 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.

58. For the purposes of the TDL 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.[11]

59. If a body corporate is connected via s 79 to a QLP and that body corporate earned qualified revenue, then that revenue must be included in the qualified revenue disclosures irrespective of whether the connected body corporate is, or is not, itself a liable person.

Assessing any connected body corporate's qualified revenue

60. The QLP should consider if any of the provisions of s 79(1) apply and, if it is connected to another body corporate, whether such body corporate earns qualified revenue.

61. If a body corporate connected to a QLP via s 79(1) earns revenue from telecommunications services that is ancillary to providing other goods or services and that revenue is not material to its overall revenue, then that revenue is not qualified revenue. For example, if the body corporate is a hotel that earns some ancillary revenue from providing telecommunications services to guests.

62. If, for the QLP, there were no bodies corporate connected via s 79, or if such connected bodies corporate did not earn qualified revenue, then for Template 4, the QLP is only required to answer the question in section 4a (by answering 'no' in the white input cell). Otherwise the QLP must answer 'yes' in section 4a and complete section 4b.

[11] Section 79(2)

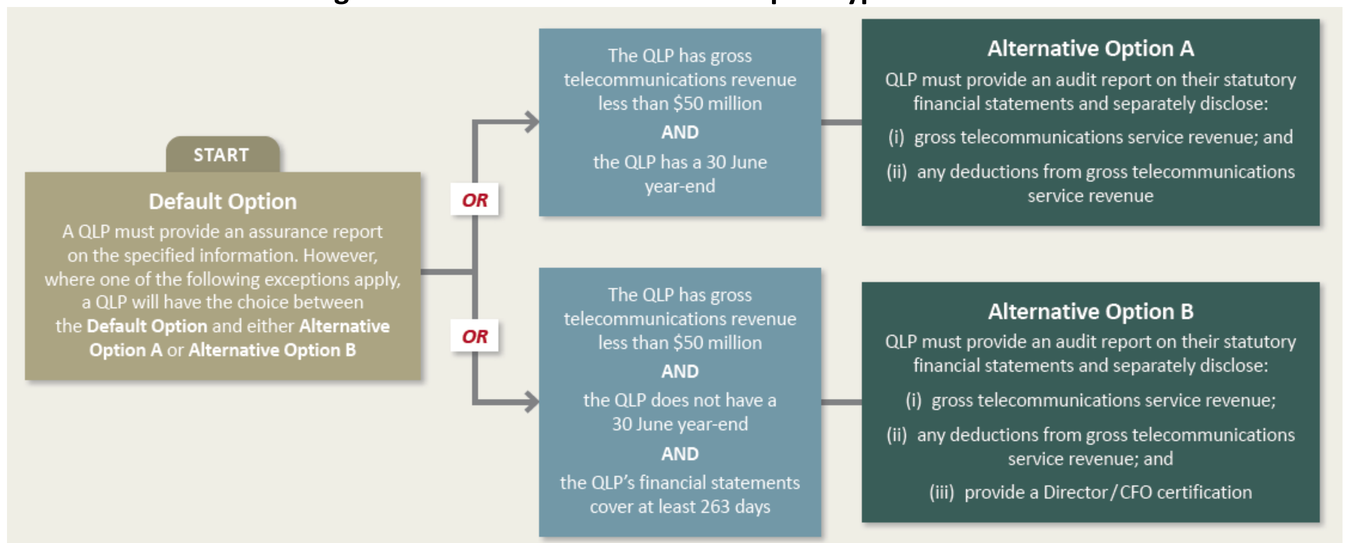
Assurance requirements

63. This section sets out the assurance that QLPs must provide to the Commission regarding the financial information they disclose, in accordance with s 83(1)(b).

64. QLPs must provide to the Commission an assurance report or an audit report by an independent qualified auditor (**auditor**) on the specified financial information.[12] Which type of report a QLP must provide is specified in the remainder of this section.

65. Figure 1 below provides an overview of the type of report a QLP must disclose to the Commission to meet the requirements of s 83(1)(b).

Figure 1: Overview of assurance report types



Auditor

66. For the purposes of these instructions, an auditor means, in relation to any information, a person who:

    66.1 is qualified for appointment as an auditor under the Companies Act 1993 (or successor legislation), or is an auditor appointed by the Auditor-General;

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

    66.3 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

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

[12] Section 83(1)(b) read with section (2) of the Act requires QLPs to provide the Commission with a report from a qualified audit and/or an alternative form of assurance as specified by the Commission.

Default option

67. A QLP will meet the requirements of s 83(1)(b) by providing us with a reasonable assurance report by an auditor on the specified information. The assurance report must:

    67.1 be addressed to the directors of the QLP and to the Commission as the intended users;

    67.2 state that it has been prepared in accordance with Standard on Assurance Engagements 3100 – Compliance Engagements (SAE 3100) and International Standard on Assurance Engagements 3000 (Revised) (ISAE (NZ) 3000 (Revised)), or International Standard on Auditing (New Zealand) 805 Special Considerations – Audits of Single Financial Statements and Specific Elements, Accounts or Items of A Financial Statement, or their successor standards; and

    67.3 state whether or not in the auditor's opinion the information provided by the QLP in Templates 1 to 4 is prepared in all material respects in accordance with these instructions.

Alternative option A

68. A QLP which meets both of the following circumstances will comply with the requirement in s 83(1)(b) by disclosing to the Commission either an assurance report (the "Default option", as specified above) or an auditor's report prepared for the QLP's statutory financial statements:

    68.1 the QLP had gross telecommunications services revenue of under $50,000,000 in the 2021/22 TDL year;[13]

    68.2 the QLP's statutory financial statements cover the full 2021/22 TDL year (ie, 1 July 2021 to 30 June 2022).

69. If, under this section, the QLP chooses to disclose an auditor's report prepared for the QLP's statutory financial statements, the following requirements must also be met:

    69.1 the QLP must make the auditor available to the Commission to answer questions relating to the specified information (if required);

    69.2 the statutory financial statements or the notes to the statutory financial statements must separately disclose:

        69.2.1 the QLP's gross telecommunications services revenue;[14] and

        69.2.2 any deduction from gross telecommunications services revenue that is disclosed in Template 1 and that exceed 1% of the QLP's gross telecommunications services revenue;[15]

    69.3 The auditor's report:

        69.3.1 must be prepared in accordance with International Standards on Auditing (New Zealand) or equivalent or successor standards; and

        69.3.2 must contain an audit opinion that states that the QLP's statutory financial statements present fairly, in all material respects, (or give a true and fair view of) the financial position of the QLP as at 30 June 2022, and (of) its financial performance and its cash flows for the year ending 30 June 2022 in accordance with the applicable financial framework (or an equivalent level of assurance).

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13 This $50,000,000 threshold also applies to QLPs who are connected to other QLPs via common ownership by the Crown, but who elect to complete separate TDL disclosures.

14 In the case of gross telecommunications services revenue that is earned by interconnected bodies corporate that prepare their own statutory financial statements, gross telecommunications services revenue may be disclosed in the statutory financial statements either as a single consolidated value or as bodies corporate specific values in the individual statutory financial statements.

15 This applies to total payments made to other QLPs; total payments made to non-QLPs for services initially provided by a QLP; free-to-air broadcasting services revenue; and total cost of non-telecommunications goods and services included in gross telecommunications services revenue.

Alternative option B

70. A QLP which meets both of the following circumstances will comply with the requirement in s 83(1)(b) by disclosing to the Commission either an assurance report (the "Default option", as specified above) or an auditor's report prepared for the QLP's statutory financial statements:

    70.1 the QLP had gross telecommunications services revenue of under $50,000,000 in the 2021/22 TDL year;[16]

    70.2 the QLP's statutory financial statements cover at least 263 days of the 2021/22 TDL year;[17]

71. If, under this section, the QLP chooses to disclose an auditor's report prepared for the QLP's statutory financial statements, the following requirements must also be met:

    71.1 the QLP must make the auditor available to the Commission to answer questions relating to the specified information (if required);

    71.2 the statutory financial statements or the notes to the statutory financial statements must separately disclose for either the TDL year ending 30 June 2022 or the reporting period covered by the QLP's statutory financial statements:

        71.2.1 the QLP's gross telecommunications services revenue;[18] and

        71.2.2 any deduction from gross telecommunications services revenue that is disclosed in Template 1 and that exceeds 1% of the QLP's gross telecommunications services revenue;[19]

    71.3 The auditor's report:

        71.3.1 must be prepared in accordance with International Standards on Auditing (New Zealand) or equivalent or successor standards; and

        71.3.2 must contain an audit opinion that states that the QLP's statutory financial statements present fairly, in all material respects, (or give a true and fair view of) the financial position of the QLP at the QLP's year end, and (of) its financial performance and its cash flows for the

[16] This $50,000,000 threshold also applies to QLPs who are connected to other QLPs via common ownership by the Crown, but who elect to complete separate TDL disclosures.

[17] This subclause includes 31 March 2022 year ends.

[18] In the case of gross telecommunications services revenue that is earned by interconnected bodies corporate that prepare their own statutory financial statements, gross telecommunications services revenue may be disclosed in the statutory financial statements either as a single consolidated value or as bodies corporate specific values in the individual statutory financial statements.

[19] This applies to total payments made to other QLPs; total payments made to non-QLPs for services initially provided by a QLP; free-to-air broadcasting services revenue; and total cost of non-telecommunications goods and services included in gross telecommunications services revenue.

relevant financial year in accordance with the applicable financial framework (or an equivalent level of assurance).

71.4 The QLP must provide a certification in respect of the QLP's specified information and audit report that:

71.4.1 is signed by a director or CFO (or equivalent senior financial officer) of the QLP; and

71.4.2 includes the following statement:

I **[insert full name]** being **[insert role]** of **[name of QLP]** certify that having made all reasonable enquiry, to the best of my knowledge, the attached specified information disclosed in Templates 1 to 4 and the attached audit report in all material respects complies with section 83 of the Telecommunication Act 2001 and the requirements specified by the Commerce Commission for the 2021/22 TDL year.

Attachment A: Qualified revenue status of common types of revenue

72. This section provides some guidance on the treatment of common types of revenue but if stakeholders have further questions they can contact market.regulation@comcom.govt.nz (CC'ing jordan.hamilton@comcom.govt.nz).

73. See Attachment B for further information on the treatment of broadcasting related revenue streams.

Calculation of gross telecommunications revenue

74. The calculation of gross telecommunications revenue deducts non-telecommunications and non-qualifying telecommunications revenue from operating revenue. The table below provides examples of non-telecommunications and non-qualifying telecommunications revenue.

#	Revenue stream	Rationale	Note
1	Mobile phone handsets revenue 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.	
2	Mobile phone handsets revenue 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. The revenue earned from these bundles should be allocated between non-telecommunications service revenue and gross telecommunications service revenue in accordance with NZ IFRS 15.	If QLPs are unable to separately identify the revenue streams they may instead deduct the cost of the handsets from gross telecommunications service revenue – see #14.
3	Services provided in other countries	The criteria for qualified revenue as defined in section 5 of the Act require telecommunications services to be provided by means of a PTN operated in New Zealand. These services fall outside the definition of qualified revenue.	
4	Customer premises equipment[20]	Revenue from selling customer premises equipment is revenue from selling goods that are not considered to be related to a PTN.	
5	Early termination charges (non-telecommunications revenue)	Early termination charges revenue derived from a bundle that includes non-telecommunications revenue (eg, end-user equipment), which was sold by the QLP to the customer paying the early termination charge and the cost of the equipment is not deducted (or has not been deducted in a previous TDL year) from gross telecommunications	Early termination charges derived from telecommunications services is qualified revenue – see #25.

[20] Does not include equipment that is located inside an end-user's premises, but which forms part of a QLP's PTN, such as optical network terminals (ONT).

#	Revenue stream	Rationale	Note
		revenue, is not qualified revenue (to the extent it relates to the non-telecommunications equipment). This recognises that it relates to non-telecommunications equipment for which the cost had not been deducted when calculating qualified revenue.	
6	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 QLP to represent their true revenue totals.	
7	Bundles of telecommunication services with non-telecommunications goods and services other than those for which these instructions allow deductions	The revenue earned from these bundles of telecommunication services with non-telecommunications goods and services (for which these instructions do not provide specific guidance) must be allocated between non-telecommunications services revenue and gross telecommunications services revenue in accordance with NZ IFRS 15. This includes allocating any bundle discounts based on the relative stand-alone selling prices as prescribed by NZ IFRS 15 paragraphs 81 to 83. This approach seeks to allocate bundled revenue and discounts proportionate to their unbundled or stand-alone prices as prescribed in a recent accounting standard.	
8	Co-sited office and retail space, or hosting commercial data centres	Revenue earned from renting office and retail space in a premise that is also used for providing telecommunication services is not captured. Revenue from operating commercial data centres is not captured provided that it is operated separate from any PTN environment, sharing the same premises. For example, revenue from operating a server farm that is on the distribution side of a MDF (main distribution frame) or ODF (optical distribution frame) of a central office building is not qualified revenue. This recognises that premises may be used for both telecommunication and non-telecommunication purposes.	Revenue earned from co-location on cellular transmission sites or equipment in the PTN environment is qualified revenue – see #27.
9	Ancillary revenue, earned by non-liable persons that are bodies corporate connected to a QLP via section 79 as an ancillary part of providing non-telecommunications goods and services	The Commission considers that such revenue is not qualified revenue. This is where a non-liable person body corporate provides telecommunications services as an ancillary part of providing non-telecommunications goods or services, and the revenues earned from that service are not material to their overall revenue.	

#	Revenue stream	Rationale	Note
10	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 a PTN. Therefore, receipts from capital contributions made towards assets which develop the PTN are not qualified revenue (and can be deducted) if the QLP 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 – see #36.
11	A satellite operator owned and operated by a party outside New Zealand with no uplink and downlink facilities in New Zealand	Only revenue earned from telecommunications services provided in New Zealand by means that rely primarily on the existence of a PTN in New Zealand meets the definition of qualified revenue. A satellite operator, owned and operated by a party outside of New Zealand, which facilitates the transmission of signals for receipt by end-users in New Zealand, is not providing a service in New Zealand if they do not operate uplink and downlink facilities in New Zealand.	Satellite revenues earned via New Zealand based uplink and downlink facilities are qualified revenue - see #23

Legitimate deductions

75. The table below outlines the main deductions that can be made from gross telecommunications revenue.

	Revenue stream	Rationale	Note
12	Expenditure on purchasing telecommunications services from other QLPs	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 QLP providing the service.	See Template 2
13	Expenditure on purchasing telecommunications services from a non-QLP that on-sells those services it purchased from another QLP	The Commission considers that this situation is analogous to purchasing services from another QLP directly. QLPs can claim this expenditure as a deduction but they will need to provide detailed information to support these claims.	See Template 3

14	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 QLPs to deduct the cost of handsets which were provided as part of a bundle which includes telecommunication services.	This deduction is only to be used in situations where the QLP cannot reasonably identify the separate revenue streams in the calculation of gross telecommunications revenue– see #2.

Qualified revenue

76. The table below outlines revenue streams that must be included in qualified revenue.

	Revenue stream	Rationale	Note
15	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.	
16	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.	
17	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.	
18	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.	
19	Mobile voice and SMS – a PTN includes that part of a mobile network that facilitates voice calls and SMS	The Commission considers that this revenue stream is a telecommunications service as defined in the Act and is therefore qualified revenue.	
20	Toll by-pass/ direct dial calls provided by the QLP	The Commission considers that this revenue stream is a telecommunications service as defined in the Act and is therefore qualified revenue.	

	Revenue stream	Rationale	Note
21	Mobile radio services (campus networks)	Revenue derived from providing telecommunications services by means of a PTN is qualified revenue, irrespective of how a QLP's client uses the services. Therefore, because the mobile radio network fits within the definition of a PTN the fact that a QLP's client uses it for a private purpose is not relevant to its qualified revenue status.	
22	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.	
23	Satellite revenues (uplink and downlink)	Only revenue earned from telecommunication services located in New Zealand via a PTN meet the definition of qualified revenue. In relation to satellite transmission to New Zealand end-users, the service provided in New Zealand is the service enabled by New Zealand-based uplink and downlink facilities. It does not include the revenue of satellite operators who facilitate the transmission of a New Zealand PTN where that facilitation occurs outside of New Zealand e.g., in space.	A satellite operator positioned outside New Zealand with no uplink and downlink facilities in New Zealand is not earning qualified revenue - see #11
24	Dumb caches, 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.	
25	Early termination charges (telecommunications services revenue)	Early termination charges revenue derived from services or bundles of services that are all telecommunications services is qualified revenue. Early termination charges revenue derived from a bundle that includes end-user equipment which was sold by the QLP to the customer paying the early termination charge and the cost of the equipment is deducted (or had been deducted in a previous TDL year) from gross telecommunications services revenue is qualified revenue. This avoids the problem of a QLP deducting both the cost of equipment while not recognising the matching revenue when calculating qualified revenue.	Early termination charges derived from non-telecommunications revenue is excluded from gross telecommunications revenue– see #5.
26	Porting charges (also known as plan change fees)	The Commission considers that this is revenue from the day to day operations of a PTN and is therefore qualified revenue. As these charges are qualified revenue, QLPs can deduct the porting charges they pay to other QLPs from their gross telecommunication services when calculating their qualified revenue.	
27	Co-location	Revenue earned from co-location on cellular transmission sites (as the term is used in Schedule 1 of the Act) or co-location of equipment in the PTN environment of the central office is captured as it is earned from the use of those facilities as part of a PTN. For example, revenue from the co-location of telecommunications equipment that is located in a secured area of the PTN facilities is qualified revenue.	Revenue from co-sited office and retail space, or hosting commercial data centres is excluded from telecommunications revenue – see #8

	Revenue stream	Rationale	Note
28	Paper bills	Revenue earned from charging customers for paper bills, statements, and invoices that relate to the purchase of telecommunications services is qualified revenue. For example, a surcharge for receiving paper bills via the post (rather than receiving emails or using online account management) is qualified revenue.	
29	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.	
30	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.	
31	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.	
32	Mobile broadband services	Revenue from telecommunications services using a PTN is captured – PTN includes PDNs and this service is captured under the PDN definition.	
33	Business data services	Revenue from business data telecommunications services using a PTN is captured.	
34	Telecommunications services revenue earned by non-liable persons that are bodies corporate connected to a QLP via section 79 in conjunction with providing telecommunications goods	The Commission considers that such revenue is qualified revenue. This is where a non-liable person body corporate provides telecommunications services in conjunction with or as an ancillary part of providing telecommunications goods, For example, when a consumer electronics retailer sells a mobile handset in a bundle with mobile calling minutes.	
35	Telecommunications services revenue earned by a QLP from providing telecommunications services to a non-liable person that is a body corporate connected to a QLP via section 79 (or another related party) when the non-liable person does not report downstream qualified revenue	The Commission considers that such revenue is qualified revenue and should be valued in accordance with NZ GAAP. This is where a QLP provides telecommunication services to a non-liable person that is a body corporate connected to a QLP via section 79 (or another related party) and that person consumes the services itself, uses it to earn ancillary revenue as part of providing non-telecommunications goods and services, or earns an immaterial amount of downstream telecommunication services revenue (for example, the downstream revenue is earned overseas as part of a mobile bundle that includes international calling). This seeks to ensure that telecommunications services revenue resulting from related party transactions is	For a QLP that completes the row ‘statutory operating revenue as per the relevant financial statements’ of Template 1 using group consolidated operating revenue, this may require reducing the value of the deduction for non-telecommunications services revenue. This adjustment would equal the

	Revenue stream	Rationale	Note
		included in gross telecommunication revenue, while avoiding double counting of revenue streams.	value of the QLP's telecommunicates services revenue that was eliminated on consolidation and for which the non-liable person does not report downstream qualified revenue.
36	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 a PTN. Therefore, the Commission considers revenue from operational contributions for building, maintaining and renewing PTN infrastructure, recorded by the QLP accordingly under NZ GAAP is qualified revenue. This because it is part of the telecommunications service provided by means of a PTN.	Receipts from capital contributions are excluded from gross telecommunications revenue – see #10.

Further guidance

Pricing reviews by the Commission

77. When assessing revenues received and payments made in relation to a telecommunications service that is currently subject to a pricing review by the Commission the values for qualified revenue received and for deductions for payments to other QLPs, should reflect the prices charged during the TDL year. For example, the invoiced amounts recognised under accrual based accounting and reported as statutory operating revenue (or as operating expenses).

Indefeasible right to use

78. The Commission considers that QLPs may not deduct the cost of purchasing an IRU. For example, an IRU to use a segment of (dark) fibre for a specified period when under NZ GAAP the IRU should be treated as an asset.

79. This reflects that IRUs are typically treated as non-current assets that are depreciated over time, and not as operating expenses.

Customer loyalty programmes

80. The treatment of payments made to third party operators of customer loyalty programmes should be consistent with how a QLP's gross telecommunications services revenue is calculated and avoid double deductions.

81. The accounting profession has issued an interpretation statement on the treatment of loyalty programmes.[21] For companies issuing points in a program run by a third party the statutory operating revenue should typically be net of the amount paid to the third party for providing the loyalty points.

82. The double deduction of payments to third party operators of loyalty programmes is not allowed (eg, when the consideration has been netted off in calculating operating revenue as per the relevant statutory financial statements, it cannot also be deducted as the cost of bundled non-telecommunications goods and services).

[21] NZ IFRIC 13 New Zealand Equivalent to IFRIC Interpretation 13 Customer loyalty programmes and NZ IFRS 15.

Attachment B: Treatment of broadcasting related revenue streams

Guidance on common broadcasting revenue streams

On-demand content

83. The Commission considers that both music on-demand and 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.

84. As such content revenue is non-telecommunications revenue and conveyance revenue is qualified revenue.

85. If on-demand content is sold as part of a bundle with telecommunications services QLPs should allocate the revenue in accordance with NZ IFRS 15.[22]

Broadcasting subscription revenue

86. Subscription revenue is earned from both the transmission of the content and the content of the broadcast. The revenue associated with the transmission of the content is telecommunications revenue and the revenue associated with the content element is non-telecommunications revenue.

87. If a QLP is unable to allocate subscription revenue between the content and the transmission elements using IFRS 15 then they may instead use the apportionment methodology outlined below.

Table 1: Apportionment methodology for broadcasting subscription revenue[23]

Step	Item	Value	Formula
a	Broadcasting subscription revenue	$a	
b	Normalised EBITDA	$b	
c	Normalised EBITDA / Broadcasting subscription revenue	c%	c% = b / a
d	Transmission costs[24]	$d	
e	**Broadcasting subscription revenue – Transmission element**	$e	e = d x (1 – c%)
f	**Broadcasting subscription revenue – Content element**	**$f**	f = a - e

[22] See #7 from *Attachment A: Qualified revenue status of common types of revenue*.

[23] This apportionment methodology should only be used in instances where content and transmission are not sold separately and individual revenue items cannot be obtained.

[24] This should include all transmission costs, regardless of the QLP status of the supplier.

88. The apportionment methodology outlined in Table 1 above and described further below allows QLPs to calculate the “content element” of their broadcasting subscription revenue. The QLP then uses this content element value as a “non-telecommunications service revenue” deduction from their operating revenue in Template 1 of their information disclosure.

89. The QLP must retain records of this calculation and name the line item “Broadcasting subscription revenue – content element” in their Template 1 disclosure.

Step (a)

90. The QLP should include in step (a) all broadcasting subscription revenue that needs apportioning between transmission and content for the 2021/22 TDL year.

91. For the avoidance of doubt revenue received from residential subscribers, corporate subscribers and resale partners should be treated the same.

Step (b)

92. In step (b), the QLP uses their normalised EBITDA from their 2021/22 financial statements.

93. For the purpose of these instructions normalised EBITDA means EBITDA which has been adjusted (where necessary) to exclude one-off items such as impairment of assets.

Step (c)

94. In step (c), the QLP divides their normalised EBITDA by their broadcasting subscription revenue.

Step (d)

95. The QLP should include in step (d) all broadcasting transmission costs incurred whilst earning the revenue listed in step (a).

96. For the purpose of step (d) broadcasting transmission costs include all costs that are attributable to broadcasting transmission such as transmission and linking costs, costs of service and monitoring equipment at subscribers’ premises and installation costs.

Step (e)

97. In step (e) the transmission element of the QLP’s broadcasting subscription revenue is calculated by multiplying transmissions costs (step d) by one minus step (c).

Step (f)

98. In step (f) the QLP calculates the content element of their broadcasting subscription revenue by deducting the transmission element (step e) from their broadcasting subscription revenue (step a).

Advertising and sponsorship revenue

99. Subject to s 85A(1)(a), all revenue received in relation to broadcast transmission is telecommunications revenue. This includes advertising and sponsorship revenue that is received in relation to broadcasting transmission.

100. As with broadcasting subscription revenue, it is likely that advertising and sponsorship revenue is received in relation to broadcasting transmission and the content that is being transmitted. Only the revenue received in relation to broadcasting transmission is telecommunications revenue.

101. QLPs should use the apportionment methodology described in broadcasting subscription revenue section above to apportion revenue between the content and transmission elements. This will require the QLP to use total advertising, and sponsorship revenue in step (a) to calculate a deduction for “Advertising and sponsorship revenue – content element” in Template 1 of their information disclosure.

Colocation

102. Revenue earned from co-location on broadcasting transmission sites or co-location of equipment in the PTN environment is captured and considered telecommunications revenue as it is earned from the use of those facilities as part of a PTN.

103. This is equivalent to the treatment of co-location for other telecommunication services.

End-user equipment

104. Revenue from selling or renting customer premises equipment is revenue from goods that are not considered to be related to a PTN and therefore not telecommunications revenue. For example, revenue from the sale of Freeview receivers is not qualified revenue, as a Freeview receiver is on the private side of the network demarcation point and therefore not a component of a PTN.

Attachment C: List of 2021/22 TDL QLPs

105. Tables 1 and 2 below list the companies (or groups of companies) that, based on the information before us, we consider are liable for the 2021/22 TDL, ie, are QLPs. However, it is the responsibility of businesses involved in providing telecommunications services to determine whether they are QLPs and whether they must comply with the requirements under subpart 2 of Part 3 of the Telecommunications Act.

106. QLPs are required to provide the Commission with specified information and assurance in accordance with s 83 of the Act.

107. The list of QLPs for the 2021/22 TDL year is based on information provided to date, the list is not final and may be reviewed and updated if required.[25]

Listing the QLPs

108. The Commission has identified two categories of QLPs:

    108.1 *QLP groups* – groups of connected bodies corporate that are treated as a single QLP by virtue of s 79 of the Act (identified in Table 1); and

    108.2 *Independent QLPs* – companies without connected bodies corporate (identified in Table 2).

Table 1: QLPs that include interconnected bodies corporate under s 79 of the Act

QLP Group
Chorus group: • Chorus Ltd; and • Chorus New Zealand Ltd.
Crown companies group: • Kordia Ltd; • Transpower New Zealand Ltd; • Northpower Fibre Ltd; • Enable Networks Ltd; • Enable Services Ltd; and • Tuatahi First Fibre Ltd.[26]
Devoli group: • Devoli Ltd; • Layer 2 Co Ltd; and • Mynx Internet Ltd.
Infratil group: • Vodafone New Zealand Ltd; • Vodafone Next Generation Services Ltd; and

[25] It is important to note that parties must self-report that they are QLPs no later than 60 working days before the end of the TDL year and provide financial statements for the preceding TDL year, along with any other information we require to verify that they are a QLP. We can also, at any time, seek financial or other information from a party to assist us to verify whether or not they are a QLP.

[26] UltraFast Fibre Limited changed its name to Tuatahi First Fibre Limited on 1 November 2021.

• Bay City Communications Ltd.
Inspire Net group: • Inspire Net Ltd; and • Inspired Networks Ltd.
Mercury NZ group: • Mercury NZ Ltd[27]; and • Now New Zealand Ltd.
Plan B group: • Plan B Ltd; • Internet Company of New Zealand Ltd; and • Solarix Holdings Ltd.
Spark group: • Spark New Zealand Ltd; • Spark New Zealand Trading Ltd; and • Digital Island Ltd.
Todd Corporation group: • Nova Energy Ltd; • Total Consumer Services Ltd (MegaTEL); and • Todd Digital Ltd.
Two Degrees group: • Two Degrees Mobile Ltd; • Two Degrees Networks Ltd; and • Two Degrees New Zealand Ltd. • Vocus (New Zealand) Ltd; • Vocus Group NZ Ltd; • M2 NZ Ltd; • CallPlus Ltd; • CallPlus Services Ltd; • 2Talk Ltd; • Flip Services Ltd; • Orcon Ltd; and • NZ Fibre Communications Ltd (Stuff Fibre).
Vital group: • Vital Ltd; and • Vital Data Ltd.

Table 2: Independent QLPs

Independent QLP
• **Cello Group Ltd.**
• **Feenix Communications Ltd.**
• **Lightwire Ltd.**

[27] Mercury NZ Ltd is also a part of the Crown companies' group.

- **MyRepublic Ltd.**
- **Sky Network Television Ltd.**
- **Vector Communications Ltd.**
- **Voyager Internet Ltd.**

Attachment D: Relevant statutory references

Relevant extracts from the Telecommunications Act 2001

Section 5: Interpretation

broadcasting has the same meaning as in section 2(1) of the Broadcasting Act 1989

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

telecommunication means the conveyance by electromagnetic means from one device to another of any encrypted or non-encrypted sign, signal, impulse, writing, image, sound, instruction, information, or intelligence of any nature, whether for the information of any person using the device or not

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) one 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) one 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.

(3) 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.

(4) If any of the circumstances described in subsection (1)(a) to (e) apply to 2 or more bodies corporate for part of a year, those bodies corporate must be treated as 1 person in respect of that part of the year to which the relevant circumstance applies.

Section 80: Interpretation

In this subpart, unless the context otherwise requires,—

financial reporting standard has the same meaning as in section 5(1) of the Financial Reporting Act 2013

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.

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) either—

(i) a report on the information provided by the liable person under subsection (1)(a), prepared by a qualified auditor in accordance with an auditing and assurance standard issued under section 12 of the Financial Reporting Act 2013, as specified by the Commission; or

(ii) an alternative form of assurance, as specified by the Commission, that the Commission is satisfied will enable it to make a determination.

Section 85A: Certain revenue from broadcasting services

(1) For the purposes of this subpart, the amount of a liable person's qualified revenue must exclude the following amounts (as determined in accordance with any specifications set by the Commission):

(a) any amount of revenue that is received by a liable person in relation to a broadcasting service that is supplied to end-users free of charge (for example, revenue derived from a free-to-air radio or television service):

(b) any amount of revenue that is received before 1 July 2021 by a liable person in relation to any other broadcasting service.

(2) The specifications set by the Commission may (without limitation) provide for the apportionment of any amount of revenue if the amount is received in connection with a service referred to in subsection (1) and 1 or more other services.

Schedule 3B: Annual telecommunications development levy

Financial year	**Telecommunications development levy ($)**
2010/11	50 million
2011/12	50 million
2012/13	50 million
2013/14	50 million
2014/15	50 million
2015/16	50 million
2016/17	50 million
2017/18	50 million
2018/19	50 million
2019/20	10 million
2020/21 and each subsequent financial year	the inflation-adjusted specified telecommunications development levy

The inflation-adjusted specified telecommunications development levy must be calculated in accordance with the following formula:

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

where—

a is the CPI index number for the last quarter of the financial year preceding the relevant financial year

b is the CPI index number for the last quarter of the financial year that is 1 year before the financial year preceding the relevant financial year

c is the telecommunications development levy for the financial year preceding the relevant financial year.

Relevant extracts from the Broadcasting Act 1989

Section 2(1): Interpretation

broadcasting means any transmission of programmes, whether or not encrypted, by radio waves or other means of telecommunication for reception by the public by means of broadcasting receiving apparatus but does not include any such transmission of programmes —

(a) made on the demand of a particular person for reception only by that person; or
(b) made solely for performance or display in a public place