

LFC Information Disclosure 2012

Reasons paper

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Introduction

1. This paper sets out the reasons behind the Commerce Commission's (**Commission**) determination of the information disclosure requirements applicable to Local Fibre Companies with Undertakings (**LFCs**).
2. We have prepared two determinations setting out these requirements:
 - A common set of requirements for Enable Networks Limited (Enable), Ultrafast Fibre Limited (Ultrafast) and Whangarei Local Fibre Company Limited (WLFC). This includes a set of report schedules which each of these LFC must complete, and definitions of key terms.
 - A separate set of requirements for Chorus Limited (Chorus). This reflects the requirements for the other LFCs, amended to take account of factors specific to Chorus.
3. The LFCs are required to provide the Commission with financial and non-financial information about their LFC fibre network and services.
4. The requirements incorporate a phased implementation approach under which the LFCs provide increasingly detailed information over the first three years. This will reduce the LFCs' compliance costs in 2011/12 and 2012/13, while providing the Commission with more robust information from 2012/13 onwards.
5. These determinations have been prepared after considering feedback on our 2011 discussion paper, 2012 technical consultation, and a workshop with the LFCs, including Chorus.
6. The LFCs are Chorus¹ and the three companies created as a result of agreements with the New Zealand Government for building the ultra fast broadband network which will cover most of New Zealand. The other LFCs are Enable,² Ultrafast³ and WLFC.⁴ This reasons paper covers all four LFCs.

¹ Chorus was formerly part of Telecom, but was structurally separated from Telecom into a separate company in late 2011.

² Enable Networks Limited is the LFC with Crown Fibre and Enable Services Limited as partners.

³ Ultrafast Fibre Limited has Crown Fibre and Waikato Network Limited as partners.

⁴ Whangarei Local Fibre Company has Crown Fibre and Northpower Limited as partners. It is often referred to as Northpower Fibre.

Background and Approach

Background

7. Under the Telecommunications Act 2001 (**Act**), the Commission must require LFCs to prepare and disclose information regarding the “costs and characteristics” of LFC fibre networks and services provided over those networks.⁵
8. The purpose of LFC information disclosure is to –⁶

Promote competition in telecommunications markets for the long-term benefit of end-users of telecommunications services in New Zealand by requiring LFCs who have given undertakings in relation to certain services to provide reliable and timely information to the Commission to enable it to record over time the cost and characteristics of LFC fibre networks to inform the Commission’s statutory processes and determinations.
9. The LFCs are not required to publish the information which they provide to the Commission. However, the Commission may publish summaries of the information prepared by LFCs.⁷

Consultation process

10. On 3 October 2011, the Commission issued a discussion paper which outlined its proposed approach to LFC information disclosure.
 - The paper outlined an approach which ensured the Commission had sufficient information to fulfil its statutory duties while minimising the compliance costs imposed on the LFCs.
 - The paper and the eleven submissions received can be found on the Commission’s website.⁸
 - LFCs supported the Commission’s approach in their submissions, although they did raise issues on the specifics of its application.
11. On 23 February 2012, the Commission held a workshop in Wellington.
 - All LFCs were represented and provided further feedback on the discussion paper.
 - Feedback was incorporated into the current set of schedules.
12. The Commission published copies of the proposed schedules in its 24 April 2012 technical consultation paper.

⁵ Act, s156AU(1).

⁶ Act, s156AT.

⁷ Act, s156AW.

⁸ <http://www.comcom.govt.nz/information-disclosure-2/>

Approach

13. The Commission has applied the following approach in developing the information disclosure requirements for LFCs:
- Minimise compliance costs to the extent practical. Such measures include:
 - Aligning the Commission information disclosure requirements with Crown Fibre Holdings (**CFH**) requirements. CFH, will as part of its oversight of the LFCs, impose certain reporting obligations that may overlap with the Commission's requirements.⁹ The Commission has aligned its requirements to allow LFCs to produce information for the Commission using the same data as that used for reporting to CFH.
 - Utilising data an LFC is likely to have for other purposes.
 - Focus on key information. Routine information disclosure will focus on the information that is most likely to be help the Commission fulfil its responsibilities..
 - Use standard layouts. The Commission has developed standard report layouts (schedules) which all LFCs should use when providing information to the Commission. Standard reports reduce the risk of non-compliance by LFCs by making it easier for LFCs to check that all required information is provided. Attachment 1 lists these reports.
 - Ensure consistency across LFCs. Information disclosure should be consistent across the LFCs and reporting periods. This will enable the Commission to meaningfully compare LFCs, monitor industry trends, and publish summaries and reports for the benefit of industry and the public. Accordingly, the Commission has defined many of the line items which will be used in the standard report layouts.
 - Adopt regulatory reporting principles to provide guidance as to the methodologies that LFCs should apply. This will avoid the cost of developing a comprehensive set of detailed requirements, and in practice tends to promote reliability and consistency. The regulatory reporting principles are:
 - *Objectivity*: LFCs should apply reporting processes which are objectively justifiable and reasonable. These processes, any changes to them, and any supporting assumptions or data, should be documented such that an informed reader can easily judge their reasonableness.
 - *Consistent treatment*: LFCs should treat similar types of information consistently, both within a reporting period and from year to year.

⁹ CFH is likely to require a higher level of reporting from Enable, Ultrafast, and WLFC since the Crown will own shares in these LFCs.

- *Causality*: LFCs should attribute all revenue, expenses, and assets based on the activities, which caused the item to be incurred.
- *Data Retention*: LFCs should retain copies of all data, and documentation detailing the processes related to the information disclosed for seven years. This is consistent with the data retention requirements in New Zealand for taxation and under the Companies Act.
- *Use of NZ GAAP*:¹⁰ Except where the requirements otherwise provide, LFCs should prepare all financial information disclosure in accordance with NZ GAAP.

Revisions for 2013

14. The Commission intends to review the determinations in 2013 to address any issues identified during the first year of information disclosure.
15. This reflects the iterative nature of implementing information disclosure, and allows for lessons learn in 2012 to be incorporated into the long term requirements. This also provides an opportunity to revise the requirements to reflect other factors which may emerge as the LFCs and the ultrafast broadband market mature.¹¹
16. The Commission considers that it is still important to publish long term requirements in 2012. This provides the LFCs with early guidance as to how to develop their reporting and operational support systems to meet regulatory requirements and thus minimise the need for revisions to these systems.

Separate requirements for Chorus

17. The Commission has issued two determinations, of which one is specific to Chorus. The Chorus determination is based on the determination that applies to the other LFCs but includes:
 - no requirement to separately disclose related party transactions. Chorus will perform, in-house, many activities which for the other LFCs are, or will be, related party transactions. However, Chorus will need to implement and maintain processes to attribute costs and assets which are shared between its LFC fibre network and its other networks.
 - separate provisions relating to Chorus' use of existing assets to provide fibre services, including in areas where other LFCs will build competing fibre

¹⁰ New Zealand Generally Accepted Accounting Practice (NZ GAAP) prescribes principles applicable to financial reporting and is intended to meet the purposes of statutory reporting. However it does not always align with or address regulatory purposes and hence there are situations where the Commission needs to specify its own requirements.

¹¹ Possible factors include improved understanding of the capability of the LFCs' reporting and operational support systems as they are implemented, finalisation of CFH's reporting requirements, developments in the marketing and pricing of relevant services, and alignment with other regulatory requirements.

networks. This is covered by Chorus' ongoing requirement to provide the Commission with information on their existing assets.

- dates which recognise that Chorus was structurally separated from Telecom in late 2011. Chorus' first reporting period is 1 December 2011 to 30 June 2012. 30 November 2011 is the cut off date for existing assets.

Draft view

18. The Commission proposed issuing a determination specific to Chorus in its 2012 technical consultation.¹²

Submissions

19. Chorus supported the Commission's approach.¹³ Enable agreed with separate requirements for Chorus.¹⁴ However, Enable submitted that Chorus should report on related party transactions that relate to its LFC fibre network and on any transactions with other LFCs.
20. WLFC noted that there are differences between Chorus and the other LFCs.¹⁵ However, Ultrafast suggested a single document for Chorus and LFCs for the final determination to allow greater transparency in the different reporting requirements for Chorus and the LFCs.¹⁶

Commission decision

21. The Commission considers that Chorus is sufficiently different from the other LFCs that it should have some specific requirements and that these differences are best reflected in a separate determination.
 - Chorus' relationship with CFH differs to that of the other LFCs. In the initial years CFH will hold the majority of shares in the smaller LFCs. For Chorus, CFH will have both a debt and an equity investment. Under the agreement between Chorus and CFH, Chorus has different reporting obligations to CFH than the other LFCs.
 - Chorus is larger than the other LFCs, and will provide UFB coverage in a larger number of candidate areas, and coverage in areas outside of the UFB agreements.

¹² Commerce Commission, *Consultation on Draft LFC Information Disclosure Determinations 2012*, 24 April 2012, p7, paras 26–29.

¹³ Chorus, *Submission on the Commission's Draft Chorus Information Disclosure Determination 2012*, 21 May 2012, p13, para 49.

¹⁴ Enable Networks, *Submission on the Commerce Commission's "Draft LFC Information Disclosure Determination 2012" and "Draft Chorus Information Disclosure Determination 2012"*, 21 May 2012, p2, para 2.1.

¹⁵ Whangarei Local Fibre Company and Northpower Limited, *Submission on the Commerce Commission's "Information Disclosure for Local Fibre Companies Consultation Paper"*, 7 December 2011, para 7.

¹⁶ Ultrafast Fibre Limited, *Submission on Draft LFC Information Disclosure Determinations 2012*, 18 May 2012, para 6.

- Chorus also provides a wider range of telecommunications services and has many existing assets. The latter factors result in Chorus having a different cost structure to the other LFCs.

Fibre Network Costs and Characteristics

Introduction

22. The purpose of information disclosure¹⁷ is to provide the Commission with sufficient information to record costs and characteristics of fibre networks as they change over time. This information is intended to assist the Commission in performing its functions under the Act, and in addition the Commission may publish reports on trends and developments relating to LFCs' networks.
23. The Commission's determination requires LFCs to provide financial and non-financial information on costs and characteristics of their fibre networks and services. The Commission may use the information to understand issues such as the overall profitability of fibre networks, the costs of rolling out and operating a fibre network, pricing behaviour, service level performance, and the long-term viability of the fibre networks. Attachment 1 provides a summary of the required information in each schedule.
24. The Commission's determination also requires that LFCs record and retain source data for seven years and have it available if requested by the Commission.

Overview

25. In determining the scope of the information disclosure requirements, the Commission has taken into consideration industry feedback as well as the regulatory reporting principles (referred to above).
26. The Commission expects that the LFCs will have systems that record information about their costs and characteristics and understands from the submissions that the LFCs have commenced work on developing these systems. This information will be used for operational, managerial, taxation and statutory reporting purposes.
27. The Commission also expects that LFCs will document their internal processes to ensure that they comply with their undertakings to the Crown.
28. Enable, Ultrafast, and WLFC are required to provide regular reports on financial and non-financial information to CFH. Chorus will also provide some information to CFH.
29. As a result of the above, the Commission considers that the LFCs should be capable of providing most of the information about their costs and characteristics, and compliance with the undertakings, largely using information from their existing or planned reporting systems (eg for providing reports to CFH).

¹⁷ Section 156 AT states that:

The purpose of this subpart is to promote competition in telecommunications markets for the long-term benefit of end-users of telecommunications services in New Zealand by requiring LFCs who have given undertakings in relation to certain services to provide reliable and timely information to the Commission to enable it to record over time the costs and characteristics of LFC fibre networks to inform the Commission's statutory processes and determinations.

30. Further details on how the Commission considered earlier industry feedback can be found in the Commission's technical consultation paper.¹⁸
31. The remainder of this section discusses the following aspects of the schedule:
- phasing in of information disclosure requirements
 - timing of annual disclosure
 - reporting by candidate area
 - reporting by retail service provider
 - allocations
 - existing assets.

Phasing in of requirements

Commission decision

32. The Commission will phase in the information disclosure requirements over three years. The LFCs will have to provide only a reduced number of reports for the disclosure year ending June 2012, with fuller disclosure in later disclosure years. The initial information disclosure is based on financial information prepared for CFH or statutory purposes, and rollout coverage.
33. The Commission considers that it is important for LFCs to provide key information in 2012 for several reasons:
- It gives LFCs an opportunity to improve their processes based on experience gained in 2012, and to have informed discussions with the Commission on potential revisions to the requirements. These revisions should improve the quality of information in later periods, when up-take may be high.
 - Explicitly requiring information disclosure for 2011/12 will help ensure that the LFCs make initial steps towards long term compliance, and provide the Commission with base data in case it is needed for other purposes.
 - It ensures the Commission has information about the key costs and characteristics of LFCs. This will support future decision making in general, and the trend analysis in the Commission's summary report.
 - It specifically ensures that the LFC's start-up costs are recorded, and hence can be reflected in the Commission's future decisions and recommendations.
 - The Act requires the Commission to collect information about the costs and characteristics of LFCs annually.

¹⁸ Commerce Commission, *Consultation on Draft LFC Information Disclosure Determinations 2012*, 24 April 2012.

34. Attachment 2 shows the phasing in of reporting requirements.

Consultation process

35. The Commission initially proposed that full disclosure of costs and characteristics should begin with the disclosure year ending June 2012.
36. Submissions received by the Commission suggested that several of the LFCs are not in a position to provide full disclosure in 2012 due to factors such as limited reporting systems and the demands of establishing new businesses.
37. Several submissions proposed that these concerns be addressed by delaying information disclosure until the financial year ending June 2014. Vector favoured having disclosure start with the disclosure year ending June 2012,¹⁹ while Chorus proposed a phased approach.²⁰
38. A phased approach reflects the ability of the LFCs to provide limited information in 2012, while giving them time to implement other reporting systems. The Commission understands that the LFCs will implement operational and business support systems during 2012 and 2013. These systems will expand the LFCs' ability to prepare information, particularly non-financial data such as service level KPIs.
39. Most of the initial disclosure is based on information the LFCs are already preparing for CFH or statutory reporting purposes. This includes key financial statements and a summary of assets.
40. Due to the low up-take of LFC services by June 2012, there will be limited value in having product statements or service level related KPI reports for the disclosure year ending June 2012. Hence product statements will not be required until the disclosure year ending June 2013.
41. Some information relating to 2011/12 which is not required by November 2012, will still need to be provided by November 2013. This includes information which in 2012/13 will serve as prior year comparisons or opening values, as well as related party transactions for the smaller LFCs.
42. The LFCs will have to provide the summaries of the LFCs network characteristics from the disclosure year ending June 2013. This will reduce the compliance costs to LFCs in 2012 and will allow them time to develop the required reporting capability. The Commission expects that each LFC will maintain geographical information systems for managerial and operation purposes which will be used to prepare these summaries.
43. The Commission intends to monitor LFC's implementation of the requirements during the transition period. The draft requirements include an exemption process

¹⁹ Vector Limited, *Submission on Information Disclosure for Local Fibre Companies*, 7 December 2011, p4, para 18.

²⁰ Chorus Limited, *Submission on the Commerce Commission's Consultation Paper "Information Disclosure for Local Fibre Companies"*, 7 December 2011, p3, paras 10–12.

which may be used to address any future timing issues. Feedback from future formal consultation may lead to revisions to the requirements.

Timing of annual disclosure

Commission decision

44. The Commission requires LFCs to provide information disclosure reports to the Commission annually by 30 November of the relevant year.
45. The Commission considers that the due date for the first disclosure should remain as 30 November 2012:
 - The removal of audit and directors certification for 2011/12 will reduce the effort which the LFCs will need to complete the first year's disclosure reports.
 - Comparable information is to be provided to CFH beforehand and hence can be used as the basis for disclosure to the Commission.
 - Chorus and WLFC have both indicated that this date is achievable.

Consultation process

46. The Commission initially proposed that the LFCs provide the annual reports by 31 October. However, the LFCs submitted that this would not allow sufficient lead time for preparation and audit of data. WLFC, Enable and Ultrafast proposed a due date of 30 November.²¹ The Office of the Auditor-General submitted that sufficient lead time was required for auditing.²²
47. The Commission's technical consultation proposed shifting the disclosure date to 30 November to make compliance easier for the LFCs, while not adversely impacting the Commission's ability to fulfil its obligations under the Act.
48. No submission objected to 30 November being the due date for information disclosure for the second and later disclosure years.

Reporting by candidate area

Commission decision

49. The Commission requires Chorus and Ultrafast to disclose key regional information from 2013/14.
50. The Commission will require Chorus and Ultrafast to provide candidate area information where end user up-take is 5% or above of the premises passed. This reflects the increased value to the Commission that such information would provide as end user up-take increases.

²¹ Enable, Ultrafast, & WLFC, "Joint Submission on the Commerce Commission's "Information Disclosure for Local Fibre Companies Consultation Paper", 7 December 2011, para 45.

²² Office of the Auditor-General, *Information Disclosure for Local Fibre Companies Consultation Paper*, 6 December 2011.

51. For candidate areas where Chorus has, or will commercially deploy, its own fibre or has existing fibre, a lower threshold of 2.5% or above of the premises passed will apply.²³ This reflects both the importance of monitoring; and that as competition will reduce sales, it may take longer for Chorus to achieve 5% up-take in areas where it is competing with other LFCs.

Consultation process

52. The LFCs vary considerably in terms of network coverage and hence the benefit in reporting by candidate area is varied.
53. The Commission's consultation paper proposed that LFCs provide regional information based on ten proposed regions.²⁴ All LFCs opposed the ten regions, stating that where regional reporting is required by the Commission, it should align with CFH's candidate areas.²⁵ As the LFCs will provide information to CFH by candidate area, the Commission agrees that LFCs should provide regional information to the Commission on a candidate area basis.
54. WLFC is deploying fibre in only one candidate area. Enable's candidate areas are both in the Canterbury region, and consequently there is limited benefit in having Enable report by candidate area.
55. Ultrafast has coverage in six areas which are spread across the North Island, and do not form a contiguous network.²⁶ Hence there will be benefit in having Ultrafast disclose some information by candidate area, once volumes have reached a point where disaggregated information is meaningful. Feedback from LFCs suggested that the threshold should be end user take-up, expressed as a percentage of premises passed.²⁷
56. Chorus is likely to deploy fibre network in candidate areas which were awarded to other LFCs. The Commission understands that while this commercially deployed fibre will not cover complete candidate areas,²⁸ they will compete with other LFC fibre networks.
57. Chorus opposes candidate area reporting for financial information. Chorus states it would be costly to produce and of limited value to the Commission.²⁹ Ultrafast has

²³ The Commission acknowledges this threshold may present implementation issues and will consider it in 2013 as part of its review of the determinations.

²⁴ Commerce Commission, *Information Disclosure for Local Fibre Companies Consultation Paper*, October 2011, Appendix A, p21.

²⁵ Chorus, *Submission on the Commerce Commission's Consultation Paper "Information Disclosure for Local Fibre Companies"*, 7 December 2011, p10, para 40; and Enable, Ultrafast and WLFC, *Joint Submission on the Commerce Commission's "Information Disclosure for Local Fibre Companies Consultation Paper"*, 7 December 2011, p13, para 36.

²⁶ The candidate areas are Hamilton, Tauranga, Tokoroa, New Plymouth, Hawera and Wanganui.

²⁷ Oral feedback at workshop held on 23 February 2012.

²⁸ The Commission understands this commercially deployed fibre will not cover complete candidate areas. For example, it may include a city centre, but have little or no coverage in adjoining residential areas.

²⁹ Chorus, *Submission on the Commission's Draft Chorus Information Disclosure Determination 2012*, 21 May 2012, p7, para 21.

advised the Commission that it can provide candidate area reports as it will collect information at that level.³⁰

58. The Commission considers that it is reasonable to expect firms to maintain information on a regional basis for both operational and managerial purposes. However, the Commission recognises that reasons exist to delay disclosure of regional information until 2013/14. The Commission considers this reflects both the LFCs' need for time to develop their reporting systems and the Commission's need to have disaggregated information when and where regulatory issues are most likely to occur.

Reporting by retail service provider

Commission decision

59. The Commission requires LFCs to disclose information on the prices that LFCs charge to retail service providers (RSPs) and that LFCs must provide information for the top five RSPs subject to these LFCs representing more than 90% of the LFCs revenue from fibre based services (relevant services).
60. The Commission understands that LFCs are likely to set prices at or close to the price caps specified in agreements signed with CFH, and that any issues about price discrimination are most likely to occur with pricing below the price cap. Accordingly the LFCs need only disclose pricing information when pricing is below the price cap. This approach should reduce the LFCs' compliance costs.

Consultation process

61. The Commission's technical draft proposed that LFCs, when preparing the exception report on pricing, provide information only for those RSPs which collectively represent more than 80% of the LFCs revenue from fibre based services (relevant services).
62. Chorus questioned the requirement for an exception report on pricing.³¹ They note that under the fibre deeds they must publish any variations to a reference offer, including any variation to a price offer to a RSP.
63. TelstraClear³² submitted that an 80% threshold was too low as it would be crossed by only the top few RSPs. They submitted that the additional compliance costs of raising the threshold to 90%-95% would be minimal.
64. The Commission considers that information is required as important for assessing compliance with the LFC's undertakings and is an area where the Commission may

³⁰ Ultrafast Fibre Ltd, *Letter to the Commerce Commission "Information Disclosure Requirements"*, 16 April 2012, p2.

³¹ Chorus, *Submission on the Commission's Draft Chorus Information Disclosure Determination 2012*, 21 May 2012, Annex A, p17.

³² TelstraClear, *TelstraClear Submission on the Consultation on Draft LFC Information Disclosure Determinations 2012*, para 13-15

receive complaints which it is required to consider for investigation under section 156O of the Act.

65. Publically available survey data presented in the Commission's Annual Telecommunications Monitoring report³³ shows that the top five retailer's (Telecom, TelstraClear, Vodafone, CallPlus and Orcon) market share of residential broadband connections is 92%.³⁴
66. The Commission considers that it is important for the LFCs to provide data for the larger mass market retailers. For any one of these firms to receive favourable discriminatory pricing may have a significant detrimental impact on market competition. The Commission considers that the compliance costs for providing this information would be the same as under an 80% threshold.
67. The Commission has added a 90% threshold fall back clause. Under this clause the LFC must report on each those RSPs which collectively represent more than 90% of the LFCs revenue from fibre based services (relevant services). This provides robustness to the requirements should market share change, while avoiding the cost of reporting on the tail of smaller RSPs. That the LFCs have so far signed up over 30 RSPs suggests that it is likely that in the medium term the UFB retail market will have similar composition to the fixed line broadband market.³⁵

Allocation

Commission decision

68. The Commission requires LFC to apply the regulatory reporting principles of causality and data retention to address any allocations.
69. Allocation may be required for revenues, asset values, operating expenses and non-financial values. As the LFCs will have costs that are shared and common across services (and in some cases related businesses) cost allocation is important. The assumptions used for cost allocation can impact where costs and revenues are reported and hence the relative profitability of different products and business areas..

Consultation process

70. LFCs supported the proposed regulatory reporting principles. However, Chorus and Ultrafast noted the need to work with the Commission to apply the principles. Enable also noted issues relating to cost allocation.³⁶

³³ Page 20

³⁴ Smith, P., Gibson, A., Crothers, C., Billot, J., Bell, A. (2011). *The Internet in New Zealand 2011*. Auckland, New Zealand: Institute of Culture, Discourse & Communication, AUT University.

³⁵ <http://www.crownfibre.govt.nz/ufb-initiative/frequently-asked-questions> link referenced 22 June 2012.

³⁶ Enable, *Submission on the Commerce Commission's "Information Disclosure for Local Fibre Companies Consultation Paper"*, 7 December 2011, p4, paras 4.6(b) and (d).

71. The Commission agrees with submissions that it is important for LFCs and the Commission to work together on implementation. This will ensure the Commission's intent is achieved and promote compliance and consistency.
72. The Commission considers it more cost effective to adopt the principles based approach than the alternative of highly prescriptive requirements or requiring LFCs to develop costly manuals.
73. In addition, the Commission has addressed allocation by:
- Designing the templates to reduce the number of cost allocation calculations. The Commission will then perform its own cost allocations. This will reduce the workload on the LFCs, promote consistent analysis, and provide flexibility for future analysis (eg to test alternative assumptions).
 - Requiring that any allocation procedures which the LFCs will perform, should align with those used for reporting to CFH, when practical.
 - Requiring any allocations which LFCs perform in preparing the information for Commission to be supported by transparent and objectively justifiable assumptions or data. LFCs will not be required to provide this supporting information to the Commission, but should retain it for seven years in case the Commission requests it.
74. In regard to the specific matter of LFCs purchasing assets on a cost per premise passed (CPPP) basis rather than asset type basis, the Commission considers that an LFC can address this by applying the principle of causality in conjunction with certification by technical expert. This matter was raised by Ultrafast in its 2012 submission.³⁷
75. Feedback in submissions and at the workshop indicates that the allocation of assets will require professional consideration. The Commission expects that technical experts will have access to and use of varying source documents³⁸ and recognises that there will be elements of professional judgement and approximation in the allocations.

Existing assets

Commission decision

76. The Commission requires Chorus to provide a high level disclosure of their existing assets in 2011/12 with fuller disclosure in later disclosure years.
77. Enable, Ultrafast and Northpower are required to provide a one-off, high level (layer 1/layer 2), disclosure of existing assets in 2011/12. This will provide the Commission

³⁷ Ultrafast Fibre Limited, *Letter to the Commerce Commission "Information Disclosure Requirements"*, Appendix 2.

³⁸ Possible source documents which a technical expert could use when allocating asset related values include vendor price lists, related party or third party costs for comparable contracting services, tender evaluation documents and specialist publications.

with the key information, such as the value of any assets transferred from the partner.

Consultation process

78. The Commission initially proposed an annual disclosure of existing assets broken down to categories aligning with their new assets.
79. WLFC³⁹ and Enable⁴⁰ both submitted that their reporting systems will roll existing assets into the same register as new investments making it difficult or 'impossible' to report on these assets separately. The Commission understands that for the smaller LFCs the value of these existing assets is not significant in the scheme of the overall value of their fibre networks.⁴¹
80. Recent information from the LFCs indicates that it is not cost effective to require ongoing completion of a separate schedule for existing assets. CFH will not be requiring separate ongoing reporting of existing assets. Ongoing information regarding these asset's depreciation and disposals can be adequately covered via a combined schedule of all assets and related party disclosures.
81. Chorus indicates that it will separately identify existing assets but has problems classifying them. Chorus will not categorize them in their new reporting system until 2013 or 2014. This is driven by the workload resulting from separation, and impacted by the loss of assets due to the Christchurch earthquake.⁴²
82. Chorus has a higher value of existing assets and their long term approach to recording these assets differs from the other LFCs. The Commission understands that some of the existing assets are in the other LFCs' candidate areas.

³⁹ Whangarei Local Fibre Company and Northpower Ltd, *Submission on the Commerce Commission's Draft LFC Information Disclosure Determination 2012*, 21 May 2012, para 4.

⁴⁰ Enable, *Submission on the Draft LFC Information Determination 2012*, 21 May 2012, para 3.5

⁴¹ For example, Whangarei Local Fibre Company, *Submission on Draft LFC Information Disclosure Determination 2012*, 14 May 2012

⁴² Chorus, *Chorus Submission on Draft Information Disclosure*, 21 May 2012, para 34

Assurance and Certification

83. The Commission requires that the LFCs provide:
- director certification for all information provided to the Commission.
 - certification by the LFC's technical expert(s) regarding the material assumptions and methodologies used to prepare the disclosed information.
 - an opinion of the financial information disclosed which provides the "presented in all material respects in accordance with" level of assurance.
84. For information disclosure regulation to be effective, the Commission must be able to rely on the accuracy of the disclosed information.
85. The Act allows the Commission to require information to be verified by audit or certification.⁴³
86. In determining the verification framework, the Commission considered submissions, the availability of supporting records, the level of prescription in the relevant requirements, the LFCs other likely verification requirements, the costs involved, and the extent to which reliance may be placed on the disclosed information.
87. The submissions from all LFCs,⁴⁴ as well as Vector,⁴⁵ all supported having an assurance framework. Some submissions sought improved clarity on the role of technical experts.⁴⁶

Assurance review by the Commission

88. The Commission will review and analyse the information disclosed by the LFCs to assess each LFC's compliance and the appropriateness of the methodologies applied (such as cost allocation). Should the Commission identify any concerns, it intends to raise these concerns with the LFCs and/or the independent auditor who provided the assurance report. Should the Commission consider that a significant issue exists, the Commission can take action to address it; such as requiring the LFC to provide the Commission with supporting documentation, requiring restatement of the disclosed information, or revising the disclosure requirements for subsequent years (for example requiring disclosure of supporting material or the assumptions used for cost allocations).

⁴³ Sections 156AV(d) and (e).

⁴⁴ Chorus, *Submission on the Commerce Commission's Consultation Paper "Information Disclosure for Local Fibre Companies"*, 7 December 2011, p14, para 55; and Enable, Ultrafast and WLFC, *Joint Submission on the Commerce Commission's "Information Disclosure for Local Fibre Companies Consultation Paper"*, 7 December 2011, p18, paras 59–63.

⁴⁵ Vector, *Submission on Information Disclosure for Local Fibre Companies*, 7 December 2011, p8, para 46.

⁴⁶ Chorus, *Submission on the Commerce Commission's Consultation Paper "Information Disclosure for Local Fibre Companies"*, 7 December 2011, p14, para 57; and Enable, Ultrafast and WLFC, *Joint Submission on the Commerce Commission's "Information Disclosure for Local Fibre Companies Consultation Paper"*, 7 December 2011, p18, para 60.

Director certification

89. The Commission requires director certification that all information disclosures are compliant with the Requirements.
90. Director certification is a relatively cost-effective means of gaining assurance as it is expected that directors would be able to certify information given their knowledge of the business. The Commission expects that directors will seek whatever advice they consider is needed prior to signing the director's certificate, which may include senior executive or external advice.
91. This is consistent with the verification requirements used by the Commission for airports and electricity lines businesses.
92. No submission opposed the use of director certification. Chorus suggested technical revisions to the wording which the Commission has considered in revising the certification statement.⁴⁷

Certification by technical expert(s)

93. The Commission requires certification by the LFC's technical expert(s) regarding the material assumptions and methodologies used to prepare the disclosed information.
94. Certification by LFCs' technical experts can be a cost effective way of obtaining assurance in areas requiring specific expertise. Due to the specialised nature of fibre networks, information disclosure will involve areas outside of auditor's expertise. The Commission understands that LFCs will employ staff and contractors who are skilled in these areas, and who could certify key assumptions and methodologies used in preparing the information disclosure. For the LFCs this should reduce compliance costs compared to requiring verification by expert third parties, such as auditors' experts.
95. For the Commission this should provide an adequate level of assurance that objective methodologies were used to prepare technical aspects of the information disclosure.
96. The LFCs supported the use of their own technical experts to provide the Commission assurance.
97. The Commission has revised the wording relating to LFCs' technical experts to make it clearer that the regulatory auditor may rely on information certified by these experts who possess relevant professional capabilities and competencies. This addresses a point raised in Chorus' submission.⁴⁸

⁴⁷ Chorus, *Submission on the Commission's Draft Chorus Information Disclosure Determination 2012*, 21 May 2012, p12, para 45.

⁴⁸ Chorus, *Submission on the Commission's Draft Chorus Information Disclosure Determination 2012*, 21 May 2012, p12, paras 43–44.

98. The Commission also revised the wording for technical experts to make the scope of what they certify clearer.⁴⁹ The technical experts are required to certify information such as technical assumptions underpinning the schedules, the attribution of network related costs (such as allocating aggregated costs to network component categories), and the reliability of the operational support systems.

Independent auditor's assurance report

99. The Commission requires that the LFCs provide an assurance report which:
- is prepared by an independent auditor
 - Includes a statement that it has been prepared for directors and the Commerce Commission for the purpose of providing assurance as to whether the information has been prepared, in all material respects, in accordance with the Commission's determination
 - covers all financial information, except material certified by the LFC's technical experts.
100. The Commission considers that there is significant benefit in having an independent auditor provide assurance of the information disclosure, and in particular the processes used to prepare these statements. An independent auditor is expected to identify and correct deficiencies in processes and information, and provide reassurance as to its reliability.
101. The submissions from the LFCs all supported having an independent auditor provide assurance.⁵⁰
102. The Commission is considering the requirements for assurance reports prepared by independent auditors as part of its work on defining the information disclosure requirements for the electricity distribution boards, gas pipeline businesses and gas transmission business. The Commission will consider the outcome of this work when it considers revising the information disclosure requirements for LFCs in 2013.

Level of assurance and scope

103. The Commission requires that the auditor provides an opinion at the "presented in all material respects in accordance with" level of assurance. This is consistent with the Commission's approach in airports, electricity and previous telecommunication regulatory reporting. A 'true and fair' opinion, as required for most statutory reporting, is more costly and may be problematic in this regulatory context (eg cost allocations, prescriptive requirements).

⁴⁹ Chorus, *Submission on the Commission's Draft Chorus Information Disclosure Determination 2012*, 21 May 2012, p12, para 45.

⁵⁰ Chorus, *Submission on the Commerce Commission's Consultation Paper "Information Disclosure for Local Fibre Companies"*, 7 December 2011, p14, para 56; and Enable, Ultrafast, and WLFC, *Joint Submission on the Commerce Commission's "Information Disclosure for Local Fibre Companies Consultation Paper"*, 7 December 2011, p18, para 62.

104. The requirements allow the LFCs to engage the same auditor for both regulatory information disclosure and the statutory reports, provided the relevant professional standards allow this whilst ensuring audit independence. This should reduce the LFCs' compliance costs, as much of the information to be provided to the Commission will be subject to independent audit for statutory purposes.
105. The Commission does not expect the auditor to verify material which is already certified by a technical expert. This should also reduce assurance costs.

Use by the Commission

106. The Commission requires that the assurance report includes a statement that it has been prepared for directors and the Commerce Commission for the purpose of providing assurance.
107. The draft determinations provided that such reports should include an explicit acknowledgement that a duty of care is owed to the Commerce Commission (the Commission). Chorus supported the proposed wording with relation to the duty of care.⁵¹ However submissions from Ultrafast⁵² and Enable⁵³ noted concerns about this wording in a submission on the requirements for the electricity and gas sector.
108. The Commission considered how to continue recognising its interest in the assurance report, while also removing this issue of concern. As the information disclosed will only be provided to the Commission (and not subject to scrutiny by other interested parties), it is important that the requirements recognise that the Commission will rely on the assurance report and that the independent auditors have an accountability to the Commission.
109. The requirements recognise this by requiring the audit opinion to recognise that it was prepared for use by both the Commission and the LFC's directors.
110. This approach continues to recognise the interest of the LFCs' directors in the audit. It also allows for the audit agreement to be a bi-partite agreement between the LFC and their auditor, which does not include the Commission.

⁵¹ Chorus, *Submission on the Commerce Commission's Consultation Paper "Information Disclosure for Local Fibre Companies"*, 7 December 2011, p14, para 56.

⁵² Ultrafast, *Submission on Draft LFC Information Disclosure Determination 2012*, 18 May 2012, para 7.

⁵³ Enable, *Submission on the Commerce Commission's "Draft LFC Information Disclosure Determination 2012" and "Draft Chorus Information Disclosure Determination 2012"*, 21 May 2012, p2, para 2.3(a).

Legal Framework

Overview

111. The Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (Amendment Act), which received the Royal assent on 30 June 2011, introduces new information disclosure requirements relating to participants in the Government’s Ultra Fast Broadband initiative.⁵⁴ The Commission is required to implement information disclosure requirements applicable to participating LFCs. These requirements are found in new subpart 3 to the new Part 4AA of the Telecommunications Act 2001 (the Act).
112. LFCs are defined in s156AB of the Act as –
- a company through which the investment of the Crown and a UFB partner in relation to a fibre optic communications network is effected, including –
- (a) a company in which the Crown and the UFB partner hold shares; and
 - (b) a company in which the Crown holds a financial interest pursuant to the selection of that company as a UFB partner
113. The information disclosure obligations apply to all participating LFCs including Chorus.

Requirements relating to costs and characteristics

114. New subpart 3 of Part 4AA of the Act requires the Commission to issue information disclosure requirements for LFCs. The purpose of this subpart is –
- To promote competition in telecommunications markets for the long term benefit of end-users of telecommunications services in New Zealand by requiring LFCs who have given undertakings in relation to certain services to provide reliable and timely information to the Commission to enable it to record over time the costs and characteristics of LFC fibre networks to inform the Commission’s statutory processes and determinations
115. “Relevant services,” for the purposes of information disclosure, are defined as –⁵⁵
- a wholesale telecommunications service that is provided using, or that provides access to unbundled elements of, an LFC fibre network
116. Some form of information disclosure is required under the Act,⁵⁶ though the Commission has substantial scope in the nature and type of the information it may require in fulfilling the purpose of subpart 3. A non-exhaustive list, of possible items of information disclosure, is provided in the statute, and includes:⁵⁷

⁵⁴ See, generally, s81 of the Amendment Act, which introduces new Part 4AA – Services provided using networks developed with Crown funding: Undertakings regime and Commerce Act 1986 authorisations – to the Telecommunications Act 2001.

⁵⁵ Clause 156AB(a) of the Act.

⁵⁶ Section 156AU(1).

⁵⁷ See s156AU(2). The Commission is not required to request that LFCs provide all information in this list.

- (a) financial statements;
 - (b) asset valuations and valuation reports
 - (c) prices, terms, and conditions
 - (d) costs and cost allocation methodologies;
 - (e) contracts;
 - (f) transactions with related parties
 - (g) financial and non-financial performance measures
 - (h) plans and forecasts
 - (i) transfer payments
 - (j) network capacity information
 - (k) characteristics of relevant services
 - (l) policies and methodologies used in reference to the foregoing
117. As part of the information to be disclosed, the Commission may prescribe the business activities and services to be disclosed, the methodologies to adopt in the preparation of the information (including cost allocation), and the manner in which those methodologies were applied.⁵⁸
118. In making requirements, the Commission may:⁵⁹
- (a) prescribe the form and manner of disclosure
 - (b) specify the time(s) and date(s) of disclosure
 - (c) require the disclosure of assumptions made in preparation of the information
 - (d) require auditing of the information, and/or certification of the information
 - (e) provide for exemptions on any terms or conditions it deems appropriate
 - (f) provide for transitional provisions
 - (g) make requirements more than once a year
 - (h) make requirements in respect of all or part of the relevant business.

⁵⁸ Section 156AU(3).

⁵⁹ Section 156AV.

119. The Commission notes that the provisions governing the nature of the information to be disclosed (s156AU(2)), allowing the Commission to prescribe the methodology used to prepare the information and how those methodologies were applied (s156AU(3)), and further powers of the Commission relating to the disclosure (s156AV), are largely identical to the lists provided in Part 2B of the Act.
120. Information on costs and characteristics must be disclosed on an annual basis. The Commission may not require more frequent disclosures, such as on a semi-annual or monthly basis. However, the Commission may require that different information be disclosed at different dates and times.⁶⁰
121. The Commission's requirements under this subpart provide for disclosure only to the Commission.⁶¹ The Commission may, however, publish reports, summaries, and analyses of the information provided in order to inform the industry and public of current developments and emerging trends.⁶² The Commission must keep confidential information that may reasonably be regarded as confidential or commercially sensitive.⁶³ The Commission will be guided in this regard by the Official Information Act 1982.
122. Unlike the former s69ZB provisions of the Act which required the accounting separation of Telecom, information disclosure under the new subpart is not primarily focused on separating out the various business units of the LFCs, as section 156AU(5) makes clear:
- To avoid doubt, nothing in this subpart requires an LFC to prepare and disclose information about the operation of all or any of its network or wholesale activities as if those activities were operated as independent or unrelated companies.
123. While the Commission may require the disclosure of information that would provide some insight into an LFC's network and wholesale activities, including related party transactions⁶⁴ and transfer payments,⁶⁵ and particularised requirements in relation to all or part of a business,⁶⁶ the new provisions do not provide for implementing an accounting separation regime.
124. The Commission considers that any requirements issued under subpart 3 will be published on the Commission's website and notified in the Gazette.

⁶⁰ Section 156AV(b).

⁶¹ Section 156AT.

⁶² Section 156AW(1).

⁶³ Section 156AW(3).

⁶⁴ Section 156AU(2)(f).

⁶⁵ Section 156AU(2)(i).

⁶⁶ Section 156AV(k).

Attachment 1: Summary of information required by the Commission

Schedule	Description	Type		Description
		Financial (costs) \$	Non-financial (characteristics)	
1	Report on Earnings	✓		Summary income and expense information
2	Report on Regional Earnings	✓		Information on revenue and expense by product, and network related expenses. For Chorus and Ultrafast some of this information will be split by candidate area.
3	Report UFB Fixed Assets and Fixed Asset Movements	✓		Details on fixed assets to be aggregated into asset categories and split into network assets and non-network assets. Network assets to be split by network layer.
3a	Report on Fixed Assets and Fixed Asset Movements for Existing Infrastructure	✓		Details on existing fixed assets transferred to LFCs. Only Chorus will be required to provide this from 2012/13 onwards.
4	Report on Fixed Asset Volumes		✓	Details of asset volumes either nationally or by candidate area.
5	Report on Product Information	✓	✓	Information for key products split and including income and costs directly related to an individual product.
6	Exception Report on Pricing	✓		Product pricing information by region, for products covered by the CFH fact sheets. This schedule is often only required at a national level.
7	Report on Service and Product Performance		✓	Details of key service and product performance indicators.
8	Report on Network Capacity and Utilisation		✓	Detail of the LFC's network rollout performance including number of premise passed and connected.
9	Report on Related Party Transactions	✓		Information on transactions with partners and other related firms. Not required for Chorus.
10 (9)	Commentary on Schedules	✓	✓	Qualitative comment on the content of the other schedules.
-	Network characteristics		✓	Information on network characteristics including routing and topology.

Attachment 2: Overview of phased implementation of LFC information disclosure¹

Schedule	Description	2011/12	2012/13	2013/14
		Limited national level reporting	National level reporting	Candidate area (CA) reporting ²
1	Report on earnings	revenue only	✓ (national)	✓ (national)
2	Report on regional earnings	✓ revenue	✓ (national) ⁴	✓ (CA)
3	Report on LFC fibre network fixed assets and fixed asset movements	✓ layer 1/2 only	✓ (national)	✓ (CA)
3a	Report on fixed assets and fixed asset movements for existing infrastructure	✓ layer 1/2	Chorus only (drop for other LFCs)	Chorus only
4	Report of fixed asset volumes	✗	✓ (national)	✓ (CA)
5	Report on product information	✗	✓ (national)	✓ (CA)
6	Exception report on pricing	✗	✓ (national)	✓ (CA)
7	Report on service and product performance	✗	✓ (national)	✓ (CA)
8	Report on network capacity and utilisation	✗	✓ (national)	✓ (CA)
9	Report on related party transactions	defer ³	✓ smaller LFCs	✓ smaller LFCs (national)
-	Network characteristics	✗	✓	✓
-	Audit and certification	defer	✓	✓

1. This attachment is provided for information purposes only. Fuller details of the phased implementation are in the determinations.
2. Candidate area reporting will only apply to Chorus and other LFCs with more than four candidate areas (currently Ultrafast) for schedules 2 to 8 and is subject to a take-up threshold being achieved.
3. LFCs will need to provide some information relating to 2011/12 by November 2013 (such as prior year comparisons). This deferred information may need to be audited in 2013.
4. Reporting this schedule at a national level is subject to the LFC having national pricing or four or less candidate areas.