COMMERCE COMMISSION NEW ZEALAND
Te Komihana Tauhokohoko

WELLINGTON
Level 6, 44 The Terrace
PO Box 2351, Wellington 6140
New Zealand
Tel: +64 4 924 3600

AUCKLAND
Level 13, 55 Shortland Street
PO Box 105-222, Auckland 1143
New Zealand
Tel: +64 4 924 3600

www.comcom.govt.nz

2 February 2018

Jonathan Young MP
Chairperson
Economic Development, Science and Innovation Committee
Private Bag 18041
Wellington 6160

Dear Mr Young

Submission on the Telecommunications (New Regulatory Framework) Amendment Bill

1. Thank you for the opportunity to make this submission on the Telecommunications (New Regulatory Framework) Amendment Bill (the **Bill**). The Commerce Commission wishes to appear before the Economic Development, Science and Innovation Committee in support of our submission.

2. Our submission suggests some minor changes to the Bill which focus on improving implementation while retaining what we understand to be the policy intent.

3. The Commission is New Zealand's primary competition, consumer and regulatory agency. In markets where there is little or no competition we deliver targeted and effective regulation for the benefit of consumers. We also enforce legislation that protects and promotes competition in New Zealand markets and prohibits misleading and deceptive conduct by traders.

4. We are responsible for implementing, monitoring and enforcing the Telecommunications Act 2001. This involves promoting competition in telecommunications markets and regulating the supply of certain wholesale telecommunications services, including fixed line services provided over the national copper network, and access to mobile network infrastructure.

5. Overall, we support the intent of the Bill:

    5.1 Part 2 introduces a well-understood 'utility-style' regulatory framework for wholesale fibre services, focused on the long-term benefit of end-users.

    5.2 We welcome the increased focus on addressing consumer issues at the retail level provided by Part 3 of the Bill.

    5.3 We believe the proposed treatment for legacy copper-based services under Part 1 is transparent, easily understood and appropriate in the circumstances.

6. The Bill, as currently drafted, requires us to implement all elements of the new regime by the end of December 2019. Based on past experience that date will be extremely challenging to meet without making trade-offs that adversely affect the quality of the new regulatory rules. We recommend that the implementation timeframe prescribed in the Bill is reviewed to provide a more realistic timetable.

7. We have considered how the Bill could be improved to assist with a smooth implementation of the new regime while remaining true to what we understand to be the policy intent. In particular we have considered:

   7.1 How the regulation can accommodate competition to fibre-based services from fixed wireless connections to homes and businesses; and

   7.2 How certain technical matters specified in the legislation could be clarified to achieve more predictable outcomes.

8. We have included an attachment to this submission that suggests drafting amendments to specific clauses in the Bill.

We support the overall intent of the Bill

9. Fibre optic-based telecommunications services are seen by industry and Government as a vital component of New Zealand's economic activity and source of productivity growth. Fibre is regarded as a superior technology to existing copper-based infrastructure for many applications, and, among other things, better caters for end-users' growing demands for internet data and video.

10. Fibre-based infrastructure is provided exclusively in most areas of New Zealand to end-user premises by single providers, which means there is no, or only limited, competition to wholesale fibre services in those areas. Consumers can therefore be disadvantaged without regulation of price and quality.

11. The Bill introduces a 'utility-style' regime for the regulation of wholesale fibre-based services. We note that:

    11.1 Utility-style regulation has worked well in New Zealand, Australia and the UK for the regulation of natural monopolies;

    11.2 This type of regime is familiar and generally well-understood by investors and telecommunications suppliers; and

    11.3 Our experience with regulation of electricity, gas and airports under Part 4 of the Commerce Act should assist us in implementing the new regime effectively.

12. The new powers given to us in Part 2 of the Bill to regulate wholesale fibre-based services allow us to protect end-users by ensuring they are provided with an appropriate quality of service and are not overcharged.

13. In particular, we welcome the inclusion of input methodologies as part of the regulatory framework. We view the requirement to specify the upfront rules and processes that will apply in implementing the regime as an important means of promoting certainty for regulated businesses and consumers.

14. With respect to Part 3 of the Bill, we welcome the increased focus on improving retail service quality for consumers. We suggest that the industry codes to be developed by the Telecommunications Forum would be more effective if subject to enforcement provisions, or if we were given the ability to approve and enforce them.

15. With respect to existing copper-based services, we consider the proposed treatment under Part 1 of the Bill to be transparent, easily understood and appropriate in the circumstances. It provides for the stable pricing of copper services which, over much of New Zealand, are expected to be superseded by new technologies such as fibre.

An extension to the 2020 implementation date is likely to be needed

16. The Bill, as currently drafted, requires us to implement the new regime by the end of December 2019. However, it allows the Minister to defer the implementation date by up to two years if requested by us.

17. Assuming the Bill passes by June 2018, a 'go live' implementation date of January 2020 gives us 18 months to implement all elements of the new regime. This entails:

    17.1 Establishing the upfront rules called input methodologies (IMs);

    17.2 Setting a price-quality path for Chorus (based on the IMs) for 2020-23; and

    17.3 Setting enduring information disclosure requirements (also based on the IMs) for Chorus and the Local Fibre Companies.

18. We will also need to deregulate legacy copper services in areas where fibre is available and develop a copper withdrawal code.

19. These tasks will involve significant time and resources, and are likely to require substantial consultation with stakeholders and the wider industry. Based on our past experience in implementing similar regulatory regimes under Part 4 of the Commerce Act for electricity, gas and airports, meeting a December 2019 deadline would be very challenging and we are almost certain to seek an extension to the implementation date.

20. Previously, under Part 4, we were given two years to implement the input methodologies alone. Price-quality paths and information disclosure were completed two years later. Drawing on our past experience, we believe it would be feasible to develop the various parts of the regime as follows:

    20.1 IMs over an 18 month period;

20.2 Price-quality regulation for Chorus over the 12 month period after IMs are completed; and

20.3 Information disclosure regulation for Chorus and the Local Fibre Companies over the 18 to 24 month period after IMs are completed.

21. It is important to note that the new regime for telecommunications will differ in many respects to regulation under Part 4 of the Commerce Act and establishing the new regime will not be a 'cookie cutter' exercise. For example, additional price-regulated services such as anchor services and direct fibre access services are required to be supplied by Chorus from inception. There are also potentially complex cost allocation issues arising from Chorus' ownership of both copper- and fibre-based networks.

22. If we were required to meet a January 2020 implementation date for all elements of the new regime, we would need to make trade-offs and the quality of the new regulatory rules would likely suffer. We would have less time available to consult with parties. Also, we would need to develop the price-quality path and information disclosure alongside the IMs, rather than determining the IMs up front first. This creates additional timing risks, inefficiencies and potential rework by us after 2020, creating a less predictable regime in the short to medium term.

23. An extension would ensure that the rules contribute to certainty over time. Under the Bill, the current Ultra-Fast Broadband (**UFB**) prices would continue to apply during any extension period granted, providing stability for suppliers and end-users while the new regime is developed and implemented. We could also consider ways to 'wash-up' excess profits or shortfalls during that period under the new regime.

24. Alternatively, the Select Committee could consider specifying the dates in the Bill for implementation in a 'staged' fashion to accommodate the timeframes outlined in paragraph 20 above. This would likely avoid the need for us to seek an extension from the Minister and provide certainty for investors and end-users.

Recommendation

25. We recommend that the timeframes currently prescribed in the Bill are reviewed in order to accommodate a more realistic timetable for implementation.

We need to cater for future developments in telecommunications markets

26. While we believe the regime is likely to be generally suitable for the market for New Zealand fibre services we have considered how the nature of that market differs from other markets or sectors governed by utility-style regulation, and, particularly, how markets for telecommunication services are likely to develop over time.

27. Our main observations are:

    27.1 Utility-style regulation has worked well in New Zealand, Australia and the UK for the regulation of natural monopolies, but only has a limited track record of being applied to telecommunications markets (only recently for fixed line services in Australia). There is a lack of direct experience internationally and in New Zealand in how it should be applied, especially over the longer term.

    27.2 Technology for internet access is expected to develop rapidly. One possibility is that fibre suppliers will need to consider making additional investments in their networks to keep pace with end-user demands. Section 175 of the Bill requires that we develop input methodologies from the outset of the regime to govern how we will evaluate and approve proposed capital expenditure projects for the long-term benefit of end-users.

    27.3 Another possibility is that competition for fibre will emerge from new technologies. This is already occurring and emergence of effective substitutes for fibre (for example, fixed wireless connections to homes and businesses) seems likely to affect many parts of New Zealand. Going forward, the possibility of greater competition for fibre needs to be accommodated with an appropriate regulatory treatment that allows the potential benefits from competition to flow through to access seekers and end-users.

28. These factors indicate that a key area of the Bill needing attention is the scope of the general purpose statement contained in section 162 of the Bill. In its current form, the wording used in section 166 may limit the Commission's ability to make decisions for the long-term benefit of *all* end-users of telecommunications services because it only refers to *fibre* end-users.

29. This is problematic because it is foreseeable today that the provision of wireless services may constitute a near substitute for the provision of fibre services for certain market segments of end-users (for example, those with lower bandwidth demand requirements). Similarly, we believe it is reasonably foreseeable that other access technologies which may also be substitutes for fibre services for certain market segments of end users will become available in the future.

30. Since these end-users will be dependent on the type of access technology used, a decision for the long-term benefit of end users of one access technology may be detrimental to the long-term benefit of end-users of other access technologies. For example, a recommendation made to the Minister to amend the specification of the anchor services in a way that negatively affects demand for wireless might be consistent with the section 162 purpose, but not in the long-term benefit of all end-users of telecommunications services if the benefits of competition are considered.

Recommendation

31. To ensure that end-users benefit from efficiencies of new technologies that emerge over time to compete with fibre, we recommend amending section 166 to explicitly permit us to consider promoting the long-term benefit of *all* telecommunications end-users within the scope of Part 6 when applying section 162.

32. We provide suggested drafting in the attachment to this submission.

Technical implementation matters

33. The Bill seeks to achieve certainty by specifying some technical matters relating to implementation of the regime:

    33.1 Geographically consistent pricing is required for price-regulated services;

    33.2 Initial financial losses from the UFB roll-out are to be calculated and added to the asset base at implementation date; and

    33.3 Costs of meeting the Government-funded UFB initiative are to be included in the asset base.

34. These are mandatory legislative directions that will bind both regulated suppliers and us and are intended to place certain matters beyond debate during introduction – enhancing predictability of the new regime. We have assessed the implications of these matters for end-users and whether they can be implemented smoothly.

Requirement for geographically consistent pricing

35. Section 200 of the Bill requires Chorus to charge the same price for fibre services, regardless of the geographic location of the access-seeker or end-user. Similar prices will therefore apply across urban and rural/provincial areas. The requirement will not apply to the local fibre companies (who are subject only to information disclosure regulation) unless they become subject to price-quality regulation at a future date.

36. We have presumed that the central motivation of the Government in including this requirement is to keep wholesale prices for fibre services low in rural areas. This is because the costs of providing services in rural areas are typically higher than those in urban areas due to the lower density of users across rural networks.

37. Geographic consistency, however, is not a necessary requirement for a utility-style regime, and is not a feature of the regulation implemented for the electricity, gas and airport sectors under Part 4 of the Commerce Act. We therefore wish to make the Committee aware of the implications of including this rule for fibre regulation.

38. In short, geographic consistency could result in distortionary pricing signals for potentially competitive technologies (such as fixed wireless connections for homes

and businesses) which will negatively affect the development of telecommunications markets and the economic benefits available to all end-users.

39. More specifically:

39.1 Geographically consistent prices, which will be higher than urban costs, will encourage the uptake of alternative technologies in urban areas more rapidly than if prices reflected local costs in those areas. This risks duplicating networks in urban areas and inefficiently under-utilising fibre assets;

39.2 Conversely, geographically consistent prices, which are likely to be lower than rural costs, will tend to discourage competition from alternative technologies in rural areas where it might otherwise be viable. Rural end-users will, at least initially, enjoy prices lower than cost and the benefits of a fibre-based service. However, as competition intensifies in urban areas and those areas are deregulated over time fibre regulation would increasingly be confined to rural areas and rural users will be paying prices that *do* reflect the higher costs of fibre provision in their areas. Had competition in rural areas not been discouraged, costs and prices may have been driven down sooner.

40. The harm from such negative impacts on market dynamics is difficult to quantify but it seems clear that in the case outlined above geographic consistency would hinder the efficient deployment of technologies with some economic cost to end-users.

41. Of course, if rival technologies to fibre fail to gain much market share then end-users will continue to use existing fibre networks and in practice the likely economic harm will be limited. However, as discussed in other sections above, it is foreseeable today that alternative technologies may constitute near substitutes for fibre services, even if only for certain market segments of end-users.

<u>Recommendation</u>

42. We recommend that the Committee considers both the costs and benefits for the geographic consistency requirement, given the implications discussed above. We are happy to provide further advice as required.

Calculation of initial losses

43. Section 176(2) of the Bill provides that financial losses made by suppliers from the UFB programme up until the implementation date of the new regime should be added to the asset base of those suppliers. The inclusion of losses in the asset base indicates a willingness on the part of the Government to allow those initial costs to be considered for recovery through prices charged to end-users in the future.

44. Incentive-based regulation of the type included in the Bill (and in Part 4 of the Commerce Act), however, typically does not *guarantee* absolutely that all past costs and losses incurred by suppliers will be recovered via future revenues from end-

users. Rather, the asset base represents an investment which suppliers should have a reasonable expectation of recovering through revenues, based on the best forecasts available and subject to decisions by us as to how future financial risks around those forecasts should be allocated between suppliers or end-users.

44.1 An example of such a decision affecting the recovery of past investments is whether suppliers should bear the consequences of actual demand for fibre services being different to forecasts for a regulatory period. A supplier placed under a 'revenue cap' form of control, for example, would tend to be insulated against the resulting under- or over-recovery of revenues. On the other hand, putting in place a 'price cap' form of control places consequences on suppliers so that they will bear the financial upside or downside.

Recommendation

45. We presume that the legislative direction to include losses up until the implementation date in the asset base does not indicate a wider policy intent to insulate suppliers from financial risks in the future and guarantee recovery of these losses and any future under-recoveries through revenues. Rather, the Commission should be able to make decisions about how to regulate suppliers and the financial risks they face based on promoting the long-term benefit of end-users. We recommend that the Bill clarify this.

46. We provide suggested drafting in the attachment to this submission.

Government-funded UFB initiative

47. A further matter that we believe needs to be resolved is the treatment of the concessional funding provided by the Government to suppliers as part of the UFB roll-out. The funding was provided by way of low- or no-interest loans and equity funding, in effect lowering the cost of the UFB deployment for the suppliers relative to other form of funding that would otherwise be needed.

48. In the regimes implemented under Part 4 of the Commerce Act capital contributions are typically subtracted from the costs of assets if the contributions are not already counted as reducing the costs of the assets under relevant accounting practices. This treatment ensures that suppliers have the opportunity to recover only the *net* costs outlaid in acquiring or constructing the assets in the future through prices.

Recommendation

49. To narrow the scope for debate over interpretation we recommend that the Committee clarify the treatment of concessional funding provided by the Government to suppliers for the UFB roll-out, and, specifically, whether it should be subtracted from the costs included in the asset base of suppliers.

50. We provide suggested drafting in the attachment to this submission.

We are happy to provide further analysis or information

51. This submission has been compiled from our own analysis of the Bill. We have not sought views from industry participants or other stakeholders.

52. In addition to our oral submission, we are available to speak to the Committee about our submission.

53. If you have any questions regarding this submission or wish to discuss this submission, please contact Vanessa Howell (Head of Fibre Regulation) at Vanessa.Howell@comcom.govt.nz or (04) 924 3833.

Yours sincerely,

Stephen Gale
Telecommunications Commissioner

Suggested drafting amendments for the Telecommunications (New Regulatory Framework) Amendment Bill

	Issue	Section	Discussion	Suggested drafting
1.	Scheme of the new regime – regulated persons and services	Key definitions	The current wording of key definitions (e.g. "fibre fixed line access services") in Part 6 means that the scope of regulation is initially defined according to "persons" named in regulations made under section 222, rather than services supplied. Once a person is prescribed in the regulations, then the fibre-based services they provide are captured by the various definitions. We are concerned that this focus on "persons" might create challenges in relation to the workability of the new regime. For example, a new operator (e.g., a new company operating a fibre network following a corporate restructure or a sale) who is not initially prescribed in the regulations could argue that it is not subject to any form of regulation until it is prescribed under section 222. We note that the process set out in section 222 for prescribing a person will not be immediate, as it involves consultation by the Commission, a recommendation by the Commission to the Minister and an Order in Council. We also note that this is a different model for deciding the scope of regulation to that used for some sectors in Part 4 of the Commerce Act. For example, it is sufficient for suppliers of electricity lines to be regulated by reference only to the nature of the services they provide – i.e., there is no equivalent provisions requiring creation of a list of "persons".	We would be happy to assist with drafting if it is decided that it is desirable to review/amend the key definitions in Part 6.

2.	Purpose statement	Section 166	Refer to paragraph 26 of the main submission. To ensure that end-users benefit from efficiencies of new technologies that emerge over time to compete with fibre, we recommend amending section 166 to explicitly permit us to consider promoting the long-term benefit of *all* telecommunications end-users within the scope of Part 6 when applying section 162.	Amend section 166 as follows: **"166 Commission and Minister ~~must~~ considerations ~~purpose set out in section 162~~** (1) If the Commission or the Minister (as the case may be) is required under this Part to make a recommendation, determination, or decision, the Commission or the Minister must— (a) consider the purpose in section 162; and (b) to the extent relevant, have regard to the promotion of workable competition in telecommunications markets for the long-term benefit of end-users of telecommunications services; and (c)~~(b)~~ make the recommendation, determination, or decision that the Commission or Minister considers best gives, or is likely to best give, effect to ~~that purpose~~ the consideration in (a), and, if considered relevant by the Commission, the consideration in (b)." All references to the section 162 in the Bill should be reviewed to refer to the section 166 requirements.
3.	Treatment of initial losses	Section 176	Refer to paragraph 43 of our main submission. We recommend that the Bill be altered to clarify that the direction to include initial losses from the UFB roll-out in the asset base of suppliers is not indicative of the future financial risk allocation between suppliers and end-users.	Amend section 176(3) as follows: "(3) To avoid doubt~~,~~- (a) the initial value of a fibre asset determined under this section includes the costs incurred by the provider in relation to the asset— (i) ~~(a)~~ as a direct result of meeting specific requirements of the UFB initiative; and (ii) ~~(b)~~ for both standard and non-standard connections; and (b) the requirement to capitalise initial financial losses under subsection (2) does not imply that regulated fibre service providers should be protected from the risk of recovery of those losses through prices over time or be protected from other financial risks accruing to providers generally over time."

4.	Treatment of government subsidy	Section 176	Refer to paragraph 47 of the main submission. We recommend that the Bill be altered to clarify whether the benefit of concessional funding provided by the Government to suppliers to assist with the UFB roll-out should be subtracted from the costs included in the asset base of suppliers. If this benefit is not to be subtracted, then the clarification should state that the benefit should be ignored.	Amend section 176(3) by inserting new paragraph (c): "<u>(c) but is reduced by the financial benefit of concessional debt or equity financing provided by a New Zealand government agency in respect of the deployment of fibre assets under the UFB initiative, if such benefit has not already reduced the cost of the assets.</u>" <u>or</u> "<u>(c) does not require that a reduction to costs be made for the financial benefit of concessional debt or equity financing provided by a New Zealand government agency in respect of the deployment of fibre assets under the UFB initiative, if such benefit has not already reduced the cost of the assets.</u>"
5.	Collection of information	Section 188	The power to explicitly require reconciliation between information about services regulated under Part 6, and under Part 4 of the Commerce Act, and consolidation of various combinations of services regulated under either Act, seems to have been omitted. We suggest that new subsections (3)(d) and (4) are added to section 188.	Amend section 188 by inserting paragraph (3)(d) and subsection (4): "<u>(3)(d) reconciliation of information disclosed under Part 4 of the Commerce Act 1986 with information disclosed in accordance with information disclosure requirements applying to the fibre fixed line access services.</u>" "<u>(4) If a regulated fibre service provider supplies goods or services that are regulated under Part 4 of the Commerce Act 1986, the Commission may require the regulated fibre service provider to provide consolidated information and performance measures relating to all, or any combination of, the regulated goods or services regulated under this Part or under Part 4 of the Commerce Act 1986.</u>"
6.	Exclusion of IMs for information disclosure regulation	Section 190(1)	The quality dimensions are the types of measures of the quality of fibre services, and will be set out in an input methodology. The quality dimensions should apply to both price-quality regulation and information disclosure regulation. Therefore, it would be inappropriate to exempt regulated suppliers subject only to information disclosure from	Amend section 190(1) as follows: "(1) Despite **section 174**, a regulated fibre service provider who is subject only to information disclosure regulation does not have to apply the ~~following~~ input methodologies ~~in accordance with that section:~~ ~~(a) methodologies~~ for evaluating or determining the cost of capital~~:~~

			applying quality dimensions in their information disclosure returns. Rather, quality dimensions in the IM determination will be relevant in terms of setting up the rules, requirements and processes in relation to the information about quality that will be disclosed by all regulated suppliers.	~~(b) quality dimensions~~."
7.	Exclusion of competing fibre from regulation	New section	Fibre-based services can be excluded from the scope of price-quality regulation where competing fibre-based services are provided by another regulated supplier (for example, Chorus has limited existing fibre networks in areas covered by other LFCs which can be used to supply competing services). However, excluded services should still be subject to information disclosure regulation in order to allow information to be collected and monitored.	Add section 192(2) as follows: "192(2) For the purposes of sections 208 and 222, the Commission must not make a recommendation that a fibre fixed line access service provided by a regulated fibre service provider to access seekers on a fibre network be subject to price-quality regulation if a directly substitutable telecommunication service is available to those access seekers on another regulated fibre service supplier's fibre network." Renumber existing 192(2).
8.	Minimising financial hardship or price shocks	Section 196	In accordance with the Cabinet decision and to assist with the smooth transition to prices or revenues set from time to time for particular regulatory periods, this section should direct the Commission to set maximum prices or revenues (i) in a way that minimises financial hardship or price shocks if in its opinion it is necessary or desirable, and (ii) in a present-value equivalent manner over time.	Reword section 196(2) as follows: "The Commission must calculate maximum prices or revenues in a manner that seeks to minimise undue financial hardship to a regulated fibre service provider or price shocks to end-users (for example, by altering depreciation) such that the change in maximum price or revenue is equivalent in present value terms over 2 or more regulatory periods to that which would otherwise be calculated".
9.	Equivalence of inputs	Section 204	The Bill currently provides that equivalence of inputs (EOI) rules are suspended for unbundled services, since their initial prices may not be cost-reflective. However, no end date for the suspension is specified in the Bill. We think that EOI rules should recommence application once prices are cost-based.	Renumber existing section 204 as sub-clause (1), and insert following text as sub-clause (2): "However, sub-section (1) will cease to apply in respect of a particular fibre fixed line access service if it is subject to regulation through the setting of a maximum price that is cost-based".
10.	Direct fibre access service	New section 207	"DFAS services" are understood by industry to extend only to the point of aggregation. However, Chorus does	In the definition of "direct fibre access services" in section 164 amend as

	and backhaul		currently supply some fibre-based backhaul services which extend past the point of aggregation and that may also need to be regulated in a manner similar to commercial DFAS services due to a lack of competition. We therefore suggest allowing the specification of the DFAS service for regulatory purposes to include certain backhaul services from the point of aggregation (POA) to the point of interconnection (POI).	follows: "**Direct fibre access service** or **DFAS** means a fibre fixed line access service that provides access seekers with fibre optic cable access between: (a) any premises, building connected to the fibre network, or access point within the fibre network (whether or not an end-user premise), and (b) the access seeker's equipment in an exchange or central office (which may include backhaul services from the point of aggregation to the point of interconnection), as prescribed in regulations made under section 224 to be a direct fibre fixed line service". Separate out the provisions relating to DFAS services in section 207 (by including a new section that deals only with DFAS) from the general price-quality review, in a similar way to section 206. Include in the new section the ability to review "the specification of the service" and "the prescribed conditions that apply to the service".
11.	Fibre deregulation reviews	Section 208	Deregulation reviews may need to occur reasonably frequently given the fast-changing nature of telecommunications technologies that are possible substitutes for fibre. The process for the Minister's response to recommendations by the Commission for deregulation should be clarified. Also, the relevant provisions should refer to the re-regulation of fibre services in the event that competition eventually diminishes, and some or all fibre-based services can be deregulated (rather than being an 'all or nothing' review).	In the definition of "fibre fixed line access service" in section 5 add new paragraph (c): "(c) does not include a telecommunication service specified in regulations made under **section 223**, either for the purposes of this **Part**, or of **Part 6 Subpart 5** (as the case may be):". In section 175(1)(c) add a new subparagraph: "(iii) the consequences of excluding fibre fixed line access services from regulation, such as methods for reducing the value of the asset base relating to deregulated assets." In section 191 after "fibre fixed line access services" insert: ", other than services specified by the Governor-General by Order in

				Council pursuant to section 208 to be no longer subject to price-quality regulation”. Amend existing section 208 as follows: **“208 Regulation of services ~~Deregulation~~ review** (1) The Commission may, at any time after the implementation date, review whether and how fibre fixed line access services should be regulated under this Part if the Commission has reasonable grounds to consider that some or all fibre fixed line access services— (a) should no longer be regulated under this **Part**;~~or~~ (b) should no longer be subject to price-quality regulation under this **Part**; or (c) should be re-regulated after having been deregulated under **section 223**. (2) The Commission must, before the start of each regulatory period (except the first regulatory period), consider whether there are reasonable grounds to start a review. (3) A review may consider the following: (a) whether competition to fibre fixed line access services has emerged (or diminished) in a relevant market: (b) ~~whether any competition~~the impact of the event referred to in **paragraph (a)** ~~exercises an~~ on the ability of regulated fibre service providers to exercise substantial market power: (c) whether the section 166 requirements ~~the purpose of this Part~~ would be better met if fibre fixed line access services on a fibre network were subject to (or no longer subject to) regulation under this **Part**, or price-quality regulation under **Part 6 Subpart 5**. (4) The Commission must give interested persons a reasonable opportunity to give their views on the matters subject to review and the Commission must have regard to any views received. (5) The Commission must make a recommendation to the Minister after a

				review, which constitutes a recommendation for the purposes of section 222(4). (6) After receiving the recommendation the Minister must as soon as reasonably practicable decide whether to accept or reject the recommendation. (7) If the Minister accepts the recommendation then the Minister must make a recommendation to the Governor-General consistent with the recommendation from the Commission."
12.	Persons subject to regulation under Part 6	Section 222	Please refer to our comment at 1 above in relation to the key definitions in Part 6. The changes proposed here are aimed at minimising some of concerns raised at 1 above.	Amend existing section 222 as follows: "(1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations prescribing a person who provides fibre fixed line access services over a fibre network as being subject to 1 or both of the following: (a) information disclosure regulation: (b) price-quality regulation. (2) Regulations made under this section must identify the relevant fibre network and/or services in respect of which the person is subject to regulation under this Part and may: (a) include the name and a description of the person identified by the Commission under **subsection (4)(b)**, or (b) remove the name and a description of the person identified by the Commission under **subsection (4)(c)**. (3) The persons referred to at subsection (2)(a) include their successors in relation to the fibre network. (4)~~(3)~~ The Minister must not recommend that regulations be made under this section unless—

				(a) the Commission has consulted with interested parties; and either: (b) the Commission has recommended to the Minister that the person provides fibre fixed line access services over a fibre network in a market where the person can exercise a substantial degree of market power; and ~~(c)~~ the Commission has recommended to the Minister that making the provider subject to the proposed form of regulation for that fibre network meets the ~~purpose in~~ section 166 requirements~~2~~, or~~.~~ (c) the Commission has recommended to the Minister that the person provides fibre fixed line access services over a fibre network in a market where the person can **no longer** exercise a substantial degree of market power and ~~(c)~~ the Commission has recommended to the Minister that making that fibre network and/or services **no longer** subject to regulation meets the section 166 requirements."
13.	Specified points of interconnection	Section 226	Specifying points of interconnection is a technical matter that does not warrant the involvement of the Minister or the Governor-General in making regulations. We suggest amending section 226 to allow the Commission to specify the relevant points of interconnection from time to time by way of public notice.	Amend the definition of "specified point of interconnection" in section 5 as follows: "**specified point of interconnection** means the point of interconnection prescribed ~~under section 226~~ in a public notice under **section 226** for the end-user premises or access point". Amend section 226 as follows: "**226 Specified points of interconnection** (1) The ~~Governor-General may~~Commission must, ~~by Order in Council made on the recommendation of the Minister~~before the implementation date, and may, from time to time thereafter, ~~make regulations~~prescrib~~inge~~, by public notice, points of interconnection for the purposes of establishing fibre handover points. (2) ~~Regulations~~The public notice made under **subsection (1)** may prescribe a point of interconnection by reference to 1 or more of the following:

				(a) a regulated fibre service provider's network: (b) a geographical location: (c) the UFB initiative. ~~(3) The Minister must not recommend that regulations be made under this section unless the Commission has recommended that the regulations be made.~~ (3) The Commission must give interested persons a reasonable opportunity to give their views on the matters subject to public notice and the Commission must have regard to any views received. (~~4~~4) The Commission must not ~~recommend~~prescribe an amendment to a specified point of interconnection unless the amendment— (a) is for an appropriate technical purpose; and (b) is consistent with the purpose in **section 162**. (~~5~~5) The first ~~regulations~~public notice made under this section must prescribe points of interconnection based on the points of interconnection that will apply as at the close of 31 December 2019 under the UFB initiative."
14.	Section 13 (3) Exemption from 2021 Schedule 3 review of Copper services	Section 13(3)	The regulated copper services that are subject to the 'Copper Review' (due before 31 December 2025) should all be subject to the exemption from the 5 yearly review of Schedule 1 services (due 30 June 2021).	Currently there is an exemption for 'Copper Fixed Line Access Services' (UBA and UCLFS). We think this should be extended to include UCLL COLO, UCLL Backhaul and UBA Backhaul too (which were included in a previous definition of Copper FLAS) It seems impractical to review these services so near to the time UBA and UCLFS are to be deregulated in Specified Fibre Areas (on the Implementation Date), and then again as part of the Copper Review.
15.	Consumer issues	Part 7 and Part 3	The enforcement provisions of the Act do not apply to industry codes. As a result, the enforcement of these codes is likely to be less effective than Commission RSQ	Industry codes developed by the Forum could be subject to the same enforcement provisions as Commission RSQ codes, as set out in Part 3, section 28 and section 29 of the Bill.

			codes. Consumers do not have access to private enforcement of RSQ codes. This creates an inconsistency with the private enforcement available under the copper withdrawal code, as well as the enforcement of other consumer legislation such as the Fair Trading Act and Consumer Guarantees Act. The cost of private enforcement through the High Court is likely to be unrealistic for most consumers, and disproportionate to the size of the issues at stake. Consumer protection provisions are generally able to be enforced through the District Court. In order to review codes and the dispute resolution scheme, the Commission needs the ability to request information in a useable way from the Forum and from industry dispute resolution providers - distinct from the information provision requirement in section 236(2) (for scheme providers in relation to an RSQ code). We suggest this sits prior to the section 224 review of industry retail service quality codes.	Alternatively, the Commission could be given the ability to approve (and then enforce) industry codes as per industry access codes in Schedule 2, Part 1. We suggest that section 156BA(1) be amended to refer to both section 156A(1)(o) and (p), so that consumers have the power to make applications to enforce the RSQ. It would also be necessary to include a new section 156BA(1)(c) that refers to section 156MB, and make consequential amendments to section 156MB. The Bill proposes that the District Court hear appeals on Commission RSQ Code disputes. We suggest that section 156MB be amended so that consumers are able to take enforcement proceedings (including for enforce RSQ codes) through either the District Court or High Court. It may also be appropriate to amend sections 156MC and 156MD. Please insert an information provision equivalent to section 236(2) along the following lines: "The Forum or a dispute resolution provider for an industry retail service quality code must, on request by the Commission, provide information to the Commission on matters relating to any information or reports relevant to administration of an industry retail service quality code."
16.	Incorporation by reference	Sections 167(3)(b), 219, 156MD(3), 220(5)	We suggest that incorporation by reference of provisions from the Commerce Act are reviewed and avoided to the extent possible, as they might create undesirable confusion and uncertainty. We are concerned that some of the Commerce Act provisions might not readily apply to the Telecommunications Act. The references to "applied with any necessary modifications" might not necessarily solve the problem.	We would be happy to assist with drafting if it is decided that it is desirable to review/amend the provisions.