

15 June 2018

James Hartley
General Manager – Commerce, Consumers & Communications
Ministry of Business, Innovation & Employment

CC: Osmond Borthwick, Manager, Communications Policy

By Email

Dear James

Commerce Commission funding for implementing new regulatory framework for fibre services

1. Now that the Telecommunications (New Regulatory Framework) Bill (**Bill**) is moving through the final stages before it becomes law, we have been giving detailed thought to the steps required to implement the new regime. These steps include, in particular, developing input methodologies, price-quality regulation and the information disclosure requirements proposed under Part 6 of the amended Telecommunications Act (**new fibre regime**).
2. An intense work programme will be required to establish and implement the new fibre regime ahead of the first regulatory period.
3. The Bill anticipates this by allowing for a separate, one-off, levy by which the Crown could recover from industry the costs of establishing the new fibre regime separately from our ongoing telecommunications baseline funding (which is also recovered by way of an industry levy).
4. The purpose of this letter is to inform you of the costs that we anticipate will be required to establish the new fibre regime.
5. We consider that it will cost \$12m, over three years, to effectively implement the new fibre regime in a way that best meets the needs of our stakeholders.
6. This estimate is based on our experience in completing similar projects, including developing utility-style regulation for energy and airports under Part 4 of the Commerce Act, and determining final pricing principles under the Telecommunications Act.
7. Our estimate is supported by responses received from stakeholders during consultation on our implementation plan, including the cost/quality trade-offs we have considered in order to deliver fit-for-purpose regulation.

8. We received 14 submissions on our discussion paper that we published in April.¹ Feedback was broadly supportive and emphasised the importance of “getting it right”. The key themes from submissions were:
- No-one took issue with our proposal to spend \$12 million implementing the new fibre regime.
 - The \$12 million cost was in line with Chorus’ expectations.
 - Submissions agreed with the level of quality outcomes that we proposed – durable, workable, decisions that align with existing business practices – and the level of stakeholder engagement required to achieve this.
 - Some retail service providers suggested using existing baseline funding to partially fund the establishment of the new fibre regime.
 - Consumer representatives were supportive of additional funding being made available to help fund consumer input to the process.

Appropriate quality of decisions will ensure good outcomes for consumers

9. Our proposal proceeds on the basis that our decisions should be durable, workable and align with businesses’ existing practices. This will require well-reasoned decisions on an appropriate range of issues.
10. This approach was supported by our stakeholders. For example, Transpower submitted:
- We agree that it is important to focus on delivering high-quality decisions and the Commission should be funded adequately to ensure that they can deliver this, without it impacting on their existing work program. It is crucial that the decisions that the Commission makes over the next few years when determining the fibre IMs, price-quality, and information disclosure regulation are durable and well thought out.
11. To achieve this, it is important to actively engage with stakeholders throughout the decision-making process, ensuring that all relevant views are taken into account and ultimately improving our decisions.
12. We intend to spend time up-front working with stakeholders, including consumer groups, to ensure they are able to engage meaningfully in the process. For example, we propose to host workshops for stakeholders to allow them to gain a greater understanding of how our new rules will operate.
13. Higher quality stakeholder engagement should also mean greater certainty for the regulatory regime, by ensuring that there is shared understanding between the Commission and stakeholders of our policy intent. This may also reduce the likelihood of appeals and subsequent rework.

¹ Our funding discussion paper is set out in Attachment A. Submissions we received on this paper are set out in Attachment B.

Relationship with our other telecommunications work

14. Some retail service providers and the NZ Telecommunications Forum questioned whether it was necessary for the new work to be wholly financed through new funding as opposed to re-prioritising existing work. Submitters queried whether we could temporarily use a portion of the existing \$6m annual telecommunications appropriation for implementation of the new fibre regime.
15. We consider it important that the implementation of the new fibre regime does not detract from work we are undertaking in other telecommunications areas.
16. We agree with the policy approach in the Bill that establishment and implementation of the new fibre regime requires discrete one-off funding. We expect our baseline funding over the next three years to be fully committed with our existing work programme as well as the other new responsibilities introduced under the Bill, relating to the deregulation of copper networks and more extensive regulation of retail service quality.
17. We see value in creating a new fibre regulation implementation team, with a separate budget, in order to ring-fence this work, and ensure that the existing telecommunications work programme can proceed as planned.
18. This approach was supported by some submitters, such as Trustpower, who strongly supported a separate fibre team and budget, and Vocus, who emphasised the importance of not taking our “eye off the ball” with other important telecommunications work.
19. We consider that our existing reporting to MBIE and the Economic Development, Science and Innovation Select Committee provides an appropriate check on the work that we do. However, we understand that more notice of our upcoming work can help give regulated businesses more certainty and we will look to provide more information on our priorities going forward.

Proposal for funding of Consumer Representative Groups or Panels

20. In our funding discussion paper, we raised the possibility of additional funding for consumer representative groups or consumer expert panels, though we have not yet investigated how this may work in detail. This proposal received varied support from submitters. Most submissions supported the idea in principle, but some debated whether there was a clear need and if now was the right time for such a development.
21. Submissions also discussed how this could be implemented, with some suggesting that any panel should be pan-industry, rather than just focussing on fibre regulation.
22. Others submissions raised concerns around whether such a group would compromise the Commission’s independence.

23. Consumer NZ, TUANZ and Internet NZ strongly supported the additional funding for consumer representative groups or panels, but most of the industry did not wish to pay for it.
24. A strong consumer voice in our processes could add value to the decision-making process, by improving the level of information which we use to make decisions. Ultimately, the cost/quality trade-off is as much a policy question as a process one. If you were minded to fund the establishment of consumer representative groups or panels, then we would support this decision and work to ensure its effective implementation.

Next steps

25. I am happy to discuss this in more detail. If you have any questions, please do not hesitate to contact Vanessa Howell or myself.

Yours sincerely

A handwritten signature in black ink, appearing to read 'S. Gale', with a small dash at the end.

Dr Stephen Gale
Telecommunications Commissioner

Implementation of the New Regulatory Framework for Fibre Services

Funding discussion paper

30 April 2018



Chapter 1 - Purpose and overview of this paper

Purpose of this paper

1. The Telecommunications (New Regulatory Framework) Amendment Bill (**Bill**) is currently before Parliament. The Bill would create a new regulatory framework for Chorus and the 3 other Local Fibre Companies (**LFCs**)¹, based on a 'building blocks' methodology similar to that used in Part 4 of the Commerce Act 1986 (**Part 4**) for energy networks and airports.
2. This paper explains and seeks views on the funding consequences for the Commission and telecommunications service providers of implementing this new regulatory framework for fibre services.
3. After considering previous projects of this type undertaken by the Commission, including the introduction of Part 4, we have calculated that it will cost the Commission \$12m, over three years, to implement a regulatory framework for fibre fixed line access services (fibre services) that is efficient and effective and best meets the needs of stakeholders.
4. This paper has four chapters:
 - 4.1 Chapter 1 introduces the changes proposed by the Bill, provides an overview of our plan to implement the new regulatory framework, and explains why we are consulting now.
 - 4.2 Chapter 2 explains our role under the Telecommunications Act 2001 (**Act**) and how we are funded to administer it, and how our role is likely to change following the passage of the Bill.
 - 4.3 Chapter 3 sets out, in more detail, our initial plan for implementing the fibre regulatory framework, how we intend to resource it, and the potential trade-offs we could make by implementing the regime differently.
 - 4.4 Chapter 4 seeks your views on our plan and identifies specific issues that we want your input on.
5. For the purposes of this paper, we have assumed that the Bill will pass in its current form. We are seeking your views now due to the tight timeframes we will face to implement the new regime.

¹ Ultrafast Fibre Limited, Enable Networks Limited, and Northpower Fibre Limited/Northpower LFC2 Limited.

The system for funding telecommunications regulation

6. Our telecommunications regulation work is funded through a Budget appropriation approved by Parliament. MBIE recovers this cost from industry through the Telecommunications Regulatory Levy (**TRL**), through regulations made under section 11 of the Act.
7. The Bill would create a new section 12(3A) of the Act,² which would allow the creation of a further component of the TRL for the first appropriation period after the Bill passes, to fund our new Part 6 role in regulating fibre services.³
8. The Minister for Communications is responsible for recommending the regulations on the amount of the Part 6 TRL and the classes of service providers who will be liable to contribute to it.⁴ The Minister must consult those persons and organisations that she considers appropriate having regard to the subject matter of the proposed regulations.
9. Your feedback on this paper will be used to inform the input that we provide to MBIE on our likely funding requirements for consideration by the Minister for the purposes of any section 12, Part 6 TRL regulations.

We will need to spend \$12m to implement the new fibre framework

10. Based on our past experience, we consider that we will need to spend \$12m, over three years, to effectively implement the new regulatory framework for fibre services in a manner that best meets the needs of stakeholders.
11. The Bill would create a new Part 6 of the Act, with new provisions for the regulation of fibre services. The new Part 6 would require us to determine the price-quality paths Chorus must apply, as well as the information Chorus and the LFCs must disclose. To do this, we will first need to develop the input methodologies (**IMs**) that apply to the regulation of fibre services. This will require a significant increase in workload to develop and implement the new regulatory regime.
12. We intend to seek an extension to the implementation timeframe set out in the Bill to give us adequate time to develop good quality rules and to consult fully with stakeholders, as set out in our submission to the Select Committee currently reviewing the Bill.⁵ For the purposes of this paper, we assume that this extension will be granted.

² See, clause 17 of the Bill.

³ We are proposing that the first appropriation is a multi-year appropriation – see s 10 of the Public Finance Act 1989.

⁴ Section 12(4) of the amended Act.

⁵ <http://comcom.govt.nz/dmsdocument/16139>

13. We plan to develop IMs for fibre over an 18 month period from the date the Bill is passed. Price-quality regulation (**PQR**) for Chorus will then be developed over the next 12 months, assuming we have the necessary information. This will be implemented in parallel with the information disclosure (**ID**) regulations for Chorus and the LFCs, which will be developed in the 18 months after the IMs are completed.

Our spending proposal ensures appropriate quality for regulatory implementation

14. Our spending proposal allows for a meaningful consultation process with stakeholders, and ensures we do not have to compromise on the appropriate quality of the end product. Based on our experience in implementing and operating the regulatory regime in Part 4, we consider that this approach is desirable, and is in the best interests of stakeholders.
15. This consultation process will ensure that stakeholders have the opportunity to provide input into our decisions, and will allow us to spend time up-front educating stakeholders about how the new regime will work. For example, our proposal would allow us to:
- 15.1 Host conferences and workshops for stakeholders, to facilitate engagement and dialogue on the new regulations and to allow stakeholders to gain a greater understanding of how our new rules will operate; and
 - 15.2 Conduct further technical consultations on drafts of our determinations, to improve the clarity and effectiveness of our rules and their workability for fibre service providers.
16. Higher quality stakeholder engagement should also mean greater certainty for the regulatory regime, by ensuring that there is shared understanding between the Commission and stakeholders of our policy intent. In addition, providing time and resources for consultation should assist in producing regulation that is more durable in the face of technological change, by allowing for deliberation on our regulatory proposals.
17. We will undertake this work efficiently, leveraging off the expertise we have developed in regulating gas and electricity networks, and major airports, under Part 4. However, the new regime will differ in some respects to regulation under Part 4 and establishing the new regime will not be a simple exercise of ‘cutting and pasting’ the Part 4 IMs.
18. We explain the cost in more detail, along with our high-level plan for the work, in Chapter 3.
19. Under the Bill, we will also have new powers and functions in relation to such matters as retail service quality, and deregulation of existing copper networks. The \$12m cost does not include the cost of our other new responsibilities introduced by the Bill.

Lower levels of spending would result in trade-offs

20. As outlined above, our spending proposal for \$12m will allow us to develop and implement a fibre regulatory framework that is efficient and effective.
21. If we were to spend less, this would mean we would have less than adequate resourcing to develop the regime and run these consultation processes as intended. We would need to focus on delivery of the mandatory elements of implementing Part 6, rather than stakeholder engagement, and we expect that this would compromise the overall quality of the regulations.

Opportunity to provide funding for consumer representative groups

22. We are interested in views on whether there should be provision for the creation and funding of consumer representative groups to participate in the consultation process. This is an approach that has been applied in the regulation of utilities overseas, for example in Australia and the UK.⁶
23. The cost of creating and funding consumer representative groups would be additional to the \$12m sought for implementation of Part 6. We have not undertaken any design but, based on other regulators' experience and our relative scale, we consider it likely that such a regime could be implemented for around \$1m, over the three years.
24. We are interested in feedback on whether this could add value to the new regime.

We want your views

25. As explained in chapter 4, we want to hear the views of our stakeholders on our plan and proposed funding for implementing the new fibre regulatory framework, set out in the following chapters.
26. We ask that we receive emailed submissions by **11 May 2018**. We will consider all submissions received by this date.
27. There will also be an opportunity to provide views at our stakeholder workshop to be held on **2 May 2018**.

⁶ We discuss some examples in Chapter 3, below.

Chapter 2 – Our role in regulating NZ telecommunications

Our current role

28. The Commission is New Zealand’s primary competition, consumer and regulatory agency. In markets where there is little or no competition we deliver targeted 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.
29. The Act confers on us a range of functions and powers with respect to the regulation of telecommunications markets in New Zealand. 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 the mobile network infrastructure.

The Bill will significantly expand our current role

30. As currently drafted, the Bill would increase our telecommunications regulatory responsibilities significantly. In addition to our current obligations under the Act, we would be responsible for developing IMs for fibre, as well as PQR for Chorus and ID for Chorus and the LFCs. These additional obligations cannot be met using the Commission’s current resources; therefore, an increase in funding will be needed to fulfil our new role.
31. For more information on the Commission’s obligations under the Bill, as well as the timing of these obligations, see **Attachment A**.

Regulation is funded through the Telecommunications Regulatory Levy

32. Our telecommunications regulatory work is currently funded through a budget appropriation approved by Parliament, who recovers the cost of this funding from industry through the TRL, under section 11 of the Act.
33. The TRL is paid by companies that provide services in New Zealand via a public telecommunications network and have gross revenues over \$10m per annum. This includes wholesale providers and retailers.
34. Our appropriation, and therefore the cap on amounts that may be recovered by way of the TRL under section 11, is currently set at \$6m per annum, which is used to meet our existing statutory obligations.⁷

⁷ We note that for the 2017/18 year the appropriation is \$6.5m.

35. The Bill provides for revisions to levy arrangements. The Bill would create a new section 12(3A) of the Act,⁸ which would allow the creation of a further component of the TRL for the first appropriation period after the Bill passes, to fund the initial establishment of the part 6 regime.
36. The Bill allows for this initial funding to be set over a multi-year appropriation period, rather than a financial year.
37. The Minister for Communications is responsible for recommending the regulations on the amount of the Part 6 TRL and the classes of service providers who will be liable to contribute to it.⁹ The Minister must consult those persons and organisations that she considers appropriate having regard to the subject matter of the proposed regulations.
38. Your feedback on this paper will be used to inform the input that we provide to MBIE on our likely funding requirements for consideration by the Minister for the purposes of any section 12, Part 6 TRL regulations.

⁸ See, clause 17 of the Bill.

⁹ Section 12(4) of the amended Act.

Chapter 3 – Our initial plan for developing the fibre regulatory framework

Spending required to implement new fibre framework

39. After considering previous projects of this type undertaken by the Commission, including the introduction of Part 4, we have calculated that it will cost the Commission \$12m, over three years, to implement a regulatory framework for fibre services that is efficient and effective and best meets the needs of stakeholders.
40. Our spending proposal allows for a meaningful consultation process with stakeholders, and ensures we do not have to compromise on the appropriate quality of the end product.
41. The amount of work required is significantly beyond what can be accommodated within our current appropriation level. We have calculated that we will need to spend \$12m to develop and implement IMs, ID and PQR.
42. This cost has been calculated based on our previous experience completing similar projects, such as:
- 42.1 The development of the original IMs under Part 4;
 - 42.2 the subsequent review of the IMs;
 - 42.3 the copper final pricing principle determination;
 - 42.4 determining individual price-quality paths for Transpower;
 - 42.5 determining customised price-quality paths; and
 - 42.6 determining information disclosure requirements for electricity distributors, gas pipeline businesses, and airports.
43. This cost would be split over a multi-year appropriation. The following table shows a breakdown of the expected cost and how it would be spread from the time the Bill passes.

Table 1: Break-down of cost to implement new fibre regime

	Year 1	Year 2	Year 3
Cost	\$3.3m	\$5m	\$3.7m

44. The bulk of the additional spending is for staffing costs, including full time equivalent employees (FTEs) and fixed term contractors. The remaining spending will cover the cost of external consultants and corporate costs.
45. This breaks down to \$5.8m for staffing costs, \$3.0m in external costs and \$3.2m in corporate costs over the three years.

46. We will seek to implement the new legislation in the most efficient way possible. We will do this by prioritising mandatory work, sharing common resources with Part 4 regulation, and using temporary resources to manage peaks in workload (for example, the development of the IMs).
47. While we will leverage off our expertise in Part 4, the new regime for telecommunications will differ in some respects to regulation under Part 4 and establishing the new regime and will not be a simple exercise of 'cutting and pasting' the Part 4 IMs. 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, and the creation of a quality IM for the first time.
48. Regardless of any similarities to Part 4 IMs, our decisions for telecommunications must consider the views from interested parties on the telecommunications IM process. We will not simply be able to take existing decisions for Part 4 without turning our minds to alternatives.
49. We have already set up a small fibre regulation team to assist with MBIE's review of the regulatory framework for telecommunications under s 157AA of the Act.
50. This team is currently funded out of the \$6m appropriation. We have achieved this by deferring some discretionary work in our telecommunications programme. Our aim in creating this team is to ensure that when the new legislation passes, we will have undertaken sufficient preparatory work to be able to 'hit the ground running' and begin the consultation process for determining IMs shortly after.
51. We consider that a total of 15 FTEs, during the key period, will be needed to implement the new regulatory framework. We believe this level of resourcing will deliver regulation of the right quality.
52. For more information on how the fibre implementation team will be resourced, see Attachment B.

Our plan will deliver decisions of an appropriate quality

53. Our plan to spend \$12m would enable us to produce fit-for purpose, good quality decisions. Our experience is that decision processes we are proposing would best place us to implement a regulatory framework that delivers the following levels of quality:
- 53.1 Our decisions should be durable, meaning that any reviews will not need to undertake extensive rework, because we would have picked the best solutions available to us at the time to adequately deal with future circumstances. This ultimately provides greater certainty to stakeholders.
 - 53.2 Effective engagement should ultimately improve our decisions. Our consultation materials, such as draft decisions, should be well explained and stakeholders should understand our reasoning. We intend to spend time up-front working with stakeholders, including consumer groups, to ensure they are able to engage meaningfully in the process. We consider that engaging in up-front advocacy with stakeholders is especially important for this process as it is a new regime with many smaller affected parties.
 - 53.3 Our decisions should be workable. Our decisions should not just be technically robust, but they should be practically workable, by those that apply them. For example, IM determinations should be logically laid out, and presented in Plain English to the extent possible.
 - 53.4 Our requirements align, to the extent practicable, with regulated businesses' existing practices. This should reduce compliance costs for regulated businesses.
 - 53.5 We should actively engage with stakeholders. This ensures that all relevant views are taken into account, which would contribute to better decisions.
 - 53.6 We should provide decisions on appropriate range of issues. This helps to provide stakeholders with certainty.

Question for stakeholders

- Do you agree that we are targeting the right level of quality for our determinations to deliver an enduring and stable transition to the new regulatory regime?

Processes that we will follow to reach decisions

54. We intend to follow a similar process to implement substantive regulation as we have in the past. We will complete the process steps required by the legislation, as well as additional steps to improve the quality of our decisions.

55. The Act will set out the mandatory steps that we must complete before reaching decisions on IMs, PQR, and ID. For example, under the Act we will be required to publish a notice of intention to start work on input methodologies, consult on draft methodologies, and publish and gazette final determinations.
56. In addition to our statutory requirements, we will also use additional discretionary processes to help improve the quality of our decisions. For example, we have found it useful in the past to:
- 56.1 produce and consult on process and issues papers to help scope the work that we are undertaking, and focus our work on the most important issues;
 - 56.2 run conferences or workshops with industry, consumers, and Commission staff, to gather information and ideas in a 'hot-tub' environment; and
 - 56.3 undertake technical consultations on determinations, to ensure that the determination drafting is workable and reflects the intent of the policy decisions that have been made.

Question for stakeholders

- Do you agree that we should undertake these additional process steps proposed?
- Are you satisfied the proposed consultation will provide stakeholders with adequate opportunity to provide input into the final determinations?
- Are there other consultation steps you think we should be taking?

Trade-offs will be made if we spend less

57. If we were to spend less than \$12m, we would not be adequately resourced to develop the regime and run consultation processes in this way. We would need to focus on delivery of our minimum statutory requirements, rather than ensuring that the overall quality of our decision was appropriate.
58. For example, we may focus on ensuring that our IM determinations meet the minimum statutory requirements and are technically robust, while deprioritising the workability of the determination documents. This could mean that we would meet our statutory obligations, but the documents would be difficult for stakeholders to use and apply, resulting in increased compliance costs.
59. Another example would be if we focussed our ID requirements on what we need from businesses to meet the purpose of ID, as opposed to also ensuring that the requirements align with existing business practices, in order to reduce compliance costs.

Question for stakeholders

- If you disagree that our proposal incorporates the appropriate level of quality for this process, what aspects of quality should be scaled up or down?

Potential to include additional funding for consumer representative groups

60. Aside from the base cost of running a robust consultation process, there is also a question as to whether there should be provision for the creating and funding of consumer representative groups to participate in the implementation of fibre regulation.
61. This approach has been applied overseas, for example in Australia and the UK. For example the consumer challenge panel (**CCP**) run by the Australian Energy Regulator is designed to improve the quality of regulatory determinations.¹⁰

The CCP assists the AER to make better regulatory determinations by providing input on issues of importance to consumers. Regulatory determinations are technical and complex processes which can make it difficult for ordinary consumers to participate. The expert members of the CCP bring consumer perspectives to the AER to better balance the range of views considered as part of our decisions.

62. The CCP provides an expert voice on behalf of consumers. However, another option would be for a consumer representative group, made up of organisations active in New Zealand communities, to provide input from everyday consumers.
63. We are interested in your views as to whether creating and funding a consumer representative group (expert or otherwise) which could provide input into the implementation process. We want to know if this would lead to a better decision making process and improved outcomes for end-users.
64. We have not undertaken any design but, based on other regulators' experience and our relative scale, we consider it likely that such a regime could be implemented for under \$1m, over the three years.

Questions for stakeholders

- Would it add value to the fibre implementation process to allow funding for consumer representative groups to engage with our consultation processes?
- Which would provide better value input into our implementation process – an expert panel representing consumers, or a group comprising of non-expert community representatives?

¹⁰ <https://www.aer.gov.au/about-us/consumer-challenge-panel>

Chapter 4 – We want your views

65. We want to hear the views of our stakeholders on our plan and proposed funding for implementing the new fibre regulatory framework, set out in the following chapters.
66. Please email your submission to TelcoFibre@comcom.govt.nz with 'Fibre implementation funding' in the subject line. All submissions will be published on our website.
67. We ask that we receive emailed submissions by **11 May 2018**. We will consider all submissions received by this date.
68. There will also be an opportunity to provide views at our stakeholder workshop to be held on **2 May 2018**.

Key questions we are seeking feedback on

Appropriate level of quality and trade-offs

- Do you agree that we are targeting the right level of quality for our determinations to deliver an enduring and stable transition to the new regulatory regime?
- If you disagree that our proposal incorporates the appropriate level of quality for this process, what aspects of quality should be scaled up or down?
- Do you agree that we should undertake the additional process steps proposed in addition to our statutory requirements?
- Are you satisfied the proposed consultation will provide stakeholders with adequate opportunity to provide input into the final determinations?
- Are there other consultation steps you think we should be taking?

Consumer representation

- Would it add value to the fibre implementation process to allow funding for consumer representative groups to engage with our consultation processes?
- Which would provide better value input into our implementation process – an expert panel representing consumers, or a group comprising of non-expert community representatives?

Attachment A: Current timing of Commission's obligations under the Bill

Obligation	Timeframe	Reference
Work funded by proposed \$12m, recovered under section 12 of the Act		
Consult on and determine IMs: <ul style="list-style-type: none"> • cost of capital • valuation of assets • allocation of common costs • treatment of taxation • quality dimensions • regulatory processes and rules • methodologies for capital expenditure projects¹¹ 	Not later than the implementation date [s177] Implementation date means 1 January 2020, which may be extended for up to 24 months on request to the Minister	Subpart 3
Consult on and determine ID determinations <ul style="list-style-type: none"> • Chorus + LFCs 	After the date the relevant IMs are determined, but before the implementation date [s171]	Subpart 4
Consult on and determine price-quality determination for the first 3 year regulatory period <ul style="list-style-type: none"> • Chorus 	After the date the relevant IMs are determined, but before the implementation date [s171]	Subpart 5
Work funded by the existing TRL, under section 11 of the Act		
May review whether, and how effectively, Anchor Services meet the purpose (Anchor Services review)	Before the start of each regulatory period (including the first regulatory period)	s206
May review PQR (Price-quality review)	On or after the date that is 3 years after the implementation date and at intervals of no less than 5 years thereafter	s207
May review how fibre fixed line access services should be regulated (Deregulation review)	At any time after the implementation date	s208
Determine specified fibre areas	Before implementation date and at least annually thereafter	s69AB

¹¹ These are only the mandatory IMs listed in the Act – ie, a minimum requirement. Other IMs may be required.

Consequential changes to standard terms determinations (STDs) and the subsequent s30R review freeze	No later than 31 December 2019	s69AG
Implement annual CPI adjustments to all Charges in the STDs	Annually from 1 January 2020 <ul style="list-style-type: none"> • 16 December: UBA + UCLF • 1 January: UBA Backhaul, UCLL Backhaul, UCLL colo 	s69AG
The Commission, or the Forum if requested to do so by the Commission, must prepare a code to be known as the copper withdrawal code	Before the implementation date	Schedule 2A
Schedule 3 modified investigation of certain copper services (Copper review)	No later than 31 December 2025	s69AH
Commission review of industry dispute resolution schemes	At least once every 3 years	s240

Attachment B: Resourcing for fibre implementation team

69. As mentioned, the Commission's workload is set to increase significantly if the Bill passes, and a number of new people will need to be engaged if we are to complete this work.

FTEs required to implement new fibre regime

We consider that 15 full time equivalent employees will be required over the proposed time period, including:

- one programme manager;
- one project manager;
- one principal adviser;
- one staff member to provide administrative support;
- three economists;
- two legal staff; and
- six analytical staff members, including chief advisers/senior analysts/analysts/assistant analysts.

70. Staff would be supported by external economic and legal advice, and internal and external technical expertise on complex issues such as financial modelling and geographic mapping.

Attachment B - Consolidated submissions on funding discussion paper



Vanessa Howell
Commerce Commission
44 The Terrace
WELLINGTON 6140

11 May 2018

Dear Vanessa

Implementation of the New Regulatory Framework for Fibre Services – Funding Discussion Paper

2degrees supports robust consideration of the new regulatory framework and therefore that the Commission receives adequate funding to carry out this piece of work to a high quality. The framework will have a significant impact on the industry structure for years to come and it is important to 'get it right'. We are aware there are key differences between the telecommunications sector and other sectors that have a utility-style framework applied, and importantly, that the Commission will need to consider the impact of the new fixed framework on other markets as part of this project.

However, an additional \$12 million over three years is a very considerable additional cost to the existing Telecommunications Regulatory Levy. We do not consider the Commission can simply just 'add' a budget for this new work to the existing \$6 million appropriation it already receives, and which is ultimately passed on to industry and consumers.

The existing \$6 million levy has managed to cover substantial other processes (such as the copper FPP) and we expect at least some of the future annual \$6 million cost received by the Commission would be covering the new fibre-related work. As such, 2degrees supports increased transparency of how the \$6 million existing TRL will be spent, and subsequent identification of aspects of that which can be deprioritised.

Industry levies represent a real cost to 2degrees (and other industry parties) and we are concerned this is not adequately recognised. 2degrees did not seek an overhaul of the fixed regulatory framework. Whether this is added to the existing TRL mechanism or passed through as a wholesale cost, 2degrees would be financing a significant portion of the cost of establishing the new regime. The commercial reality is 2degrees must deprioritise projects it considers important in bringing value to consumers in order to cover costs - including the regulatory levies to cover Commission regulatory costs. Difficult as it might be, the Commission should also recognise not all work can be funded – or resourced – at once, and some work will need to be prioritised/deprioritised.

Our related concern is that in addition to the direct the TRL cost paid to the Crown, the Commission's current proposal also implies a significant increase in regulatory resource and cost to industry participants to effectively respond to all the Commission's multiple work programmes (occurring in addition to other Government initiatives). We consider it essential the Commission hears from both regional fibre providers and the RSPs (the latter of which deal directly with end-users) to ensure decisions are made in the long-term interests of consumers, but, as was highlighted by other parties at the Commission's recent workshop on 2 May, it is very unclear if industry can effectively achieve this over a short timeframe.

Additional funding for consumer representation

A consumer perspective is important to the Commission's work. 2degrees considers that its interests - our customers - are aligned with the long-term interests of consumers. It is important to have a deeper understanding of the industry and regulatory framework to understand the true impacts on consumers in many cases, in addition to a more general consumer perspective.

We support the Commission directly commissioning consumer focussed work on such areas, as it has done in the past and does for other 'experts'. This maintains the independence of the Commission, we consider vital.

While we understand, from experience, the difficulties in funding responses to regulatory issues, we do not consider an industry-funded appropriation to create and fund separate consumer representative groups, and losing its independence, is appropriate.

Yours sincerely

A handwritten signature in black ink, appearing to be 'M Bolland', written in a cursive style.

Mat Bolland
Director of Corporate Affairs & Wholesale

Submission on the Commerce Commission's Funding Discussion Document "Implementation of the New Regulatory Framework for Fibre Services"

11 May 2018 – Public Version



Introduction

- 1 Thank you for the opportunity to comment on the Commerce Commission's (**Commission**) funding discussion document "Implementation of the New Regulatory Framework for Fibre Services", released 30 April 2018 (**discussion document**).
- 2 Under the new regulatory framework for the provision of fibre services the Commission is required to determine both price-quality paths for Chorus and information disclosure requirements for Chorus and LFCs. Underpinning these, is the development of the input methodologies (**IMs**). We appreciate this new regulatory framework will require an increase to the Commission's workload in order to develop and implement it.
- 3 In summary:
 - The quantum of funding is in line with our expectations.
 - We agree that a three year apportioned quantum is about right, however Chorus wants a fast transition to the utility model by 1 January 2020 to provide certainty to consumers as well as shareholders. This could be achieved without trading off quality, by prioritising IMs and the Commission resourcing up in the first year.
 - We suggest the proposed process steps to implement the new regulatory framework are targeted and focus on the key issues that are likely to be bespoke to telecommunications. We see benefit in the Commission leveraging existing precedent established under Part 4 of the Commerce Act that should help provide consistency and certainty for this industry.
 - We agree that a consumer voice may be valuable. However, we consider that it may be more appropriate for a consumer representative group to focus on providing input to the development of the Retail Service Quality Code which forms part of the new regulatory framework.
 - In line with current practice under the Commerce Act, we would expect any levy costs to be treated as pass-through costs under the new regulatory framework.

Level of funding

- 4 The discussion document sets out the Commission's initial funding proposal to implement the new fibre framework at \$12m over three years. This timeframe is based on the Commission's intention to seek an extension to the implementation

timeframe set out in the Telecommunications (New Regulatory Framework) Bill to give it adequate time to develop a high quality framework.¹

- 5 The proposed level of funding is in line with our expectations. In addition, we also support funding being apportioned over three years. This should allow the Commission to spend a higher proportion up front in order to get priority areas implemented in a timely manner without sacrificing the quality of the framework. Timeliness and quality regulatory decision-making are both critical and achievable, which is reiterated in our submission on the Telecommunications (New Regulatory Framework) Amendment Bill 2017.²

Timing

- 6 We appreciate the Commission's efforts to implement the New Regulatory Framework in the most efficient way possible. In addition to this, Parliament has sent a clear signal the regime should be implemented as quickly as possible. In light of this, our view is in preference of a fast transition to the utility model to provide certainty to consumers as well as shareholders.
- 7 As mentioned in our submission on the Telecommunications (New Regulatory Framework) Amendment Bill 2017, we propose that the implementation date be fixed at 1 January 2020. Assuming the Bill is passed in the third quarter of this year, this will give 21 months for the Commission to complete this work.³ [Figure 1](#) below illustrates how this timeframe can be achieved.

¹ Commerce Commission, *Implementation of the New regulatory Framework for Fibre Service*, April 2018.

² Chorus, *Submission on the Telecommunications (New Regulatory Framework) Amendment Bill 2017*, February 2018.

³ Chorus, *Submission on the Telecommunications (New Regulatory Framework) Amendment Bill 2017*, February 2018

Figure 1. Our Preferred Timeline

	Year 1	Year 2	Year 3
IMs – Priority - Asset Valuation - Cost Allocation - WACC			
Expenditure Approval (via official info requests)			
PQD - MAR - Prices - Quality			
IMs – Other - Quality - Info Disclosure - Expenditure			

Process

- 8 While we agree with the chosen approach to the process set out in the discussion document, we would encourage the Commission to ensure that the additional processes are targeted to the key issues that differ for the telecommunications industry from existing Part 4 precedent. The Commission has the ability to build on the established common understanding underpinning the Part 4 regulatory regimes, rather than covering already well traversed ground. This will ensure efficient and targeted use of funding and time.
- 9 We note that the new regulatory framework is being implemented after approximately five years of policy debate and associated consultation. We therefore encourage the Commission to avoid traversing issues already settled by that debate.
- 10 The most efficient way of achieving timely outcomes is for the Commission to prioritise work streams that will provide the most certainty to investors and consumers, in particular determination of the initial RAB and WACC by 1 January 2020.
- 11 We are very concerned to hear views from some stakeholders at the Commission’s workshop on 3 May that they do not intend to meet the timelines outlined in the Commissions’ plan. We note that:
 - Implementation timing has a strongly asymmetrical impact on parties involved. Given the transitional provisions in place, delays in implementation have very little impact on RSPs but a considerable impact on Chorus;
 - The current early advice on the timeline gives participants an opportunity to make resourcing choices.

11 May 2018

PUBLIC VERSION

4

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- 12 We therefore ask that the Commission truncates its proposed timeline to the greatest extent possible but in no event extend the timeline beyond that already proposed.

Consumer representative groups

- 13 We agree that the consumer voice is important in the implementation of the new regulatory framework. We see the use of a consumer representative group being the most valuable in the development of the Retail Service Quality Code. Where relevant this input will flow through to wholesale services, which will be developed to meet the needs of retailers subject to the Retail Service Quality Code.
- 14 A consumer voice may also be useful when developing asset management and investment plans to meet the quality standards consumers expect. In this case this consultation can be undertaken directly between consumer representatives and the regulated firm.

APPENDIX

CHORUS' ANSWERS TO DISCUSSION DOCUMENT QUESTIONS

Question Number	Commerce Commission Questions	Chorus position
APPROPRIATE LEVEL OF QUALITY AND TRADE-OFFS		
1	<i>Do you agree that we are targeting the right level of quality for our determinations to deliver an enduring and stable transition to the new regulatory regime?</i>	It is difficult to judge the quality of a process on the basis of high level information. We think that quality can be maintained under tight timeframes if parties remain focused on the key issues that will drive outcomes. As the Commission is aware the key focus for Chorus is the work that allows us to establish the value of the allocated RAB and the WACC.
2	<i>If you disagree that our proposal incorporates the appropriate level of quality for this process, what aspects of quality should be scaled up or down?</i>	It is not possible to judge the quality of a series of processes based on the information provided. The quantum is in line with our expectations. Given the funding is over three years, the Commission could spend a larger proportion of the funding upfront in the earlier years, in order to get it done faster while maintaining quality.
3	<i>Do you agree that we should undertake the additional process steps proposed in addition to our strategy requirements?</i>	We agree with the additional process steps proposed if they are well targeted to key issues. We do not want these processes to start from the beginning and re-examine issues and work which has previously been considered under the Part 4 regimes and provides meaningful precedent in the telecommunications context too. We suggest the Commission focuses from the outset on key issues that are likely to differ between the existing Part 4 regime and the telecommunications industry.
4	<i>Are you satisfied the proposed consultation will provide stakeholders with adequate opportunity to provide input into the final determinations?</i>	We agree, these steps allow ample opportunity for stakeholders to engage and provide input into the implementation process.

5	<i>Are there other consultation steps you think we should be taking?</i>	Prioritisation of key work streams, in particular determination of the initial RAB and weighted average cost of capital (WACC).
CONSUMER REPRESENTATION		
6	<i>Would it add value to the fibre implementation process to allow funding for consumer representative groups to engage with our consultation processes?</i>	<p>As mentioned in the discussion document, matters related to retail service quality are not included in the \$12m cost. Given this, the Commission may seek to allow funding for a consumer representative group.</p> <p>While we agree that a consumer voice is important for the implementation of the regulatory framework, we see the use of a consumer representative group being more valuable in the development of the Retail Service Quality Code.</p>
7	<i>Which would provide better value input into our implementation process - an expert panel representing consumers, or a group comprising of non-expert community representatives?</i>	This depends, in part, on what the purpose of this group would be. We think the Commission needs to provide more insight into how it envisions using a customer representative group. These have been used in various ways internationally.

11 May 2018

Commerce Commission
PO Box 2351
WELLINGTON 6140

By email: TelcoFibre@comcom.govt.nz

Implementation of the New Regulatory Framework for Fibre Services

1. Introduction

Thank you for the opportunity to make a submission on the *Implementation of the New Regulatory Framework for Fibre Service Funding Discussion Paper*. This submission is from Consumer NZ, New Zealand's leading consumer organisation. It has an acknowledged and respected reputation for independence and fairness as a provider of impartial and comprehensive consumer information and advice.

Contact: Aneleise Gawn
Consumer NZ
Private Bag 6996
Wellington 6141
Phone: 04 384 7963

2. Comments

- 2.1 In the time available for making submissions, we have focused our comments on the proposal to provide funding to support consumer participation in the implementation of fibre regulation. We strongly support this proposal.
- 2.2 Telecommunications is an essential service and the way it is regulated has significant implications for consumers. It is therefore important that consumers are effectively represented in decision-making processes.
- 2.3 To date, participation has been constrained by a lack of resources. We've previously recommended ring-fencing revenue from the Telecommunications Development Levy to support consumer representation. Alternatively, funding could be provided directly from central government.

3. Overseas experience

- 3.1 Other jurisdictions have already moved to provide funding support for consumer representation. One example is the Australian Communications Consumer Action Network (ACCAN), which receives funding to represent consumer interests in the industry.

3.2 Funding allows ACCAN to advocate for consumer interests in consultation processes as well as to provide consumers with information to navigate the telecommunications market.

3.3 This arrangement is seen by consumer groups as beneficial to decision-making processes and outcomes for the market.

3.4 A 2017 review of the ACCAN scheme concluded there was:

...an ongoing need for consumer participation in policy and regulatory processes. At the current time, given the complexity of this evolving sector, a telecommunications-specific consumer representative body remains an appropriate model to ensure effective consumer representation.¹

3.5 We consider similar issues are present in the New Zealand telecommunications market and funding consumer representation is warranted.

4. Funding options

4.1 The discussion document seeks feedback on two funding options:

- an expert panel representing consumers, or
- a group comprising non-expert community representatives.

4.2 These options are not mutually exclusive: for example, a panel could be established that includes both technical experts and other consumer representatives.

4.2 Our main concern is that funding is sufficient to ensure effective consumer representation. That is, consumer representatives are adequately resourced to enable them to:

- review consultation documents and participate in submission processes, and
- communicate with consumers about proposed changes and the outcomes for telecommunications customers.

Thank you for the opportunity to provide comment. If you require any further information on the points raised, please do not hesitate to contact me.

Yours sincerely



Sue Chetwin
Chief Executive

¹ Department of Communications and the Arts. 2017. *Consumer representation: Review of section 593 of the Telecommunications Act 1997.*

17 May 2018

To the Commerce Commission,

Fibre implementation funding

InternetNZ is a non-profit and open membership organisation, which works to promote and protect the benefits of the Internet to New Zealand. We welcome the opportunity to submit feedback on the Commission's 30 April funding discussion paper.

We appreciate the Commerce Commission ("the Commission") both that it is consulting on its proposed approach and funding and that it held the workshop earlier this month.

We would like to submit on the questions raised by the Commission in the discussion document.

InternetNZ supports the funding of the Commission to complete a high quality implementation process

InternetNZ supports the full funding of the Commission to enable it to implement the new fibre regulation framework. InternetNZ firmly welcomes and supports the approach in the discussion paper as to the proposed level of activity by the Commission, the consultation of stakeholders during the pricing process, its funding via the levy, and funding for effective consumer input.

InternetNZ is concerned that if the Commission is required to narrow its scope and make quality trade-offs, the process will harm the consumer and other Internet stakeholders. We also share concerns raised at the workshop that tight timelines will be challenging for stakeholders and the Commission, making adequate funding and extension of the implementation deadline vital, especially for meaningful consumer engagement.

InternetNZ supports strong consumer engagement

Strong input by consumer interests can contribute much to help the Commission arrive at better outcomes in this process, including as the focus of the proposed Part 6 regime, namely long-term benefit of end-users.

We believe that the Commission needs to ensure it has adequate time and funding for consumer engagement, taking into account likely delays and challenges down the track. InternetNZ believes detailed consultation early in the process is important, given the key decisions made then.

Considering the scale of this process and the complex issues involved, consumer and Internet stakeholder interests may also need financial support to facilitate meaningful engagement. It is deep in the detail of this work that many crucial matters play out, and it requires expertise to be able to meaningfully contribute.

We think as part of strong consumer engagement that the Commission should consider alternative methods of consulting with stakeholders, working with main consumer/Internet stakeholder bodies (Consumer NZ and TUANZ) with carefully controlled and planned funding available to those bodies to finance effective public interest contributions to the process.

InternetNZ also offers its commitment to engage in the process with expert input and Internet community interests, as well as offering to act as a facilitator to bring people together on this issue, where appropriate.

We have consulted with Consumer NZ and TUANZ on this submission and we support their messages.

In summary, InternetNZ supports the funding of the Commission to complete a high-quality implementation process and we hope the Commission will consider options for consumer engagement which include working with industry and consumer bodies, to ensure the interests of end-users are properly heard and reflected in the outcome of this process.

We would welcome the chance to discuss this submission further. Please contact Nicola Brown by email at nicola@internetcz.net.nz.

Yours sincerely,



Jordan Carter
Chief Executive

11 May 2018

Nick Russ
General Manager Market Design
Electricity Authority
By email to TelcoFibre@comcom.govt.nz

Dear Nick

Fibre implementation funding

1. This is a submission by the Major Electricity Users' Group (MEUG) on the funding discussion paper 'Implementation of the New Regulatory Framework for Fibre Services' 30 April 2018.¹
2. MEUG members have been consulted in the preparation of this submission. This submission is not confidential. Some members may make separate submissions.

Consumer participation in implementing the new fibre monopoly regulatory regime

3. Chapter 3 of the paper considers the potential to include additional funding for consumer representative groups. Two questions are asked of stakeholders:
 - Would it add value to the fibre implementation process to allow funding for consumer representative groups to engage with our consultation processes?
 - Which would provide better value input into our implementation process – an expert panel representing consumers, or a group comprising of non-expert community representatives?
4. The paper states:²

“We have not undertaken any design but, based on other regulators' experience and our relative scale, we consider it likely that such a regime could be implemented for under \$1m, over the three years.”
5. MEUG is interested in precedents for interventions to facilitate consumer participation for regulating fibre that might flow onto the energy sector. The following sections consider:
 - a) Achieving an optimal level of consumer participation is complex;
 - b) Defining consumers and estimating benefits;
 - c) Identifying policy problems and feasible solutions; and
 - d) The benefits of interventions must exceed costs, accountability and who pays.

¹ URL <http://www.comcom.govt.nz/dmsdocument/16239> at <http://www.comcom.govt.nz/regulated-industries/telecommunications/industry-levy-and-service-obligations/implementation-of-the-new-regulatory-framework-for-telecommunications-funding-discussion-paper/>

² Funding discussion paper paragraph 64.

Achieving an optimal level of consumer participation is complex

6. MEUG supports the Commission raising the question of if and how consumer participation might be facilitated in implementing the new regulatory regime for monopoly fibre services.
7. This is a complex topic we have been grappling with for many years. As recently as last December we discussed this topic in MEUG's briefing to incoming Ministers:³

“It is too hard for consumers to participate in the regulatory processes governing the electricity sector and MEUG would urge Ministers to ask officials and regulators to consider ways to remove barriers to consumer participation.

The complexity of issues and information prevents most customers understanding let alone effectively participating in regulatory processes. Regulators have made improvements in simplifying issues, for example explaining decisions in terms of impact on an average household. However, too often we continue to encounter the attitude that the issues are complex and cannot be explained in simple, accessible terms. That is unacceptable.”

8. The first paragraph of the MEUG briefing to Ministers essentially said we think consumer participation is a problem but we haven't, despite watching various models overseas, yet found a solution that might work for New Zealand. MEUG wants Ministers, officials and regulators to also worry about this problem. The more people that have this topic on their radar the better chance new solutions might be developed where benefits clearly exceed costs. Hence, we welcome the Commission's paper recognising this should be a topic to consider from the outset of the new fibre regulatory regime.
9. The second paragraph of the MEUG briefing covered one barrier to consumer participation; namely regulators not communicating the impact of proposed or final decisions in lay-terms relevant to an average household consumer (though we noted this has been improving in recent years). The question of identifying barriers to consumer participation is discussed from paragraph 16 onwards. Before that we discuss the complexity and importance of defining consumers.

Defining consumers and estimating benefits

10. The purpose statement of Part 4 of the Commerce Act begins “The purpose of this Part is to promote the long-term benefit of consumers in markets ...”⁴ Consumers of regulated services need to be distinguished from customers of entities providing regulated services. A customer of an entity that supplies regulated services can be an end consumer of the service or an intermediary such as wholesalers, retailers or aggregator which pass on the service as part of a service bundled with other services. An end consumer either:
 - a) Consumes the service such as in the electricity sector a household or a supermarket consuming electricity to provide heating, cooling, driving electric motors etc.
 - b) Transforms the regulated service into another product and service where the regulated service cannot practically be unbundled. For example, in the electricity sector industrial manufacturers consume electricity in motors, heating and cooling processes to produce commodities (eg aluminium, steel, pulp, paper, packaging, milk products, refined petroleum products, gold, glass, fertiliser and beer) that are then sold for consumption in other markets other than electricity,

³ MEUG letter to Hon Dr Megan Woods, Minister of Energy & Resources, and Hon Kris Faafoi, Minister of Commerce and Consumer Affairs, Briefing by MEUG, December 2017, <http://www.meug.co.nz/node/899>

⁴ Commerce Act 1986, s.52A (1), <http://www.legislation.govt.nz/act/public/1986/0005/latest/DLM87623.html>

11. It is important to consider which parties are consumers rather than customers in a regulated sector. In some cases, the intermediary customers of a market have in part or whole incentives to promote the long-term benefit of consumers. Electricity retailers have strong incentives to maintain a high degree of vigilance and provide expert views on boundary issues between regulated and non-regulated services but less so, at least in a consistent co-ordinated and sustained fashion, on other regulatory parameters. MEUG's incentives in representing commercial and industrial (C&I) consumers are more aligned across all the Part 4 issues that affect household consumers. Our impression is that in the regulated airfield services market the incentives on the Board of Airline Representatives of NZ (BARNZ) is also well aligned with the consumers of those services. For the fibre sector we suggest a stock-take is needed of the roles and incentives of fibre customers (intermediaries and their trade-associations) to identify topics where there is or will be a voice aligned with the interests of consumers and where there are gaps.
12. The purpose statement of Part 4 talks about "long-term benefits" to consumers. The next two paragraphs discuss price effects as one part of the price-quality pairing that "long-term benefits" refer to. We don't discuss quality further other than to note quality and price should be considered as a pairing, with a lower price coupled with lower quality and higher prices with higher quality. In the electricity sector we have barely scratched the surface on incorporating quality-price trade-offs for different classes of consumer and this will become more relevant and complex with disruptions in technology and business models. The same may apply in the fibre sector.
13. Regulators in the electricity sector have, for major consultations and decisions, progressively included estimates of the impact on prices for an average household. The diversity of household energy demand patterns due to many factors makes impacts for an "average household" less relevant for many consumers.⁵ The impacts of regulatory decisions on commercial and industrial (C&I) consumers are rarely estimated. A further complicating factor is wholesaler, retailer or aggregator intermediaries may re-bundle regulated prices making Commission estimates of reported average household price benefit/cost changes incorrect. Over time competition should drive re-bundling closer to straight pass-through changes. Assurances to consumers price benefits/costs will transition over the long-term are of less interest as to what are the immediate effects and having greater clarity on the whether the expected transition period is reasonable.
14. MEUG expects in the fibre sector estimating the impact on the price of regulated services of regulatory options and decisions for an average household may have the same problem where that measure is not relevant for a reasonable number of non-average households and C&I consumers and or is re-bundled by most intermediaries. If true, the same problem we find in the electricity sector may occur where few consumers except those clearly affected because their demand is so large take close interest in regulatory design.
15. Finally, having a more accurate estimate of the impact on disaggregated consumer segments is no guarantee consumers will then increase the level of their participation in regulatory matters because the impacts may be small relative to other issues.

⁵ Factors include housing stock differences (eg levels of insulation and floor area per occupant), occupant differences (eg number and age of occupants and frequency and timing at home), and use of alternative energy sources (eg reticulated natural gas in the North Island, LPG, solid fuels including use of wet-backs for heating water, solar hot water, PV and batteries).

Identifying policy problems and feasible solutions

16. Before interventions are considered, the Treasury cost-benefit-analysis guidelines require identification of the policy problem to be solved. Once the policy problem has been defined (usually in terms of the market failure to be addressed, in this case the market for effective consumer participation in the implementation of the fibre market regulatory regime) then policy options can be considered. The funding paper in seeking feedback on possible solutions skips the important stage of defining the policy problem.
17. In this section we discuss some, not necessarily all, policy problems and alternative solutions that could be considered in addition to those discussed in the funding paper.
18. In the MEUG briefing to incoming Ministers (paragraph 7 above) the policy problem we discussed was the failure of regulators to explain their decisions in terms understandable and relevant to an average household. As discussed in the preceding section, the next phase for the Commission in the electricity sector is to expand estimates of the price impact on customers from a grand-average-household to more disaggregated estimates for discrete classes of consumer, pairing price impacts with quality impacts and considering if re-bundling materially distorts price estimates. We expect there will be ongoing improvements in all these aspects by the Commission; though it won't be a quick fix.⁶ The same may apply to the fibre sector.
19. The policy problems of access by consumers and understanding the relevance of decisions given only grand-average-household price or cost effects are part of a wider problem of information and resource asymmetry between the regulated party and customers or their retailers and agents that contract directly with the monopoly. We assume, though it's not specifically stated in the funding paper, that the suggestion of consumer representative groups is targeted at the policy problem of information and resource asymmetry.
20. From MEUG's monitoring of international experience with consumer representative groups in the electricity sector there are risks such groups are captured by consultants or special interest groups and or used for political window dressing. The latter is discussed in the final paragraph of this section. If these risks materialise then all or some consumers end up being as disenfranchised from the consumer representative group as they are with the monopoly supplier and regulator; but must pay for the consumer representative group anyway.
21. The one exception of a consumer expert panel that we think has been useful was the expert peer-review panel in the original Input Methodology (IM) process in 2010. That expert group had an incentive in maintaining their independence and expertise to provide free-and-frank feedback to the Commission. The three changes we would make were a similar expert panel be used again are:
 - In considering the make-up of the panel the Commission could consult consumer representatives beforehand in case there were potential material conflicts of interest the Commission was unaware of or other candidate experts that could be considered;
 - The role of the expert panel is to represent the interest of consumers guided by the s.52 (A) Purpose statement. That is the panel is not neutral as that is the role of the Commission. But the panel is also not given an advocacy role outside the objectives of the s.52 (A) Purpose statement; and

⁶ An aspect to consider in the electricity sector is whether the incentive on the Commission to articulate more granular price-quality effects on different consumer classes is weaker because the Commission is only responsible for regulating aggregate price/revenue and quality metrics of an entity providing regulated services.

- The expert panellists hold a workshop with consumers to discuss their findings before they are presented to the Commission. This creates an incentive on the experts in formulating their views to:
 - Communicate those in terms understandable to a broad range of consumers; and
 - Reconcile their views between two audiences: The Commission and consumers.
22. Even if consumers or agents for consumers (intermediaries with aligned incentives or an expert peer-review panel) become well-informed and provide supporting or new evidence to the Commission, there remains a problem of resource asymmetry in the ability of parties to undertake merit reviews of Commission decisions.⁷ The monopolies not only have deep pockets but can also seek provision for court costs to be included as part of a price or revenue path and hence be recovered from consumers.
 23. In the electricity sector MEUG has undertaken merit reviews but we are not aware of any other consumer or other party with incentives aligned with consumers, apart from BARNZ, which have initiated merit reviews. We have no data but speculate that regulated monopolies have spent more than an order of magnitude more than MEUG and BARNZ on merit reviews. A consumer representative group without an ability to follow through with a merit review, or that group has no individual representatives that could do so, illustrates that such groups might address some consumer participation policy problems but not all.
 24. An interesting thought experiment is whether electricity consumers would have preferred to have spent \$1m over 3-years for a consumer representative group or to fund a merit review of the WACC asset beta Input Methodology decision in 2016. If MEUG members were paying part of a \$1m levy (we argue against that later in paragraph 31), our vote would probably have gone on a merit review.
 25. There is a risk that a consumer representative group allows the Commission to test and or be a conduit for preparing customers for proposed decisions. This overcomes a policy problem the Commission may have in managing the political stability of its decisions. MEUG is wary of using a customer representative group in this manner unless that is its clear stated purpose and the Commission, as the initial direct beneficiary, absorbs that cost rather than pass it on as a levy to customers (ie the cost is recovered from general taxation).

The benefits of interventions must exceed costs, accountability and who pays

26. Conceptually the optimal level of resources used by end consumers in development of the new fibre regulatory regime should be no more than the incremental benefits gained by the deployment of such resources. In practice estimating incremental benefits and incremental costs of alternative interventions is challenging.
27. One issue to consider is that the future business-as-usual (BAU) counterfactual is likely to differ from the status quo as continuous improvements are implemented. That is there are likely organic improvements by the Commission and consumers in how they interact. That will be facilitated by a greater range of social media and technologies to reach different classes of consumer and more disaggregated data to estimate changes in prices and quality for different consumer classes.

⁷ While the text of this discussion only mentions merit reviews; the same logic applies to barriers to consumers initiating judicial reviews of Commission regulatory decisions.

28. In the case of implementing the new regulatory regime for monopoly fibre services, estimating costs would cover the \$1m over 3-years for Commission direct costs and it is likely a reasonable range of scenarios for fibre market participant and customer direct costs could be estimated. The funding paper has no estimates of the offsetting benefits to justify the Commission's direct costs of \$1m and we think that is a non-trivial exercise. Before decisions are made to intervene an estimate of the incremental benefits should be made and tested with interested parties. In some cases, MEUG has been sufficiently confident, despite a lack of precise quantitative evidence, that a proposed regulatory change is likely to have incremental benefits well in excess of the incremental costs of change, the net-benefits are likely to be greater than any other alternative and there are no feasible scenarios where net-benefits might be negative. We are not confident this applies to the proposed solutions posed in the questions in the funding papers (paragraph 3 above).
29. If the Commission decides to budget for an intervention(s) as suggested in the funding paper then mechanisms to require an ex-post review or reviews of the effectiveness of the intervention should be considered. Having this accountability loop will incentivise the Commission to prudently design the intervention and ensure that any future use of similar approaches is effective as possible.
30. An intervention by the Commission of up to \$1m over 3-years to facilitate consumer participation in the implementation of the new fibre regulation will need to be paid by somebody. Options include (not an exhaustive list) from general taxation, from the fibre monopolies (they would pass the cost on) and from consumers benefiting from the intervention. Subject to further details emerging of any proposed intervention, MEUG's preference is that beneficiaries pay. Only after a detailed cost-benefit-analysis identifies if all consumers equally benefit or some more than others can a levy structure be set using an appropriate cost allocator.
31. An example of the latter using the electricity sector follows. MEUG members through MEUG membership subscriptions and work programmes already participate extensively in development and operation of the Part 4 regime regulating energy monopolies. To that extent MEUG members have self-selected to pay their own way in participating in Commission processes and would pay less, if anything, than other consumers for Commission interventions to facilitate consumer participation.

Next steps

32. MEUG welcomes the Commission including a discussion on consumer participation at the outset of thinking about implementing the new fibre regulatory regime. We acknowledge the Commission is not just talking about this but, as explained at the workshop, is actively encouraging feedback through a dedicated "fibre in-box". This submission does not directly answer the 2-questions on consumer participation in the funding paper. Instead we have given some initial comments on aspects of the topic that could be considered using our experience in the electricity sector. We would welcome an opportunity to meet with the Commission to further explore the topics in this submission.

Yours sincerely



Ralph Matthes
Executive Director



IM funding discussion paper

Submission | Commerce Commission

11 May 2018

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Introduction

1. Thank you for the opportunity to comment on the Commission's *Implementation of the New Regulatory Framework for Fibre services Funding* discussion paper (**discussion paper**).
2. The Commission is required to develop new input methodologies, determine a Chorus price-quality path and LFC information disclosure requirements by a proposed new Part 6 of the Telecommunications Act (**Part 6**).
3. This is a substantial undertaking requiring the Commission to take a fresh look at all aspects of the utility regulatory model. As noted in the discussion paper, establishing the new Part 6 regime will not be a simple "cut and paste" exercise from previous Commission decisions. For example, the Part 6 regime differs in material respects to regulation under Part 4 and decisions must be in the best interest of all end users of telecommunications services. Further, Commission decisions made in the first period – particularly the input methodologies – will determine prices ultimately charged to end-users and the nature of competition in our sector for many years to come.
4. We support the Commission's approach in the discussion paper and outlined in the workshop.
5. Conversely, we wouldn't support any proposals that – in seeking to shorten the process or take short cuts - compromise the quality of regulatory outcomes as these will negatively impact a broad range of stakeholders and end users. While we support the Commission looking for ways to provide early certainty to Chorus shareholders, this shouldn't come at the expense of end user benefits.
6. In responding to the questions below, we've suggested additional process issues the Commission may wish to consider in its project planning, and comment on proposed mechanisms to better engage consumers.

Questions

Funding and quality

Do you agree that we are targeting the right level of quality for our determinations to deliver an enduring and stable transition to the new regulatory regime?

7. The decisions the Commission is required to make to implement the new Part 6 regime will be inherently complex. In addition to capturing detailed technical requirements, the decisions will need to give best effect to the purpose of new Part 6 and the promotion of workable competition in telecommunications for the long-term benefit of end-users of telecommunications services. We consider that the Commission is best placed to determine the consultation, timetable and resources required to achieve this.
8. As discussed at the workshop, the Commission should look to provide early certainty for Chorus to shareholders or reduce the parties' costs to engage in the process where possible. However, this shouldn't come at the expense of its primary obligation to make decisions in the interests of end users. As it stands, we believe the proposed legislative timetable is tight for resolving the matters raised by the new regime.
9. As also discussed at the workshop, with all the additional telecommunications work ahead of it, we believe the Commission should consider cancelling or deferring some of the lower value

work in its current work programme. Every business needs to make prioritisation calls and use its capital carefully, and the Commission is no different. We don't expect, for example, that the Commission should (or in practice could) simply treat the Part 6 work programme as simply additive to the \$6 million work programme it operated prior to the introduction of that Part 6 regime.

10. Rather, the Commission should now consult with industry on how to condense its planned work programme. That will free up Commission resource for the Part 6 work and reduce the quantum of the overall cost increase to industry of the Commission's regulatory work. In a practical sense, we note that most of the Commission's telecommunications work programme relies on input and engagement from industry stakeholders. We will simply not be able to cope with a 60% increase in regulatory engagements, and we don't expect the rest of the industry will be able to either. The industry faces the prospect of engaging on a number of significant regulatory processes in parallel – i.e. the IMs development, mobile market study, retail service quality reporting and other matters provided by the new framework – and the sheer volume of regulatory issues risks compromising the quality of the outcomes.
11. We appreciate the Commission sets its own regulatory and market study priorities. However, there should be ongoing consideration of the value of some activities and of the load placed on parties that have to respond to those activities. At a minimum, the Commission should re-visit the need for, or timing of, its broadband speed testing work, 9A studies, deregulation review, review of dispute resolution schemes, copper review, and new regulatory activities.

If you disagree that our proposal incorporates the appropriate level of quality for this process, what aspects of quality should be scaled up or down?

12. Quality regulatory decisions arising from fulsome engagement between the Commission and stakeholders relies on: knowledgeable, relevant experience in telecommunications markets; insights into conduct of operators, consumer interests, commercial and economic drivers and incentives in telecommunications; and the interplay between legacy, current and future technology ecosystems.
13. Accordingly, as set out by staff in the workshop, Telecommunications branch staff will need to take a significant role in implementing the new regulatory regime. As a retail service provider of fibre broadband services, we already know that the non-price component of the Part 6 regime (or the Quality component of the IMs framework) will be critically important and technically complex. We believe that the industry understanding necessary to consider these issues will likely mean more involvement from the Telecommunications branch than anticipated at the workshop, and the branch will need to prioritise its activities accordingly.
14. If the Commission is able to refocus Telecommunications branch resources onto the implementation of the Bill and deprioritise other work, we expect it will be possible for the Commission to achieve its regulatory quality objectives with a reduced overall budgetary requirement.

Process

Do you agree that we should undertake the additional process steps proposed in addition to our statutory requirements?

Are you satisfied the proposed consultation will provide stakeholders with adequate opportunity to provide input into the final determinations?

Are there other consultation steps you think we should be taking?

15. We agree that the priority is to implement a high quality, comprehensive regulatory regime required to give full effect to the Amendment Act. And while the Act anticipates an inquisitorial-style and consultative approach to making decisions, it is left to the Commission how it ascertains user preferences and facts.
16. We support the Commission looking for innovative ways to improve the quality of the process its decisions, including the examples of additional engagement and technical steps set out in the discussion paper. However, staff should be open to adopting new consultation steps as the process unfolds. There are complex relationships to consider, and additional complexities and issues will be uncovered as we move through the process.
17. Other possibilities for improving the process and engagement that could be considered by staff early in the process include:
 - a. Its approach to confidential information – access to relevant information has a significant impact on parties' ability to efficiently test and comment on proposals and end user outcomes;
 - b. Making a provisional model with draft/broad cost parameters available to parties early in the process;
 - c. Exploring the relationships and incentives within the regime discussed above - while our understanding will develop over time, this could frame sequencing and planning to develop individual IMs; and
 - d. Potentially engaging the industry through, say, the TCF to establish non-price terms for the anchor and DFAS services, i.e. draft service descriptions and SLAs. This model was successfully applied to early Part 2 regulated services. This could occur substantially in parallel to the development of the IMs.
18. This is not a definitive list and we're keen to engage with staff further on this.

Funding for consumer representative groups

Would it add value to the fibre implementation process to allow funding for consumer representative groups to engage with our consultation processes?

19. The Commission's role is to make decisions that promote competition for the long-term benefit of end-users of telecommunications services. This is not a new area of responsibility and has always been part and parcel of the Commission's obligations and a key determinant in the Commission's approach to telecommunications regulation under the Telecommunications Act. If the Commission believes it needs to engage differently with end users in order to better

understand their preferences then it should do so, and there are a range of ways it might do this.

20. But any new engagement activities or engagement model – the purpose of which would be to better inform the Commission’s decision-making – should:
- a. **Be funded by the Commission:** if the Commission sees enough value in a new engagement activity then it should be willing to fund that activity from within its funding envelope. If it does not see sufficient benefit to fund this activity, it should not expect other stakeholders to do so; and
 - b. **Operate across all of the markets the Commission monitors or regulates:** We do not believe that the Commission’s responsibilities under Part 6 are materially different to its responsibilities in respect of Energy, Airports, Dairy or Credit Finance markets. Therefore, any additional consumer engagement model should apply across the Commission activities. For example, the AER Consumer Challenge Panel (**CCP**) referred to in the discussion paper was not established for a specific project but sits across all AER regulatory activities; and
 - c. **Be designed to avoid the Commission funding a particular submitter, or submitters, within its processes.** The proposed approach in the discussion paper – whereby the Commission would fund consumer parties to engage within the consultation process - raises several procedural concerns that we believe make it a non-starter in what is likely to be a litigious process. For example, what is the status of the Commission funded submissions and how will the Commission show that it has accorded those submissions equal weight to others’? Would the consumer group(s) be an interested party that can appeal the decision? Could a submitting group funded by the Commission ever be truly independent of the Commission? What is the role of the consumer group versus the Commission in deciding what is in the interests of end users?
21. Therefore, if the Commission wishes to establish an advisory group, it should look to implement a transparent and separate consultation process on this question, and seek submissions on it from stakeholders across all of the markets the Commission is involved in. For example, the CCP sits across all AER regulatory activities and was established with a clear role – i.e. to provide insights of value to the AER decision making process - and governance structure. The CCP is funded directly by the AER. The AER issues the CCP a Request of Advice and, through the determination, CCP members work closely with AER staff and Board.¹ Any Commission advisory panel would need to have a similarly transparent role and governance structure.
22. At the workshop, staff also set out the benefits of independent experts providing a counter-point or critical perspective on issues. The Commission already commissions expert peer review reports and this model seems to work well. If it deemed it necessary, the Commission could also seek a critical expert review to help ensure it properly understands the consumer perspective in its decision making.

¹ <https://www.aer.gov.au/about-us/consumer-challenge-panel/past-panel-membership>

Which would provide better value input into our implementation process – an expert panel representing consumers, or a group comprising of non-expert community representatives?

23. The answer to this will ultimately depend on what aspect of its decision-making process the Commission believes is lacking a consumer's perspective – if the Commission believes it needs detailed economic advice from a experts who can represent end-users' interests, then an expert panel representing consumers, like the CPP, is the answer. If the Commission wants to better understand what customers actual preferences and priorities are, then it will need to engage with the non-expert community.

END

11 May 2018

Vanessa Howell
Commerce Commission | Te Komihana Tauhokohoko
Wellington
New Zealand



By email:

Dear Vanessa

Funding of for future fibre regulation

Introduction

Thank you for the opportunity to comment on the Commerce Commission's (the Commission) proposed funding requirements for the new Regulatory Regime set out in the Telecommunications (New Regulatory Framework) Amendment Bill (Bill).

The Commission has also sought feedback on a suggestion that the Commission might create and fund a consumer representative group to participate in the consultation process.

The New Zealand Telecommunications Forum (TCF) welcomes the Commission's transparency in setting out its proposed costs for this new work and providing the opportunity to comment.

Appropriate level of quality and trade-offs

The Commission has proposed that it will require additional funding of \$12 million over three years to implement the proposed new regime. It is noted that this funding is required for the new Wholesale regime and the cost of the new Retail Service Quality Codes will be funded from the Commission's current annual Telecommunications appropriation. The \$12 million is in addition to the annual \$6 million levied on the telecommunications industry to cover the Commission's costs regulating the industry.

The TCF believes that the Commission should be adequately funded to competently and efficiently perform its role to a high standard. The Commission's decisions in implementing the new regulatory regime will have long lasting effects and need to be right. However, the TCF considers that this cost cannot be considered in isolation from the Commission's other work under the Telecommunications Appropriation.

When the Commission was given a regulatory role under the Telecommunications Act 2001, the industry was levied to pay the cost of the regulatory function and the cost was allocated across all participants in the industry. That levy has continued, with adjustments to its annual cost, since 2001 and the allocation methodology has also remained conceptually unchanged. The structure of the industry has changed significantly since that time, and the nature of the regulatory environment is about to change to a completely new regime as a result of an entirely new access network being rolled out.

These changes to the industry suggest that it would be more appropriate for the Commission to set out its overall funding requirements and priorities under the Telecommunications Appropriation. To provide stakeholders with better transparency of what will change with the new regime, what discretionary activities will cease, or be continued, and what priorities the Commission will set. Stakeholders would have a much better context for discussion about Commission funding and priorities, including the funding required for the new responsibilities.

The industry does not have the ability to generate additional revenue when the regulatory regime changes. Participants are constantly required to make decisions about costs and priorities. The Commission should be required to make the same decisions. For this reason, the TCF would like to see the Commission's costs and priorities set out so that stakeholders may see that the cost of the new regime is not simply being added to the existing work programme, but that trade-offs are being made and that priorities are being set based on a realistic view of what might be achieved by the Commission, and the industry. The TCF encourages timely and quality decisions by the Commission as it implements the new regulatory regime, but this should be achieved and costed as part of its overall work programme.

The industry is not in a position to respond overnight to a 60 percent increase in the Commission's work programme. It is clear that some of the Commission's discretionary activities must be reduced and reprioritised if the industry is to be able to respond to the Commission's consultative processes. A reduction in the current work programme would be reflected in a more even allocation of costs across the Commission's priorities.

It is acknowledged that the industry may not be in agreement about all of the Commission's priorities. Some aspects of the Commission's work will be seen as having a different priority by different participants in the industry. But in the absence of transparency about the trade-offs and reprioritisation of the Commission's discretionary work, that conversation cannot even begin.

Please note that Trustpower notes their support of the TCF's view that the Commission should be adequately funded to competently and efficiently perform its role under the new telco regulatory framework and that at some point a holistic review of the funding of the telco regulatory work is desirable as no changes have been made to the TRL since 2001 however Trustpower does not consider this holistic review necessarily needs to be done at this time or as a condition of the funding for the regulation of fibre services.

Consumer representation

The Commission has asked for comment about the concept of the Commission creating and funding a consumer representative group for the consultation process of the new regulatory regime. The TCF acknowledges that a consumer perspective will always be important to the Commission in its regulatory role. The industry has considerable experience in seeking consumer views and understands how difficult it is to obtain this perspective, due to the range of consumer perspectives, knowledge and experience. However, the Commission has not been clear about what aspect of the consumer view is currently missing from its regulatory consultation processes.

The Commission has a statutory function to set regulatory outcomes for the benefit of consumers. It does this through a process of gathering information, consultation and by employing independent experts. The Commission's role is to act on behalf of consumers to replicate competitive outcomes for the benefit of consumers. To this end it is a proxy consumer representative.

It is not the Commission's role to use an industry funded appropriation to create and fund consumer representative groups.

If the Commission were to fund an existing consumer group to engage with its stakeholders through surveys, focus groups and other activities to obtain information about consumer views, the consumer group would no longer be independent of the Commission. The Commission would be better to directly purchase consumer surveys and conduct its own focus groups. Managing its own processes would allow the Commission to control the quality and design of such activities. Likewise, engaging a panel of consumer representatives could be achieved by simply engaging those experts directly to provide advice, as the Commission already does with legal and economic experts.

Summary

The cost of the new regulatory regime needs to be considered against the overall cost of regulation in the telecommunications industry. The TCF requests that the Commission set out its funding requirements indicating its priorities and demonstrating which discretionary activities will be reduced or increased, what changes in priorities will occur, and what trade-offs will be made. Setting out the programme of work would allow the cost of the new regulatory responsibilities to be considered in the context of the Commission's overall funding requirements against its priorities.

The TCF understands the Commission's desire to encourage consumer participation on the regulatory consultative process. However, the Commission has not been clear about what consumer perspective it believes is missing from its current processes. The TCF does not believe that it is appropriate for the Commission to use an industry funded appropriation to create and fund consumer representative groups.

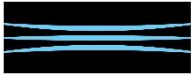
Yours sincerely

A handwritten signature in black ink, appearing to read 'G. Thorn', followed by a horizontal line.

Geoff Thorn

Chief Executive Officer

New Zealand Telecommunications Forum (TCF)



11 May 2018

Vanessa Howell
Head of Fibre Regulation
Commerce Commission
Wellington 6140

By email: TelcoFibre@comcom.govt.nz

Dear Vanessa

New Fibre Regulation: development and funding

We welcome the opportunity to submit to the Commerce Commission's request for feedback on implementing a new regulatory framework for fibre services. The introductory stakeholder workshop held on May 2 was a valuable start to what will be a very intensive development period as soon as enabling legislation is passed by Parliament.

Cross-sector precedent for input methodologies and price-quality regulation

We have monitored the Commission's price regulation in telecommunications for potential precedent value of decisions in one sector applying to other sectors. For example, the proposed fibre regulation for Chorus (under new Part 6 of the Telecommunications Act) mimics the regulatory arrangements which apply to Transpower under Part 4 of the Commerce Act.

We are interested in the Commission's views on regulatory certainty and how the Commission reflects that in setting the input methodologies (IMs) IMs and prices for telecommunications activities, compared with regulatory certainty and predictability under Part 4. We note the Commission's emphasis on Chorus' desire for regulatory certainty as a reason for expediting the IMs, and new regulated prices.

As the Commission develops the fibre IMs we think it would be helpful if the Commission can identify whether differences in approach to the Part 4 reflect industry-specific and legislative differences, or alternatively reflect that the Commission's thinking has evolved or changed. Such understanding will assist stakeholders to see how fibre IMs might impact on future review or changes to the Part 4 IMs.

Development timeline and funding

The development of the new fibre price regulation will be a substantial additional undertaking for the Commission. The Commission faced similar changes with the establishment of the Part 4A 'thresholds' regime and then the replacement Part 4 regime. For example, when the Commission developed the Part 4 IMs, pre-existing methodologies were in place for each of the building blocks for price determination (cost allocation, asset valuation, depreciation, WACC, tax treatment etc).

We caution that compressed timetables can affect the extent to which stakeholders, particularly consumers and smaller service providers, can meaningfully engage with the process (a point made at

the Commission workshop). In our view, the 18 months proposed by the Commission to develop the fibre IMs appears highly challenging.

The original IMs for the electricity sector (excluding the Capex IM for Transpower) were determined 25 months after the new Part 4 legislation was enacted, with amendments required in the following two years. The new price regulation was finished over 3 and a half years later after the legislation.

The 18 months timetable also appears ambitious when compared to the Commission's statutory review of the IMs, which took longer. The review of the Capex IM alone has taken 13 months.

To ensure quality regulatory development and stakeholder engagement, and to ensure better certainty for all affected parties, we consider the Commission should apply to the Minister for the (up to two years) extension provided under clause 7 of new Part 2 of the Telecommunications Act.¹

We consider additional funding for the step change in Commission outputs is necessary but defer to the affected parties to comment on amount. We do agree with the views expressed at the workshop that the Commission could improve information disclosure about allocation of appropriations, to understand the trade-offs between Commission outputs that may need to be made.

Role of consumers in development of regulation

The Commission has floated the idea of potentially funding consumers to participate in a Consumer Panel or similar. While we support the idea, we would not support such an initiative being introduced in an ad hoc manner. We consider more research is needed to understand the evidence for costs and functions of consumers' roles in other jurisdictions.

Given that expediency may be of value in the tight development time-frame proposed (before any extension), perhaps existing consumer representation could be leveraged or supported, rather than starting afresh. If an extension is sought and given, then the extended process may allow a new approach to consumer representation to be more fully considered.

Yours sincerely

Rebecca Osborne
Regulatory Affairs and Pricing Manager

¹ [Telecommunications \(New Regulatory Framework\) Amendment Bill](#) As reported from the Economic Development, Science and Innovation Committee



10 May 2018

Submissions
Commerce Commission
WELLINGTON

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TRUSTPOWER SUBMISSION: IMPLEMENTATION OF THE NEW REGULATORY FRAMEWORK FOR FIBRE SERVICES

1 Introduction and background

- 1.1.1 Trustpower appreciates the opportunity to submit on the Commission's 30 April 2018 funding discussion paper on the *Implementation of the New Regulatory Framework for Fibre services (Consultation Paper)*.
- 1.1.2 The Commission is seeking feedback on:
- a) Its estimated cost of \$12m over three years to implement a regulatory framework for fibre fixed line access services (**fibre services**) in the manner set out in the Telecommunications (New Regulatory Framework) Amendment Bill (**Bill**) currently before Parliament; and
 - b) The desirability of creating and funding either:
 - i. An expert panel representing consumers; or
 - ii. A group comprising non-expert community representatives;to ensure consumer interests are properly heard in the Bill implementation process.
- 1.1.3 The responses to the Consultation Paper will be used by the Commission as an input into its request to the Minister to create a further component of the Telecommunications Regulatory Levy (**TRL**) through regulations made under the Telecommunications Act 2001 (**Act**).
- 1.1.4 The Bill provides for the TRL to be expanded to cover these costs.
- 1.1.5 MBIE will consult on the final form of any expansion to the TRL.
- 1.1.6 During this latter consultation, stakeholders will have:
- a) A *further* opportunity to comment on the amount required by the Commission to implement the new regulatory framework; and
 - b) A *first* opportunity to comment on who this levy is to be recovered from.

2 Trustpower's views

2.1.1 Trustpower supports:

- a) the Commission being adequately resourced to carry out its tasks under the Bill including through meaningful engagement with affected stakeholders;
- b) the establishment of a separate team to implement the Bill to ensure that there is no reduction in the resources and delivery of its existing responsibilities; and
- c) funds being made available to enable increased consumer participation in the process, although our preference would be for this to be undertaken on a different basis to that proposed by the Commission in the Consultation Paper.

2.1.2 Our reasons for these views are explained in the balance of this submission.

3 Estimated costs of implementation of fibre services regulation

3.1.1 The Commission's work programme involves an initial intensive process developing the input methodologies (**IMs**) which will apply to both the price quality regulation of Chorus and the information disclosure regulation of the local fibre companies (**LFCs**).

3.1.2 This is expected to take 18 months and will involve wider stakeholder engagement.

3.1.3 Thereafter the focus will shift to applying the IMs and making the necessary regulatory determinations required by Subpart 4 and 5 of the Bill.

3.1.4 At the core of the Commission's funding proposal is a proposal to employ 15 additional persons in a dedicated team to implement the new regulatory framework. The Commission also intends to use external consultants and short term contractors to manage peak work load.

3.1.5 The Commission's estimate of the number and cost of additional staff is based on its previous experience, including the development of the original IMs under Part 4 of the Commerce Act, the copper final pricing principle determination, and its experience setting price quality paths for Transpower (which has the closest parallel to the proposed price quality path for Chorus).

3.1.6 Based on our, albeit limited, understanding of these processes, we consider that the Commission's approach is appropriate. The Bill will require the Commission to undertake a significant amount of work to determine the fibre regulatory settings in a complex and dynamic market. We agree that it is important to focus on delivering high quality decisions, and the Commission should be funded adequately to ensure that they can deliver this, without it impacting on their existing work program. It is crucial that the decisions that the Commission makes over the next few years when determining the fibre IMs, price-quality, and information disclosure regulation are durable and well thought out.

3.1.7 Accordingly, we support the Commission having the resources to:

- a) carry out a complex task in compressed timeframes;
- b) engage appropriately with stakeholders throughout the process, including via conferences, workshops, and working groups; and
- c) seek practicable solutions to regulatory requirements which will benefit our customers by lowering overall compliance costs for regulated suppliers.

3.1.8 We also note that this is a significant regulatory change for the telecommunications sector, where most participants have not participated in similar regulatory processes, such as those under Part 4 of the Commerce Act. It will be important that the Commission, throughout this process, is mindful of the varying levels of understanding, and makes efforts to inform, and

share its knowledge, in order to ensure that submissions from industry participants and consumer groups are meaningful, and that the best outcomes for consumers are achieved.

4 Importance of continuing ongoing work

- 4.1.1 We also, strongly support a dedicated team being utilised for this work so there is no detracting from the Commission's ongoing work, which includes:
- a) promoting competition in telecommunications markets
 - b) regulating the supply of wholesale telecommunications services including fixed line services provided over the copper network; and
 - c) regulating access to mobile network infrastructure.

5 Proposals to increase consumer representation panel proposal

- 5.1.1 All regulatory processes rely on formal consultation processes.
- 5.1.2 However, the technical and complex nature of some topics do not naturally fit with direct engagement from affected consumers. Price quality regulation and IMs in particular are firmly in this category.
- 5.1.3 The interests of retail service providers and customers generally, but may not always be perceived to, align.
- 5.1.4 Further, smaller retailers such as ourselves have finite resources to engage with these processes particularly in the context of parallel processes by other agencies which also affect our business.
- 5.1.5 For these reasons, we support the creation and funding of a consumer group to participate in the implementation process.
- 5.1.6 The subject area lends itself more to an expert panel representing consumers rather than a non-expert group of community representatives.
- 5.1.7 However, we think the most value will be added if the panel:
- a) Is independent from the Commission;
 - b) established as a permanent rather than an ad hoc body so the lessons learned from engagement in this process can be available for economic regulation of other sectors and subsequent steps in fibre services regulation; and
 - c) contributes to, and is funded by, more than one sector.
- 5.1.8 We note that:
- a) In Australia, the Energy Consumers Australia has been established by the Council of Australian Governments to provide input and advice on the regulation of matters such as price, quality, safety and security of energy supply.
 - b) The International Energy Agency in a recent in depth report of the New Zealand energy sector raised the issue of whether a separate independent advocacy body is required to ensure the consumer's voice is properly heard.
- 5.1.9 We think a bespoke agency working in both the energy and telecommunications sectors would be a valuable adjunct to the current regulatory system.

6 Concluding remarks

- 6.1.1 The Commission is tasked with conducting its responsibilities in the long term interests of consumers and we assume that it has developed this funding proposal for the new telco regulatory framework with this obligation front of mind.
- 6.1.2 It is for this reason Trustpower supports the proposal set out in the Consultation Paper. However, if practicable, we are keen to see the consumer panel set up in a way which would enable an ongoing contribution to sector regulation.

Regards,

DocuSigned by:

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PAUL BACON
HEAD OF RETAIL MARKETS



We're helping New Zealand make the most of a digitally connected world.

Implementation of the New Regulatory Framework for Fibre Services

TUANZ feedback to the Commerce Commission's Funding discussion paper (30th April 2018)

14th May 2018

Feedback

1. This is the Telecommunications Users Association of New Zealand (TUANZ) feedback on the Funding discussion paper released by the Commerce Commission on the 30th April 2018.
2. Our address is PO Box 302 469, North Harbour, Auckland 0751 or Level 7, 62 Victoria Street West, Auckland Central. Our email address is office@tuanz.org.nz and our website can be found at <https://www.tuanz.org.nz>.

TUANZ

3. TUANZ is unique - **there is no other group or organisation that is representative of the people and organisations that are the end users of digital technologies in the manner that TUANZ is.**
4. TUANZ has been in existence for over 31 years, advocating for the continued improvement of the use and supply of communications technology to all end users of such services. We have always argued that connectivity, and fast connectivity, will enable businesses to improve productivity and to deal far more efficiently with well-connected customers. Families, wherever they live, will become far better connected. Smart young Kiwis will be much more attracted to living here rather than overseas. The world's capitals will be on our electronic doorstep, while we will become earlier adopters of leading-edge services like fibre-powered television on demand and the widespread use of cloud services for businesses such as on-demand accounting and file storage.
5. TUANZ is a not-for-profit membership association with over 170 members, predominantly large organisations with a strong dependency on telecommunications technology as well as small enterprises and individual members. These small businesses and residential users are the customers of our large corporate members, who are just as focused on the quality of their customers' connectivity as their own.

6. TUANZ is governed by a Board elected at large by the members of the organisation. The current Chair of the Board is Liz Gosling, CIO of AUT University.
7. It is pertinent to point out that our submission should be seen in the light of TUANZ' stated principles:

We desire to see a lift in the digital competency within the NZ economy.

We will listen and have brave face to face conversations.

We will promote fair and sustainable competition.

We will focus on outcomes.

We want our members to be successful.

8. Our member's want to see a lift in the digital economy along with the continued development of a strong market providing real choice for end users – whether corporations or consumers. We seek a national drive to leverage the opportunities that we have with our world leading digital networks. **TUANZ has the vision where New Zealand is one of the top 10 countries for business usage of ICT by 2020.**

Developing the Fibre Regulatory Framework

General Position

12. We welcome and firmly support the approach in the discussion paper as to the proposed level of activity by the Commission, the consultation of stakeholders during the pricing process, and its funding via the levy. We would be particularly concerned if the Commission elected to narrow its approach, as experience shows that favours the utility and harms users and in particular consumers.
13. Specifically we agree with the Commission's statements around their decisions as contained in the paper:

- "Our decisions should be durable, meaning that any reviews will not need to undertake extensive rework, because we would have picked the best solutions available to us at the time to adequately deal with future circumstances. This ultimately provides greater certainty to stakeholders.
- Effective engagement should ultimately improve our decisions. Our consultation materials, such as draft decisions, should be well explained and stakeholders should understand our reasoning. We intend to spend time up-front working with stakeholders, including consumer groups, to ensure they are able to engage meaningfully in the process. We consider that engaging in up-front advocacy with stakeholders is especially important for this process as it is a new regime with many smaller affected parties.
- Our decisions should be workable. Our decisions should not just be technically robust, but they should

General Comments

9. We recognise that the passing of the Telco Amendment Bill was only the first step in ensuring the continued competitive landscape in the fixed access market in New Zealand. The legislation provides a framework for ongoing pricing of the monology assets that are the new fibre networks and so the work required to implement that framework is of critical importance to our members as users of digital connectivity.
10. It is critical that this work is done in a timely manner but that speed needs to be balanced with the requirement that it is done to a high quality that ensures the long-term interests of users.
11. We support the Commission's commitment to a full consultation process which should enable all stakeholders to provide the relevant information and views on the inputs to the new regime.

be practically workable, by those that apply them. For example, IM determinations should be logically laid out, and presented in Plain English to the extent possible.

- Our requirements align, to the extent practicable, with regulated businesses' existing practices. This should reduce compliance costs for regulated businesses.
- We should actively engage with stakeholders. This ensures that all relevant views are taken into account, which would contribute to better decisions.
- We should provide decisions on appropriate range of issues. This helps to provide stakeholders with certainty."

14. There is substantial information asymmetry between (a) the regulated provider and (b) the regulator and submitters. Utilities have considerable incentive to push for speed and less time and cost incurred by regulators (and other stakeholders), thereby increasing the prospect of increased regulated prices.
15. Thus, the Commission should, we submit, be careful to ensure it has adequate time and funding, considering likely delays and challenges down the track. We have not seen a Commission process where that has not happened, for good reason.

Specific Questions

Question	Response
Do you agree that we are targeting the right level of quality for our determinations to deliver an enduring and stable transition to the new regulatory regime?	Yes. Only an output based on this level of quality will ensure longevity of the decisions to the benefit of users.

If you disagree that our proposal incorporates the appropriate level of quality for this process, what aspects of quality should be scaled up or down?	N/A
Do you agree that we should undertake the additional process steps proposed in addition to our statutory requirements?	We strongly support the proposed additional steps in this process. These are now well-established part of the timeline that has been used in various regulatory processes to date and they ensure that all views are heard, as well as ensuring initial outcomes are tested against stakeholder views. We also believe they add to the quality of the final output and ensure that no groups feel they have not been heard during the process.
Are you satisfied the proposed consultation will provide stakeholders with adequate opportunity to provide input into the final determinations?	Yes – based on the additional steps proposed to be included in the process.
Are there other consultation steps you think we should be taking?	The only other steps might include those that need to be included as a result of an expert user panel if implemented. These processes could run parallel to the normal regulatory process.

End User Involvement

General Position

16. TUANZ has been consistent in its position during the most recent review of the Telecommunications Act that ensuring credible and fact based submissions on important issues around communications technology is critical to robust debate on the relevant issues. The outcome of that review in the form of the current Bill before parliament does nothing to assist end users to have a voice on issues that ultimately affect them through applying the Telecommunications Act and Regulations.
17. Within the current environment, including this fibre pricing process, there exists a strong information and resource asymmetry among the parties in these processes. Not for profit, membership-based organisations which represents the users of these services, unless they have an independent commercial revenue stream, lack the human and financial resources to contribute fully.
18. Users, and in particular, consumers are the centre-piece in this process, just as they are under the Act generally. Indeed Section 162 states, "*The purpose of this Part [6] is to promote the long-term benefit of end-users in markets for fibre fixed line access services*". The section continues with this focus when it calls for "*services of a quality that reflects end-user demands*" and "*allow end-users to share the benefits of efficiency gains...including through lower prices*".
19. Given that pivotal role in the process, it seems particularly important that the Commission has the benefit of strong and careful submissions and inputs on behalf of users of the services being regulated. We are confident that the proposed targeted funding for engaging in the process will produce considerably greater net benefit to users and consumer representation should "*increase economic efficiency or consumer surplus over the longer term.*"ⁱ
20. One commentator at the recent workshop submitted that the Commission can look after the interests of the consumer and so funding and support is not necessary. That is not realistic. The Commission is already faced with an information asymmetry problem, as all regulators face as to utility and telecommunications regulation. While it can take some steps to redress the balance and deal with the consumer perspective, such as on an inquisitorial basis, that is ultimately challenging and has the regulator in an advocate not

- decision maker role (which is difficult). The regulator will benefit considerably from strong voices for consumers.
21. Some retail service providers may argue that their interests in this matter are so much in common with consumers that what they submit (with detailed experts' reports and funding, etc) will sufficiently address consumer interests. While there can be substantial overlap on issues, there can be and often are also substantial differences. Service provider interests can depart from consumers' interests where, for example, competing RSPs compete on pricing that "rises and falls with the tide" (i.e. they are relatively neutral or not too concerned, if they all face increased fibre input costs that can be passed through to consumers).
 22. The Commission has identified market conditions that are conducive to just such an outcome. In its decision on the Vodafone and Sky merger, it identified the limited retail price competition due to the limited number of major fixed line RSPs competing with each other (despite the theoretically large number of RSPs). Such conditions can lead to at or near 100% pass-through, so they are less or not concerned.
 23. We have suggested that the Government and its agencies look to Australia where this asymmetry was recognised by the Government. With the demise of ATUG (Australian Telecommunications Users Group), there was no equivalent of TUANZ in Australia and so the Government encouraged the creation of the Australian Communications Consumer Action Network (ACCAN) undertaking advocacy and representation for consumers of telecommunications services. It is funded under long term contracts with the Federal Government, with performance criteria and defined deliverables.
 24. We also believe that the alternative proposal for a consumer panel, much like the Australian Energy Regulator (AER) Consumer Challenge Panel, comprised of experts providing input to the AER, has too many challenges, as identified in the paper noted above, *Power to the People: A New Trend in Regulation*.
 25. We submit that in New Zealand, we consider that the more effective model to assist the Commission with better decision making is to fund through contracts for service with clear expectations and deliverables with an organisation or organisations representing consumers as users of these services. TUANZ

would be open to participating in a framework such as this which would ensure that funds are optimally allocated and spent, with a focus on the key issues, and collaboration with others where that is sensible.

- 26. Like the Commission, we have not assessed necessary funding but the sort of allocation suggested by the Commission seems sensible, given the scale of what is involved.
- 27. We submit that, under proposed s 12(3A), the power to levy is sufficiently wide to enable funding via the levy as such as this proposed funding is *“for, and in connection with ...the performance of the Commission’s functions and duties....and....the exercise of, the Commission’s powers...”*. The Commission would be funding getting input from experts engaged by consumer interests, similarly to paying for external economists.
- 28. We believe that this model could be implemented in a cost-effective way in the New Zealand environment to ensure a strong and credible voice for end users.

Specific Questions

Question	Response
Would it add value to the fibre implementation process to allow funding for consumer representative groups to engage with our consultation processes?	Given the situation with the severe information and resource asymmetry between industry players and user representatives, we are strongly of the view that providing funding to user groups to participate in a robust and quality way would add significant value to the Commission’s process.
Which would provide better value input into our implementation process – an expert panel representing consumers, or a group comprising of non-expert	The IT sector, and in particular telecommunications and the regulation of the sector are complex and difficult for those who are not regularly involved in the issues to fully

community representatives	comprehend the ramifications of the issues. Our view is that organisations such as TUANZ came into being exactly to address this situation and it is our specific aim to be a representative voice of users. Therefore, it is our view that an expert panel representing users would provide better quality input to the Commission’s process.
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Concluding comments

- 29. TUANZ welcomes the opportunity to provide this feedback to the Commission’s paper of funding what is a critical process in the development of the digital communications sector in NZ. This document provides a summary of feedback from our organisation that represents actual users of telecommunications. We have attempted to provide a succinct and clear enunciation of the views of our members.
- 30. We look forward to participating further with the Commission on these issues.

Contact

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Chief Executive Officer

Telecommunications Users Association of New Zealand Inc.

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ⁱ Hahn, Metcalfe and Rundhammer; *Power to the People: A New Trend in Regulation*

11 May 2018



VIA EMAIL: regulation.branch@comcom.govt.nz

ultrafastfibre.co.nz

Commerce Commission
Fibre Regulation Team
WELLINGTON

RE: FIBRE IMPLEMENTATION FUNDING

This submission is made by Ultrafast Fibre Limited (**Ultrafast Fibre**) in response to the Commerce Commission's 30 April 2018 Funding Discussion Paper in relation to the Implementation of the New Regulatory Framework for Fibre Services (**Funding Paper**).

Ultrafast Fibre appreciates the opportunity to comment on the proposals and attend the recent stakeholder workshop on the implementation of regulation for fibre services.

The Funding Paper proposes that the Commission will require additional funding of \$12m over a 3-year period to implement the regulatory framework to be enacted under Part 6 of the Telecommunications Act 2001. This funding will be recovered through the Telecommunications Regulatory Levy (**TRL**). The Minister will need to consult on this change to the TRL before it is introduced, and the Funding Paper is intended to help inform that consultation.

We note that the 4 May 2018 report from Economic Development, Science and Innovation Select Committee proposes that the additional funding for Part 6 will apply from 1 July 2018. It is important that any further consultation on the funding proposal also addresses the issue of how and when this additional levy is expected to be recovered by providers, and how it is to be shared among the relevant parties. In relation to this issue, we submit that the liability for funding should be a shared allocation across the telecommunications industry on the basis that the new regulatory framework will deliver, monitor and (where required) impose obligations on network operators for the ultimate benefit of the retail service providers and their (end-user) customers.

The key components of the \$12m cost estimate include:

- the development and implementation of input methodologies;
- price-quality regulation for Chorus; and
- information disclosure regulation.

We note that this funding will not be used to meet the cost of the new Retail Service Quality Codes, which will be funded from the Commission's current annual Telecommunications Appropriation.

The Funding Paper indicates that the \$12m will comprise \$5.8m staffing costs, \$3.0m external costs and \$3.2m corporate costs. At the date of this submission, it is not possible for us to comment on the magnitude of the budget proposed.

However, we expect the Commission will apply a proportionate approach to its implementation tasks where it will focus on:

- the areas which have the most impact in meeting the regulatory purpose;
- operating as cost effectively as possible; and
- ensuring that the regulations can be implemented in practice by service providers, at reasonable cost, without compromising the commercial environment within which the businesses operate.

We agree that it is essential for the Commission to work competently and efficiently to deliver high quality regulatory outcomes and to implement high quality regulatory processes. In our view, the outcomes of this process will be to deliver a new regulatory regime that will have long lasting effects. Therefore, it needs to be right.

We recognise that this will require consideration of a range of issues, the view of multiple stakeholders and technical and expert inputs. We also recognise the value in testing initial thinking through consultation papers, workshops and other forums.

We note that the Commission plans to leverage its experiences in dealing with building block regulation under Part 4 of the Commerce Act 1986. This includes sharing common resources with Part 4 while ensuring sufficient focus on the differences between fixed fibre services and those services regulated under Part 4. We support this approach.

The Funding Paper raises the prospect of additional funding for a consumer representative group. It is our understanding that similar groups have been introduced into established regulatory regimes once they have reached more maturity. We suggest the Commission and other stakeholders will be well placed to take account of, and test, consumer views during the development phase where appropriate. We note the development phase will involve significant amounts of technical material that is likely to be less relevant to consumers. Therefore, we support further consideration of a customer panel once the regime has been implemented.

We thank you for the opportunity to comment on the proposed funding arrangements. If you have any questions regarding this submission, please contact: Hiramai Rogers, General Counsel, Ultrafast Fibre Limited (**Email:** hiramai.rogers@ultrafast.co.nz; **Phone:** 027 703 3653).

Kind regards



William Hamilton
Chief Executive
Ultrafast Fibre Limited

8 May 2018

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SUBMISSION ON FIBRE IMPLEMENTATION FUNDING

Unison welcomes the opportunity to provide a submission to the Commerce Commission (the Commission) on its consultation paper, *Implementation of the New Regulatory Framework for Fibre Services*. This submission reflects the views of the Unison Group (Unison), which includes the subsidiary UnisonFibre, which provides fibre connections in the Hawke's Bay, Taupo and Rotorua regions. UnisonFibre, while not directly subject to the new regulatory framework for fibre services, is following the development of the regulatory framework for fibre services with great interest. We appreciate the opportunity given to be able to contribute to the development of the new regulatory framework for fibre services, as it will have implications for our operations.

Funding for Implementation of Fibre Services Regulation

Unison attended the workshop held by the Commission on 2 May, where the new regulatory framework for fibre services was discussed, along with the proposed funding for implementation. Upon first examination, Unison considered that \$12 million over three years to implement the regulatory framework for fibre services seemed high. However, we have not seen the detailed breakdown of this cost so we are unable to comment further on whether this is value for money. The fact that this funding requires approval and signoff by the Ministry of Business, Innovation and Employment (MBIE) and the Minister gives us assurances that it should be appropriate for the scope of the work the Commission needs to undertake.

However, we are interested in learning more detail about the current appropriation of \$6 million appropriation per annum for telecommunications services and what this is being used for. This point was discussed at the workshop, and there were questions asked about the current fund and its effectiveness (e.g. is there anything that the Commission could stop doing, while still achieving its legislative obligations).

Additional Funding for Consumer Engagement

The consultation paper proposes to include additional funding for consumer engagement through consumer reference groups. Unison believes there is great merit in engaging consumer groups in the process of regulatory development. However, we consider that this should not be done solely for the development of fibre services and the composition of the group needs careful consideration:

(a) Consumer engagement is needed, but more broadly than just fibre services regulation. Unison supports the need for consumer engagement, but other industries would also benefit from having a structured approach to consumer engagement, e.g. the electricity industry. For example, we understand that the Government's Electricity Review, will be examining the extent to which consumers have an effective voice in the industry and how the industry is perceived by consumers.

(b) Composition of Consumer Groups. As noted above, careful consideration is needed of the make-up of consumer reference groups. Due to the complex nature of price-quality regulation, input methodologies and information disclosure requirements, an expert group who could understand the detail as well as represent the interests of consumers would be the most pragmatic approach. This would be in line with the consumer challenge panel (CCP) run by the Australian Energy Regulator.

For any questions relating to this submission, please contact John Kelly, Fibre Network and Operations Manager (phone: (06) 8739486 or email: John.Kelly@unison.co.nz) or Roanna Vining, Senior Regulatory Affairs Advisor (phone: (06) 873 9329 or email: Roanna.Vining@unison.co.nz).

Yours sincerely,

A handwritten signature in black ink, appearing to read 'NKS' followed by a stylized flourish.

Nathan Strong
GENERAL MANAGER, BUSINESS ASSURANCE



Funding for the new regulatory regime

Submission to Commerce Commission

11th May 2018

ABOUT VOCUS

1. Vocus New Zealand is the third largest fixed line operator employing over 800 staff In New Zealand. Our retail operation includes a number of challenger brands - Slingshot, Orcon, Flip, Vocus and 2Talk. We are also an active wholesaler of services including access, voice and broadband over both fibre and copper to a diverse wholesale customer base in both business and consumer markets.
2. Vocus is committed to New Zealand and is one of the few large NZ telecommunications companies to base all its customer service call centres here in New Zealand rather than out-sourcing its customer service operations overseas.

SUBMISSION

3. Vocus do not want to comment on the appropriateness of the level of funding in absolute terms, however we note that the new regime is complex and the introduction of a new regime will have its challenges. The Commission is the party tasked with ensuring that monopoly providers do not extract monopoly premiums from their market position to the detriment of the long term interests of consumers. As such it is important that the Commission is appropriately funded to perform its role to a high standard.
4. Vocus' biggest concern is the very real danger that the size of the task takes the Commissions 'eye off the ball' with respect to some of the other important telecommunications work the Commission is undertaking in parallel, such as the mobile study. Whatever the proposed solution that evolves for funding it needs to ensure that the Commission can also focus and fund its other work. We don't want to see a 'lottery draw' about which work makes it through the budget round and what doesn't.
5. Having said that Vocus would like to see transparency around the costs and activity that are being undertaken in order that discussions with stakeholders can have a common basis of understanding.
6. In terms of any changes to the allocation of costs our understanding is that this lies with MBIE and Parliament. We would like to take the opportunity to comment that the current method of recovery through the Telecommunications Regulatory Levy would be the most appropriate method of recovery and ensure consistency.
7. Undoubtedly some parties, particularly mobile network operators, would prefer to see a new method of cost recovery introduced whereby the cost of this piece of Commissions work is recovered through fibre services only. This would minimise their contributions given that they consume proportionately less fibre in delivering telecommunications services. Vocus see a number of issues with this approach.
 - If MBIE were minded to take a service specific approach to allocation then it should not do it piecemeal. If the Commission undertakes regulation of Mobile then a service based approach would mean that the cost of the Commission work should be charged to mobile connections only. A change introduces a level of complexity that is unnecessary and, in the example of mobile regulation, something that mobile operators would undoubtedly not support.

- The lines between fixed and mobile are blurring as convergence occurs. There is much debate on the role of Chorus with respect to 5G and future mobile development. If a service based approach was taken to recovering, through fibre services alone, the initial setup cost of the tools to regulate Chorus future non-fibre services would get a 'free ride'
8. In terms of the funding of consumer groups Vocus supports the TCF's submission. Vocus encourages the Commission to engage with consumer groups and other stakeholders however the subject matter is complex and requires expert input. Funding a consumer group to go out and recruit an expert consultant seems inefficient. The practicality is that nearly all the Retail Service Providers (RSP's) will struggle to engage in the process given the high barrier to entry - the complexity and the level of experts, domestic and international, that the incumbent monopoly will resource to represent its views.
 9. In Vocus' opinion the Commission is there, ultimately, to represent the long term interests of consumers on what is a deeply complex and technical matter.
 10. Thank you for the opportunity to make this brief submission. If you would like any further information about the topics in this submission or have any queries about the submission, please contact:

Graham Walmsley
General Manager Commercial and Regulatory

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Vodafone Submission on: 'Implementation of the New Regulatory Framework for Fibre Services - Funding discussion paper'

14 May 2018

We welcome the opportunity to submit on the Commerce Commission's proposed funding requirements for the new fibre Regulatory Regime as proposed in the Telecommunications (New Regulatory Framework) Amendment Bill.

The Commission should be adequately funded to ensure that the new fibre regulations are well considered and enduring. However, it is important that the Commission's overall appropriation is considered together. We fail to see a justification for not finding savings in the existing appropriation to help pay for at least part of the new costs.

Over time regulation of the telecommunications sector should be shrinking as competition increases

The government expectations for regulatory stewardship state that it is important to review regulations at appropriate intervals to determine whether they are still 'fit-for-purpose'. The Telecommunications Act requires that the Commission undertake the regulation functions that will promote competition for the long term benefit of end-users. It is becoming increasingly clear that most parts of the telecommunication sector are robustly competitive, and that this is delivering great outcomes for Kiwis, as shown in the box below.



In this competitive environment we are all having to find ways to eliminate unnecessary, or low value spending. It is important that the Commission does the same – ensuring that it only exercises discretionary powers where there is a demonstrable, justifiable and clear benefit from doing so. We would like to see a plan from the Commission to adjust the size of the regulatory regime to reflect the nature of the sector as it now stands.

Regulation of last mile fibre is critical

Last mile fibre is the least competitive part of the telco industry, and still warrants strong regulatory intervention. Fibre providers have significant market power, only constrained in certain areas. This is in sharp contrast to the mobile market where there are three competing national networks..

To ensure that regulation ensures fibre providers deliver long-term benefits to end-users, there needs to be strong and enduring regulations in place. The establishment of the Input Methodologies under the Telecommunications Amendment Bill will be the most important phase of these new regulations. We therefore support the proposed \$12m funding over three years to complete that work. However, we would expect this cost to come down significantly after that initial work is completed.

The value of maintaining the full existing levy costs is less clear

On top of the additional \$12m requested to fund the last mile fibre regulations the Commission continues to levy \$6m per year from telecommunications companies to fund its on-going work.

We fail to understand how savings cannot be found within this work programme, in light of the significant competition in many areas of the telecommunications market.

Competition is delivering for Kiwis

- Mobile prices are 30-40% below OECD average
- Telco services are overall 6.3% cheaper in the year to December 2017
- Retail margins are shrinking to historically low levels.
- A huge range of innovative products are now available like Vodafone TV, and My Flex prepay.



For example, the Commission has commenced a study into backhaul. This is a competitive part of the market, with the vast majority of companies self-supplying or purchasing backhaul on a commercial basis. It is not clear what problem the Commission is trying to solve with this study or why further regulation would be required.

Funding for consumer representative groups

The Commission is responsible for promoting competition for the long term benefit of end-users.

Additional funding for consumer representative groups is not necessary for the implementation of the last mile fibre regulations. It is hard to see what these groups would add to the process on top of the views of the Commission itself, experts hired by the Commission, RSPs and interested consumer bodies.