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Final liability allocation determination under sections 87 and 88 of the Telecommunications Act 2001 for 1 July 2016 to 30 June 2017 [2017] NZCC 28

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List of defined terms and abbreviations

Act	Telecommunications Act 2001
Amendment Act	Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011
ETP	external termination point
Interconnected bodies corporate	a body corporate that was connected to a liable person via one of the criteria set out in section 79(1)(a)-(e) that earned qualified revenue, even where such body corporate was not itself a liable person
ITP	internal termination point
LAD	liability allocation determination
LP	Liable person
Liable person	a person who provides a telecommunications service in New Zealand by means of some component of a PTN that is operated by the person
Minimum telecommunications revenue threshold	means $10 million of gross revenue (as determined in accordance with the specified information instructions) that a liable person (together with all interconnected bodies corporate) receives during a financial year for supplying either or both of the following: (a) telecommunications services by means of its PTN; and (b) telecommunications services by means that rely primarily on the existence of its PTN or any other PTN
NZ GAAP	New Zealand Generally Accepted Accounting Practice
NZ IFRIC	New Zealand International Financial Reporting Interpretations Committee
NZ IFRS 15	New Zealand Equivalent to International Financial Reporting Standard 15 Revenue from Contracts with Customers
ONT	optical network terminal
PDN or public data network	a data network used, or intended for use, in whole or in part, by the public

PSTN or public switched telephone network	a dial-up telephone network used, or intended for use, in whole or in part, by the public for the purposes of providing telecommunication between telephone devices
PTN or public telecommunications network	a network used, or intended to be used, in whole or in part, by the public for the purpose of telecommunication, and includes a PSTN and a PDN
QLP	qualifying liable person
Qualifying liable person	a liable person that traded in the 2015/16 financial year and, together with all bodies corporate connected via section 79, met the minimum telecommunications revenue threshold in that financial year
Qualified revenue	revenue determined by the Commission that is used to assess the amount of the TDL that a liable person must pay
Specified information	information requested by the instructions we issued on 29 June 2017
Specified information instructions	section 83 specified information and assurance report instructions that we issued on 29 June 2017
Telecommunication	the conveyance by electromagnetic means from one device to another of any encrypted or non-encrypted sign, signal, impulse, writing, image, sound, instruction, information, or intelligence of any nature
Telecommunications services	any goods, services, equipment, and facilities that enable or facilitate telecommunication
TDL	Telecommunications Development Levy
TDL year	the period from 1 July to 30 June for which a TDL liability allocation determination is being made
TSO	Telecommunications Service Obligations in relation to a TSO instrument

Executive summary

Final determination

X1. This is the final liability allocation determination (LAD) for the 2016/17 Telecommunications Development Levy (TDL) year of 1 July 2016 to 30 June 2017, required by section 87 of the Telecommunications Act 2001 (Act). It allocates the amount each qualifying liable person (QLP) is required to pay of the total 2016/17 TDL of $50 million.

X2. The TDL is an annual levy that the government uses to pay for TSO charges and funding improvements to New Zealand's telecommunications infrastructure including the relay service for the deaf and hearing-impaired, broadband for rural areas, and improvements to the 111 emergency service.

Allocation of levy

X3. In keeping with the prescribed formula in section 85(1)(b) of the Act, we determined the below allocations by apportioning the $50 million 2016/17 TDL between QLPs, based on their qualified revenue.[1]

X4. The following table shows the qualified revenue amounts that we have determined, and the amount of the TDL payable by each liable person.

[1] The formula is set out in Attachment C on page 42.

Table 1: Levy allocation

QLP	Qualified revenue ($)	% of industry qualified revenue	Amount of TDL to pay ($)
Spark†	$1,502,143,973	35.34%	$17,668,014.48
Vodafone	$1,119,526,777	26.34%	$13,167,722.70
Chorus	$960,502,000	22.59%	$11,297,294.77
2degrees	$356,180,198	8.38%	$4,189,343.37
Vocus	$134,057,695	3.15%	$1,576,768.50
Ultrafast Fibre	$38,659,000	0.91%	$454,701.94
Teamtalk	$34,401,000	0.81%	$404,619.91
Enable Networks	$25,674,000	0.60%	$301,974.12
Vector	$21,721,000	0.51%	$255,479.47
Kordia**	$16,476,000	0.39%	$193,788.49
Trustpower	$13,901,000	0.33%	$163,501.68
REANNZ**	$9,327,000	0.22%	$109,702.91
Now†	$5,659,908	0.13%	$66,571.07
Northpower**	$5,443,000	0.13%	$64,019.83
Compass*	$4,935,000	0.12%	$58,044.80
Transpower**	$2,419,000	0.06%	$28,451.95
Total Industry	**$4,251,026,551**	**100%**	**$50,000,000.00**

* A firm with an operating revenue over the $10m minimum telecommunications revenue threshold for inclusion may have a reported qualified revenue of under $10m due to adjustments.

**s 79 of the Act requires us to treat these Crown companies as one QLP when assessing who is required to contribute to the TDL, including whether their combined qualified revenue exceeds the $10m telecommunications revenue threshold. However, they provided separate disclosures, so their TDL allocations are displayed separately.

† s 79 of the Act requires us to treat these Spark Group companies as one QLP when assessing who is required to contribute to the TDL, including whether their combined qualified revenue exceeds the $10m telecommunications revenue threshold. However, they provided separate disclosures, so their TDL allocations are displayed separately.

Summary of methodology

X5. For this final LAD we have used the same methodology as in prior years. This was first determined in the 2012/13 final LAD with minor updates in each subsequent LAD.[2]

X6. The key parts of our methodology are:

X6.1 **Identifying QLPs for the 2016/17 TDL**. After reviewing information from last year's TDL disclosures, changes in existing QLP shareholding and new information provided by potential QLPs through section 82 of the Act, we identified a list of QLPs required to contribute to the 2016/17 TDL.[3]

X6.2. **The approach to calculating qualified revenue.** Each QLP's gross telecommunications services revenue (including the qualified revenue of any interconnected bodies corporate) was identified and the following amounts were subtracted:

X6.2.1 total payments made to other QLPs for telecommunications services;

X6.2.2 total payments made to non-QLPs for telecommunications services initially provided by another QLP; and

X6.2.3 the total cost of any non-telecommunications goods and services that were included in gross telecommunications services revenue.

X6.3 **Compliance and assurance.** To ensure the accuracy and integrity of the final LAD, each QLP was required to provide us with either an audit report or an assurance report prepared by an independent auditor. We also reviewed each QLP's qualified revenue calculation for accuracy and compliance with our specified information instructions and followed up on several concerns that we identified. In most cases the QLP was able to provide a satisfactory explanation or additional information when requested.

X6.4 Subsequent to issuing our draft LAD, we liaised with Compass regarding an outstanding compliance issue. Compass submitted a revised disclosure on 9 November 2017. This has resulted in Compass' qualified revenue increasing substantially compared to its initial disclosure although this only has a minor impact on the allocation of the levy.

2 These determinations are available on our website at http://www.comcom.govt.nz/regulated-industries/telecommunications/industry-levy-and-service-obligations/telecommunications-development-levy-tdl.

3 Information on the QLP criteria can be found in paragraph 10 of this final LAD.

Introduction

1. The Telecommunications Act 2001 Act (Act) regulates the supply of telecommunications services in New Zealand.

2. Subpart 2 of Part 3 of the Act prescribes our annual procedure for determining the amount of the Telecommunications Development Levy (TDL) payable by each qualifying liable person (QLP). The TDL was established under the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (Amendment Act) to assist the government in paying TSO charges and funding improvements to New Zealand's telecommunications infrastructure.

3. This document is the final liability allocation determination (final LAD) for the period 1 July 2016 to 30 June 2017. The final LAD allocates the amount each QLP is required to pay of the total levy amount of $50 million for the 2016/17 TDL year.[4]

Outline

4. The final LAD sets out:

    4.1 The legislative background including terminology and the prescribed liability allocation process.

    4.2 Our methodology and reasoning, including:

        4.2.1 How we identified QLPs for the 2016/17 TDL process.

        4.2.2 The approach used to calculate qualified revenue.

        4.2.3 The compliance and assurance process used to ensure the accuracy and integrity of the draft LAD. This included checking that QLPs complied with our specified information instructions, their independent audit/assurance requirements and reviewing each QLP's calculations of their qualified revenue for accuracy.

    4.3 Our final allocation of the TDL between the QLPs.

5. For this final LAD we continued to use the methodology we adopted for prior years.[5] This was first determined in the 2012/13 final LAD with minor updates in each subsequent LAD.

6. We developed the methodology used for the 2011/12 LAD through a lengthy policy development process, which included consultation on several discussion documents, and

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[4] $50 million is the total TDL levy amount that applies to the 2016/17 TDL financial year as provided for in Schedule 3B of the Act.

[5] These determinations are available on our website at http://www.comcom.govt.nz/regulated-industries/telecommunications/industry-levy-and-service-obligations/telecommunications-development-levy-tdl.

a workshop involving telecommunications service providers and other key stakeholders.[6] This continued the methodology from our 2011/12 LAD, although we adopted certain technical revisions in 2012/13 that we explained in our 2012/13 LAD.

[6] Our website contains material relating to the process at http://www.comcom.govt.nz/regulated-industries/telecommunications/industry-levy-and-service-obligations/telecommunications-development-levy-tdl.

Legislative background

The TDL

7. The TDL was introduced by the Telecommunications Amendment Act 2011. It replaced the net cost calculation and allocation process for the TSO, and requires the Crown to pay TSO charges from the TDL.

8. Schedule 3B of the Act stipulates that the TDL is $50 million dollars for the 2016/17 financial year.

9. Subpart 2 of Part 3 of the Act requires us to make a TDL liability allocation determination on an annual basis in respect of the TDL year. A TDL year is the financial year of 1 July to 30 June.[7]

10. The TDL is allocated among persons who meet the criteria set out in subpart 2 of Part 3 of the Act. The criteria are met if a person:

    10.1 traded in the year prior to the TDL year;[8]

    10.2 provided a telecommunications service in New Zealand by means of operating a component of a Public Telecommunications Network (PTN);[9] and

    10.3 earned at least $10 million gross telecommunications services revenue in the year preceding the TDL year under review by means of its PTN or by means that rely primarily on the existence of its or any other PTN, including such revenue of any interconnected bodies corporate.[10]

11. Section 82 of the Act requires liable persons (LPs) that meet the criteria (QLPs) to provide us with their financial statements for the year prior to the TDL year, and any further information that we specify, no later than 60 working days before the end of the financial year. We use this information to verify who is liable to pay a portion of the TDL.

12. Section 83 of the Act requires QLPs to provide us with their qualified revenue information for the entire TDL year for the purposes of the LAD. We use this information to determine what proportion of the TDL each QLP is required to pay.

13. Sections 85(1)(a) and 88(a) of the Act state that the liability allocation determinations (both the draft and final determinations) must include "the amount of each liable person's qualified revenue".

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[7] "Financial year" is defined in section 5 of the Act as meaning "a period of 12 months beginning on 1 July in any year and ending on 30 June in the following year". The "financial year" (for which the levy must be paid) is referred to as 'financial year A' in section 81. Section 81(2) provides that the Commission may request certain financial information from liable persons "for the purpose of determining whether a person is a liable person to whom this subpart applies *in respect of a financial year*". Section 81(2)(b) also states that the Commission may request any further information "for the purpose of enabling it to verify the telecommunications revenue of that person *for the year preceding financial year A*".

[8] Section 81(1)(a) of the Act.

[9] Definition of 'liable person' in section 5 of the Act.

[10] Section 81(1)(b) and section 79 of the Act.

14. Qualified revenue is defined in section 5 of the Act as the revenue a LP receives during a financial year for supplying either or both:[11]

    14.1 telecommunications services by means of its PTN; and/or

    14.2 telecommunications services by means that rely primarily on the existence of its PTN or any other PTN.

15. The total qualified revenue for purposes of assessing whether a liable person meets the minimum telecommunications services threshold to be a QLP as well as the amount of the TDL they must pay consists of the combined qualified revenue of the QLP and all interconnected bodies corporate. For convenience where interconnected entities provide separate disclosures their TDL allocations are calculated separately.

16. Section 89 of the Act requires each QLP to pay the amount set out in our final LAD to the Crown.

Terminology

17. It is important to note that information for the financial year preceding the TDL year is used to identify if a party is required to pay, and that information from the TDL year (sourced later in the year) identifies how much a party is required to pay.

18. We use the term 'qualifying liable person' (QLP) to describe the liable persons (LPs) that must pay a portion of the TDL. We consider that a service provider meets the criteria detailed at paragraph 10.2, and is a liable person (and therefore potentially a QLP) if it:[12]

    18.1 provides a telecommunications service, which may include the transmission of voice, data, SMS, or any other content, but excludes broadcasting (ie, the transmission of programmes for the reception by the public);

    18.2 provides the telecommunications service in New Zealand;

    18.3 operates a component of the PTN over which the telecommunications service is provided;

    18.4 operates a component of a PTN that falls within the public side of the network demarcation point – the component must be operated by the service provider, not a third party; and

    18.5 operates a network that is publicly available, ie, not limited to private use.

19. As we explained in our 2012/13 LAD, a party operates a component of a PTN where it has legal ownership and control, but the term 'operate' also has a wider and more practical

[11] Qualified revenue is subject to potential deductions specified in our information instructions. See Attachment A.

[12] Details of our development of these rules can be found on our website, including in the 2011/12 LAD, at http://www.comcom.govt.nz/regulated-industries/telecommunications/industry-levy-and-service-obligations/telecommunications-development-levy-tdl.

focus, which includes the concepts of management and making the PTN components work.

Interconnected bodies corporate

20. Section 79(1) of the Act requires two or more bodies corporate to be treated as one for purposes of the TDL if:

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

    (b) all of them are subsidiaries of the same body corporate; or

    (c) all of them are associates of each other; or

    (d) one of them owns or controls shares that in the aggregate carry the right to exercise or control the exercise of 20% or more of the voting power at meetings of the others; or

    (e) a third person owns or controls shares in each of them that carry the right to exercise or control the exercise of 20% or more of the voting power at meetings of each of them.[13]

21. We consider that for TDL purposes it is consistent with the intent and purposes of the Act to include all bodies corporate connected to a LP via one of the criteria set out in section 79(1)(a)-(e) that earned qualified revenue, even where such bodies corporate are not themselves LPs. This approach is in keeping with the anti-avoidance intention of this provision and would address a situation where a QLP could structure its business to separate the operation of components of the PTN from all or some of the group's downstream telecommunications services revenue, and thus reduce its contribution to the TDL (and other industry levies).[14]

22. Accordingly, for section 79 of the Act to apply only one of the interconnected bodies corporate has to operate a component of the PTN.

23. Therefore, when assessing whether they meet the minimum telecommunications revenue threshold of $10 million, and when providing the Commission with information under sections 82 and 83, LPs and/or QLPs must include all qualified revenue of other interconnected bodies corporate, even where such firms may not have operated a component of a PTN themselves.

24. A recent amendment to the Act provides guidance for when two or more bodies corporate become connected or disconnected during the TDL year (eg, mergers or divestment of a subsidiary). Section 79(4) states that in such circumstances the bodies corporate should be treated as one for TDL purposes only for the part of the year that they were connected.[15] This may result in the telecommunications services revenue of a

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[13] Section 79(1)(a)-(e) of the Act.

[14] We note that such business structures could exist for reasons other than the TDL.

[15] Section 71(4) was inserted to the Act on 3 May 2017 as part of the Telecommunications (Property Access and other Matters) Amendment Act 2017.

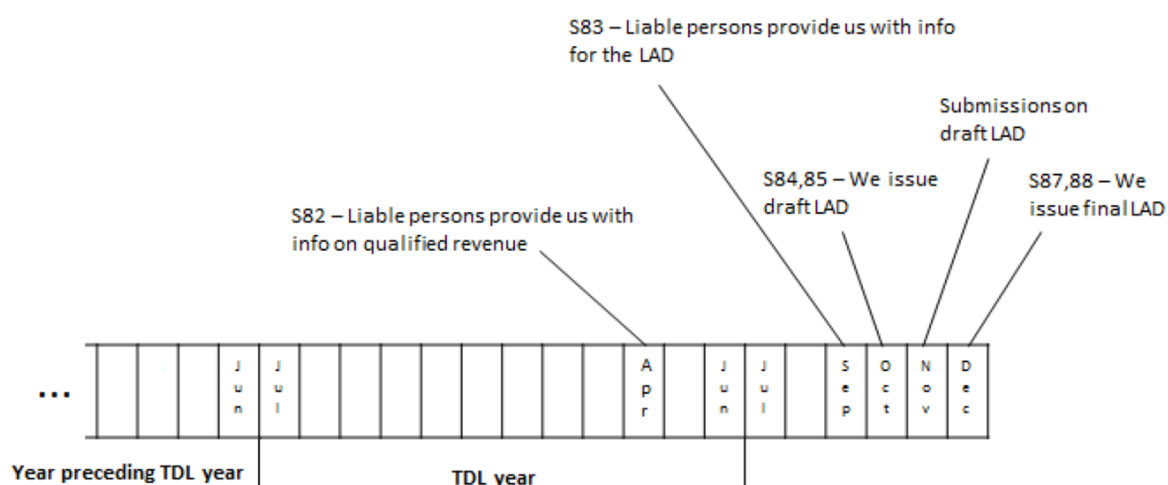
body corporate only being disclosed for TDL purposes for part of a year or being split across two separate QLPs.[16]

The liability allocation determination process

25. Subpart 2 of Part 3 of the Act requires us to complete an annual LAD. This section describes our process.

26. The process commences before the end of the TDL year that the obligation applies to. The process is expected to start in April and last about eight or nine months.

TDL Timeline



QLP verification

27. Section 82 of the Act requires QLPs to provide the Commission with financial statements for the financial year preceding a TDL year and any other information we specify to enable us to verify that they are a QLP. This financial and shareholding information is required 60 working days prior to the end of a TDL year (which usually equates to the first week of April).

28. We usually inform QLPs from the previous TDL year that they need not submit financial statements under section 82 of the Act because we have this information as part of their qualified revenue disclosures from the previous year.

29. We may also, around this time, undertake an additional process of serving notices to require information under section 81 of the Act. This may be done for telecommunications service providers:

    29.1 that we suspect may have met the QLP criteria and should have complied with section 82; or

[16] An example of when a body corporate's revenue could be split across two separate QLPs would be if it was sold by one QLP to another QLP.

29.2 where we consider that we do not have sufficient financial or shareholding information to assess their QLP status in terms of the criteria.

30. We then analyse the information that we receive from LPs complying with section 82 requirements (and any notices under section 81), to verify a list of QLPs that are required to pay a portion of the TDL. This list is not final and can be amended at any stage up to the date of publication of the final LAD if we receive information that unveils a new QLP.

Qualified revenue information disclosure

31. Around the end of June of the TDL year, the QLPs identified through our QLP verification process will be notified that we require information from them, with instructions on the type and format of that information. This information will relate to the TDL year under review (the full financial year just completed).

32. Under section 83 of the Act, QLPs must provide us with the specific financial information. The information is due 60 workings days after the end of each TDL year, around the end of September. We use this information, less a few important deductions (identified in our specifications), to calculate each QLP's net qualified revenue and then calculate the portion of the TDL they are each required to pay.

33. The Act requires that this information be accompanied by a report, prepared by a qualified auditor, which includes a statement of the extent to which the information provided by the QLP is correct and complete.[17]

Preparing and completing the liability allocation determination

34. We are required to make reasonable efforts to complete a draft LAD no later than 80 working days after the end of the TDL year, which is mid-October. A draft LAD must include:[18]

34.1 each QLP's qualified revenue;

34.2 each QLP's TDL liability, calculated in accordance with section 85(1)(b); and

34.3 our reasoning, and the methodology we used.

35. We are required to give public notice when the draft LAD is released.[19] The Act provides that the closing date for submissions cannot be more than 20 working days after the date of public notice.[20]

36. In addition to submissions, we may convene a conference to discuss matters related to the draft LAD.[21] We can invite any person who has a material interest in the draft LAD to a conference. Conferences are generally reserved for situations where there is a serious need, such as where issues arise that require further discussion among the parties.

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[17] Section 83(2)(b) of the Act.
[18] Section 85 of the Act.
[19] Section 84(1)(b) of the Act.
[20] Section 84(1)(c) of the Act.
[21] Section 86 of the Act.

37. Once we have completed the consultation on a draft LAD (and, if relevant, a revised draft LAD), we must complete a final LAD. We are required to make reasonable efforts to complete a final LAD no later than 20 working days after the closing date for submissions on the draft LAD (or if relevant, the revised draft LAD), which would usually be mid-December.[22] The final LAD has the same content requirement as the draft LAD.[23] Our general practice is to also include a summary of any submissions or consultative processes, and any resulting changes to the final LAD.

Relevant statutory references

38. A list of relevant statutory references can be found in Attachment C.

Methodology and reasoning

Introduction

39. On 29 June 2017 we published a number of documents on our website to help QLPs comply with section 83 of the Act. Using the information from section 82 of the Act and information from last year's TDL, we published an updated list of QLPs for this year, the specified information templates, specified information instructions, a list of relevant statutory references and a list of specified information. On 29 June 2017 QLPs were notified about these documents and sent an email containing the links to our website where they could be found.

40. An email was also sent to all QLPs on 11 September 2017 reminding them of the specified information deadline and again attaching the links to the instructions on our website.

41. Once we received the specified information from the QLPs, we conducted a compliance review, details of which can be found in paragraphs 157 to 165.

42. We issued our draft LAD on 26 October 2017. We received one submission from Chorus.

43. Chorus supported our compliance review in its submission, stating that "we continue to support the Commission's compliance review which includes checking the calculations of QLPs for compliance with the qualified revenue notice, and adjusting qualified revenues according to its findings."[24]

44. Chorus also supported our intention to consult on the broader implications of the NZ IFRS 15 accounting standard on our TDL methodology.[25]

45. In this final LAD we have maintained the methodology used in our draft LAD, and updated the allocation of the levy to take account of the further and revised disclosure provided by one QLP. This final LAD also includes consideration of Chorus' submission.

[22] Section 87(2) of the Act.

[23] Section 88 of the Act.

[24] Chorus, *Submission on Draft Liability Allocation Determination under sections 84 and 85 of the Telecommunications Act 2001 for 1 July 2016 to 30 June 2017*, 9 November 2017.

[25] Chorus, *Submission on Draft Liability Allocation Determination under sections 84 and 85 of the Telecommunications Act 2001 for 1 July 2016 to 30 June 2017*, 9 November 2017.

Identifying QLPs for the 2016/17 TDL process

46. For the 2016/17 TDL process, we reviewed information provided by QLPs as part of their 2015/16 qualified revenue disclosures as well as information provided under section 82 of the Act by other LPs.

47. On 29 June 2017 we published a list of firms that we had identified as being QLPs for the purposes of the 2016/17 TDL process. This list is not final and can be amended at any stage up to the date of publication of the final LAD if we receive information that uncovers a new QLP.

48. This list differs from that for 2015/16 LAD as it reflects changes in the New Zealand market. Following Enable Services Limited's purchase of all Crown Fibre Holdings Limited's shares in Enable Networks Limited in June 2016, the Enable group is no longer included in the Crown Companies group of liable persons. Similarly, following WEL Networks Limited's purchase of all Crown Fibre Holdings Limited's shares in Ultrafast Fibre Limited in September 2016, Ultrafast Fibre Limited is no longer included in the Crown Companies group of liable persons. Each, however, continue to meet the QLP criteria in their own right.

49. In completing this process we have communicated the TDL obligations to one firm who expects to be a QLP for the 2017/18 TDL process.

50. The rest of this section:

    50.1 explains our net revenue approach to calculating qualified revenue, which was adopted for the 2011/12 LAD and continued for the 2012/13, 2013/14, 2014/15, 2015/16 and 2016/17 TDL processes;

    50.2 sets out our reasons for this approach and the accounting practices supporting its implementation; and

    50.3 explains the compliance and assurance process used to ensure the integrity and accuracy of the information used in the LAD process.

51. In previous consultations, parties supported maintaining our approach on *"*a consistent basis from year to year".[26] Parties also agreed that additional precision in measuring the components of qualified revenue would not necessarily change the allocation of the levy appreciably.[27]

52. For this reason, and to reduce compliance costs, we developed an approach to calculating qualified revenue that:

    52.1 relies on information that is readily available across a wide range of firms;

[26] Telecom, *Submission on draft TDL liability allocation determination 2011/12*, 5 June 2013. Page 1.

[27] Commerce Commission, *TDL Qualified Revenue Workshop,* Wellington, 13-14 November 2012. Day 1.

52.2 is applicable across a wide range of firms with varying products, business models, and reporting capabilities, rather than being designed to meet the business practices and concerns of any one firm; and

52.3 where possible, relies on common auditable information that QLPs are likely to keep for other purposes (such as statutory reporting and billing).

53. The approach presented in this section was developed specifically for the LAD process and should not be taken as guidance for compliance with any other notice, determination or other requirements we may issue.

Approach to calculating qualified revenue

54. The 2016/17 specified information instructions required QLPs to estimate their qualified revenue as follows:

54.1 calculate gross telecommunications services revenue by applying the directions provided on the inclusion and exclusion of common revenue streams; [28] and

54.2 apply the net revenue assessment method, which assesses a QLP's telecommunications revenue and subtracts:

54.2.1 total payments made to other QLPs for telecommunications services

54.2.2 total payments made to non-QLPs for telecommunications services initially provided by another QLP; and

54.2.3 the total cost of any non-telecommunications goods and services that were included in gross telecommunications services revenue.[29]

Qualified revenue conventions: net revenue approach

55. This section sets out the framework we developed to calculate qualified revenue for the 2011/12 LAD, and that we have continued using, including for the 2016/17 TDL process, in order to determine the proportion of the TDL payable by each QLP. This section:

55.1 summarises our reasons for using the net revenue method to calculate the qualified revenue for each QLP; and

55.2 explains our formula for calculating each QLP's qualified revenue.

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[28] These directions were provided in the form of an attachment, which is Attachment B of this final LAD.

[29] Revenue from the sale of a non-telecommunications goods or services can only be included in the gross telecommunications services revenue if the QLP does not have a separately identifiable revenue stream relating to the sale. Therefore, equipment retailed in bundles must have been sold in a bundle by the QLP (eg, through its own retail outlets). If equipment is wholesaled unbundled at an arms-length price and later bundled by an independent retailer, then the QLP must value the sale at the wholesale price (and treat it as non-telecommunications services revenue).

Rationale for choosing the net revenue method

56. In selecting the method for assessing the relative proportion of the TDL payable by QLPs for the 2011/12 TDL year, we considered the approach adopted for the previous TSO regime, changes since the TSO regime, the relative merits of different approaches, and submissions on our consultation documents.

57. We chose to adopt the net revenue approach, which had previously been used for the TSO regime. The net revenue method includes all revenues received by each QLP after the deduction of payments between QLPs for the sale/provision of telecommunications services.

58. We considered that the net revenue method was the appropriate revenue method because it captures revenues earned by both wholesale and retail service providers, which is the intention behind the definition of qualified revenue. We also consider that it avoids double taxation.

59. The gross revenue method was ruled out because it taxes some revenue streams twice.[30]

60. The retail revenue method was ruled out because a segment of the QLPs would not contribute to the TDL as this method would not capture revenue for wholesale service providers.[31] In our view this does not reflect the objectives of subpart 2 of Part 3 of the Act.

61. Further details on how we chose the net revenue method can be found in our 2011/12 LAD and previous consultation.[32]

Formula to calculate qualified revenue based on the net revenue method

62. Our 2016/17 specified information instructions included a formula setting out how each QLP should calculate its qualified revenue. The formula is set out in Table 2 below.

30 *Gross revenue method*: includes all relevant revenues received by each liable person, regardless of whether the revenue is from sales to end-users or not.

31 *Retail revenue method*: includes only the revenues earned by each liable person from selling services directly to end-users.

32 This information is on our website http://www.comcom.govt.nz/regulated-industries/telecommunications/industry-levy-and-service-obligations/telecommunications-development-levy-tdl/ . Attachment A of the 2011/12 LAD provides an example to illustrate the differences between the three possible revenue assessment methods.

Table 2: Formula to calculate qualified revenue[33]

Step		Disclosed Items	Value	Value	Formula
a		Operating revenue as per the relevant statutory financial statements		$ a	
b		Non-telecommunications services revenue (if any)	$ b		
c		Other non-telecommunications services revenue	$ c		
d	less	Total non-telecommunications service revenue, sold separately		$ d	d = b + c
e	plus	Timing adjustment (if required)		$ e	
f		**Gross telecommunications services revenue**		**$ f**	f = a - d + e
g	less	Total payments made to other respondents		$ g	
h	less	Total payments made to non-respondents for services initially provided by a respondent		$ h	
i	less	Total cost of non-telecommunications goods and services included in gross telecommunications services revenue		$ i	
j		**Qualified revenue**		**$ j**	j = f –g – h- i

63. In developing this formula for the 2011/12 LAD, we consulted on how to treat bundles that include both telecommunications and non-telecommunications goods and services.[34] We also specifically considered the treatment of subsidies and rebates paid on mobile handsets and tablets.

64. The next section presents an overview of the position we formed on valuing the non-telecommunications component of a bundle. Our 2011/12 LAD contains further explanation of our position and the issues we considered in reaching it.

Qualified revenue conventions: bundles including non-telecommunications services

<u>Allowing for non-telecommunications services revenue when bundled with telecommunication services</u>

65. Operators sometimes sell services to consumers in bundles.[35] The bundled price is typically less than the combined prices of purchasing all the products in the bundle separately.

66. If telecommunications goods and services and non-telecommunications goods and services are sold by a QLP in a bundle, the qualified revenue calculation needs to account for this to ensure that QLPs that offer such bundles are not disadvantaged compared to QLPs that do not offer bundles. If such allowances were not made the QLPs that offer bundles would effectively pay the TDL on revenue attributable to the provision of non-telecommunications goods and services.

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[33] Step (e) 'timing adjustment' is only required if the company has a statutory year end other than 30 June. The timing adjustment will typically represent the effect on gross telecommunications revenue from the statutory accounts and TDL financial year having different year ends and thus relating to different revenue periods.

[34] For example, Commerce Commission, *Establishing the Qualified Revenue Framework for the Telecommunications Development Levy,* 19 October 2012, para 77-97.

[35] Bundling refers to a situation where two or more goods are sold together. Most cases that we deal with in the TDL are mixed bundling, which is where components of the bundle are available on a standalone basis and available in a bundle. This was noted in Vodafone's submission on the 2011/12 LAD, *Submission on draft liability allocation determination for the TDL*, 5 June 2013, page 1.

67. Our TDL methodology allows for QLPs to account for bundles by either:

    67.1 identifying and excluding the revenue attributable to the non-telecommunication services (separate revenue approach); or

    67.2 if the QLP cannot do this, by subtracting the cost of the non-telecommunication services (deduction approach).

68. In practice both the separated revenue and deduction approaches are used by QLPs.

69. We noted that these approaches are only for TDL purposes to promote consistent treatment of bundles by QLPs, and do not predetermine our future decisions in other areas.

<u>Separate revenue approach to valuing the non-telecommunications component of a bundle</u>

70. Under the separate revenue approach the QLPs separately identify and exclude the value of the non-telecommunications component of a bundle from its calculation of gross telecommunications services revenue. In effect the value of the non-telecommunications service component of the bundle is excluded in the same way as any non-telecommunications revenue that was not bundled with a telecommunication service.

71. The 2015/16 TDL process indicated that we should provide specific guidance for revenue where telecommunication services are bundled with goods and/or services that are usually sold separately to telecommunications services. This situation requires specific guidance as the allocation of revenue and discounts that apply across high value bundles can significantly impact the size of a QLP's qualified revenue.

72. We revised our specified information instructions to require QLPs to follow the guidance of a new accounting standard NZ IFRS 15 to allocate revenue and associated bundle discounts earned from bundles of telecommunication services with non-telecommunications goods and services for which we currently do not provide specific guidance. Paragraphs 81 to 88 provide further discussion on NZ IFRS 15.

73. This revision required revenue from such bundles to be allocated in proportion to the standalone prices of the separate services or goods. We consider that the impact and compliance costs for such a requirement is minimal given our observation of QLPs current market offering, TDL disclosures, and accounting practices, combined with the fact that the standalone prices for these bundled goods and services should be known to the relevant QLPs.

<u>Deduction approach to valuing the non-telecommunications component of a bundle</u>

74. Under this approach the value of non-telecommunications goods and services sold in a bundle with telecommunications services should be deducted based on their input cost. This approach can be used for bundles that include non-telecommunications goods and services for which we provide specific guidance.

75. We chose this approach for the 2011/12 LAD because it provides benefits in terms of compliance costs, and objectivity and fairness in the TDL allocation.

76. Our 2016/17 specified information instructions included directions on how the QLPs should calculate the input costs for the different types of non-telecommunications goods and services. Each approach sought to capture the relevant direct or directly attributable costs as calculated in accordance with NZ GAAP. These approaches were designed to promote consistency across QLPs and to tie the cost to readily available information, such as invoices, to reduce compliance costs.

77. These information specifications were based on those used in past LAD processes. For the 2016/17 TDL process we limited the use of the deduction approach to non-telecommunication goods and services for which our specified information instructions provided specific guidance for the reasons explained in paragraph 71 (also see the 2015/16 final LAD). We provided guidance for bundles typically offered by the telecommunications sector such as telecommunications end-user equipment (eg, modems, handsets) or services used in conjunction with telecommunication services (eg, hosting services).

Handset subsidies and rebates

78. Our 2016/17 specified information instructions only allow deductions for the cost of non-telecommunications equipment included in bundled sales where the QLP provided the non-telecommunications equipment to the end customer. Therefore, rebates (or a value derived from the rebates) paid to indirect channels (independent retailers such as national electronics shops and franchisees) cannot be deducted from gross telecommunications revenue.

79. The treatment of rebates paid to indirect channels was raised as an issue for the 2011/12 LAD in the context of rebates paid by mobile operators to indirect channels who supplied 'subsidised' handsets to customers that entered into term contracts for mobile services.

80. After considering submissions on our 2011/12 draft LAD, and other information provided to us, we confirmed and explained our view on rebates in our 2011/12 LAD and have maintained it to date.

Impact of NZ IFRS 15 on TDL treatment of bundled revenue

81. As NZ IFRS 15 relates to revenue and the TDL is a revenue based levy, we have outlined our initial views on how it may impact the TDL, and in particular the treatment of revenue from bundled services.

82. In 2014, NZ IFRS 15 was issued by the relevant NZ standard setting body. IFRS 15 does not become mandatory until the 2018/19 TDL year, although QLPs may elect early adoption.

83. NZ IFRS 15 will provide a single source of requirements for accounting for all contracts with customers (except for some specific exceptions, such as lease contracts and insurance contracts).

84. NZ IFRS 15 requires a prescribed methodology to be followed to identify the revenue benefit from each "performance obligation" in a bundle. This approach is consistent with the separate revenue approach currently in our TDL methodology.

85. NZ IFS 15 provides additional guidance for the recognition of revenue from bundles and terms contracts, both of which are common in the telecommunications sector.

86. We expect that for some QLPs the adoption of NZ IFRS 15 will assist in completing their TDL disclosures, as it will make it easier to apply the separate revenue approach.

87. When NZ IFS 15 becomes mandatory in the 2018/19 TDL year, QLPs are more likely to separately identify the telecommunications and non-telecommunication revenue earned from bundled offers. This should reduce the effort required by QLPs to complete their TDL disclosures. It may also reduce the need for QLPs to use the deduction approach when calculating qualified revenue.

88. We also intend to consult on the broader impact of NZ IFRS 15 to our TDL methodology in advance of NZ IFRS 15 becoming mandatory in order to help QLPs factor their TDL obligations into the changes they will make to their accounting processes. At this stage we anticipate the scope of the consultation to be issuing a request for comment on the implication of NZ IFRS 15 on the TDL and a follow up workshop with QLPs, if required.

Other matters: accounting practices

89. Our 2016/17 specified information instructions required QLPs to estimate their qualified revenue in accordance with a set of regulatory reporting principles and several prescribed accounting practices. These provided guidance on issues that we had identified as requiring further clarity, and sought to ensure that the information disclosed was sufficiently objective, accurate and reliable for the purposes of the TDL. These requirements were based on those used in the 2014/15 LAD process.

<u>Reporting principles</u>

90. Our 2016/17 specified information instructions required QLPs to apply five overarching reporting principles when preparing the disclosed information under section 83 of the Act (or via other means). These principles were developed as part of the 2011/12 TDL framework development process and are correctness, completeness, objectivity, consistency and data retention.[36]

91. During the LAD framework development process, industry was generally supportive of these principles. In response to consultation feedback, we revised the definition of correctness to make it clear that the level of accuracy required did not exceed that required under NZ GAAP.

[36] Refer to Attachment A of this document for the definition of each principle.

July to June financial year

92. Our 2016/17 specified information instructions required QLPs to provide the specified information for the TDL year of 1 July 2016 to 30 June 2017.

93. We included instructions for firms with statutory year ends other than 30 June, on how to complete the required disclosures. We sought to balance the compliance costs of making the adjustments, with the need for a reasonable level of accuracy. For example, the instructions recognised that a QLP may need to make estimates of the TDL year specific revenue is recognised in. However, the instructions also had provisions to ensure that these estimates do not result in revenue never being included as qualified revenue (which would disadvantage other QLPs).

Changes in accounting practices: level of disclosure

94. Our 2016/17 specified information instructions required QLPs to address the effects of changes in accounting practices on qualified revenue in their disclosures. This was included to recognise that QLPs may have valid reasons for changing their accounting practices, but also to require them to make reasonable efforts to ensure that such changes do not result in their under-reporting their overall qualified revenue.

95. These requirements included that when a change in accounting practices impacts on when revenues or costs are recognised, the QLP must make reasonable efforts to ensure that the affected qualified revenue is disclosed in the year that the change in accounting policy is made, or failing that in the year when the revenue or cost is first recognised.

96. One reason for a QLP to change its accounting practices is that it adopts a new accounting standard.

97. For the avoidance of doubt and to reduce the risk of under reporting of qualified revenue overall, our 2016/17 specified information instructions state that the requirements for changes in accounting practices apply to the adoption of NZ IFRS 15. This new guidance was added in response to our experience with and submissions on the 2015/16 TDL process.[37]

98. As explained in our 2015/16 Final LAD, IFRS 15 includes transitional provisions regarding the disclosure of early adoption and the treatment of contracts that span multiple reporting periods.[38] We consider that the transitional provisions in NZ IFRS 15 are largely consistent with the intent of our current requirement for changes in accounting practices.

Other matters: particular revenue streams

99. Our 2016/17 specified information instructions included guidance on how QLPs should classify common types of telecommunications revenue when calculating their qualified

[37] Refer to paragraphs 83 to 94 of our 2015/16 final LAD for further details.

[38] When a firm adopts NZ IFRS 15, it should apply the standard in full for the current period, including retrospective application to all contracts that were incomplete at the beginning of that period.

revenue. This guidance is found in Attachment B of this final LAD and includes our rationale for including or excluding these revenue streams as qualified revenue.

100. The rest of this subsection explains our view on several of the revenue streams.

Revenue from building, maintaining and renewing network infrastructure

101. The Act requires QLPs to pay the levy on revenue received from providing services by means of a PTN, or which rely primarily on the existence of a PTN. This requires us to identify what payments (capital contributions) towards the construction and enhancement of the PTN should be deductible when calculating qualified revenue, and which one-off payments should be included in qualified revenue.

102. Our 2016/17 specified information instructions required QLPs to treat:

102.1 capital contributions made towards developing the PTN, as deductible when calculating gross telecommunications revenue, subject to several conditions;[39] and

102.2 revenue from operational contributions for building, maintaining and renewing the PTN as qualified revenue.

Capital contributions

103. Our 2016/17 specified information instructions allowed QLPs to deduct capital contributions made towards material non-routine additions or enhancements of the PTN network's ability to serve the public from qualified revenue. These payments provide benefits to users other than the person making the payment, and may include contributions such as those by developers to run infrastructure through new subdivisions, by commercial users for providing new capability that benefits other users in the area, and payments from Crown Fibre Holdings to the local fibre companies.

Revenue from operational contributions

104. Our 2016/17 specified information instructions required revenue from operational contributions for routine building, maintaining and renewing the PTN, to be included as qualified revenue. This could include telecommunications service connection fees, maintenance charges and fees for routine changes to a customer's telecommunications service offerings.[40]

105. This approach is consistent with the Act's intent that the TDL covers revenue from providing services based on the PTN, as such revenue is earned (largely) from the existing capability of the PTN to provide service to that customer. This approach is also consistent with NZ GAAP and is equitable, as some operators may recover the cost of these

[39] Our specified information instructions also include requirements that QLPs record related assets as fixed assets under NZ GAAP to claim the capital contribution as a deduction.

[40] Examples include payments to connect a customer to the network when the PTN already passed their property (eg, residential drop leads), and payments to upgrade to a service which was already available to the customer (such as upgrading to ADSL when the customer's exchange was already ADSL capable).

activities via monthly tariffs. To allow some firms to separate out these operational contributions (and exclude them from qualified revenue) would result in inconsistent and inequitable outcomes.

Porting charges

106. We consider that revenue from porting charges (also known as plan change fees) is qualified revenue. These charges are paid when a subscriber changes network provider (ports) but keeps their number. The network provider acquiring the subscriber pays the subscriber's previous network provider a porting charge. This is a wholesale charge and is distinct from any fees that operators may charge retail customers for early termination or changing their monthly or pre-pay plans.

107. As network providers earn this revenue from the day-to-day operations of their networks, we consider that it is earned by means that rely primarily on the existence of a PTN. Therefore, it fulfils the statutory definition of qualified revenue in section 5 of the Act.

108. As this revenue is qualified revenue, QLPs can deduct the porting charges they pay to other QLPs from their gross telecommunication services revenue when calculating their qualified revenue.

Paper bill charges

109. We consider that revenue from charging customers for paper bills, statements, and invoices that relate to the purchase of telecommunications services is qualified revenue. Some retail service providers surcharge customers for receiving paper bills via the post (rather than receiving emails or using online account management).

110. As network providers earn this revenue from the day-to-day operations of their networks, we consider that it is earned by means that rely primarily on the existence of a PTN. Therefore, it fulfils the statutory definition of qualified revenue in section 5 of the Act.

Satellite revenues

111. Our 2016/17 specified information instructions required QLPs to include in qualified revenue any revenue from telecommunications services provided in New Zealand via satellite. This reflects that the TDL is a revenue based levy, and the services provided using satellite technology are telecommunications services provided by means of a PTN.

112. During the 2011/12 LAD framework development, this issue was raised by Bay City Communications Ltd (Bay City) who provides services using satellite technology. Payments to satellite services providers are not permitted to be deducted at this stage because there are no satellite services providers that are QLPs. If we permitted a deduction for payments for these services, it would be inconsistent with the net revenue approach, and create an inequality with other QLPs who use alternative non-contributing technologies to deliver their services.

Video on-demand

113. We consider that revenue derived from video on-demand content is not qualified revenue. We only consider revenue clearly related to this content exempt, whereas revenue related to the conveyance of this content is qualified revenue.

114. Video on-demand content can be distinguished from broadcasting as it is content provided to a single-user for use at their discretion. Broadcasting revenue is also not qualified revenue as the definition of "telecommunication" defined in section 5 of the Act excludes "any conveyance that constitutes broadcasting."

Private versus public telecommunications network

115. We consider that revenue earned from operating a physically private telecommunications network is not qualified revenue. This is only when the private network is not physically able to connect to another telecommunications network, and is therefore not part of a PTN.

116. We consider that if the network is physically capable of being accessed by the public for any purpose (even private uses of the public network) then revenue that the QLP derives from providing the services by means of a PTN (or that rely primarily on the existence of a PTN) is qualified revenue.

117. This means that the QLPs do not need to know (or incur the costs of knowing) how their clients use the services they provide. If the QLP derives revenue from providing telecommunications services over a publicly accessible telecommunications network, then it is qualified revenue.

118. This means revenue from providing services via layer one and above (including ducting and dark fibre) is qualified revenue. Revenue from fibre or copper dedicated to a single-user is also included in qualified revenue, unless that fibre or copper is part of a physically separate telecommunications network that does not connect to a PTN.

Co-location and co-sited space

119. Our 2016/17 specified information instructions state that revenue from selling co-location services on cellular transmission sites and the co-location of equipment in the PTN environment of the central office, including secured areas, must be included in qualified revenue. This is because the co-location revenue is earned by means of a facility that is predominately operated as part of a PTN located in New Zealand.

120. Our 2016/17 specified information instructions also provided guidance as to the treatment of revenue from co-siting. This made it clearer that we do not consider revenue from co-sited office and retail space, or hosting commercial data centres that are operated separately from any PTN environment to be qualified revenue. This recognises that premises may be used for both telecommunication and non-telecommunication purposes.

Telecommunications services revenue earned by an interconnected body corporate

121. Our 2016/17 specified information instructions included guidance requiring telecommunication services revenue earned by a body corporate connected to a QLP via section 79 in conjunction with providing telecommunication goods to be included as qualified revenue.

122. This guidance ensures that different corporate structures (eg, having separate subsidiaries to operate the PTN and retail channels) did not result in material inconsistencies in the treatment of revenue from providing bundles of telecommunications goods and services. It also reflects the often close nature of the sale of telecommunication goods and services. An example would be when an interconnected consumer electronics retailer sells a mobile handset in a bundle with mobile calling minutes.

123. This guidance ensures that our specified information instructions provide guidance on the treatment of telecommunications services revenue earned by interconnected bodies corporate both in conjunction with providing telecommunications goods (eg, mobile phones) and non-telecommunications goods and services (eg, hotel accommodation). We do not consider telecommunications services revenue to be qualified revenue when it was an ancillary part of providing non-telecommunications goods or services, and the revenues earned are not material to the interconnected bodies corporates' overall revenue.

124. Our 2016/17 specified information instructions included guidance making it explicit that a QLP's qualified revenue includes revenue from providing telecommunications services to interconnected bodies corporate (and other related parties) that do not report downstream qualified revenue.

125. This covers situations where a QLP provides services to related parties that:

125.1 consume the services themselves, or

125.2 use it to earn ancillary revenue as part of providing non-telecommunications goods and services, or

125.3 earn an immaterial amount of downstream telecommunication services revenue.[41]

126. This guidance was added to ensure that telecommunications services revenue resulting from related party transactions is included in gross telecommunication revenue, while avoiding double counting of revenue streams.

[41] Respective examples of qualified revenue would be a related party that provides consulting services and buys mobile plans for its own staff, a museum that provides wifi to visitors and downstream revenue that is earned overseas as part of a mobile bundle that includes international calling.

Other matters: particular expenditures

Fibre network equipment located inside end-user premises

127. We consider that the cost of some fibre equipment, such as optical network terminals (ONT) installed inside the end-user's premises PTN, should not be deducted from qualified revenue. This is because the deduction for the cost of non-telecommunications goods and services does not apply to goods that form part of a QLP's PTN.

Customer loyalty programs

128. The 2016/17 specified information instructions required that payments made to third party operators of customer loyalty programs (such as Fly Buys) should be treated consistently with how the QLP calculated its gross telecommunications services revenue.

129. This requirements avoids the risk of double deductions from having a payment to a third party operator of a customer loyalty program netted off in calculating statutory operating revenue, and deducted as a cost of bundled non-telecommunications goods and services. This approach is consistent with both the relevant outgoing account interpretation standard[42] and the incoming NZ IFRS 15. NZ IFRS 15 requires firms to separately identify the revenue associated with customer loyalty programs when calculating operating revenue.

Other matters: Services subject to a pricing review by the Commission

130. Our 2016/17 specified information instructions provided guidance on the treatment of revenues received and payments made in relation to a telecommunications service that is currently subject to one of our pricing reviews. The instructions required that the values for qualified revenue received and for deductions for payments to other QLPs should reflect the prices charged during the TDL year. To provide further guidance we gave the example of using the invoiced amounts recognised under accrual based accounting and reported as statutory operating revenue (or as operating expenses).

131. This guidance provides clarity about the treatment of revenues and expenditure relating to the services covered by our pricing reviews of the regulated UBA and UCLL services. This guidance is consistent with the existing TDL disclosure principle of correctness that requires that TDL disclosures are in accordance with NZ GAAP (except where otherwise expressly provided).

Other matters: ability of Chorus to pass through the TDL

132. In past consultations Chorus has raised concerns about its inability to recoup the levy through increased prices, and requested that the Commission allow it to pass on the cost of the TDL levy in prices for its regulated copper services.[43]

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[42] NZ IFRIC 13 New Zealand Equivalent to IFRIC Interpretation 13 Customer loyalty programs.

[43] For example, Chorus, *Submission on proposed draft liability allocation under sections 83 and 85 of the Telecommunications Act 20013 for 1 July 2013-30 June 2014*, 28 November 2014 and Chorus, *Submission on draft liability allocation under sections 84 and 85 of the Telecommunications Act 2001 for 1 July 2014 to 30 June 2015*, 12 November 2015.

133. In developing our TDL methodology, we considered and consulted on the ability of Chorus to pass through the levy in its wholesale prices.

134. As before, we do not consider that the price of regulated services should be determined via the TDL process. We maintain the view presented in our 2011/12 LAD and subsequent LADs that:[44]

> The regulatory regime has separate processes for setting the prices for regulated services, while Chorus is able to set the price for non-regulated services itself. Issues relating to the setting of the price for copper based LLU services and UBA should be considered as part of a separate process under the Act.

135. On 15 December 2015, we issued our final determinations under the FPP process which set the prices for regulated copper based UBA and UCLL services.[45,46] In doing so we considered the cost of providing these services in accordance with the final pricing principle specified in the Act.

136. In reaching our final decisions for the FPP process, we specifically considered and factored into the regulated prices non-network operating costs, which include regulatory levies such as the TDL.[47]

Compliance and assurance

137. This section discusses the assurance requirements and compliance review relating to the accuracy of our qualified revenue calculation.

138. This year, we widened the scope for when a QLP may rely on its statutory audit report for the TDL. This was intended to reduce the compliance costs for QLPs that meet certain criteria. This was also in keeping with recent legislative amendments that granted us a discretion to determine alternative forms of assurance for the TDL disclosures.

Compliance and assurance for the qualified revenue calculations

139. For the 2016/17 TDL process, we required QLPs to provide us with one of:

    139.1 an assurance report by an independent qualified auditor, providing an opinion on the TDL disclosed information;

    139.2 the statutory audit report if the QLP's statutory financial statements covered the full TDL year (ie, year-end of 30 June 2017), the QLP had gross telecommunications services revenue of under $50m and the requirements

[44] See our website for material relating to previous LADs at http://www.comcom.govt.nz/regulated-industries/telecommunications/industry-levy-and-service-obligations/telecommunications-development-levy-tdl

[45] Commerce Commission "Final pricing review determination for Chorus' unbundled bitstream access service [2015] NZCC 38" (15 December 2015).

[46] Commerce Commission "Final pricing review determination for Chorus' unbundled copper local loop service [2015] NZCC 37" (15 December 2015).

[47] Further information on our treatment of operating costs in our FPP process can be found in Attachment O of our final determination. Refer to *ibid*.

detailed in paragraph 148, were met. This threshold also applied to QLPs that were connected to other QLPs via common ownership by the Crown, or

139.3 the statutory audit report and certification by a director or senior financial officer if the QLP has a year-end other than 30 June 2017, gross telecommunications services revenue of under $50m and the requirements detailed in paragraph 148, were met. This threshold also applied to QLPs that were connected to other QLPs via common ownership by the Crown.

140. The Act requires that all information requested under section 83 must be accompanied by either a report prepared by a qualified auditor in accordance with auditing and assurance standards as specified by the Commission, or by an alternative form of assurance as specified by the Commission.

141. Assurance and statutory audit reports prepared by independent qualified auditors provide users with a reasonable level of confidence as to the processes used to prepare information and the reliability of information. An independent auditor is expected to identify and correct deficiencies in processes and information, and provide assurance of its reliability.

142. QLPs' TDL disclosures typically include information that is not presented in the statutory financial statements. This is particularly so for larger QLPs that have more complex TDL disclosures, such as numerous deductions for payments to other QLPs. Therefore, most QLPs' TDL disclosures require additional review to provide assurance as to the reliability of the disclosed information.

143. One way to achieve this additional assurance is for the QLP's auditor to perform additional work to specifically review the QLP's TDL disclosures. Auditors will express their findings from such engagements in the form of an assurance report and are expected to do so in accordance with relevant auditing and assurance standards. This approach involved additional audit costs.

144. Another way to provide assurance is to include information relating to the TDL in the QLP's statutory financial statements and accompanying notes. Hence the statutory audit report should provide some assurance as to the reliability of the TDL related information that is included in the statutory financial statements and accompanying notes. This approach involves a trade-off between compliance costs for the QLP and the scope of the TDL related information that the auditor reviews.

145. A third approach is to have a director or senior officer of the QLP provide certification of TDL related information. This approach can be used in conjunction with assurance from independent auditors (eg, to provide assurance for information that relates to a time period that was not covered by the auditor's report).

<u>Assurance report requirements</u>

146. Most QLPs provided us with an assurance report that was specific to their TDL disclosures.

147. The overall scope of these assurance reports was the same as for the 2015/16 TDL year. As before, these reports were required to be prepared in accordance with relevant professional auditing standards and to recognise that we and the QLPs' directors are the intended users of the assurance report.

Alternative approach using statutory audit reports

148. The 2016/17 TDL specified information instructions provided some QLPs with the option of providing us with their statutory audit report instead of providing us with a separate assurance report prepared by an auditor for TDL purposes.

149. We introduced this approach in the 2013/14 TDL process to address some QLPs' concerns about compliance costs for smaller QLPs being disproportionately high relative to the levy paid.[48]

150. To ensure that there would be an appropriate level of assurance, we set parameters for when we would consider that a QLP's statutory auditor's report met the requirements in section 83(1)(b).

151. For the 2016/17 TDL specified information instructions we widened the scope for when a QLP may rely on its statutory audit report for the TDL. This reflected that the alternative approach was successful in previous TDL years.

152. This year we increased the cap on telecommunications services revenue where a QLP need not provide an assurance report by an independent qualified auditor from $20M to $50M. This reflects the changing dynamics of QLP size and that our past experience has indicated that QLPs of this size have not presented ongoing compliance problems. In terms of the overall TDL, a QLP earning up to $50M revenue represents less than 1% of the overall market revenue.

153. We also expanded the alternative approach available to QLPs with a year-end other than 30 June 2017 and in particular those with a 31 March 2017 year end. This revision reflects that 31 March is a common year end for New Zealand based firms.

154. The criteria for the alternative approach included that:

154.1 the QLP had an unqualified audit opinion;[49]

154.2 the QLP had gross telecommunications services revenue of under $50m in the 2016/17 TDL year;

154.3 the QLP will make the auditor available to us to answer questions relating to the specified information (if required);

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[48] For example, Northpower*, TDL - submission on draft TDL liability allocation determination for 1 July 2012 to 30 June 2013,* 21 November 2013.

[49] The requirements for an unqualified statutory audit report was that the audit opinion states that QLP's statutory financial present fairly, in all material respects, (or give a true and fair view of) the financial position of the QLP as at 30 June 2015, and (of) its financial performance and its cash flows for the year ending 30 June 2015 in accordance with (the applicable financial framework) (or an equivalent level of assurance).

154.4 the statutory financial statements or the notes to the statutory financial statements separately disclose:

154.4.1 the QLP's gross telecommunications services revenue;[50] and

154.4.2 any deduction from gross telecommunications services revenue that is disclosed in Template 1 and that exceeds 1% of the QLP's gross telecommunications services revenue;[51]

155. If the QLP had a year-end other than 30 June 2017, and wished to use the alternative approach, the following additional requirements applied:

155.1 the QLP's statutory financial statements cover at least 263 days of the 2016/17 TDL year (this includes 31 March 2017 year-ends); and

155.2 The QLP provides a certification in respect of the QLP's specified information that must be signed by a director or CFO (or equivalent senior financial officer).

156. The following section outlines the compliance review that we conducted during the 2016/17 LAD process.

Our compliance review

157. We reviewed all information received from QLPs under section 83 for compliance with our specified information instructions. This included checking the disclosures for completeness, the reasonableness of the information provided, and the consistency of how different QLPs addressed comparable issues.

158. Overall the level of completeness and timeliness of disclosures this year was better than in the past, with all QLPs having provided us with their templates and audit or assurance reports by the due date.

159. Our review identified several issues, which we have raised with the relevant QLPs. These issues were technical in nature, relating to the specifics of the individual QLPs, and therefore did not require consultation. In most cases the QLP provided us with a satisfactory explanation or additional information when requested.

160. When we issued our draft LAD we were still discussing one outstanding compliance issue with Compass. Compass submitted a revised disclosure on 9 November 2017. This has resulted in Compass' qualified revenue increasing substantially which only has a minor impact on the overall allocation of the levy.

161. We were also still awaiting statutory accounts from two QLPs due to their statutory accounts being finalised after the TDL disclosure due date. The statutory accounts from

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

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

both QLPs have been received and no change is required to our allocation calculation. Our specified information instructions require QLPs to provide us with all financial statements that they are required to register under the Financial Reporting Act 2013 or are required to send to shareholders under the Companies Act 1993 (if any), for the 1 July 2016 to 30 June 2017 period.[52] Section 10(1) of the Financial Reporting Act requires financial statements to be completed within 5 months of the balance date.

162. Several QLPs spoke to us in advance of the due date for the disclosures under section 83 to seek guidance on issues. We found this approach improved the process and ensured that these issues did not lead to delays relating to compliance concerns.

163. We found that the changes to our templates and specified information instructions this year led to an increased level of compliance. For example, locking some formula cells and emphasising the need to use the current year's templates removed the problem of QLPs modifying formulas.

164. However, as with last year, our compliance review identified that several QLPs had not fully updated their TDL processes for changes in our instructions on the Excel templates. While this did not lead to our revising any QLPs' estimate of qualified revenue, it did add to our work load. More significantly as our templates are specific to individual TDL years, and our newer templates include additional data validation checks, the use of templates from past years increases the risk that a QLP may provide incomplete or incorrect information.[53] For future years, we continue to encourage all QLPs to use the latest templates to reduce their risk of non-compliance and being subject to enforcement action.

165. We expect that after we inform a QLP of its non-compliance, the QLP will take steps to improve its compliance in the future. Should a QLP repeat a known mistake in a later TDL year, we may take formal enforcement action. Our enforcement options include issuing a warning letter, issuing an infringement notice incorporating a fine, or taking Court proceedings seeking a financial penalty.

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[52] Commerce Commission. "List of Specified Information and Assurance Report required under Section 83 of the Telecommunications Act 2001" 29 June 2017 at [3.1].

[53] For example, in 2016/17 we added a combo box to template 2 where QLPs can claim deductions for payments to other QLPs. The change will require QLPs to select the "other QLP" from a set list rather than enter the QLP's name as freeform text. This is intended to prevent QLPs entering invalid names.

Allocation of levy

166. The proportion of the TDL required to be paid by each QLP is determined by its share of the total qualified revenue earned by all QLPs for the TDL period.

167. In accordance with section 88(a) and (b) of the Act, the following table shows the qualified revenue amounts that we have determined, and the amount of the TDL payable by each liable person.

Table 1: Levy allocation

QLP	Qualified revenue ($)	% of industry qualified revenue	Amount of TDL to pay ($)
Spark†	$1,502,143,973	35.34%	$17,668,014.48
Vodafone	$1,119,526,777	26.34%	$13,167,722.70
Chorus	$960,502,000	22.59%	$11,297,294.77
2degrees	$356,180,198	8.38%	$4,189,343.37
Vocus	$134,057,695	3.15%	$1,576,768.50
Ultrafast Fibre	$38,659,000	0.91%	$454,701.94
Teamtalk	$34,401,000	0.81%	$404,619.91
Enable Networks	$25,674,000	0.60%	$301,974.12
Vector	$21,721,000	0.51%	$255,479.47
Kordia**	$16,476,000	0.39%	$193,788.49
Trustpower	$13,901,000	0.33%	$163,501.68
REANNZ**	$9,327,000	0.22%	$109,702.91
Now†	$5,659,908	0.13%	$66,571.07
Northpower**	$5,443,000	0.13%	$64,019.83
Compass*	$4,935,000	0.12%	$58,044.80
Transpower**	$2,419,000	0.06%	$28,451.95
Total Industry	**$4,251,026,551**	**100%**	**$50,000,000.00**

* A firm with an operating revenue over the $10m minimum telecommunications revenue threshold for inclusion may have a reported qualified revenue of under $10m due to adjustments.

**s 79 of the Act requires us to treat these Crown companies as one QLP when assessing who is required to contribute to the TDL, including whether their combined qualified revenue exceeds the $10m telecommunications revenue threshold. However, they provided separate disclosures, so their TDL allocations are displayed separately.

† s 79 of the Act requires us to treat these Spark Group companies as one QLP when assessing who is required to contribute to the TDL, including whether their combined qualified revenue exceeds the $10m telecommunications revenue threshold. However, they provided separate disclosures, so their TDL allocations are displayed separately.

Attachment A – 2015/16 TDL Specified Information and Assurance Report Instructions

Introduction and Interpretation

Introduction

1. These instructions provide guidance for parties seeking to comply with the information disclosure requirements under section 83 of the Telecommunications Act 2001 (Act).

2. Each year the Commerce Commission (Commission) identifies a group of telecommunications service providers (TSPs) who meet the criteria set out in subpart 2 of Part 3 of the Act and are therefore liable to pay a portion of the annual Telecommunications Development Levy (TDL). We refer to such TSPs as qualifying liable persons (QLPs).

3. In order to meet the QLP criteria a TSP must:

    3.1 provide a telecommunications service in New Zealand by means of operating a component of a Public Telecommunications Network (PTN); and

    3.2 have earned at least $10 million gross telecommunications services revenue in the year preceding the TDL year under review by means of its PTN, or by means that rely primarily on the existence of its or any other PTN, including such revenue of any bodies corporate that were connected to it in any of the ways described in section 79(1)(a) to (e) of the Act (interconnected bodies corporate).

4. The list of QLPs for the 2016/17 TDL year is based on information provided to date and is available on our website. The list is not final, and may be reviewed and updated if required.

5. Section 83 of the Act requires QLPs to produce information for purposes of the Commission's liability allocation determination. Under section 83(1)(a), the Commission may specify the information it needs for the purpose of enabling it to make its determination in accordance with section 88(a) of the Act. Under section 83(1), the specified information is due 60 working days after the end of a TDL year (around the end of September). Each QLP is required to provide us with specified information to enable us to determine their qualified revenue for the TDL year under review as required by section 88(a). We use this information less a few important deductions (identified by these instructions) to determine the QLP's net qualified revenue. This net qualified revenue is then used to allocate the TDL in accordance with section 88(b) of the Act. We refer to this information as "specified information" and to this process as "the qualified revenue information disclosure process".

6. These instructions provide guidance on what the specified information required under section 83(1)(a) includes and how it is to be presented.

7. Along with these instructions and the list of QLPs, a set of templates and relevant statutory references are available on our website. We require QLPs to use the templates specific to the 2016/17 TDL year as these materials have been designed to meet our

requirements. Specific instructions for using the templates are provided in this document. QLPs are reminded not to modify the formulas in the templates as this could result in errors.

8. Under section 83(1)(b), QLPs are also required to provide us with a report on the specified information by an auditor or an alternative form of assurance as specified by us. . These instructions also explain when we will consider that the requirements in section 83(1) have been met.

Interpretation

9. Specified information includes all information used to identify a QLP's qualified revenue.

10. Unless the context otherwise requires, QLP includes all interconnected bodies corporate.

11. PTN means a PTN in New Zealand, as defined in section 5 of the Act.

12. Qualified revenue is the amount of revenue that, during the 2016/17 financial year (1 July to 30 June), the QLP received from supplying all or any of the following:

    12.1 telecommunications services by means of its public telecommunications network (PTN); and/or

    12.2 telecommunications services by means that rely primarily on the existence of its PTN or any other PTN.

13. Qualified revenue does not include any amount paid by the Crown to a QLP as compensation for the cost of complying with a TSO instrument that contains a specified amount. This type of revenue is expressly excluded in the definition of qualified revenue in section 5 of the Act.

14. Qualified revenue also excludes non-telecommunications services revenue (such as broadcasting), payments for telecommunications services between QLPs and in some specific circumstances payments to non-QLPs for telecommunications services purchased from another QLP.

15. Telecommunications services (as defined in section 5 of the Act) mean only services (rather than goods, equipment and facilities), as goods, equipment and facilities cannot be supplied by means of a PTN or by means that rely primarily on the existence of a PTN.

16. All specified information used to identify qualified revenue must be calculated on an accruals basis.

17. For the purpose of these instructions, 'end-user equipment':

    17.1 means any or all handsets, USB modems, WIFI modems, PABX and other end-user equipment that have the primary function of connecting to telecommunications services; and

    17.2 does not mean:

17.2.1 equipment that is located inside the end-user's premises but which forms part of a QLP's PTN such as optical network terminals (ONT) installed inside the end-users' premises, external termination point (ETP) and internal termination points (ITPs) that are part of a QLP's PTN; or

17.2.2 television sets, gaming consoles, alarm systems, photocopiers, and other consumer and office equipment that have a primary function other than connecting to telecommunication services.

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

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

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

18.3 has not assisted with the compilation of the information or provided advice or opinions (other than in relation to audit reports or in respect of the interpretation of this determination) on the methodologies or processes used in compiling the information; and

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

Operational changes for QLPs

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

20. If a QLP ceased trading or operating a component of a PTN in the 2016/17 financial year, it will generally continue to have liability for the TDL in that year. This is because the QLP would have met the qualifying criteria in the preceding financial year, and will have some qualified revenue for the 2016/17 year.

21. Should a QLP disposed of all its assets that it used to generate qualified revenue to a non-liable person, then the acquirer would assume responsibility for the TDL and must pay the amount of the TDL resulting from the revenue associated with those assets as required by section 81A of the Act. Hence the acquirer of these assets must provide to the Commission the completed TDL schedules, assurance report or audit report and other information required under Section 83 of the Act.

22. If a QLP only disposed of some of these assets to a non-liable person, then both the QLP and the non-liable person may have responsibilities for the 2016/17 TDL, such as providing the Commission with the specified information required under Section 83 of the Act. Section 81A of the Act provides guidance for the non-liable person acquiring the assets.

Instructions for preparing specified information to identify a qualifying liable person's qualified revenue for purposes of the Telecommunications Development Levy

Disclosure principles

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

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

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

    23.3 Objectivity: the QLP must apply regulatory reporting processes which are objectively justifiable and reasonable. These processes, any changes to them, and any supporting assumptions or data must be documented in such a way that an informed reader can easily judge their reasonableness.

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

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

Instructions for completing the templates

Template 1: Consolidated Return & Qualified Revenue Calculation

24. Template 1 requires the QLP to:

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

    24.2 provide a calculation of the QLP's qualified revenue for the 2016/2017 financial year.

Template 1a: Consolidated Return

25. Under the heading 1a: Consolidated return for Section 79 purposes, the QLP is required to identify in the drop-down box, if it is filing a consolidated return. If so, the QLP must list which parties are included in the consolidated return. Section 79 identifies when two or more bodies corporate are required to be treated as one person.[54,55] The List of QLPs (on

[54] For example, section 79(1)(e) of the Act provides that any two or more bodies corporate must be treated as one person if a third person owns or controls shares in each of them that carry the right to exercise, or control the exercise of, 20% or more of the voting power at meetings of each of them.

our website) indicates whether the QLP includes interconnected bodies corporate, and if so who such bodies are.

Template 1b: Qualified Revenue

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

    26.1 less any non-telecommunications services revenue; and

    26.2 allowing for any timing adjustments which arise should the QLP have a statutory year end which differs from the financial year ending 30 June 2017 that is used for calculating qualified revenue.

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

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

    27.2 the total of any payments made to non-respondents for services initially provided by a respondent (which is calculated in Template 3); and

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

28. The QLP's qualified revenue for the 2016/17 financial year is calculated in accordance with the formulas in Template 1, which are summarised in Table 1.

29. Table 1 is provided to assist the QLP calculate its qualified revenue and as such, is for information and explanation purposes only. The information required to be provided to the Commission is that set out in Template 2.

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[55] Crown owned entities may each provide the specified information specific to their entity (and any subsidiaries or like). This approach is to facilitate lower compliance costs and recognises how entities linked via common ownership by the Crown operate.

Table 1: Calculating Qualified Revenue

Step		Disclosed Items	Value	Value	Formula
a		Operating revenue as per the relevant statutory financial statements		$ a	
b		Non-telecommunications services revenue (if any)	$ b		
c		Other non-telecommunications services revenue	$ c		
d	less	Total non-telecommunications service revenue, sold separately		$ d	d = b + c
e	plus	Timing adjustment (if required)		$ e	
f		**Gross telecommunications services revenue**		**$ f**	f = a - d + e
g	less	Total payments made to other respondents		$ g	
h	less	Total payments made to non-respondents for services initially provided by a respondent		$ h	
i	less	Total cost of non-telecommunications goods and services included in gross telecommunications services revenue		$ i	
j		**Qualified revenue**		**$ j**	j = f –g – h- i

Calculating gross telecommunications services revenue

30. To calculate the gross telecommunications services revenue (step f), the QLP must, amongst others, identify the following features.

30.1 In step (a), the operating revenue as per the relevant statutory financial statements being the QLP's most recent statutory financial statements (or equivalent information if the QLP does not publish statutory financial statements) that have the greatest overlap with the financial year ending 30 June 2017. For a QLP with a 31 December year end, the operating revenue is determined for the period ending 31 December 2016.

30.2 In step (d), the value of total non-telecommunications services revenue is the sum of the disaggregated major non-telecommunications revenue streams individually disclosed in step (b) under the heading 'non-telecommunications services revenue (if any)', and the value of any other revenue streams that are disclosed in aggregate in step (c) as 'other non-telecommunications services revenue'. These are calculated in the following manner.

30.2.1 Under the heading, 'non-telecommunications services revenue', the QLP must disclose each of its major disaggregated non-telecommunications revenue streams. [56] When the information is reasonably available and appropriate, the QLP must use the revenue types listed in Attachment A.[57] If this information is not readily available, then the QLP must provide sufficient detail so that an informed reader can reasonably identify the major activities that generate the non-telecommunications services revenue.

[56] In subtracting any non-telecommunications services revenue, QLPs must consider the treatment of revenue from providing telecommunications services to non-liable persons that are interconnected bodies corporate (or other related parties). Refer to page 6 of Attachment A for further details.

[57] Such as revenue derived from outside New Zealand, revenue earned from the standalone sales of handsets and other end-user equipment, and revenue earned from non-telecommunications products that were not bundled with telecommunications services.

30.2.2 Under the heading, 'other non-telecommunications services revenue' the QLP may disclose the non-telecommunications services revenue earned from minor activities as a combined value. This value must not exceed 2.5% of the QLP's operating revenue as disclosed in step (a).[58]

30.2.3 The values deducted for non-telecommunications services revenue must:

(a) be consistent with those used in calculating operating revenue as per the relevant statutory financial statements, unless specially covered by paragraph 30.2.3(b); and.

(b) be calculated in accordance with NZ IFRS 15, if the non-telecommunications services revenue was earned from a bundle that included telecommunication services, and the non-telecommunications good or service does not fall into one of the categories listed in paragraph 37.3 of these instructions.

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

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

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

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

33. The timing adjustment will typically represent the effect on gross telecommunications revenue of differences in the revenue periods under the statutory financial statements and the TDL financial year.[59] It may also include some of the adjustments relating to past assumptions about timing, which were made in accordance with paragraph 31.2, which relate to:

33.1 estimates of gross telecommunications services revenue (step (f));

33.2 total payments made to other QLPs (step (g));

33.3 total payments made to non-QLPs for services initially provided by a QLP (step (h)); and

58 The option of disclosing revenue earned from these minor activities as a combined 'other' value, rather than separate line items, is provided to reduce the company's compliance costs. The 2.5% threshold exists to provide transparency in the calculation.

59 For example, if a QLP with a 31 March year end earned $10m more telecommunications services revenue in the quarter ending 30 June 2017 than it did in the quarter ending 30 June 2016, the timing adjustment would be $10m.

33.4 total cost of non-telecommunications goods and services included in gross telecommunications services revenue (step (i)).[60]

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

35. If the QLP does not have separate statutory financial statements, it must disclose the total audited revenue of its business for the financial year and reconcile this to the gross telecommunications services revenue disclosed in step (f).

Deducting the cost of non-telecommunications goods and services

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

37. However, the Commission will permit a QLP to deduct the cost of purchasing non-telecommunications goods and services if:

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

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

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

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

37.3.2 for end-user equipment that was sourced outside New Zealand, the direct cost paid to the external supplier(s) in accordance with NZ GAAP, plus direct freight costs and customs duties.

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

37.3.4 for other non-telecommunications goods and services that were sold as part of a bundle with telecommunications services, and which have a primary function related to the provision of or connection to a

[60] For example, if a QLP, with a March year end, in its TDL year 1 templates assumed that the revenue from a shipment of handsets sold in April was included in the March statutory financial statements, later recognises the sale as an April transaction, could address this as a timing adjustment in TDL year 2. Whether this effect is disclosed as a timing adjustment or addressed elsewhere on template 1 depends on how the QLP calculates the values in template 1.

telecommunication service, the directly attributable costs in accordance with NZ GAAP. This category is likely to include accessories (eg, cables), installation work, and maintenance services relating to end-user equipment.

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

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

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

    38.3 must not include any allocation of corporate overhead, charges for the cost of capital, or mark up for indirect costs;[61]

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

    38.5 for end-user equipment and other non-telecommunications goods specifically, cannot be the price charged by a party (eg, retailer) who had purchased the same good in a previous transaction from the QLP; if the QLP had repurchased the good from such a party, then the revenue from the first sale must be fully reversed in calculating gross telecommunications revenue, and the cost of the non-telecommunications good must be set at the original cost the QLP incurred in acquiring it as allowed under paragraphs 37.3.1 and 37.3.2.

Changes in accounting practices and the treatment of estimates

39. In calculating qualified revenue, the QLP must make reasonable efforts to ensure that the reported value of its qualified revenue is accurate both within a year and in aggregate across years. This includes, but is not limited to:

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

    39.2 when a QLP with a statutory year end other than 30 June makes estimates as to which of two TDL financial years an item of revenue (or cost) should be recognised in, then the QLP must make reasonable efforts to ensure that a revenue (or cost)

[61] These accounting practices are specific to these instructions and the calculation of qualified revenue for TDL purposes. This should not be taken as guidance for compliance with any other notice, determination or other requirements issued by the Commission.

item, if not recognised in the first of the two TDL financial years, is recognised in the later of the two TDL financial years, regardless of how it is recognised for other purposes.

40. For the avoidance of doubt paragraph 39.1 applies to, but is not limited to NZ IFRS 15.

41. For the avoidance of doubt, paragraph 39.2 may result in the timing recognition of revenue or input costs for TDL purposes being different to that used for statutory reporting under NZ GAAP or other reporting requirements.

Template 2: Payments Made to Other QLPs

42. This template requires the QLP to disclose the total amount payable to other QLPs that is being deducted in accordance with these instructions for the 2016/17 financial year.

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

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

Template 3: Payments Made to Non-QLPs for Services Originally Purchased from a QLP

45. The QLP can deduct payments made to a non-QLP for telecommunications services, but only if that non-QLP is acting as an intermediary for another QLP, ie, payments to a non-QLP for the provision of telecommunications services that the non-QLP purchased from another QLP.

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

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

48. Template 3 requires the QLP to disclose details about payments claimed in template 1 (step (h)) as a deduction for payments made to non-QLPs for services originally purchased from another QLP in the 2016/17 financial year.

49. To claim a deduction in template 3, the QLP is required to provide:

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

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

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

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

50. Any allocations are to be calculated in accordance with the principles in paragraph 23. The value of transactions(s) should reconcile to invoices and must include both the allocated value deducted for TDL qualified revenue and non-deductible amounts (such as payments for non-telecommunications services).

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

Background

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

52. Section 79(1) of the Telecommunications Act 2001 provides that two or more bodies corporate must be treated as one person, for purposes of the TDL, if:

(a) one of them is a body corporate of which the others are subsidiaries; or
(b) all of them are subsidiaries of the same body corporate; or
(c) all of them are associates of each other; or
(d) one of them owns or controls shares that in the aggregate carry the right to exercise, or control the exercise of, 20% or more of the voting power at meetings of the others; or
(e) a third person owns or controls shares in each of them that carry the right to exercise, or control the exercise of, 20% or more of the voting power at meetings of each of them.

53. Section 79(2) provides that for the purposes of section 79(1)(c) a body corporate is an associate of another if that body corporate is able, whether directly or indirectly, to exert a substantial degree of influence over the activities of the other.

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

Assessing any connected body corporate's qualified revenue

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

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

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

If a body corporate is connected to multiple QLPs

58. If the QLP is connected via section 79 to bodies corporate that earn qualified revenue, then the QLP should consider if one or more of those bodies corporate is also connected to another QLP. If the latter applies, then:

    58.1 only one of the QLPs must provide further specified information for each body corporate (for example including the connected body corporate's qualified revenue in its estimation of group qualified revenue in template 1).

    58.2 the other connected QLP(s) must declare the connection by answering "yes" in section 4a and providing further details in section 4b of template 4.

59. Therefore, the QLP may need to agree with other QLPs connected to the same bodies corporate on who will provide further specified information for such bodies. This will include determining who is responsible for disclosing financial information (such as templates 1 to 3) about the bodies corporate.

60. In the case of QLPs who are connected to other QLPs via common ownership by the Crown, they may complete templates 1 to 3 as separate QLPs; and note that they are connected to the other Crown owned QLPs via section 79, in section 4b of template 4 with the entry 'Other Crown owned QLP(s)' in the first column of the table.

The qualified revenue status of common revenue streams

61. In general, telecommunications services can be divided into two groups; voice services, and data services. This reflects the definition of the network these services are to be provided over. PTN is defined in the Act as meaning "a network used or intended to be used, in whole or in part, by the public for the purposes of telecommunication" including a public switch telephone network (PSTN) and a public data network (PDN).

62. Voice services are generally those services provided over a PSTN, and what is captured in this category is largely unchanged from the previous TSO cost allocation processes. Common types of voice based telecommunication services include:

    62.1 local and residential telephone services;

    62.2 long distance direct dial and toll calls; and

    62.3 calling cards.

63. Data services are generally those services provided over a PDN. Common types of data based telecommunications services include:

63.1 mobile broadband services;

63.2 business data services; and

63.3 xDSL services, naked DSL services and services provided using an unbundled copper local loop.

64. Further information on the qualified revenue status of common types of voice and data telecommunications services is provided in Attachment A.

What does not constitute qualified revenue for the purposes of these qualified revenue instructions?

65. Revenue earned from international transit arrangements for calls neither originating nor terminating in New Zealand is not qualified revenue.

66. Revenue earned from the provision of end-user equipment (including handsets discounted or otherwise) is not qualified revenue as it is not revenue from the supply of telecommunications services by means of the QLP's PTN or the supply of telecommunications services by means that rely primarily on the existence of the QLP's or any other PTN.

67. Any revenue received by a QLP from the Crown as compensation for the cost of complying with a TSO instrument containing a specified amount, is not included in the calculation of qualified revenue.

68. Revenue from providing broadcasting is not qualified revenue. The definition of 'telecommunications' in section 5 of the Act excludes "any conveyance that constitutes broadcasting."

69. Revenue derived from music on-demand and video on-demand content is not qualified revenue. On-demand content is distinguished from broadcasting as it is provided to a single-user for use at their discretion. Furthermore, on-demand content revenue is distinguished from conveyance revenue, and only revenue related to the conveyance of this content is qualified revenue.

70. Receipts from capital contributions that were made towards assets which develop the PTN are not qualified revenue if the QLP records the asset(s) as a fixed asset(s) under NZ GAAP. The value of any deduction must not exceed the value of the related asset as recorded in the fixed asset register under NZ GAAP.

71. Where a non-liable person body corporate connected to a QLP via section 79 provides services related to telecommunications as an ancillary part of providing other goods or services, and the revenues earned from that service are not material to their overall revenue, such revenues are not qualified revenue.

Qualified revenue and the public telecommunications network

72. Revenue earned from operating a physically private telecommunications network (a network that is not physically able to connect to another telecommunications network) is

not qualified revenue. If the network is physically capable of being accessed by the public for any purpose (even private uses of the public network) the revenue the QLP derives from providing the telecommunications service is qualified revenue.

73. This means that a QLP is not required to know how their clients use the services they provide. If the QLP obtains revenue from providing telecommunications services by means of its PTN or that rely primarily on the existence of a PTN then that revenue is qualified revenue.

74. Therefore, revenue from providing services via layer one and above (including ducting and dark fibre) is qualified revenue. Fibre or copper dedicated to a single-user is also included unless that fibre or copper is part of a physically separate telecommunications network that does not connect to a PTN.

Instructions for preparing assurance or audit report on specified information

Requirement to provide assurance

75. The QLP must provide to the Commission an assurance report or an audit report by an independent qualified auditor (auditor) in respect of the specified information.[62]

76. The default option is for the QLP to provide an assurance report as specified in paragraph 76. This is the only option for a QLP with gross telecommunications services revenue above $50,000,000. This assurance report is separate to any auditor's report prepared for the QLP's statutory financial statements.

77. A QLP with gross telecommunications services under $50,000,000 has the option of relying on an auditor's report prepared for the QLP's statutory financial statements, if it meets the criteria specified in paragraph 78 or 79. In some cases the QLP will also be required to provide us with certification from a director or the chief financial officer (CFO).

Requirements if the QLP provides an assurance report

78. The QLP will meet the requirements of section 83(1)(b) by providing us with an assurance report in respect of the specified information. The assurance report must:

    78.1 Be addressed to the directors of the QLP and to the Commission as the intended users;

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

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

Requirements if the QLP provides an audit report and has a 30 June 2017 year end

79. An auditor's report prepared for the QLP's statutory financial statements meets the requirements in section 83(1)(b) (and hence we will not require the QLP to provide a separate assurance report), if:

    79.1 the QLP had gross telecommunications services revenue of under $50,000,000 in the 2016/17 TDL year;[63]

    79.2 the QLP's statutory financial statements cover the full 2016/17 TDL year (ie, 1 July 2016 to 30 June 2017);

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

[63] This $50,000,000 threshold also applies to QLPs who are connected to other QLPs via common ownership by the Crown, but who elect to complete separate TDL disclosures in accordance with paragraph 58.

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

79.4 the statutory financial statements or the notes to the statutory financial statements separately disclose:

79.4.1 the QLP's gross telecommunications services revenue;[64] and

79.4.2 any deduction from gross telecommunications services revenue that is disclosed in template 1 and that exceed 1% of the QLP's gross telecommunications services revenue;[65]

79.5 The auditor's report:

79.5.1 was prepared in accordance with International Standards on Auditing (New Zealand) or equivalent or successor standards; and

79.5.2 contains an audit opinion that states that the QLP's statutory financial statements present fairly, in all material respects, (or give a true and fair view of) the financial position of the QLP as at 30 June 2017, and (of) its financial performance and its cash flows for the year ending 30 June 2017 in accordance with the applicable financial framework (or an equivalent level of assurance).

Requirements if the QLP provides an audit report and has a year-end other than 30 June 2017

80. An auditor's report prepared for the QLP's statutory financial statements meets the requirements in section 83(1)(b) (and hence we will not require the QLP to provide a separate assurance report), if

80.1 the QLP had gross telecommunications services revenue of under $50,000,000 in the 2016/17 TDL year;[66]

80.2 the QLP's statutory financial statements cover at least 263 days of the 2016/17 TDL year and were prepared to in accordance with the Tier 1 requirements as per *XRB A1 Application of the Accounting Standards Framework* (XRB A1);[67]

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

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

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

66 This $50,000,000 threshold also applies to QLPs who are connected to other QLPs via common ownership by the Crown, but who elect to complete separate TDL disclosures in accordance with paragraph 58.

67 This subclause includes 31 March 2017 year ends.

80.4 the statutory financial statements or the notes to the statutory financial statements separately disclose for either the TDL year ending 30 June 2017 or the reporting period covered by the QLP's statutory financial statements:

80.4.1 the QLP's gross telecommunications services revenue;[68] and

80.4.2 any deduction from gross telecommunications services revenue that is disclosed in template 1 and that exceed 1% of the QLP's gross telecommunications services revenue;[69]

80.5 The auditor's report:

80.5.1 was prepared in accordance with International Standards on Auditing (New Zealand) or equivalent or successor standards; and

80.5.2 contains an audit opinion that states that the QLP's statutory financial statements present fairly, in all material respects, (or give a true and fair view of) the financial position of the QLP at the QLP's year end, and (of) its financial performance and its cash flows for the relevant financial year in accordance with the applicable financial framework (or an equivalent level of assurance).

80.6 The QLP provides a certification in respect of the QLP's specified information that must:

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

80.6.2 include the following statement:

> I **[insert full name]** being **[insert role]** of **[name of QLP]** certify that having made all reasonable enquiry, to the best of my knowledge, the attached specified information disclosed in templates 1 to 4 in all material respects complies with the Section 83 Specified Information and Assurance Report Instructions for the 2017 TDL year.

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

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

Attachment B – Qualified revenue status of common types of revenue

Revenue stream	Rationale	Status
Revenue from building, maintaining and renewing network infrastructure	The criteria for qualified revenue as defined in section 5 of the Act require telecommunications services to be provided by means of a public telecommunications network (PTN) or by means that rely primarily on the existence of the PTN. Therefore, the Commission considers revenue from operational contributions for building, maintaining and renewing PTN infrastructure, recorded by the QLP accordingly under NZ GAAP is qualified revenue. This because it is part of the telecommunications service provided by means of a PTN. Receipts from capital contributions made towards assets which develop the PTN are not qualified revenue (and can be deducted) if the QLP records the asset(s) as a fixed asset(s) under NZ GAAP. This is because the building, maintaining and renewing activity is significant enough to define it as the creation of an asset rather than the operation of one. However, the value of any deduction must not exceed the value of the related asset as recorded in the fixed asset register under GAAP.	Operational revenue is qualified revenue and receipts from capital contributions are legitimate deductions.
Revenue from the sale of mobile phone handsets that is not recovered through mobile access or calling charges (ie, sold separately)	The Commission considers that this revenue is not captured by the definition of qualified revenue in section 5 of the Act.	Non-qualifying telecommunications services revenue.
Revenue from the sale of mobile phone handsets recovered through mobile access or calling charges (sold as part of services provided in a bundle)	The Commission considers that this revenue is not captured by the definition of qualified revenue in section 5 of the Act. Due to difficulties in identifying the true value of this revenue stream, the Commission has allowed QLPs to deduct the cost of handsets which were provided as part of a bundle which includes telecommunication services.	Non-qualifying telecommunications services revenue.
Revenue derived from services provided in other countries	The criteria for qualified revenue as defined in section 5 of the Act require telecommunications services to be provided by means of a PTN operated in New Zealand. These services fall outside	Non-qualifying telecommunications services revenue.

Revenue stream	Rationale	Status
	the definition of qualified revenue.	
Expenditure on purchasing telecommunications services from other QLPs	The Commission considers that the avoidance of double counting of revenue is a concern and allows a deduction for this type of expenditure as the value of the service is picked up in the QLP providing the service.	Legitimate deduction.
Expenditure on purchasing telecommunications services from a non-QLP that on-sells those services it purchased from another QLP	The Commission considers that this situation is analogous to purchasing services from another QLP directly. QLPs can claim this expenditure as a deduction but they will need to provide detailed information to support these claims.	Legitimate deduction.
Prompt payment discounts and credits for billing errors and omissions	The Commission allows deductions for prompt payment discounts and credits for billing errors and omissions as this allows the QLP to represent their true revenue totals.	Legitimate deduction.
Revenue from calling cards and prepay credits	The Commission considers all calling card and prepay credit revenue, whether used or expired is qualified revenue as it was acquired for the purposes of providing a telecommunications service .	Qualified revenue.
Inbound roaming revenue	The Commission considers that revenue from inbound roaming is a telecommunications service as defined in the Act and is therefore qualified revenue.	Qualified revenue.
Mobile access and calling revenue	The Commission considers that this revenue stream is a telecommunications service as defined in the Act and is qualified revenue.	Qualified revenue.
Revenue earned from voice over IP calls that terminate or originate on a PSTN (PTN)	The Commission considers that this revenue stream is a telecommunications service as defined in the Act and is therefore qualified revenue.	Qualified revenue.
Revenue earned from mobile voice and SMS – a PTN includes that part of a mobile network that facilitates voice calls and SMS	The Commission considers that this revenue stream is a telecommunications service as defined in the Act and is therefore qualified revenue.	Qualified revenue.
Revenue earned from toll by-pass/ direct dial calls by the QLP	The Commission considers that this revenue stream is a telecommunications service as defined in the Act and is therefore qualified revenue.	Qualified revenue.

Revenue stream	Rationale	Status
Revenue earned by the QLP from late payment fees levied on customers for the late payment of outstanding accounts for telecommunications services	The Commission considers that this revenue stream is a telecommunications service as defined in the Act and is therefore qualified revenue.	Qualified revenue.
Revenue earned from dial-up ISP service (Including modem banks)	Revenue from telecommunications services using a PTN is captured – PTN includes public data networks (PDN) and this service is captured under the PDN definition.	Qualified revenue.
xDSL services, Naked DSL services and services provided using a UCLL	The Commission considers that this revenue stream is a telecommunications service as defined in the Act and is therefore qualified revenue.	Qualified revenue.
Mobile broadband services	Revenue from telecommunications services using a PTN is captured – PTN includes PDNs and this service is captured under the PDN definition.	Qualified revenue.
Business data services	Revenue from business data telecommunications services using a PTN is captured.	Qualified revenue.
Revenue derived from the supply of on-demand content	The Commission considers that music on-demand and video on-demand content revenue is not captured as a telecommunications service as it can be distinguished from the conveyance revenue which is the intended focus of the definition of telecommunications services.	Content revenue is non-qualifying telecommunications services revenue, and conveyance revenue is qualified revenue.
Mobile radio services (campus networks)	Revenue derived from providing telecommunications services by means of a PTN is qualified revenue, irrespective of how a QLP's client uses the services. Therefore, because the mobile radio network fits within the definition of a PTN the fact that a QLP's client uses it for a private purpose is not relevant to its qualified revenue status.	Qualified revenue.
Broadcasting services	The definition of 'telecommunications' in section 5 of the Telecommunications Act expressly excludes broadcasting.	Non-qualifying telecommunications services revenue.
Dark fibre, layer one, two and above services	Revenue from telecommunications services using a PTN are captured – revenue from providing telecommunications services by means of a PTN are captured regardless of the	Qualified revenue.

Revenue stream	Rationale	Status
	ISO layer.	
Satellite revenues	Telecommunications services provided in New Zealand via a satellite are supplied by means of the qualifying liable person's PTN.	Qualified revenue.
Revenue from selling customer premises equipment	Revenue from selling customer premises equipment is revenue from selling goods that are not considered to be related to a PTN.	Non-qualifying telecommunications services revenue.
Revenue from dumb caches, content delivery networks (CDN)	Revenue derived from operating this equipment relies on the existence of a PTN and is therefore within the definition of qualified revenue.	Qualified revenue.
Revenue from fibre dedicated to a single-user	Revenue derived from providing telecommunications services by means of a PTN is qualified revenue, irrespective of how a QLP's client uses the services.	Qualified revenue.
Revenue from early termination charges (telecommunications services revenue)	Early termination charges revenue derived from services or bundles of services that are all telecommunications services is qualified revenue. Early termination charges revenue derived from a bundle that includes end-user equipment which was sold by the QLP to the customer paying the early termination charge and the cost of the equipment is deducted (or had been deducted in a previous TDL year) from gross telecommunications services revenue is qualified revenue. This avoids the problem of a QLP deducting both the cost of equipment while not recognising the matching revenue when calculating qualified revenue	Qualified revenue.
Revenue from early termination charges (non-telecommunications revenue)	Early termination charges revenue derived from a bundle that includes non-telecommunications revenue (eg, end-user equipment), which was sold by the QLP to the customer paying the early termination charge and the cost of the equipment is not deducted (or has not been deducted in a previous TDL year) from gross telecommunications revenue, is not qualified revenue (to the extent it relates to the non-telecommunications equipment). This recognises that it relates to non-telecommunications equipment for which the cost had not	Non-qualifying telecommunications services revenue.

Revenue stream	Rationale	Status
	been deducted when calculating qualified revenue.	
Revenue from porting charges (also known as plan change fees)	The Commission considers that this is revenue from the day to day operations of a PTN and is therefore qualified revenue. As these charges are qualified revenue, QLPs can deduct the porting charges they pay to other QLPs from their gross telecommunication services when calculating their qualified revenue.	Qualified revenue.
Revenue from co-location	Revenue earned from co-location on cellular transmission sites (as the term is used in Schedule 1 of the Act) or co-location of equipment in the PTN environment of the central office is captured as it is earned from the use of those facilities as part of a PTN. For example, revenue from the co-location of telecommunications equipment that is located in a secured area of the PTN facilities is qualified revenue.	Qualified revenue.
Revenue from paper bills	Revenue earned from charging customers for paper bills, statements, and invoices that relate to the purchase of telecommunications services is qualified revenue. For example, a surcharge for receiving paper bills via the post (rather than receiving emails or using online account management) is qualified revenue.	Qualified revenue.
Revenue from co-sited office and retail space, or hosting commercial data centres.	Revenue earned from renting office and retail space in a premise that is also used for providing telecommunication services is not captured. Revenue from operating commercial data centres is not captured provided that it is operated separate from any PTN environment, sharing the same premises. For example, revenue from operating a server farm that is on the distribution side of a MDF (main distribution frame) or ODF (optical distribution frame) of a central office building is not qualified revenue. This recognises that premises may be used for both telecommunication and	Not qualified revenue.

Revenue stream	Rationale	Status
	non-telecommunication purposes.	
Revenue earned from bundles of telecommunication services with non-telecommunications goods and services other than those for which these instructions allow deductions.[70]	The revenue earned from these bundles of telecommunication services with non-telecommunications goods and services (for which these instructions do not provide specific guidance) must be allocated between non-telecommunications services revenue and gross telecommunications services revenue in accordance with IFRS 15. This includes allocating any bundle discounts based on the relative stand-alone selling prices as prescribed by IFRS 15 paragraphs 81 to 83. This approach seeks to allocate bundled revenue and discounts proportionate to their unbundled or stand-alone prices as prescribed in a recent accounting standard.	Apply IFRS 15 to calculate the qualified revenue earned from the bundle, even if the QLP has not yet adopted IFRS 15 for other reporting purposes.
Ancillary revenue, earned by non-liable persons that are bodies corporate connected to a QLP via section 79 as an ancillary part of providing non-telecommunications goods and services.	The Commission considers that such revenue is not qualified revenue. This is where a non-liable person body corporate provides telecommunications services as an ancillary part of providing non-telecommunications goods or services, and the revenues earned from that service are not material to their overall revenue.	Not qualified revenue.
Telecommunications services revenue earned by non-liable persons that are bodies corporate connected to a QLP via section 79 in conjunction with providing telecommunications goods.	The Commission considers that such revenue is qualified revenue. This is where a non-liable person body corporate provides telecommunications services in conjunction with or as an ancillary part of providing telecommunications goods, For example, when a consumer electronics retailer sells a mobile handset in a bundle with mobile calling minutes.	Qualified revenue.
Telecommunications services revenue earned by a QLP from providing telecommunications services to a non-liable person that is	The Commission considers that such revenue is qualified revenue and should be valued in accordance with NZ GAAP. This is where a QLP provides telecommunication services to a non-	Qualified revenue. For a QLP that completes the row 'statutory operating revenue as per the relevant financial statements' of

[70] Deductions are allowed for end-user equipment, broadcasting services, music on-demand, video on-demand content and other goods and services that were sold as part of a bundle with telecommunications services, and which have a primary function related to the provision of or connection to a telecommunication service.

Revenue stream	Rationale	Status
a body corporate connected to a QLP via section 79 (or another related party) when the non-liable person does not report downstream qualified revenue.	liable person that is a body corporate connected to a QLP via section 79 (or another related party) and that person consumes the services itself, uses it to earn ancillary revenue as part of providing non-telecommunications goods and services, or earns an immaterial amount of downstream telecommunication services revenue (for example, the downstream revenue is earned overseas as part of a mobile bundle that includes international calling). This seeks to ensure that telecommunications services revenue resulting from related party transactions is included in gross telecommunication revenue, while avoiding double counting of revenue streams.	template 1 using group consolidated operating revenue, this may require reducing the value of the deduction for non-telecommunications services revenue. This adjustment would equal the value of the QLP's telecommunicates services revenue that was eliminated on consolidation and for which the non-liable person does not report downstream qualified revenue.
Revenues received and payments made in relation to a telecommunications service that is currently subject to a pricing review by the Commission.	The values for qualified revenue received and for deductions for payments to other QLPs, should reflect the prices charged during the TDL year. For example, the invoiced amounts recognised under accrual based accounting and reported as statutory operating revenue (or as operating expenses).	n/a

Revenue stream	Rationale	Status
Indefeasible right to use (IRU)	The Commission considers that QLPs may not deduct the cost of purchasing an IRU to use a segment of (dark) fibre for a specified period when under NZ GAAP the IRU should be treated as an asset. This reflects that IRUs are typically treated as non-current assets that are depreciated over time, and not as operating expenses.	Not deductible.
Payments relating to customer loyalty programmes run by a third party	The treatment of payments made to third party operators of customer loyalty programmes should be consistent with how a QLP's gross telecommunications services revenue is calculated and avoid double deductions. The accounting profession has issued an interpretation statement on the treatment of loyalty programmes.[71] For companies issuing points in a program run by a third party the statutory operating revenue should typically be net of the amount paid to the third party for providing the loyalty points.	Not qualified revenue. The double deduction of payments to third party operators of loyalty programmes is not allowed (eg, when the consideration has been netted off in calculating operating revenue as per the relevant statutory financial statements, it cannot also be deducted as the cost of bundled non-telecommunications goods and services).

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

Attachment C – Relevant statutory references

Relevant extracts from the Telecommunications Act 2001

Section 5: Interpretation

Liable person means a person who provides a telecommunications service in New Zealand by means of some component of a PTN that is operated by the person

PTN or **public telecommunications network –**

(a) means a network used, or intended to be used, in whole or in part, by the public for the purpose of telecommunication:

(b) includes –
- (i) a PSTN:
- (ii) a PDN.

Qualified revenue means the revenue (as determined in accordance with any specifications set by the Commission) that a liable person receives during a financial year for supplying either or both of the following (excluding any amount paid to the liable person by the Crown as compensation for the cost of complying with a TSO instrument that contains a specified amount):
- (a) telecommunications services by means of its PTN:
- (b) telecommunications services by means that rely primarily on the existence of its PTN or any other PTN.

Telecommunications service means any goods, services, equipment, and facilities that enable or facilitate telecommunication

Section 79: When 2 or more bodies corporate must be treated as 1 person

(1) For the purposes of this Part, any 2 or more bodies corporate must be treated as 1 person if—

- (a) one of them is a body corporate of which the others are subsidiaries; or
- (b) all of them are subsidiaries of the same body corporate; or
- (c) all of them are associates of each other; or
- (d) one of them owns or controls shares that in the aggregate carry the right to exercise or control the exercise of 20% or more of the voting power at meetings of the others; or
- (e) a third person owns or controls shares in each of them that carry the right to exercise or control the exercise of 20% or more of the voting power at meetings of each of them.

(2) For the purposes of subsection (1)(c), a body corporate is an associate of another if that body corporate is able, whether directly or indirectly, to exert a substantial degree of influence over the activities of the other.

(3) A body corporate is not able to exert a substantial degree of influence over another body corporate for the purposes of subsection (2) just because—

- (a) those bodies corporate are in competition in the same market; or
- (b) 1 of them supplies goods or services to the other.

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

Section 80: Interpretation

In this subpart, unless the context otherwise requires,—

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

financial statements,—

(a) except if section 79 applies, has the same meaning as in section 8 of the Financial Reporting Act 1993; and

(b) if section 79 applies, means a consolidated statement of financial performance of the 2 or more bodies corporate required by that section to be treated as 1 person, prepared in accordance with generally accepted accounting practice, as defined in section 3 of the Financial Reporting Act 1993

minimum telecommunications revenue means $10 million, or such other amount, as may be prescribed by regulations made under section 101(1)(a), of gross revenue (as may be determined in accordance with any specifications set by the Commission) that a liable person receives during a financial year for supplying either or both of the following (excluding any amount paid to a liable person by the Crown as compensation for the cost of complying with a TSO instrument that contains a specified amount):

(a) telecommunications services by means of its PTN:
(b) telecommunications services by means that rely primarily on the existence of its PTN or any other PTN.

Section 81: Subpart does not apply to certain liable persons

(1) This subpart does not apply to a liable person in respect of a financial year (financial year A) if –
  (a) the liable person was not trading in the financial year preceding year A; or
  (b) the liable person's telecommunications revenue for the year preceding financial year A was less than the minimum telecommunications revenue.

Section 83: Liable persons must produce information for purposes of liability allocation determination

(1) Not later than 60 working days after the end of each financial year, each liable person must provide to the Commission—
  (a) all prescribed information or, if there is no prescribed information, information specified by the Commission, for the purpose of enabling the Commission to make its determination in accordance with section 88(a); and
  (b) either—
    (i) a report on the information provided by the liable person under subsection (1)(a), prepared by a qualified auditor in accordance with an auditing and assurance standard issued under section 12 of the Financial Reporting Act 2013, as specified by the Commission; or

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

Section 84: Commission to prepare draft liability allocation determination

(1) The Commission must—
  (a) prepare a draft liability allocation determination for each financial year; and
  (b) give public notice of that draft determination; and

(c) include in the public notice the closing date for submissions, which must be not later than 20 working days after the date of giving public notice.

(2) The Commission must make reasonable efforts to do the things referred to in subsection (1) not later than 80 working days after the end of the financial year.

Section 85: Matters to be included in draft liability allocation determination

(1) A draft liability allocation determination must include—

(a) the amount of each liable person's qualified revenue; and

(b) the amount of the telecommunications development levy payable by each liable person for the financial year, calculated in accordance with the following formula:

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

where—

a is the amount of the liable person's qualified revenue

b is the sum of all liable persons' qualified revenue

c is the telecommunications development levy specified for the relevant year in Schedule 3B; and

(c) the methodology applied by the Commission in preparing the determination; and

(d) the reasons for the determination.

(2) To avoid doubt, the Commission may determine what revenue basis to use for the purposes of subsection (1)(a) (for example, a net revenue basis).

Section 86: Conferences on draft liability allocation determination

The Commission may—

(a) hold conferences in relation to the draft liability allocation determination; and

(b) invite to those conferences any person who has a material interest in the determination.

Section 87: Commission to prepare final liability allocation determination

(1) The Commission must—

(a) prepare a final liability allocation determination; and

(b) give public notice of that final determination; and

(c) give a copy of that final determination to all liable persons.

(2) The Commission must make reasonable efforts to do the things referred to in subsection (1) not later than 20 working days after the closing date for submissions specified in accordance with section 84(1)(c).

Section 88: Matters to be included in final liability allocation determination

A final liability allocation determination must include—

(a) the amount of each liable person's qualified revenue; and

(b) the amount of the telecommunications development levy payable by each liable person, calculated in accordance with the formula set out in section 85(1)(b); and

(c) the methodology applied by the Commission in preparing the determination; and

(d) the reasons for the determination.

Attachment D – List of Qualifying Liable Persons for the 2016/17 Telecommunications Development Levy

1. The Commerce Commission (Commission) has identified those telecommunications service providers (TSPs) that are qualifying liable persons (QLPs) for the purposes of the 2016/17 Telecommunications Development Levy (TDL) in a list outlined in Tables 1 and 2 below. This means that these TSPs are required to provide the Commission with specified information in accordance with section 83 of the Telecommunications Act 2001 (Act), which the Commission will use to identify the portion of the TDL each QLP is required to pay.

2. The list of QLPs for the 2016/17 TDL year is based on information provided to date and is available on our website. The list is not final and may be reviewed and updated if required. [72]

3. In addition to this list, the Commission has also separately provided instructions for preparing the specified information required under section 83, templates for preparing the specified information, and a document containing relevant statutory references. These materials can also be found on our website.

Meeting the criteria

4. The TSPs identified in Tables 1 and 2 meet the criteria for "liable person" as defined in section 5 of the Act. They have also met the minimum telecommunications threshold as set out in sections 80 and 81 of the Act (meaning they earned more than $10 million in gross telecommunications revenue in the year preceding year A, which in this case is the 2015/16 financial year) and are accordingly QLPs.[73]

5. Some of the QLPs and their interconnected bodies corporate (as listed in Table 1) are treated as a single entity as required by section 79 of the Act.[74] This means that they are connected by way of a significant level of shareholding, common ownership/control by a third person, or the ability to exert a substantial degree of influence over the other (as identified in section 79 of the Act), and the Commission is required to treat them as a single entity for the purposes of the TDL.

Listing the QLPs

6. The Commission has identified two categories of QLPs: TSPs that are considered to be a single QLP entity under section 79 of the Act (identified in Table 1), and TSPs that are independent QLPs (identified in Table 2).

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

[73] Under section 5 of the Act, liable person means a person who provides a telecommunications service in New Zealand by means of some component of a public telecommunications network that is operated by that person.

[74] The QLP group may include one or more QLPs and any interconnected bodies corporate that earned telecommunications revenue in the 2015/16 financial year.

Explaining the reporting requirements

7. QLPs that include interconnected bodies corporate that are captured by section 79 of the Act (Table 1), can provide the specified information in a consolidated report or separate reports. Independent QLPs (Table 2) are required to provide the specified information in a report specific to their company.

Table 1

<table>
<tr>
<td>QLPs that include interconnected bodies corporate under section 79 of the Act</td>
<td>
<u>Chorus group:</u>
Chorus Ltd; and
Chorus New Zealand Ltd.
<u>Crown companies group:</u>
Kordia Ltd;
REANNZ (Research & Education Advanced Network New Zealand Ltd);
Transpower New Zealand Ltd; and
Whangarei Local Fibre Company Ltd (trading as Northpower Fibre).
<u>Enable group:</u>
Enable Networks Ltd; and
Enable Services Ltd.
<u>Spark group:</u>
Spark New Zealand Ltd (formerly Telecom Corporation of New Zealand Ltd);
Spark New Zealand Trading Ltd (formerly Telecom New Zealand Ltd); and
Now New Zealand Limited (from 30 November 2015).
<u>Teamtalk group:</u>
Teamtalk Ltd;
Araneo Ltd;
Bay City Communications Ltd; and
Citylink Ltd.
<u>Two Degrees group</u>
Two Degrees Mobile Ltd; and
Snap Ltd.
<u>Vocus group</u>
Vocus (New Zealand) Ltd;
Vocus Data Centres (New Zealand) Ltd;
M2 NZ Ltd;
FX Networks Ltd;
CallPlus Ltd;
</td>
</tr>
</table>

	• CallPlus Services Ltd; • 2Talk Ltd; • Flip Services Ltd; and • Orcon Ltd. Vodafone group • Vodafone New Zealand Ltd; and • Vodafone Next Generation Services Ltd.

Table 2

Independent QLPs	• Compass Communications Ltd. • Trustpower (Kinect) Ltd. • Vector Communications Ltd. • Ultrafast Fibre Ltd.