

Implementation of the New Regulatory Framework for Fibre Services

Funding discussion paper

30 April 2018



Chapter 1 - Purpose and overview of this paper

Purpose of this paper

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

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

The system for funding telecommunications regulation

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

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

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

² See, clause 17 of the Bill.

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

⁴ Section 12(4) of the amended Act.

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

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

Our spending proposal ensures appropriate quality for regulatory implementation

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

Lower levels of spending would result in trade-offs

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

Opportunity to provide funding for consumer representative groups

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

We want your views

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

⁶ We discuss some examples in Chapter 3, below.

Chapter 2 – Our role in regulating NZ telecommunications

Our current role

28. The Commission is New Zealand’s primary competition, consumer and regulatory agency. In markets where there is little or no competition we deliver targeted regulation for the benefit of consumers. We also enforce legislation that protects and promotes competition in New Zealand markets and prohibits misleading and deceptive conduct by traders.
29. The Act confers on us a range of functions and powers with respect to the regulation of telecommunications markets in New Zealand. This involves promoting competition in telecommunications markets and regulating the supply of certain wholesale telecommunications services, including fixed line services provided over the national copper network and access to the mobile network infrastructure.

The Bill will significantly expand our current role

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

Regulation is funded through the Telecommunications Regulatory Levy

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

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

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

⁸ See, clause 17 of the Bill.

⁹ Section 12(4) of the amended Act.

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

Spending required to implement new fibre framework

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

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

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

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

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

Our plan will deliver decisions of an appropriate quality

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

Question for stakeholders

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

Processes that we will follow to reach decisions

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

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

Question for stakeholders

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

Trade-offs will be made if we spend less

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

Question for stakeholders

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

Potential to include additional funding for consumer representative groups

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

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

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

Questions for stakeholders

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

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

Chapter 4 – We want your views

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

Key questions we are seeking feedback on

Appropriate level of quality and trade-offs

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

Consumer representation

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

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

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

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

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

Attachment B: Resourcing for fibre implementation team

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

FTEs required to implement new fibre regime

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

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

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