



## COVERSHEET

<b>Minister</b>	Hon Kris Faafoi	<b>Portfolio</b>	Minister of Broadcasting, Communications and Digital Media
<b>Title of Cabinet paper</b>	Telecommunications (Regulated Fibre Service Providers) Regulations 2019	<b>Date to be published</b>	Thursday 21 January 2020

### List of documents that have been proactively released

<b>Date</b>	<b>Title</b>	<b>Author</b>
12 November 2019	<i>Cabinet Paper</i>	<i>Office of the Minister of Broadcasting, Communications and Digital Media</i>
12 November 2019	<i>Minute of decision</i>	<i>Cabinet Legislation Committee</i>

### Information redacted

~~YES~~ / NO (please select)

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In Confidence

Office of the Minister of Broadcasting, Communications and Digital Media  
Chair, Cabinet Legislation Committee

## **Telecommunications (Regulated Fibre Service Providers) Regulations 2019**

### **Proposal**

1. This paper seeks authorisation for submission to the Executive Council of the Telecommunications (Regulated Fibre Service Providers) Regulations 2019.

### **Policy**

2. The Telecommunications Act 2001 (the Act) was amended in November 2018 to create a new framework for the regulation of wholesale fibre services. As part of this new regulatory framework, certain regulations need to be made to identify:
  - 2.1. the wholesale fibre companies that are subject to price-quality and, or information disclosure regulation (section 226 of the Act);
  - 2.2. the anchor services (section 227 of the Act); and
  - 2.3. the direct fibre access services.
3. On 3 April 2019, I sought Cabinet Economic Development Committee approval (DEV-19-MIN-0054 refers) to:
  - 3.1. issue drafting instructions to the Parliamentary Counsel Office (PCO) to give effect to regulations under sections 226, 227 and 228 of the Act as described in the Cabinet paper;
  - 3.2. approve and release an exposure draft of the regulations when available, and related commentary, for consultation with the telecommunications industry; and
  - 3.3. make decisions consistent with proposals outlined in the paper under DEV-19-SUB-0054 on minor issues that arise during the drafting process.
4. I prioritised the section 226 regulations to provide early certainty in relation to which wholesale fibre service providers would be regulated and the type of regulation each one will be subject to.
5. Regulations under section 226 prescribe the persons who provide fibre fixed line access services as being subject to one or both of price-quality regulation and information disclosure regulation.

6. The consultation process ended on 5 August 2019. The Ministry of Business, Innovation and Employment (MBIE) received submissions from:
- Chorus Limited (Chorus)
  - Ultrafast Fibre and Enable (joint submission)
  - 2degrees
  - Spark
  - Vodafone
7. Consistent with the powers delegated to me through the Cabinet Economic Development Committee, to make decisions on minor issues that arise during the drafting process (as per paragraph 3.3 above), I have amended the regulations following consultation. Chorus is subject to information disclosure but not price-quality regulation in areas where other regulated fibre service providers have installed competing fibre networks. The change is consistent with the regulatory framework which provides for less intrusive regulation where competition is present. **Annex One** summarises the issues that were subject to consultation, the feedback received and the decisions taken.
8. I am seeking Cabinet authorisation to submit to the Executive Council regulations that:
- 8.1. prescribe that Chorus Limited be subject to price-quality regulation in relation to all fibre fixed line access services, except to the extent that a service is provided in an area where another regulated fibre service provider has installed a fibre network under the Ultra-Fast Broadband initiative (UFB);
  - 8.2. prescribe that Chorus be subject to information disclosure regulation in relation to all its existing fibre fixed line access services; and
  - 8.3. prescribe that UltraFast Fibre Limited, Enable Networks Limited, Northpower Fibre Limited, and Northpower LFC2 Limited be subject to information disclosure regulation in relation to all their existing fibre fixed line access services.
9. The Telecommunications (Regulated Fibre Service Providers) Regulations 2019 are included in **Annex Two**.

### Timing

10. The regulations will come into effect on 20 December 2019. A waiver of the 28-day rule is not required.

### Compliance

11. These regulations comply with the following;
- 11.1. the principles of the Treaty of Waitangi;
  - 11.2. the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 or the Human Rights Act 1993;

- 11.3. the principles and guidelines set out in the Privacy Act 1993;
- 11.4. relevant international standards and obligations;
- 11.5. the Legislation Guidelines (2018 edition).

### **Regulations Review Committee**

12. There are no grounds for the Regulations Review Committee to draw the disallowable instrument or regulations to the attention of the House of Representatives under Standing Order 319.

### **Certification by Parliamentary Counsel**

13. These regulations were certified by PCO as being in order for submission to Cabinet.

### **Impact Analysis**

14. No Impact Analysis is required. The policy and legislative decisions requiring the development of these regulations were made by Cabinet, as part of the process for enacting the Telecommunications (New Regulatory Framework) Amendment Act 2018 (EGI-16-MIN-0361; CAB-17-MIN-0228.01; LEG-18-MIN-0101; DEV-19-SUB-0054 refers).

### **Publicity**

15. The new regulations will be gazetted and a copy will be uploaded to the MBIE's website page on "IT, Communications and Broadband".

### **Proactive release**

16. I intend to publicly release a copy of this paper and associated decisions in accordance with Cabinet's proactive release policy.

### **Consultation**

17. MBIE has consulted with Treasury and the Department of the Prime Minister and Cabinet (DPMC) in the preparation of the Cabinet Economic Development Committee (DEV-19-SUB-0054 refers).
18. MBIE has consulted on the exposure draft of the regulations. MBIE sought further comments on the proposed changes. Submissions received are available on MBIE's website.
19. MBIE has also sought comments from the Commerce Commission.
20. The Treasury has been consulted in the development of this paper. The DPMC has been informed.

## Recommendations

I recommend that the Cabinet Legislation Committee:

1. note that on 3 April 2019 the Cabinet Economic Development Committee agreed that regulations be made under section 226 of the Telecommunications Act (DEV-19-MIN-0054 refers).
2. note that the Telecommunications (Regulated Fibre Service Providers) Regulations 2019 will give effect to the decision referred to in paragraph 1 above;
3. authorise the submission to the Executive Council of the Telecommunications (Regulated Fibre Service Providers) Regulations 2019;
4. note that the Telecommunications (Regulated Fibre Service Providers) Regulations 2019 come into force on 20 December 2019, except for regulation 6 (which identifies the provider that is subject to price quality regulation) that comes into force on 31 December 2021.

Authorised for lodgement

Hon Kris Faafoi

Minister of Broadcasting, Communications and Digital Media

## **Annex One: Summary of consultation on the exposure draft of the Telecommunications (Regulated Fibre Service Providers) Regulations 2019**

1. MBIE consulted on section 226 regulations prescribing that:
  - 1.1. Chorus be subject to Price-Quality (PQ) regulation and Information Disclosure (ID) regulation in relation to its existing Fibre Fixed Line Access Services (FFLAS).
  - 1.2. UltraFast Fibre Limited, Enable Networks Limited, Northpower Fibre Limited, and Northpower LFC2 Limited (hereafter referred to as LFCs) be subject to ID regulation in relation to their existing fibre fixed line access services.
2. I note that the purposes of the two types of regulation are:
  - 2.1. PQ regulation requires the regulated fibre service provider to offer services that meet pre-defined price and quality requirements, and to be subject to a revenue cap.
  - 2.2. ID requires regulated wholesale fibre service providers to disclose certain information about their business.

### *Stakeholders' views*

3. Submitters generally agreed with the proposed approach. However, Chorus had some reservations about the scope of the regulated services as detailed below.

### **Scope of the regulated services**

4. MBIE consulted on regulating all components of FFLAS, even though section 226 of the Act allows limiting regulation to only some elements of these services.
5. Submitters' presented different views:
  - 5.1. UltraFast Fibre and Enable submitted that fibre access services to cell towers should be outside the scope of regulated services. They reasoned that mobile providers take these services, on regulated terms and conditions, and use them to compete with UFB, but are not themselves subject to any regulation.
  - 5.2. By contrast, 2degrees submitted that all inputs required to provide mobile services need to be included within the scope of regulation. These include the access services mentioned in the paragraph above as well as fibre links connecting fibre access services to the next point of interconnection.
  - 5.3. Chorus submitted that in areas where there is competition between Chorus and LFCs, regulation should not apply. They noted that Chorus would be subject to both information disclosure and PQ regulation, where other LFCs were only subject to ID regulation. This was the case even though these LFCs had the largest fibre market share in their UFB build areas.

### *Decision*

6. I consider that the UFB inputs required to provide mobile services need to remain within the scope of the regulated services because they are essential inputs to the provision of competing mobile services. This was also the policy intent of the new regulatory framework for fibre.
7. I asked MBIE to seek further submissions on applying only ID regulation to Chorus' FFLAS in areas where other UFB suppliers have rolled out their UFB network.

### *Stakeholders' views*

8. Most stakeholders agreed with exempting Chorus from PQ regulation in some areas where there is competition, based on the principle that regulation should only apply to the extent necessary to address a lack of competition.
  - 8.1. Chorus welcomed the exemption from PQ where there is another UFB network. However, Chorus reiterated that ID regulation is also not warranted, given the small scale of its fibre services in those areas. Chorus suggested that it brings unjustified compliance costs.
  - 8.2. UltraFast Fibre and Enable submitted that Chorus should also be subject to PQ regulation in areas where it is not the UFB provider, given its capacity to leverage its national market power in fibre networks. LFCs said Chorus is already aggressively competing with them on copper and if Chorus was not subject to this rule, it would set lower, anti-competitive prices for its fibre services in LFC areas, thus undermining LFCs investments in UFB.
  - 8.3. 2degrees, Spark and Vodafone supported removing PQ regulation in areas where other LFCs have been awarded the UFB contracts and have already built their networks. They also submitted that Chorus needs to be subject to PQ regulation in areas outside the scope of any contracted UFB areas.

### *Decision*

9. The section 226 regulations now provide that:
  - 9.1. Chorus is exempted from PQ in respect to its FFLAS in areas where another regulated fibre service provider has installed a fibre network as part of the UFB initiative.
  - 9.2. Chorus will continue to be subject to ID with respect to all its FFLAS services. This will allow the Commission to assess whether Chorus is pricing its FFLAS services appropriately in other LFCs' areas, and to assess whether there are grounds to introduce PQ regulation in the future.
  - 9.3. LFCs will be subject to ID with respect to all their FFLAS services.

**Annex Two: Telecommunications (Regulated Fibre Service Providers) Regulations  
2019**

PROACTIVELY RELEASED



**IN CONFIDENCE**

**Telecommunications (Regulated Fibre Service Providers)  
Regulations 2019**

Governor-General

**Order in Council**

At Wellington this                      day of                      2019

Present:  
in Council

These regulations are made under section 226 of the Telecommunications Act 2001—

- (a) on the advice and with the consent of the Executive Council; and
- (b) on the recommendation of the Minister of Broadcasting, Communications and Digital Media given in accordance with section 226 of that Act.

**Contents**

	Page
1 Title	2
2 Commencement	2
3 Interpretation	2
4 Transitional, savings, and related provisions	2
5 Persons subject to information disclosure regulation	2
6 Persons subject to price-quality regulation	2

**Schedule 1**

**Transitional, savings, and related provisions**

## Regulations

### 1 Title

These regulations are the Telecommunications (Regulated Fibre Service Providers) Regulations 2019.

### 2 Commencement

- (1) Regulation 6 comes into force on 31 December 2021.
- (2) The rest of these regulations come into force on 20 December 2019.

### 3 Interpretation

In these regulations, unless the context otherwise requires, **Act** means the Telecommunications Act 2001.

### 4 Transitional, savings, and related provisions

The transitional, savings, and related provisions (if any) set out in Schedule 1 have effect according to their terms.

### 5 Persons subject to information disclosure regulation

Each person set out in column 1 of the following table is subject to information disclosure regulation under Part 6 of the Act in respect of the services set out in column 2:

<b>Column 1</b>	<b>Column 2</b>
<b>Person subject to information disclosure regulation</b>	<b>Services subject to regulation</b>
Chorus Limited	All fibre fixed line access services
Enable Networks Limited	All fibre fixed line access services
Northpower Fibre Limited	All fibre fixed line access services
Northpower LFC2 Limited	All fibre fixed line access services
UltraFast Fibre Limited	All fibre fixed line access services

### 6 Persons subject to price-quality regulation

Each person set out in column 1 in the following table is subject to price-quality regulation under Part 6 of the Act in respect of the services set out in column 2:

<b>Column 1</b>	<b>Column 2</b>
<b>Person subject to price-quality regulation</b>	<b>Services subject to regulation</b>
Chorus Limited	All fibre fixed line access services, except to the extent that a service is provided in a geographical area where a regulated fibre service provider (other than Chorus Limited) has installed a fibre network as part of the UFB initiative

## Schedule 1 Transitional, savings, and related provisions

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### Part 1 Provisions relating to these regulations as made

There are no transitional, savings, or related provisions relating to these regulations as made.

Clerk of the Executive Council.

#### Explanatory note

*This note is not part of the regulations, but is intended to indicate their general effect.*

These regulations prescribe persons who provide fibre fixed line access services as being subject to information disclosure regulation and price-quality regulation under the Telecommunications Act 2001 (the Act). As a result of being prescribed in these regulations, the persons become regulated fibre service providers under the Act.

These regulations (including *regulation 5*, which identifies the providers who are subject to information disclosure regulation) come into force on 20 December 2019, except for *regulation 6* (which identifies the provider that is subject to price-quality regulation). *Regulation 6* comes into force on 31 December 2021.

As a result of being named in *regulation 5*, providers Chorus Limited (**Chorus**), Enable Networks Limited, Northpower Fibre Limited, Northpower LFC2 Limited, and UltraFast Fibre Limited are subject to information disclosure regulation on and from 20 December 2019 in relation to all of the fibre fixed line access services they provide. Subpart 4 of Part 6 of the Act relates to information disclosure regulation. Under that subpart, the named providers are required to publicly disclose information in accordance with requirements determined by the Commerce Commission (*see* section 187 of the Act). The information is required to be publicly disclosed to enable scrutiny of the providers' performance and profitability.

As a result of being named in *regulation 6*, Chorus is also subject to price-quality regulation on and from 31 December 2021 in relation to all of the fibre fixed line access services that Chorus provides. However, Chorus will not be subject to price-quality regulation in geographical areas where another regulated fibre service provider has installed a fibre network as part of the UFB initiative. Subpart 5 of Part 6 of the Act relates to price-quality regulation. Under that subpart, Chorus is required to apply the price-quality paths determined by the Commerce Commission. If anchor services, direct fibre access services, or unbundled fibre services are declared under

the Act, Chorus will also be required to provide those services (*see* sections 198, 199, and 200 of the Act).

Issued under the authority of the Legislation Act 2012.

Date of notification in *Gazette*:

These regulations are administered by the Ministry of Business, Innovation, and Employment.

PROACTIVELY RELEASED