



COVERSHEET

Minister	Hon Dr David Clark	Portfolio	Digital Economy and Communications
Title of Cabinet paper	Telecommunications Operators (Commerce Commission Costs) Levy Amendment Regulations 2022	Date to be published	5 July 2022

List of documents that have been proactively released

Date	Title	Author
May 2022	Telecommunications Operators (Commerce Commission Costs) Levy Amendment Regulations 2022	Office of the Minister for the Digital Economy and Communications
May 2022	Annex One: Telecommunications Operators (Commerce Commission Costs) Levy Amendment Regulations 2022	Parliamentary Counsel Office
May 2022	Annex Two: Telecommunications (Regulated Fibre Service Providers) Amendment Regulations 2022	Parliamentary Counsel Office
19 May 2022	Telecommunications Operators (Commerce Commission Costs) Levy Amendment Regulations 2022 LEG-22-MIN-0081	Cabinet Office

Information redacted

NO [select one]

Any information redacted in this document is redacted in accordance with MBIE's policy on Proactive Release and is labelled with the reason for redaction. This may include information that would be redacted if this information was requested under Official Information Act 1982. Where this is the case, the reasons for withholding information are listed below. Where information has been withheld, no public interest has been identified that would outweigh the reasons for withholding it.

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Office of the Minister for the Digital Economy and Communications

Cabinet Legislation Committee

Telecommunications Operators (Commerce Commission Costs) Levy Amendment Regulations 2022

Proposal

- 1 This paper seeks authorisation for submission to the Executive Council of the Telecommunications Operators (Commerce Commission Costs) Levy Amendment Regulations 2022.
- 2 This paper also seeks agreement to amend the Telecommunications (Regulated Fibre Service Providers) Regulations 2019 and seeks authorisation for submission to the Executive Council of the Telecommunications (Regulated Fibre Service Providers) Amendment Regulations 2022.

Background

- 3 The Commerce Commission (the Commission) has a range of regulatory functions intended to support market competition and consumer and business confidence. It also implements economic regulation in several sectors that have little or no competition to achieve outcomes in those sectors as if they were competitive. One area of regulatory oversight relates to telecommunications services under the Telecommunications Act 2001 (the Act).
- 4 The Act was amended in November 2018 to create a new framework for the regulation of fibre services. Under these amendments, additional responsibilities were allocated to the Commission to administer the fibre regime established under the Act. To enable the Commission to implement the new regime, a four-year appropriation of \$12 million per year was created and recovered through the Telecommunications Operators (Commerce Commission Costs) Levy Regulations 2019 (the Telecommunications Levy Regulations).
- 5 The Telecommunications Levy Regulations currently require the payment of two kinds of levies:
 - 5.1 a sub-levy payable by all liable telecommunications operators in relation to the entirety of the Commission's regulatory work performed under the Act, except the work relating to the implementation of the fibre services regime.

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- 5.2 a sub-levy payable only by the four local fibre companies to recover the costs of implementing the fibre services regime (information disclosure and price quality regulation).
- 6 Under the existing Telecommunications Levy Regulations, the fibre services sub-levy is only payable until the end of the 2021/22 financial year, the year in which the implementation of the fibre services regime is to be completed by.
- 7 As the Telecommunications Levy Regulations now stand from the 2022/23 financial year and outyears there would be a single, bundled levy apportioned across all telecommunications operators to recover the Commission's regulatory costs. This would include those costs relating to information disclosure and price-quality regulation administered by the Commission under the fibre services regime relating to local fibre companies.
- 8 On 7 April 2021 Cabinet agreed to carry forward the existing structure of the sub-levies [CAB-21-MIN-0111 refers]. Cabinet also approved Parliamentary Council Office (PCO) to draft amendment regulations to give effect to the decision made.

Policy

- 9 Amending the regulations to maintain the status quo is necessary in order to ensure only telecommunications operators subject to information disclosure and price-quality regulation (the local fibre companies) are liable to pay the levy towards the Commission's costs for those functions from 2022/23 and outyears.
- 10 If these amendments are not made, the current regulations require the sub-levy structure to end after the 2021/22 financial year. A single bundled levy would take its place and allocate the Commission's costs for telecommunications regulation across all liable telecommunication providers. This bundled levy would include costs for the fibre regime, which is only applicable to a select few telecommunication operators (i.e. the local fibre companies). Further to this, the Commission's costs of administering the fibre services regime will remain a sizeable portion of the overall costs for telecommunications regulation. Thus, a bundled levy would create an unfair outcome as liable providers not subject to fibre regulation would be responsible to pay those costs.
- 11 Therefore, this amendment is necessary to ensure that only those telecommunications operators who are subject to regulation relating to the fibre services regime bear the costs of administering the regime from 2022/23.
- 12 These amendments give effect to Cabinet's decision in 2021 to amend the telecommunications levy regulations [CAB-21-MIN-0111 refers].
- 13 Further amendments were made to the regulations to reflect the name change of UltraFast Fibre Limited to Tuatahi First Fibre Limited and the amalgamation of Northpower LFC2 Limited into Northpower Fibre Limited. To ensure consistency across regulations prescribing which LFCs are subject to

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information disclosure and price-quality regulation under the Act, changes were also made to the Telecommunications (Regulated Fibre Service Providers) Regulations 2019, these amendments are included in the Telecommunications (Regulated Fibre Service Providers) Amendment Regulations 2022. This change is a minor and technical change that has no impact in the application of the regulations but ensures it is up to date.

Timing and 28-day rule

- 14 The regulations will be gazetted in the week after Cabinet approval and will then come into force on 1 July 2022.
- 15 I am not seeking a waiver of the 28-day rule.

Compliance

- 16 The regulations comply with:
 - 16.1 the principles of the Treaty of Waitangi;
 - 16.2 the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993;
 - 16.3 the principles and guidelines set out in the Privacy Act 2020;
 - 16.4 relevant international standards and obligations;
 - 16.5 the Legislation Guidelines (2018 edition), which are maintained by the Legislation Design and Advisory Committee.

Regulations Review Committee

- 17 I do not believe that there are grounds for the Regulations Review Committee to draw the regulations to the attention of the House of Representatives under Standing Order 327.

Certification by Parliamentary Counsel

- 18 The draft regulations are certified by the Parliamentary Counsel Office (PCO) as being in order for submission to Cabinet.

Impact Analysis

- 19 A Stage 2 Cost Recovery Impact Statement was prepared in accordance with Cabinet's impact analysis requirements and was submitted at the time that Cabinet approval was sought for the policy for the changes made through the Telecommunications Operators (Commerce Commission Costs) Levy Regulations 2019 [<https://www.mbie.govt.nz/dmsdocument/14669-reviews-of-commerce-commission-levy-funding-under-the-telecommunications-act-and-part-4-of-the-commerce-act-proactiverelase-pdf> and CAB-21-MIN-0111 refers].

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- 20 The Treasury's Regulatory Impact Analysis team has determined that the additional regulatory changes to the Telecommunications (Regulated Fibre Service Providers) Regulations 2019 is exempt from the requirement to provide a Regulatory Impact Statement on the grounds that it has no or only minor impacts on businesses, individuals, and not-for-profit entities.
- 21 The Climate Implications of Policy Assessment (CIPA) team has been consulted and confirms that the CIPA requirements do not apply to this proposal as the threshold for significance is not met.

Publicity

- 22 The Ministry of Business, Innovation and Employment (MBIE) will notify interested stakeholders, including those who submitted on the exposure draft of the regulations, when the regulations have been made.

Proactive release

- 23 This paper will be proactively released within 30 business days on the MBIE website, subject to redactions as appropriate under the Official Information Act 1982.

Consultation

- 24 The Act requires the Minister to consult with those persons and organisations that the Minister considers appropriate, having regard to the subject matter of the proposed regulations. This requirement was met through consultation on the Commerce Commission's discussion paper on the future funding of the Commission's regulatory responsibilities under the Act before policy decisions were sought from Cabinet in 2021.
- 25 Under section 226(5) of the Act does not need to consult the making of regulations prescribing information disclosure and price quality regulation if the regulations have no more than a minor effect or correct or make similar technical amendments. I am confident the amendments being made meet this minor and technical threshold.
- 26 The Commission has been consulted during the course of developing the policy and regulations.
- 27 The Department of the Prime Minister and Cabinet and the Treasury have been informed.

Recommendations

I recommend that the Cabinet Legislation Committee:

- 1 **note** that on 7 April 2021 the Cabinet Economic Development Committee agreed to carry forward the existing structure of the sub-levies under the Telecommunications Regulatory Levy, to ensure that only those liable telecommunications operators who are subject to regulation relating to the

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new fibre broadband services regime bear the costs of administering the regime from financial year 2022/23 [DEV-21-MIN-0071 refers];

- 2 **note** that the amendments are necessary to maintain status quo and make it clear that only the four local fibre companies subject to information disclosure and price-quality regulation should pay the levy towards the Commerce Commission's costs for those functions from financial year 2022/23 and outyears;
- 3 **note** that the Telecommunications Operators (Commerce Commission Costs) Levy Amendment Regulations 2022 will give effect to the decision referred to in recommendation 1 above;
- 4 **note** that to ensure consistency the Telecommunications (Regulated Fibre Service Providers) Regulations 2019 will need to be amended to reflect the name change of UltraFast Fibre Limited to Tuatahi First Fibre Limited and the amalgamation of Northpower LFC2 Limited into Northpower Fibre Limited;
- 5 **agree** to amend the Telecommunications (Regulated Fibre Service Providers) Regulations 2019 to reflect the name changes referred to in recommendation 4 above;
- 6 **note** that the Telecommunications (Regulated Fibre Service Providers) Amendment Regulation 2022 will give effect to the decision referred to in recommendation 5 above;
- 7 **note** that the Act requires the Minister to consult with those persons and organisations that the Minister considers appropriate, having regard to the subject matter of the proposed regulations;
- 8 **note** that the above requirement was met through consultation on the Commerce Commission's discussion paper on the future funding of the Commission's regulatory responsibilities under the Act before policy decisions were sought from Cabinet in 2021;
- 9 **note** that the Telecommunications (Regulated Fibre Service Providers) Amendment Regulations 2022 meets the minor and technical threshold to not require consultation;
- 10 **note** that the Ministry of Business, Innovation and Employment has consulted with the Commerce Commission on the Telecommunications Operators (Commerce Commission Costs) Levy Amendment Regulations 2022;
- 11 **authorise** the submission to the Executive Council of the Telecommunications Operators (Commerce Commission Costs) Levy Amendment Regulations 2022;
- 12 **authorise** the submission to the Executive Council of the Telecommunications (Regulated Fibre Service Providers) Amendment Regulations 2022;

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- 13 **note** that the Telecommunications Operators (Commerce Commission Costs) Levy Amendment Regulations 2022 will come into force on 1 July.
- 14 **note** that the Telecommunications (Regulated Fibre Service Providers) Amendment Regulations 2022 will come into force on 1 July.

Authorised for lodgement

Hon Dr David Clark
Minister for the Digital Economy and Communications

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Telecommunications Operators (Commerce Commission Costs) Levy Amendment Regulations 2022

Order in Council

At Wellington this day of 2022

Present:
in Council

These regulations are made under section 11 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 for the Digital Economy and Communications made in accordance with section 13 of that Act.

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Regulations

1 Title

These regulations are the Telecommunications Operators (Commerce Commission Costs) Levy Amendment Regulations 2022.

2 Commencement

These regulations come into force on 1 July 2022.

3 Principal regulations

These regulations amend the Telecommunications Operators (Commerce Commission Costs) Levy Regulations 2019.

4 Regulation 4 amended (Levy on telecommunications operators)

- (1) In regulation 4(2), replace “For the financial years beginning on 1 July 2018, 1 July 2019, 1 July 2020, and 1 July 2021” with “For the financial year beginning on 1 July 2022 and each subsequent financial year”.
- (2) Revoke regulation 4(3).

5 Regulation 6 amended (Minister must notify levy amount)

In regulation 6, delete “, or Schedule 2, as applicable”.

6 Schedule 1 amended

- (1) In the Schedule 1 heading, delete “**for financial years beginning 1 July 2018, 2019, 2020, and 2021**”.
- (2) In Schedule 1, clause 1, table, item relating to information disclosure regulation, replace “Northpower Fibre Limited, Northpower LFC2 Limited, UltraFast Fibre Limited” with “Northpower Fibre Limited, Tuatahi First Fibre Limited”.

7 Schedule 2 revoked

Revoke Schedule 2.

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, which come into force on 1 July 2022, amend the Telecommunications Operators (Commerce Commission Costs) Levy Regulations 2019 (the **principal regulations**).

The principal regulations impose levies on telecommunications operators regulated under the Telecommunications Act 2001, including a sub-levy that applies to all such operators. Telecommunications operators who are subject to information disclosure and price-quality regulation are subject to additional sub-levies that relate to those functions.

Currently, the sub-levy structure will end on 30 June 2022, so that from 1 July 2022 a single levy will apply.

The effect of this amendment is to preserve the existing sub-levy structure under Schedule 1.

Schedule 2, which would have implemented the single levy structure, is revoked.

Issued under the authority of the Legislation Act 2019.

Date of notification in *Gazette*:

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

Telecommunications (Regulated Fibre Service Providers) Amendment Regulations 2022

Order in Council

At Wellington this day of 2022

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 for the Digital Economy and Communications given in accordance with that section.

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Regulations

1 Title

These regulations are the Telecommunications (Regulated Fibre Service Providers) Amendment Regulations 2022.

2 Commencement

These regulations come into force on 1 July 2022.

3 Principal regulations

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

4 Regulation 5 amended (Persons subject to information disclosure regulation)

- (1) In regulation 5, table, revoke the item relating to Northpower LFC2 Limited.
- (2) In regulation 5, table, column 1, item relating to UltraFast Fibre Limited, replace “UltraFast Fibre Limited” with “Tuatahi First Fibre Limited”.

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, which come into force on 1 July 2022, amend the Telecommunications (Regulated Fibre Service Providers) Regulations 2019.

The amendments update the names of some of the persons subject to information disclosure regulation to align with recent name changes of those persons. The name changes are as follows:

- Northpower Fibre Limited and Northpower LFC2 Limited have merged to become Northpower Fibre Limited; and
- UltraFast Fibre Limited has changed its name to Tuatahi First Fibre Limited.

Issued under the authority of the Legislation Act 2019.

Date of notification in *Gazette*:

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