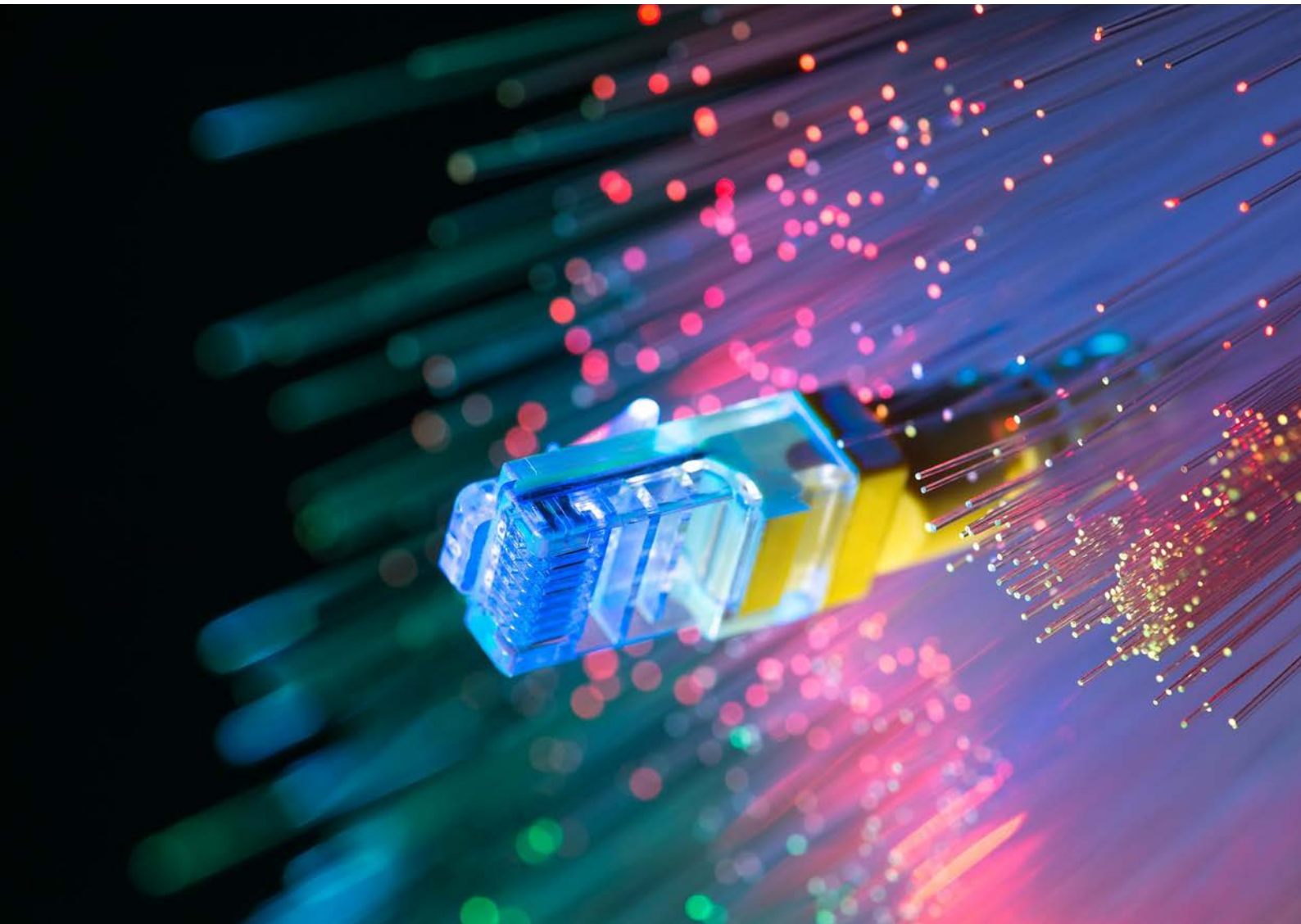
MINISTRY OF BUSINESS, INNOVATION & EMPLOYMENT
HĪKINA WHAKATUTUKI

Te Kāwanatanga o Aotearoa
New Zealand Government

Discussion document: Enhancing telecommunications regulatory and funding frameworks

MAY 2024



MINISTRY OF BUSINESS, INNOVATION & EMPLOYMENT
HĪKINA WHAKATUTUKI

Ministry of Business, Innovation and Employment (MBIE) Hīkina Whakatutuki – Lifting to make successful

MBIE develops and delivers policy, services, advice and regulation to support economic growth and the prosperity and wellbeing of New Zealanders.

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How to have your say

Submissions process

The Ministry of Business, Innovation and Employment (MBIE) seeks written submissions on the issues raised in this discussion document by **5pm on 19th June**. Your submission may respond to any or all of these issues. Where possible, please include evidence to support your views, for example references to independent research, facts and figures, or relevant examples. Please include your contact details in the cover letter or e-mail accompanying your submission.

You can make your submission:

- by sending your submission as a Microsoft Word document to communicationspolicy@mbie.govt.nz
- by mailing your submission to: Communications Policy, Building, Resources and Markets, Ministry of Business, Innovation & Employment, PO Box 1473, Wellington 6140

Please direct any questions that you have in relation to the submissions process to communicationspolicy@mbie.govt.nz.

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The information provided in submissions will be used to inform MBIE's policy development process and will inform advice to Ministers. MBIE intends to upload copies of submissions received to MBIE's website at www.mbie.govt.nz. MBIE will consider you to have consented to uploading by making a submission, unless you specify otherwise in your submission. If your submission contains confidential information or you otherwise wish us not to publish, please:

- indicate this on the front of the submission, with any confidential information clearly marked within the text, and
- provide a separate version excluding the relevant information for publication on our website.

Submissions remain subject to request under the Official Information Act 1982. Please set out clearly in the cover letter or e-mail accompanying your submission if you have any objection to the release of any information in the submission, and in particular, which parts you consider should be withheld, together with the reasons for withholding the information. MBIE will take such objections into account and will consult with submitters when responding to requests under the Official Information Act 1982.

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Contents

Glossary of terms

Commerce Commission: A New Zealand government agency with responsibility for enforcing legislation that relates to competition and fair trading, including specific functions in relation to telecommunications.

Crown Infrastructure Partners (CIP): Formally Crown Fibre Holdings, CIP was originally established to manage the government's investment in ultra-fast broadband infrastructure.

Fibre: Fibre-optic cables and associated equipment that allow optical transmission between points at very high speeds.

Local Fibre Company (LFC): There are four local fibre companies: Chorus, Tuatahi First Fibre Limited (previously known as Ultrafast Fibre Limited), Enable Networks Limited and Northpower Fibre Limited, as defined in section 156AB of the Telecommunications Act 2001.

Note**: 'other' LFC** is used in this document to refer to the three local fibre companies that are not Chorus (ie Tuatahi First Fibre, Enable and Northpower Fibre), reflecting the different regulatory settings between Chorus and the 'other' LFCs.

Low-earth orbit satellites: Satellites that orbit the Earth at a lower height (often less than 2,000 kilometres) than geostationary satellites and are in constant movement relative to the earth's surface. These satellites are often deployed in larger interconnected groups known as constellations.

Open Systems Interconnection model (OSI model): The OSI model is a theoretical framework used to explain the different parts of a telecommunication network. It has seven layers that range from the physical layer (ie fibre cables) to the application layer (ie a web browser).

Regulated fibre service provider: A person who is prescribed in regulations made under section 226 of the Telecommunications Act 2001 as being subject to one or both of information disclosure and price-quality regulation.

Telecommunications Act 2001 (the Act): The Act that provides the regulatory underpinning for our telecommunications networks.

Telecommunications Development Levy: Created to fund certain public good initiatives for the benefit of telecommunications consumers in New Zealand. Each year the Commerce Commission determines, according to statutory criteria, which telecommunications operators are liable for this levy.

The New Zealand Telecommunications Forum (TCF): A key telecommunications industry association. The TCF facilitates the development of self-regulatory codes, which set standards and specifications for the way members interact on industry-wide issues.

Ultra-Fast Broadband (UFB) Initiative: The competitive tender programme to develop fibre-to-the-premises broadband, with the support of $1.75 billion of Government investment. It includes UFB1, UFB2 and extensions to UFB2.

Introduction

Purpose of this discussion document

1. Telecommunications markets are continuing to evolve with new technologies, business models, and competitive dynamics. In some cases, this is raising questions and creating challenges in relation to our regulatory settings.

2. The Ministry of Business, Innovation and Employment (MBIE) provides advice to the Government on telecommunications policy and regulation. We report to the Minister for Media and Communications on these matters.

3. This discussion document sets out some regulatory issues we have identified for consideration. It proposes options for addressing these issues, including MBIE's preferred options in some cases. The feedback we receive from this discussion document will be used to inform our advice to the Government on what regulatory change may be required.

4. The issues and options outlined in this discussion document are preliminary only. Their inclusion in this document does not imply that changes will be made, and we note that new options may be developed based on submissions received.

5. In developing the discussion document, we considered regulatory and non-regulatory options to address the issues. Ultimately, we discounted the non-regulatory options because they did not address the issues identified, which tended to be regulatory in nature. However, submitters are welcome to suggest non-regulatory options where they consider these may be appropriate.

Scope of issues for discussion

6. The areas we are seeking feedback on through this discussion document are:
    - Consumer access to dispute resolution
    - Accessing shared property for fibre installations
    - Telecommunications levy settings
    - Identifying participants in the market
    - Enhancing information flow to the Emergency Location Information System
    - Governance settings in 'other' local fibre company constitutions
    - Other regulatory stewardship matters.

7. We note that consumers may be particularly interested in Section 1 regarding access to dispute resolution services. In addition, consumers and property owners may be interested in Section 2, regarding the rights to access shared property for fibre installations.

Issues that are out of scope

8. We are aware there are other telecommunications policy and regulatory issues of interest to stakeholders that have not been included for discussion in this paper.

In some cases, work on these issues is already being progressed by MBIE or other government agencies. In other cases, issues may not be identified as a priority for consideration at this time.

9. In particular, the following areas are out of scope of this discussion document:
    - Resource management reform and the National Environmental Standards for Telecommunications Facilities – MBIE continues to engage with the Ministry for the Environment on these matters.
    - Telecommunications resilience issues – these are being considered in work led by the Department of the Prime Minister and Cabinet, with input from MBIE.
    - Telecommunications Service Obligations are outside of the scope of this paper, but MBIE will continue to work with relevant stakeholders to respond to requests for reviewing aspects of these frameworks.

Process and timeline

10. We invite submissions on the questions set out in each section of this paper by 5pm on Wednesday 19th June.

11. To ensure we are able to take your views fully into consideration we encourage you to provide as much evidence as possible to support your position on each of the areas for discussion.

12. The Government may choose to consult on some issues further to inform decisions. MBIE will update stakeholders as this work progresses. Any legislative changes will also be subject to a select committee process, providing opportunity for additional feedback from the public and industry stakeholders.

Overview of telecommunications regulatory regime

Telecommunications Act 2001

13. The Telecommunications Act 2001 (the Act) provides the framework for the regulation of telecommunications markets in New Zealand. It promotes competition in telecommunication markets through the provision of an access regime for copper services, separation of wholesale and retail fibre services, and prohibitions on discriminatory treatment of downstream businesses.

14. The Act also provides for the Telecommunications Commissioner to investigate whether additional services should be regulated and to make recommendations to the Minister. The Commerce Commission can also recommend the removal of regulation if markets become more competitive.

15. The split between the provision of wholesale and retail services is a fundamental part of the telecommunications regulatory framework. This helps to ensure retail competition and good outcomes for consumers (such as more choice, better quality services, and more competitive pricing).

The introduction of a new regulatory framework in 2018

16. The Telecommunications (New Regulatory Framework) Amendment Act 2018 accounted for the large-scale transformation to a fibre-based network infrastructure under the UFB initiative. The Amendment Act enabled a new form of telecommunications network regulation.

17. The Amendment Act also provided for more regulatory oversight of retail service quality, enabling the development of Commerce Commission codes and wider Commerce Commission monitoring of consumer matters. It also introduced provision for consumer protection codes, such as:

    - the Copper Withdrawal Code, which sets out the minimum requirements Chorus, the provider of New Zealand's copper telecommunications network, must meet before it can stop providing wholesale copper phone and broadband services, and
    - the 111 Contact Code, which ensures that vulnerable consumers, or persons on their behalf, have reasonable access to an appropriate means of contacting 111 emergency services in the event of a power failure.

Telecommunications (Interception Capability and Security) Act 2013

18. The Telecommunications (Interception Capability and Security) Act 2013 (TICSA) is part of the telecommunications regulatory regime. TICSA establishes obligations for New Zealand's telecommunications providers in two key areas: interception capability and network security. While this discussion document does not cover any issues related to TICSA, we note there is some intersection between definitions in the Act and TICSA.

Objectives and criteria

19. The objective of the telecommunications regulatory regime is to provide for the effective operation of communications markets by promoting competition and protecting consumers. Our objective for any changes that might be considered is to ensure that the regime remains fit for purpose.

20. We have outlined our proposed criteria to be used when assessing options to address the issues in the discussion document. We note there may need to be some trade-offs between criteria for certain issues. We welcome feedback on the proposed criteria:

    - **Consistency with existing regulatory regime**: Options should maintain the existing underpinnings of the regulatory regime, which is largely delivering good outcomes for consumers (regarding access to connectivity, price, and service quality).
    - **Promoting competition**: The Act promotes competition in telecommunications markets. Any changes to the regulatory framework should continue to promote competition.

- **Protecting consumer interests**: Any changes should continue to protect consumers.
- **Fair and transparent regulatory design**: Any amendments to regulation should be clear to any new or existing telecommunications providers, and to consumers. Regulation should be proportionate to the issue that is being addressed.
- **Incentivising innovation and further investment in telecommunications**: Consideration should be given to incentivising further investment in telecommunications networks, which is likely to result in improved connectivity and better consumer outcomes.

Questions for stakeholders

1	Do you have any feedback about the proposed criteria to assess the options in the next phase of this work? Are there other criteria that we should consider?

Section 1: Consumer access to dispute resolution

Background

21. Consumers of telecommunications services need to be able to purchase and use these services with confidence. An important aspect of this is having recourse to an independent and impartial means of resolving disputes with telecommunications providers. Part 7 of the Act provides for the establishment of industry dispute resolution schemes but does not mandate membership.

22. Dispute resolution services are intended to be available when a consumer has been unable to reach a resolution through their service provider's complaints process. They provide a more cost and time effective means of dispute resolution than other alternatives, such as taking a dispute to the Disputes Tribunal.

23. There is currently one industry dispute resolution scheme that has been established under Part 7 of the Act, the Telecommunications Dispute Resolution scheme (the TDR) established by the TCF. The Act also allows for other industry dispute resolution schemes to be set up by the telecommunications industry.

24. The TCF is an industry member organisation representing most telecommunications providers in New Zealand. All members of the TCF are required to be members of the TDR. Non-TCF members may also become members of the TDR.

25. Under the Act an industry dispute resolution scheme plays an important role in hearing disputes about Commerce Commission codes (such as the 111 Contact Code or the Copper Withdrawal Code). The Commission is required to review industry dispute resolution schemes every three years. The Commission completed a review of the TDR in 2021.

26. In its review of the TDR the Commerce Commission highlighted the high level of complaints within the telecommunications sector. This has been a persistent problem for over a decade, with complaint volumes doubling in the preceding five years to the review. Against this backdrop of high complaints, the Commission noted that 13 per cent of fixed line customers did not have access to the TDR.

27. Mandatory membership of an industry dispute resolution service is a common feature of telecommunications regulatory frameworks overseas, for example in jurisdictions such as Australia and the United Kingdom.

Problem definition

28. We have some concern that not all telecommunications service providers are members of an industry dispute resolution scheme. While consumers of these providers may still refer complaints to the TDR about Commission codes, the providers themselves are not required to be members of the TDR (as the only industry dispute resolution scheme currently).

29. Consumers may not be aware that they have access to free and impartial dispute resolution services in relation to Commission codes. In addition, for any other consumer disputes, consumers may have no access to dispute resolution services with specialist knowledge and experience in telecommunications services. The problem potentially results in unfair or inadequate resolutions to disputes for consumers, and risks undermining confidence in our telecommunications markets.

30. This is an issue we are also considering in the context of recent market developments. New types of providers, such as satellite companies, now offer services to New Zealanders, and providers from other sectors (such as the energy sector) are offering bundled telecommunications products.

Questions for stakeholders

2	Do you consider that the lack of a mandatory requirement for telecommunications service providers to belong to an industry dispute resolution scheme is a problem that needs to be addressed?
3	For telecommunications service providers who are not members of the Telecommunications Dispute Resolution scheme, why have you chosen not to be a member? Are you a member of another scheme, why or why not?
4	For consumers who have had issues with their telecommunications service providers, what were your options for dispute resolution, and what was your experience?

Options

Option 1: Status quo – no mandatory dispute resolution scheme membership

31. Under the status quo, membership in a telecommunications industry dispute resolution scheme remains voluntary in the Act. Consumers may continue to experience inconsistent access to telecommunications dispute resolution.

Option 2: Making membership in an industry dispute resolution scheme mandatory

32. Under this option, the Act would be amended to require all retail telecommunications service providers to become members of an industry dispute resolution scheme. This would give all consumers of telecommunications services access to free and impartial dispute resolution through an industry dispute resolution scheme.

33. Given there is only one industry dispute resolution scheme currently in place (the TDR), the implication of this option is that all telecommunications providers would likely become members of the TDR. Under the Act there is provision for other industry dispute resolution schemes to be developed.

Benefits	Considerations
• Consumers would have access to free and impartial dispute resolution by schemes that specialise in telecommunications.	• It will be important to consider whether scheme membership fees are affordable for smaller telecommunications providers. • If additional industry dispute resolution schemes are developed, there could be greater choice and potentially lower costs, but there may be a risk of fragmentation in terms of user experience.

MBIE comment

34. At this stage we do not have a preferred option. We are seeking feedback from the industry and consumers on whether there is a need to make membership in an industry dispute resolution scheme compulsory.

Questions for stakeholders

5	What are your views on the options we have identified? Do you have a preference, if so, why? Are there any options we have not identified?

Section 2: Accessing shared property for fibre installations

Background

35. The Act (Subpart 3 of Part 4) provides statutory rights to access shared property to install, maintain, repair and upgrade fibre. The framework was established in 2017 to enable greater fibre uptake. The rights to access shared property to install fibre (referred to throughout as 'the rights') are due to expire on 1 January 2025. The rights to undertake maintenance and upgrades do not have an expiry date.

36. The rights allow fibre providers to access shared property to install fibre connections in certain circumstances, where the consent of more than one party would otherwise be required. For example, the rights allow a provider to lay fibre in a shared driveway even if one neighbour, who co-owns the driveway, has not consented to the work (provided certain conditions are met, such as notification requirements and limits on invasiveness).

37. These rights are available to fibre providers if they are members of a designated dispute resolution scheme to address any complaints from affected property owners. Fibre providers estimate that these rights are currently used for between 10-30 per cent of fibre installations.

Issue 1: Expiry of statutory rights for fibre installations

38. The expiry date of 1 January 2025, and the scope of these rights, were set so that as many dwellings as possible could connect to fibre, while considering the impact on property rights. There was an expectation that most fibre installs as part of the UFB initiative would be completed by this date and the rights would no longer be needed.

39. Currently, 87 per cent of New Zealanders have a fibre network available to them, and uptake of fibre connections is sitting at about 75 per cent of all dwellings with fibre coverage. We expect that demand for new fibre connections to the home will continue and that in some of these scenarios, access to shared property will be needed.

Problem definition

40. Given our assessment that fibre uptake will continue, we are considering whether the rights should be extended beyond the current 1 January 2025 expiry date, to further enable uptake of UFB.

41. If there were no longer rights to access shared property for fibre installations, fibre providers would need to rely on alternative ways of pursuing access to shared property, such as easements (if possible). Some fibre companies consider that the rights are crucial to increasing fibre uptake. Without the rights, installations that require access to shared property will be more difficult, and in

some cases not possible.

Options

Option 1: Status quo – statutory rights expire on 1 January 2025 with no plans to reinstate them

42. The rights to access shared property for new fibre installations would no longer be in place after 1 January 2025. The status quo aligns with the original intent for the duration of the rights to be effective until the completion of the UFB network. However, it does not recognise anticipated continued fibre uptake. We are also observing expansion of the fibre footprint on commercial terms, which will likely continue beyond 2025.

Option 2: Reinstate the rights for access to shared property for new fibre installs after the rights expire

43. Given the timeframes for legislative processes, it is unlikely there will be time to amend the Act to change the expiry date of the rights before 1 January 2025. This means that there will likely be a period where the rights are not in effect, even if it is identified that there are grounds to continue them. Under this option, we anticipate the rights would be reinstated as soon as possible after 1 January 2025 (allowing for legislative processes).

44. If this option were to be progressed, the rights could be reinstated temporarily for a specified timeframe, or be made permanent. We are seeking submitters' feedback on, if the rights were to be extended, whether this should be for a set period of time or permanently.

	Benefits	Considerations
Temporary	• Easier to install fibre. • More closely aligned to the original intent of the framework to be temporary, until the bulk of fibre installations are complete.	• An appropriate new expiry date would need to be set. • May not be sufficiently future proofed for further fibre network expansion and increase in demand for fibre services.
Permanent	• Easier to install fibre. • Future proofed.	• Need to consider the ongoing impact on property rights.

MBIE comment

45. MBIE has no preferred option at this stage. We are seeking feedback on the impact of both the rights expiring as well as the implications of reinstating them. We are also interested in views on whether a reinstatement (if progressed) should be temporary or permanent.

Questions for stakeholders

6	What are your views on the options we have identified? Do you have a preference, if so, why? Are there any options we have not identified?
7	If you are a fibre provider who uses these rights, what are the implications of these options on your business? Please provide data and evidence to support your submission where possible.
8	If the statutory rights were reinstated, what do you think is an appropriate expiry date (if any)?

Issue 2: Invoking statutory rights for high impact installations

46. The existing rights to access shared property can only be used for low and medium impact fibre installations. This was to balance the benefit of fibre uptake with the potential impacts on property rights from fibre installations.

47. There are two categories of installations that are covered by the statutory rights, as set out in the Telecommunications (Property Access) Regulations 2017:

    - Category 1, or low impact method installations, have no lasting impacts on shared property (for example, a fibre cable buried in grass).
    - Category 2, or medium impact method installations, have more of a lasting impact (for example, digging into and resealing a small part of a concrete drive to conceal a cable).

48. The industry refers to installations beyond category 2 as 'high impact'. This could include methods of install such as needing to dig up a significant portion of a driveway to install a fibre cable or digging an extra-long trench to lay a fibre cable. The rights to access shared property for fibre installations cannot currently be invoked for these types of installs.

Problem definition

49. As the rights to access shared property cannot be invoked for high impact installs, consent from all affected property owners or other legal remedies are needed to progress the installation. We understand that in this scenario, the fibre install request is often cancelled because another owner will not consent and the options for trying to overcome this can be time consuming or costly.

Options

Option 1: Status quo – the rights (if reinstated) are not expanded to include high impact installs

50. No changes would be made to the statutory rights. Rights could not be used to access shared property for high impact fibre installations. Fibre providers would need to use other available legal remedies if they cannot get consent from all affected property owners for these installs.

Option 2: Expand the scope of rights (if reinstated) to cover some high impact installs

51. This option would expand the scope of the rights to enable access to shared property for some high impact installations, without needing to get consent from all affected parties.

52. For clarity, this would allow for some high impact installs, not *all* high impact installs. This is because we consider it is still appropriate to limit the extent of the impact that can be caused from installing fibre where there is not consent from all affected parties. We are seeking feedback that would allow us to clearly define what types of 'high impact' install methods should be allowed. For example:

    - if increasing the length of trenches allowed to lay cables (currently 3m for each dwelling it passes), how much should the length be increased by?
    - if increasing the square meterage of a driveway that can be impacted (currently 30 per cent of a driveway's width), by how much should this be increased?

Benefits	Considerations
• Fibre providers could use the rights in more scenarios, increasing the number of fibre installations they can progress without relying on other legal remedies. • May reduce instances of property owners cancelling installation requests.	• Definition of what types of installs should be permitted (ie how to describe the 'high impact' installs). • Likely to increase instances of the property access provisions being used so more shared property owners will be impacted.

MBIE comment

53. We do not currently have a preferred option in relation to this issue. We are seeking feedback on the costs and benefits of enabling the rights to be invoked for some high impact fibre installations, if the rights were reinstated.

Questions for stakeholders

9	What are your views on the options we have identified? Do you have a preference, if so, why?
10	If the statutory rights were expanded to cover some high impact installs, what type of 'high impact' installs should be permitted? If you are a fibre provider, please provide examples of what changes to the rights would make a significant difference to enabling more fibre connections.

Issue 3: Invoking the statutory rights without a retail connection order from an internet service provider

54. The use of the rights to access shared property to install fibre includes a requirement that these rights may only be invoked if a person has ordered a fibre broadband product from an internet service provider.

55. This means that if there is no tenant or homeowner who wishes to order a retail internet connection, the rights cannot be invoked to access shared property for installation.

56. This can pose problems, for example, for landlords and property developers who want to make their properties 'fibre ready'. Since landlords and property developers are not planning to live in the property themselves, they do not want to order a fibre broadband product from an internet service provider. We note that if there is no dispute over shared property, or no need to access shared property for the fibre install, these properties can still be made 'fibre ready'. The rights do not need to be relied upon in those cases.

Problem definition

57. The need to have a fibre broadband order made to an internet service provider to access the rights can be problematic and may disincentivise connection to fibre.

Options

Option 1: Status quo – retain requirement for a retail service order before statutory rights can be invoked (if reinstated)

58. No changes would be made to the rights. The statutory rights to access shared property to install fibre would only be invoked if a retail connection order is placed.

Option 2: Allow rights (if reinstated) to be invoked without a retail connection order

59. This option would allow the statutory rights to access shared property for fibre installations to be invoked without a retail connection order being placed. The rights (if reinstated) could be invoked if a property developer or owner wishes to make their property 'fibre ready' (ie installing fibre before anyone moves in).

Benefits	Considerations
• Could result in increased uptake of fibre services and reduce waiting times for services (eg a tenant is able to move in and immediately take up a fibre service).	• Likely to increase instances of the property access provisions being used so more shared property owners will be impacted.

MBIE comment

60. MBIE has no preferred option on this issue. We are interested in feedback on the impacts of each option so that we can better assess if there is a need for regulatory change, if the rights were reinstated.

Questions for stakeholders

11	What are your views on the options we have identified? Do you have a preference, if so, why? Please provide data and evidence to support your submission where possible.

Section 3: Telecommunications levy settings

Background

61. Telecommunications levies, collected from liable telecommunications companies, cover the costs of the telecommunications regulatory regime and fund non-commercial telecommunications infrastructure:

    - The Telecommunications Regulatory Levy recovers the cost of the Commerce Commission carrying out its responsibilities under the Act.
    - The Telecommunications Development Levy provides a steady funding stream for telecommunications capabilities or services that are not available commercially, or that are offered commercially but not at a price affordable to consumers. Section 90(1) of the Act outlines purposes for which the levy may be used.

62. The Telecommunications Development Levy enables telecommunications capabilities and services that would not be available commercially, for example Phase Two of the Rural Broadband Initiative and the Mobile Blackspot Fund. Funds from the Levy benefit not only consumers, but also telecommunications service providers, as it broadens the connectivity opportunities available to them for supplying services to telecommunications users.

Issue 1: Identifying liable persons

63. The levies are paid to the Crown by liable persons. A 'liable person' is defined as a person who "provides a telecommunications service in New Zealand by means of some component of a public telecommunications network that is operated by the person" (section 5 of the Act). Not every service provider must pay the Telecommunications Development Levy and the Telecommunications Regulatory Levy. A liable person must pay only if they:

    - traded in the preceding financial year, and
    - are earning gross telecommunications revenues of $10 million or more in the preceding financial year.

Satellite service providers and levy liability

64. The current levy liability provisions capture some satellite providers, but may not capture all providers. In particular, satellite providers who facilitate the transmission of a New Zealand telecommunications service wholly outside of New Zealand, and have no land-based operations here, may be excluded from current liability provisions.

65. Related to this, we are consulting in this discussion document on other aspects of our regulatory regime which may be applicable to satellite services, in respect of identifying participants in the telecommunications market (section 4) and consumer access to dispute resolution (section 1).

Problem definition

66. It is important to ensure that all those who are benefiting from operating within our telecommunications market are contributing to the costs of regulating that market. It is also important that the costs of telecommunications services that would not be commercially available, but are in the public good to deliver, are covered. As noted above, the current levy liability provisions may not capture all satellite broadband providers who may provide services to New Zealanders.

67. In addition, the levy liability regime should be flexible enough to respond to market changes, such as the evolution of new technologies for delivering telecommunications services.

Questions for stakeholders

12	Do you agree that our levy liability settings need to be adjusted to ensure all satellite broadband providers providing services to New Zealanders are captured (where they meet the revenue threshold)?
13	Do you agree adjustments to our levy liability settings are required to ensure our levy regime is flexible enough to respond to market changes (such as new market entrants)? If so, what changes do you consider would be appropriate in this regard?

Options

Option 1: Status quo – do not alter existing levy liability provisions

68. Under this option, no changes would be made to modify levy liability. Service providers not covered by the liable persons definition will remain out of scope.

Option 2: Legislative change – amend liability provisions to capture all satellite providers and/or future-proof provisions (preferred option)

69. This option would require an amendment to the Act to broaden the levy liability settings to cover all satellite service providers who provide services to New Zealanders (who meet the revenue threshold from their New Zealand earnings). Additionally, the amendment could create a flexible mechanism to determine levy liability for future new cases, based on certain criteria. For example, a new regulation-making power.

Benefits	Considerations
• Would promote a level playing field, as the levies would apply to all service providers who meet the revenue threshold and are benefiting from providing services to New Zealanders and operating in the regulated market.	• Providers brought into scope may pass any levy costs onto consumers, increasing the costs of these products. • Small risk of disincentivising operators from entering or continuing to provide their services in New Zealand, noting that they would only contribute to the levy if they meet the $10 million minimum revenue requirement.

Questions for stakeholders

14	Do you support MBIE's preferred option (option 2)? Why or why not? Are there any options we have not identified?
15	What advantages and disadvantages do you consider could arise from introducing flexibility into the way telecommunications operators might become liable for the levy, for example the ability to be made liable through regulation?

Issue 2: Regulatory process to set the total Telecommunications Development Levy amount

70. The total amount collected for the Telecommunications Development Levy is set in Schedule 3B of the Act. It was initially set at $50 million per annum for nine years. It was then decreased to $10 million per annum. This change was made because the deployment of network infrastructure through the Rural Broadband Initiative was expected to be complete. The Telecommunications Development Levy is further adjusted by CPI accounting for inflation each year.

71. While an increase to the Telecommunications Development Levy amount requires an amendment to the Act, a decrease is more straightforward. It can be done by an Order in Council following a recommendation from the Minister (section 92 of the Act).

Problem definition

72. Currently, if there is a need to increase the amount collected through the Telecommunications Development Levy, this would require an amendment to the Act. This can be a lengthy process potentially compounded by any difficulty in obtaining legislative priority for a proposed bill. In practice, it is rare to take an amendment bill through the house for a stand-alone issue like a levy increase.

73. We consider the current framework does not allow enough flexibility to address changes in telecommunications markets. This could result in diminished connectivity outcomes for consumers, as the Government may be unable to fund

services that would otherwise not be offered commercially, or are offered, but not at an affordable price. For instance, we are aware that some rural communities still have challenges accessing high-quality connectivity and that this is an issue that may need to be addressed with further investment.

Questions for stakeholders

16	How well do you consider the process for setting the amount of the Telecommunications Development Levy (in the Act) works? What are the implications of having the amount set in the Act, in terms of consultation, timing, and flexibility for changing needs?

Options

Option 1: Status quo – the Telecommunications Development Levy amount remains set under Schedule 3B of the Act

74. This option would see no change made to the way the amount of the Telecommunications Development Levy is set. An amendment to the Act would be needed to increase the total amount of the levy.

Option 2: Legislative change to provide for the Telecommunications Development Levy amount to be set in regulations (preferred option)

75. An amendment to the Act could be progressed to create a new regulation making power, providing for the Minister to set the Telecommunications Development Levy amount via secondary legislation.

76. If this option were adopted, it would reduce the administrative process and timeframes to increase the Telecommunications Development Levy. We propose that any increase would be based on a justified government need to respond to changing market conditions, consistent with the purposes of the Telecommunications Development Levy. In addition, we propose there would be transparency and consultation requirements in place to ensure those liable for the levy are provided the opportunity to be consulted on any proposed increase.

Benefits	Considerations
• Provides the required flexibility for the Government to adapt the Telecommunications Development Levy amount to meet important connectivity needs not available on a commercial basis. • Levy amount could still be decreased if the need was met and the increased amount was no longer required.	• Appropriate controls around the use of such a regulation making power would need to be drafted into the design of the empowering provision. Controls could include consultation requirements and criteria to guide any increase.

A related matter that we are not currently considering

77. We have heard anecdotally that the current process set out in the Act for calculating the Telecommunications Development Levy is complex and can be administratively burdensome for both liable persons (to disclose a large amount of information and fulfil audit requirements) and the Commission. We are not seeking feedback on this issue at this time. We acknowledge that some stakeholders think this process could be improved, we consider this is a lower priority when compared to the issues outlined above.

Questions for stakeholders

17	Do you agree with MBIE's preferred option (option 2)? Why or why not? Are there any options we have not identified?
18	What measures would you consider necessary to accompany any new regulation making power under MBIE's preferred option? For example, clarifying when relevant stakeholders should be consulted and what considerations should be taken into account.

Section 4: Identifying participants in the market

Background

78. The Commerce Commission has obligations under the Act to monitor different aspects of telecommunications markets (section 9A), along with the performance and development of telecommunications markets.

79. There is currently no positive obligation on market participants to make themselves known to the Commission upon market entry. As a result, there is no exhaustive list of all active telecommunications service providers in New Zealand that can be used for the Commission's monitoring and compliance purposes.

80. Internationally, registration schemes for telecommunications service providers are common. In Canada and Singapore, there are mandatory registration and/or licensing schemes for providers of telecommunications services. In late 2023, the Australian Government sought views on the potential roll out of a mandatory licensing or registration scheme which would capture all telecommunications retailers. For clarity, we are not proposing a licensing regime, these examples are for illustrative purposes.

Problem definition

81. Requirements in the Act are given effect through the monitoring, compliance and enforcement activities of the Commerce Commission. To carry out its functions, the Commission needs to be aware of, and have key information about, participants. Currently the onus is primarily on the Commerce Commission to identify market participants, meaning its list of who is in the market may not be complete.

82. This can result in non-compliance issues for telecommunications providers, if they are not aware of the obligations they have under the Act, with potential costs if the Commission takes action for such non-compliance. Non-compliance can also have a significant impact for consumers. For example, the 111 Contact Code states that providers must ensure that vulnerable consumers have an appropriate means for contacting 111 emergency services in the event of a power failure.

Questions for stakeholders

19	Do you consider there is a need for a registration requirement for telecommunications providers operating in New Zealand (when entering the market, as well as updating contact and other business details over time)? Why or why not?

Options

Option 1: Status quo – no obligation for participants to identify themselves to the Commission for monitoring and enforcement purposes

83. Under this option, no changes would be made. The onus would remain on the Commerce Commission to identify relevant market participants.

Option 2: Mandatory registration requirement for telecommunications market participants

84. Under this option, market participants would have an obligation to make themselves known to the Commission or another government agency (ie MBIE). It could involve an ongoing obligation for providers to update their information if contact details or business offerings change over time.

Benefits	Considerations
• Allows the Commission to accurately identify market participants for monitoring and compliance purposes. • Reduces risk of non-compliance for providers, and in turn benefits consumers. • Increases efficiency for the Commerce Commission as less time and cost is spent identifying market participants.	• Ensuring registration requirements and costs do not create barriers to entry for smaller providers. • Scope of information required – could include provider name, key contacts and possibly other information (for example a high level description of the business) that would assist the Commerce Commission. • Would need to determine what registration information (if any) is publicly available.

MBIE comment

85. MBIE does not have a preferred option at this stage. We are seeking feedback on the costs and benefits of a registration requirement. We note that if a register were created to hold this information, consideration would be given to the costs of establishing and maintaining such a register. Registers are typically run on a cost recovery basis, with fees collected from those registering. MBIE's view is that any registration costs should be kept to a minimum.

Questions for stakeholders

20	What are your views on the options we have identified? Do you have a preference, if so, why? Are there any options we have not identified?
21	What would be the implications of a registration requirement for your business?
22	Do you see any benefits or problems with information provided for registration being released/disclosed publicly? If so, what types of information should or should not be disclosed?

Section 5: Enhancing information flow to the Emergency Location Information System

Background

86. The Emergency Location Information System enables emergency service providers (Fire, Ambulance and Police) to collect and use emergency location information from telecommunications agencies. The information is a crucial component of New Zealand's emergency response system. For example, it allows emergency services to quickly find the location of someone making a 111 call by locating their mobile phone.

Contractual arrangements for the Emergency Location Information System

87. The use and disclosure of emergency location information is enabled by the Telecommunications Information Privacy Code 2020. The Code *permits* telecommunications agencies to provide location information but does not *require* them to provide it. The information is provided according to contractual arrangements between MBIE and telecommunications agencies, all of whom have willingly entered into these contracts. The TCF has a code that supports the establishment of these contractual arrangements, but compliance with that code is not mandatory.

88. The contractual arrangements contrast with other overseas jurisdictions (including the USA, the UK, Canada, and EU nations) which have regulations in place to require providers to make location information available for emergency calls where technically feasible. Some overseas jurisdictions also set regulatory requirements for the accuracy and reliability of emergency location information.

Potential future applications of the Emergency Location Information System

89. There are some potential changes that could be made to the system that should be outlined for context. The Telecommunications Information Privacy Code 2020 allows for 'device location information' to be provided, although this is not happening at present. If enabled, this means emergency service providers could locate a mobile phone even when a 111 call is not in progress. This can only be done to prevent or lessen a serious threat to the life or health of an individual (for example, to locate a missing person).

90. The future potential use of satellite-to-cell mobile calling services might also support the operation of the Emergency Location Information System. It is unclear at this stage what changes (if any) would need to be made to facilitate location information for these calls.

Problem definition

91. We understand that the contractual arrangements with mobile network operators and other telecommunications agencies are generally working well. However, given the importance of emergency location information for emergency responses, it may not be sufficient to rely on providers' willingness to

enter into contractual arrangements. Should any current or new telecommunications agency decide not to support the Emergency Location Information System this would jeopardise the provision of the information, slowing emergency response times and potentially putting lives at risk.

Questions for stakeholders

23	Do you agree with the potential risks relating to the provision of information into the Emergency Location Information System that we have identified? Why or why not?

Options

Option 1: Status quo – continuation of voluntary contractual arrangements

92. Under this option, the Emergency Location Information System and provision of emergency location information would continue to be obtained through voluntary contractual arrangements with telecommunications agencies.

Option 2: Regulating the provision of emergency location information to the Emergency Location Information System in the Act (preferred option)

93. Under this option, the Act would be amended to require telecommunications agencies to provide location information through the Emergency Location Information System. Any information required would be in line with what is permitted through the Telecommunications Information Privacy Code. This option would seek to formalise the existing arrangements, and allow flexibility to incorporate potential future enhancements as technology and the Emergency Location Information System evolves. Consideration would also be given to including details such as reporting requirements, performance expectations, monitoring, and enforcement for non-compliance.

94. We are not currently consulting on the detailed requirements of potential obligations, these will be developed separately should this option be progressed.

Benefits	Considerations
• Ensures the supply of location information. • Future proofs the provision of emergency location information through the Emergency Location Information System.	• Legislative design would need to be carefully considered so as not to reduce flexibility when incorporating new technologies into the market.

Questions for stakeholders

24	Do you agree with MBIE's preferred option (option 2), to regulate the provision of emergency location information? Why or why not?

25	If option 2 were progressed, which types of entities (eg mobile network operators, or other providers that hold information derived from mobile devices) should be captured by new regulatory requirements?
26	What is your view on the potential impacts of progressing option 2, including on providers that would be in scope, and on the system as a whole?

Section 6: Governance settings in 'other' local fibre company constitutions

Background

95. LFCs were established to deliver the UFB initiative. The companies entered into partnership with the Crown to deliver UFB in one or more 'candidate areas'. The 'Invitation to Participate' document that sought proposals from private partners (available on the CIP website) included a list of objectives for LFCs, once established. This included maximising the availability of fibre within agreed areas, specifically layer 1 services and layer 2 services (being loosely defined here as wholesale fibre services) where it was agreed with the Crown.

96. Four LFCs were established to deliver the UFB initiative: Chorus, Enable, Northpower Fibre, and Tuatahi First Fibre. In order to mitigate the monopoly characteristics that would be inherent in the networks when built, each company's Deed of Open Access Undertakings for Fibre Services provides for various matters relating to the build of the UFB network. This includes the supply of unbundled services, non-discrimination and equivalence of supply. These obligations ensure that all retail service providers are being offered the same price and terms for a wholesale product. These settings have underpinned the delivery of high quality fibre services and competition in retail markets.

97. In addition, each LFC has a company constitution. For the three smaller LFCs, these constitutions include the permitted activities of the company and a restriction on retailing and supplying services directly to consumers, as well as other controls. For Chorus, similar restrictions sit in the Act.

Issue 1: Governance of permitted business activities

98. This section distinguishes between Chorus and the 'other' LFCs in order to focus on requests for constitutional amendments that the Government has received from Enable, Tuatahi First Fibre, and Northpower Fibre.

99. The company constitutions of the other LFCs govern all of their business activities. The other LFCs are restricted to providing wholesale fibre infrastructure and cannot enter other markets, such as wireless. The constitutions further restrict the LFCs' operations to layer 1 and 2 of the OSI model. LFCs, as wholesalers, can only build the physical layer of fibre networks (layer 1) and offer the data link layer to retail service providers (layer 2). Retail service providers typically operate at layer 3 and above. The constitutions also prevent the companies from being able to retail or supply any services directly to consumers.

100. The Government added restrictions in the company constitutions to ensure that the other LFCs met their UFB objectives, given the significant government investment in the UFB initiative. The restrictions also give effect to the split between wholesale and retail fibre services that became a fundamental aspect of the Act after the 2018 amendments.

101. As the government holds a non-voting share in the companies, agreement from the Government Shareholder is required to amend most clauses in the companies' constitutions. This reflects the ongoing interest of the government in the operation and maintenance of the UFB networks.

102. There is nothing in the companies' constitutions that indicates the constitutions, or the regulatory controls within them, would change once the build of the UFB network was complete. The expectation is that the other LFCs will continue to build and maintain wholesale fibre networks.

103. The governance of the other LFCs is different to the regulation of Chorus. The Act regulates Chorus' fibre network business and copper network business but does not impose limits on other business activities. For example, Chorus can use wireless technology to connect premises to its network and is able to provide other wholesale services, such as data centre co-location facilities. Chorus has restrictions related to retailing services to end users, and restrictions related to having company directors who are also engaged in retail telecommunications businesses.

Problem definition

104. With the completion of phases one and two of the UFB, the other LFCs have raised questions about the role of their companies in telecommunications markets and the controls that sit in the company constitutions. We understand the other LFCs consider that the settings in their constitutions are too restrictive and prevent them from expanding their networks and developing services for consumers (which could contribute to addressing existing connectivity challenges, including in rural areas).

105. The other LFCs have requested amendments to certain constitutional settings. The requests themselves are commercially sensitive, but the themes include:

- more flexibility around what markets the other LFCs can operate in beyond fibre. This would potentially include venturing into other telecommunications markets such as wireless networks
- a desire for the scope of the constitutions to be more closely aligned with the Deeds of Open Access relating to UFB, rather than governing all business activities of the company, and
- in some cases, being able to supply end users or retail services (for example, supplying consumers with connectivity solutions, selling connectivity equipment or services like networking).

106. We agree that the completion of phases one and two of the UFB build is an appropriate time to consider questions about constitutional settings for the other LFCs. Feedback on this section will be used to inform the Government's decision on the requested amendments from the other LFCs.

Out of scope

107. For clarity we consider some matters to be out of scope for any changes, these are outlined below along with our supporting reasoning:

- any changes that allow the other LFCs to retail or supply telecommunications services to end users (a restriction that Chorus is also subject to), given the importance of the split between wholesaling and retailing fibre services to the regulatory regime
- removing the Government Share from the other LFCs, or its role in the constitutions. The Government made a significant investment into LFCs and has an ongoing interest in ensuring fibre networks are maintained
- any options that place new obligations on the other LFCs via their constitutions, given that the other LFCs are unlikely to agree to any such changes and their agreement is required to amend the constitutions
- other aspects of wider LFC regulatory settings, including any significant changes to the wider regulatory framework for fibre, given a major review was completed in 2018.

Questions for stakeholders

27	Do you agree that it is appropriate to consider changes to the constitutional settings that govern the other LFCs? Why or why not?

Options

Option 1: Status quo – no changes to the constitutional settings for other LFCs

108. The status quo would see us retain existing settings in the constitutions of Enable, Northpower Fibre and Tuatahi First Fibre. As described above, these 'other' LFCs would continue to have different levels of control in regard to permitted activities compared to Chorus.

109. We note that under this option, the Government may still agree to other minor changes to the LFC constitutions, on a case-by-case basis.

Option 2: Allow the other LFCs to operate in any market, with a restriction on supplying telecommunications services to end users (preferred option)

110. This option would alter the restriction on the other LFCs only providing wholesale fibre services. The companies could operate in other markets, or deliver any other service, as long as it is not a retail telecommunications service.

111. This is MBIE's current preferred option. We consider it offers the best balance between addressing the concerns of the other LFCs, with our preference to maintain the wholesale/retail split for telecommunications services. The wholesale/retail split is a fundamental part of the telecommunications regulatory framework.

Benefits	Considerations
• Opportunity to develop new telecommunications solutions – potential positive impact on connectivity options for end users. • Closest to equivalence with Chorus.	• Potential impact on competition in other markets. • Focused and continued investment in fibre could be impacted if companies move into non-telecommunications markets.

Questions for stakeholders

28	Do you agree with MBIE's preferred option (option 2), which would allow the other LFCs to operate in any market, with a restriction on supplying telecommunications services to end users? Why or why not?
29	What impact would there be on competition in other markets if the other LFCs were able to operate in those markets? Do you consider that this needs to be mitigated in some way?

Issue 2: Process to seek agreement to operate at layer 3 or 4

112. The other LFC constitutions restrict them to providing wholesale fibre services. However, these constitutions do include a mechanism for the Minister for Media and Communications and CIP to consent to the other LFCs providing layer 3 (the network layer) or layer 4 (the transport layer) services. These parts of the fibre network are typically provided by internet service providers.

113. There is no standard or formalised process for the three other LFCs to seek agreement from the Minister and CIP to deliver these services. There is also no standard criteria that the Minister or CIP is required to take into account before granting consent.

114. Chorus also has the ability to request an exemption to operate at layer 3 and 4, via a different process, where the Commerce Commission assesses the application. Before agreeing to an exemption, the Commission must have regard to matters listed in the Act, including whether the exemption will harm (or is likely to harm) competition.

Problem definition

115. Requests to deliver layer 3 and 4 services through this process are not common. However, we note that the lack of clarity around the process may impact decisions by the other LFCs to seek such an exemption. We understand that the lack of a formal process to seek consent can create uncertainty for the other LFCs, particularly around timeframes and the priority for processing requests. We also note that the need to have CIP as part of the decision-making process may no longer be relevant now phases one and two of the UFB are complete.

Options

Option 1: Status quo – no change to the process

116. The status quo would result in no changes to the mechanism that sits in the other LFCs' constitutions.

Option 2: Shift the mechanism for other LFCs to seek consent to operate at layer 3 and 4 into the Act (to align with Chorus' process)

117. This option would remove the mechanism to operate at layer 3 and 4 from the constitutions and add it to the Act, aligning it with the process and criteria that Chorus has. The Commerce Commission would be the decision maker.

Benefits	Considerations
• Provides the most certainty for the LFCs – clear criteria and process set out in the Act (which is binding). • Consultation with affected parties is built into the process.	• Potential impact on Commerce Commission – additional workload to assess applications.

MBIE comment

118. MBIE does not have a preferred option. We are interested in feedback on whether the status quo is creating barriers to innovative solutions that would have benefits for end users, and on the implications of any potential changes.

Questions for stakeholders

30	If you are one of the three 'other' local fibre companies, do you have any feedback about the current process? How does the process impact your decisions to seek consent (or not) to operate at layer 3 or 4?
31	Do you support any of the options described above? Why or why not? Are there any other options that we should consider?

Section 7: Other matters

119. This section covers two other issues:

- the increase in fibre networks built by non-regulated fibre service providers, and whether these fibre networks should be considered when the Commerce Commission determines a specified fibre area (Part 2AA of the Act), and
- other minor changes and clarifications that could be made to the Act, including clarifying the pathway between information disclosure and price-quality regulation for regulated fibre providers.

Issue 1: Considering non-regulated fibre networks in specified fibre areas

120. The intent of the specified fibre area framework is to ensure a comparable alternative fibre service is available before Chorus can stop supplying a copper service in an area. The framework requires the Commerce Commission to undertake assessments to determine when a geographic area is serviced by fibre and to then declare it to be a 'specified fibre area'. Chorus can withdraw its copper network in a specified fibre area, and Telecommunications Service Obligation instruments cease to apply to the area.

121. The specified fibre area framework was developed at a time when fibre was being built almost exclusively by the regulated fibre service providers (Chorus, Enable, Tuatahi First Fibre, and Northpower Fibre). However, more market participants, for example wireless internet service providers, are expanding into fibre. Fibre built by these providers is usually vertically integrated, with the wireless internet service provider building and then retailing fibre to consumers in an area.

122. The Commerce Commission considers only the fibre networks built by regulated providers when determining whether a specified fibre area exists. A fibre network that is built by a non-regulated service provider would not meet the definition of a specified fibre service, and so is not considered by the Commerce Commission when determining whether a specified fibre area exists.

Problem definition

123. The fibre market has shifted since the introduction of the specified fibre area framework, when it was expected that regulated fibre service providers (the LFCs) would be the main fibre wholesalers in the market.

124. We are seeking feedback on the impact of this shift in the market, and whether there is a need to amend the scope of what can be considered by the Commerce Commission when determining if a specified fibre area exists. We are not seeking feedback about whether the specified fibre area framework should be expanded to consider other technologies, or on how the specified fibre area framework interacts with existing Telecommunications Service Obligations applicable to Chorus and Spark.

Options

Option 1: Status quo – only fibre built by regulated service providers is considered

125. In this option, fibre networks built by non-regulated fibre service providers would not be considered in determining specified fibre areas.

Option 2: Fibre built by non-regulated fibre service providers to be considered

126. This option would mean networks built by non-regulated fibre service providers could be considered when the Commerce Commission makes a determination about a specified fibre area. We propose that for non-regulated fibre to be included it would need to meet the standards anticipated in the original policy intent. This is because some fibre networks built by non-regulated providers may not be built or offered in the same way as regulated fibre. For example, they may not be offered on an open access basis.

Benefits	Considerations
• Depending on design, the option may encourage non-regulated fibre service providers to include pro-competitive aspects in their networks, ie non-discrimination.	• If there should be regulatory 'bottom lines' for non-regulated fibre to be considered for specified fibre areas (ie pro-competitive obligations such as open access and non-discrimination).

MBIE comment

127. At this stage, we do not have a preferred option. We are seeking feedback to better understand what is happening in the market and if there is a need to progress any regulatory changes here.

Questions for stakeholders

32	Can you provide examples of where non-regulated fibre service providers are deploying fibre, and what type of specifications this fibre is being built to (ie is it openly available or built for private use, is it wholesaled, or sold directly to consumers)?
33	What are your views on the options we have identified? Do you have a preference, if so, why? Are there any options we have not identified?
34	What provisions or minimum standards would need to be in place if fibre built by non-regulated fibre service providers were considered as part of the specified fibre area assessment?

Issue 2: Other minor changes and clarifications

128. If, following analysis of submissions, Cabinet decides to pursue changes in any of the areas identified in this discussion document, it is likely there will be a

Telecommunications Amendment Bill (except in relation to changes that can be addressed in local fibre company constitutions).

129. If such a bill is to be progressed, it would be prudent to take the opportunity to address other minor non-policy issues in the bill at the same time. This would include any changes that have been identified that would improve clarity, address any uncertainty or inconsistencies, and ensure that the Act is relevant and up to date. These types of changes would be similar to the scope of changes that would be considered for regulatory systems amendment bills (see here for more information: https://www.mbie.govt.nz/cross-government-functions/regulatory-stewardship/regulatory-systems-amendment-bills/).

130. The explanatory note to any future bill would likely describe the policy and provisions contained in the bill, as appropriate, and interested parties would have the opportunity to submit on the bill through the Select Committee process.

Clarifying the pathway between information disclosure and price-quality regulation for regulated fibre providers

131. An issue that MBIE may seek to include in a Telecommunications Act amendment bill is ensuring that the pathway between information disclosure and price-quality regulation for regulated fibre fixed line access services is clear. Section 226 of the Act provides for the Commerce Commission to make recommendations to the Minister on the appropriate level of regulation, including bringing LFCs into price-quality regulation.

132. The 2017 departmental disclosure statement for the Telecommunications (New Regulatory Framework) Amendment Bill that led to the relevant provisions, states that "any LFC may later become subject to price-quality regulation, should the Minister accept a recommendation from the Commission that price-quality regulation is necessary."

133. However, in describing the consultation that must occur before the Commission can make a recommendation to the Minister, the Act currently references consultation provisions within another section that has the heading 'Deregulation review'. This could potentially result in confusion that the Commission can recommend only a lower level of regulation to the Minister, which is not the case. The Commission can recommend both regulation and deregulation. This is a matter that could easily be clarified through small drafting edits.

Te Kāwanatanga o Aotearoa
New Zealand Government

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