



COVERSHEET

Minister	Hon Paul Goldsmith	Portfolio	Media and Communications
Title of Cabinet paper	Improving Telecommunications Regulatory and Funding Frameworks	Date to be published	20 March 2025

List of documents that have been proactively released

Date	Title	Author
December 2024	Improving Telecommunications Regulatory and Funding Frameworks	Office of the Minister for Media and Communications
2 December 2024	Improving Telecommunications Regulatory and Funding Frameworks CBC-24-MIN-0124 Minute	Cabinet Office
20 November 2024	Regulatory Impact Statement Improving Telecommunications Regulatory and Funding Frameworks	MBIE

Information redacted

YES / ~~NO~~ *(please select)*

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Some information has been withheld for the reasons of Confidential information entrusted to the Government, Commercial information and Confidential advice to Government.

In Confidence

Office of the Minister for Media and Communications

Cabinet Economic Policy Committee

Improving telecommunications regulatory and funding frameworks

Proposal

- 1 This paper seeks agreement to a package of improvements to telecommunications regulatory and funding frameworks, through changes to local fibre company constitutions and legislative amendments.

Relation to government priorities

- 2 These proposals relate to our focus on productivity and economic growth to increase opportunities and prosperity for all New Zealanders, set out in coalition agreements and the speech from the throne.

Executive Summary

- 3 While the current telecommunications regulatory and funding frameworks are delivering good outcomes for New Zealanders, the work is not done. I am leading work to ensure the regulatory regime supports a well-functioning telecommunications market to improve productivity and support economic development.
- 4 After running a consultation process earlier this year, I am seeking agreement to make the following changes to telecommunications regulatory and funding frameworks:
 - 4.1 Removing certain restrictions on the permitted activities of three local fibre companies, to align with Chorus.
 - 4.2 Progressing amendments to telecommunications legislation to:
 - 4.2.1 Permanently reinstate the rights that allow fibre providers to access shared property to install fibre in certain circumstances and make minor adjustments to the rights to improve their effectiveness.
 - 4.2.2 Mandate membership in an industry dispute resolution scheme for retail telecommunications providers with annual revenue over \$10 million.
 - 4.2.3 Shift the setting of the Telecommunications Development Levy amount from the Telecommunications Act to regulations.
 - 4.2.4 Create an explicit extra-territorial effect in the telecommunications regulatory regime to clarify that offshore providers, such as some satellite operators, are subject to relevant legislative obligations.

- 5 Given the proposal to expand the extra-territorial effect in telecommunications legislation, I am also proposing to introduce a new enforcement regime to address non-compliance with telecommunications regulatory obligations where existing enforcement mechanisms through the New Zealand courts are not practical.

6 Confidential advice to Government

Background

- 7 A review of the Telecommunications Act 2001 was completed in 2018 to adapt the regulatory system for a shift to a fibre-based network infrastructure. While the communications regulatory system is now generally in good health, the job is not done. I am undertaking a programme of regulatory reform to ensure that the regulatory regime continues to support a well-functioning telecommunications market to improve productivity and support economic development.

- 8 This paper seeks Cabinet agreement to a package of legislative and constitutional amendments so that the regulatory regime keeps up with changes in the telecommunications landscape. This follows consultation on a discussion document in May, which the Cabinet Expenditure and Regulatory Review Committee [EXP-24-MIN-002] approved for release.

- 9 The other key items on this work programme are:

9.1 Confidential advice to Government

- 9.2 Critical updates to the National Environment Standards for Telecommunication Facilities (**NESTF**) as part of the Government's RMA reform programme. The NESTF provide for nationally consistent standards to enable the telecommunications industry to roll out infrastructure across New Zealand without resource consents, while minimising environmental effects.

- 9.3 I am also seeking a temporary extension of rights for fibre providers to access shared property to install fibre in certain circumstances, through the Regulatory Systems (Economic Development) Amendment Bill, to minimise the length of time the rights are not available after they expire.

Changes to local fibre company constitutions

- 10 Three of the companies established to deliver the Ultrafast Broadband initiative (**UFB**) are seeking changes to their company constitutions. Agreement from Government is required because we still hold a non-voting share in the companies. The three companies are Enable Networks, Tuatahi First Fibre, and Northpower Fibre. These companies are referred to as the '**other LFCs**' to distinguish them from Chorus, which is also a local fibre company as defined in the Telecommunications Act.

Removing restrictions on permitted business activities

- 11 The constitutions govern the companies' business activities, including limiting them to providing wholesale fibre services only. I am proposing to expand the range of permitted business activities the other LFCs can engage in to align with the permitted activities of Chorus. This will allow the other LFCs to provide any wholesale telecommunications services (i.e. wireless or mobile broadband) and any non-telecommunications service (i.e. civil works). All local fibre companies would remain restricted from retailing telecommunications services as this wholesale/retail split is delivering good outcomes in regard to competition in the market.
- 12 Given the UFB is complete, there is no reason that the three smaller LFCs should face more restrictions on their business activities than Chorus. The change will mean the companies can innovate, expand their businesses, and support the delivery of better connectivity solutions to New Zealanders, particularly in rural areas. My proposed change balances the benefits of removing restrictions from the other LFCs with the need to retain the split between retail and wholesale telecommunications services.

Package of legislative amendments

- 13 Feedback from consultation has confirmed the need for regulatory change in a number of areas. I propose to make the following changes to telecommunications legislation.

Permanently reinstate rights for fibre providers to access shared property to install fibre

- 14 The Telecommunications Act establishes rights for fibre providers to access shared property to install fibre in certain circumstances, where consent from affected property owners would otherwise be required. These rights expire on 1 January 2025. As noted above, I am currently seeking a temporary extension of the rights.
- 15 I am now also seeking Cabinet agreement to amend the Telecommunications Act to reinstate the rights permanently. This will support continued fibre uptake, providing certainty for consumers and fibre providers. A permanent reinstatement recognises that the demand for fibre will continue to increase as fibre providers expand their networks and as housing is intensified within existing fibre footprints. Existing protection mechanisms for affected property owners would remain in place (e.g. access to dispute resolution).
- 16 I am also seeking to make two amendments that will allow the rights to be used in more scenarios, further supporting fibre uptake:
 - 16.1 Expanding the scope of the 'medium impact' installation category. For the area of hard surface impacted by fibre installation, the maximum length of impact would increase from 3 to 8 meters and the maximum total area of impact would increase from 4m² to 5m².
 - 16.2 Removing the need for a broadband retail order to be placed with an internet service provider to invoke the rights. This will mean a property owner can request a fibre install directly from a fibre provider, resulting in more 'fibre ready' properties.

Mandate membership in an industry dispute resolution scheme for retail telecommunications providers with annual telecommunications revenue over \$10 million

- 17 I am proposing to mandate membership in an industry dispute resolution scheme, as defined in the Telecommunications Act, for medium to large retail telecommunications providers. Membership is currently voluntary. The Commerce Commission estimates around 200,000 consumers do not have access to an industry dispute resolution scheme. This can lead to poor consumer outcomes, particularly as consumer complaints about telecommunications services remain persistently high.
- 18 I have sought to mitigate the impact of increased costs on small telecommunications providers by proposing a revenue threshold of \$10 million per annum. This ensures there is still a low barrier to entry to the telecommunications market, to support competition and innovation.
- 19 Penalties for non-compliance will be in line with existing penalties for consumer matters in the Telecommunications Act (i.e. a breach of a Commission code). These will be available to the Commerce Commission if a provider has not joined the scheme within six months of meeting the revenue threshold.
- 20 In addition, I propose to amend the Telecommunications Act to make it easier for industry dispute resolution schemes to be set up. More telecommunications services are being delivered by businesses outside the telecommunications industry, for example electricity companies offering bundled services. Updating the Telecommunications Act so that these types of schemes can be recognised as industry dispute resolution schemes will better reflect the market. All industry dispute resolution schemes will still be reviewed by the Commerce Commission. I acknowledge this may result in more costs for the Commerce Commission.
- 21 Industry dispute resolution schemes hear complaints relating to Commerce Commission codes or codes made by the industry body. Amendments may be needed to ensure consistency of industry codes between schemes, should more industry dispute resolution schemes emerge. My officials will engage with industry on this. If changes of this nature are needed, I will report on this on introduction of the bill.

Setting the Telecommunications Development Levy amount in regulations

- 22 The Telecommunications Development Levy funds non-commercial telecommunications services and infrastructure, including responding to rural connectivity challenges. The levy was originally set at \$50 million per year but was decreased to \$10 million in 2020. The cost of the levy is allocated to liable telecommunications providers proportionate to their revenue.
- 23 The amount of the Telecommunications Development Levy is currently set in the Telecommunications Act and increasing it requires an amendment bill. I propose the Telecommunications Development Levy amount is set through regulation instead. Amending the amount through a regulation-making process allows us to respond to connectivity challenges more flexibly. I note that my proposal includes a requirement to consult with liable payees before increasing the levy amount. This will allow for necessary flexibility to set the amount at an appropriate level, while keeping regulatory uncertainty to a minimum.

- 24 This change was supported by representative groups Rural Women NZ and the Telecommunications User Association of New Zealand.
- 25 Current levy payers were not supportive of this proposal. These submitters stated it would lead to more frequent and unjustified levy increases and that having the amount in the Telecommunications Act provides for more ‘checks and balances’ when the Government wishes to increase the levy. As noted above, in response to these concerns, I am proposing a consultation requirement is built in. Making regulations also has appropriate ‘checks and balances’ given decision-making about any increase needs to come back to Cabinet.

Ensure offshore providers are made subject to telecommunications regulatory obligations (creating an explicit extra-territorial effect)

- 26 The telecommunications regulatory regime did not anticipate that network operators providing direct-to-consumer telecommunications services would be based offshore. However, we have seen an increase in availability and uptake of telecommunications services that are partially or fully based offshore (e.g. low-earth orbit satellites). I expect this trend to continue. There are scenarios where these providers are not expressly subject to the same regulatory obligations as a New Zealand based provider, impacting competition, consumer, and national security outcomes.
- 27 Offshore telecommunications providers offering services to people in New Zealand should be subject to the same obligations as a provider operating from New Zealand. I am proposing to amend the Telecommunications Act and TICSAs through an omnibus bill so that it is explicit that offshore telecommunications providers are subject to relevant parts of the Acts, including:
- 27.1 Provisions in the Telecommunications Act relating to the Telecommunications Development Levy and the Telecommunications Regulatory Levy (which recovers the Commerce Commission cost of regulating the market).
- 27.2 Part 7 of the Telecommunications Act, relating to the provision of services by retail service providers to consumers. This would mean offshore providers would be subject to relevant Commerce Commission codes and the proposed amendment to mandate membership in an industry dispute resolution scheme.
- 27.3 Relevant regulation-making powers in Part 5 in the Telecommunications Act, for example, relating to regulation of emergency call services.
- 27.4 Provisions in Part 2 of the Telecommunications Act, where the service the offshore provider is offering in New Zealand is made a designated or specified service under Schedule 1 of the Telecommunications Act. Designated and specified services are wholesale services that are regulated to promote competition for the long-term benefit of end users.
- 27.5 The network operator obligations in TICSAs, by clarifying that network operators can be based on or offshore. These obligations include establishing interception capability by New Zealand agencies and notifying the Government Communications Security Bureau of proposed changes to their networks to ensure network security.

Addressing potential non-compliance with regulatory obligations by offshore providers

- 28 There are enforcement challenges related to creating an extra-territorial effect in legislation, as existing enforcement mechanisms in the Telecommunications Act and TICSAs are given effect through New Zealand courts. Existing enforcement pathways may be impractical if an offshore provider does not have a significant presence in New Zealand and refuses to submit to the jurisdiction of the New Zealand courts.
- 29 To address this issue, I am proposing to create an enforcement regime that would prohibit or restrict an offending party's ability to hold or use radio spectrum licences. This would be used in the event a party does not comply with relevant New Zealand telecommunications law and the subsequent enforcement mechanisms through New Zealand courts (e.g. penalties and compliance orders). The regulator could seek for a licence to be revoked or limited, and the offending party may be restricted from accessing spectrum in future. This would directly impact, and in some cases, prevent, the provider offering services in New Zealand.
- 30 I note this option could not be used to address non-compliance from a telecommunications provider that does not rely on licensed spectrum. However, officials advise that the number of providers using unlicensed spectrum is likely to be small, given the benefits of licensed spectrum for speed and capacity of telecommunications services.

Minor and technical changes

- 31 I am also proposing to remove instances of inconsistency and ambiguity in drafting from the Telecommunications Act and to amend the Telecommunications (Civil Infringement Notifications) Regulations to reflect the Commerce Commission's inability to receive cheques.
- 32 In addition, I want to ensure the regulations for the delivery of regulated fibre services remain as up to date as possible, given they often incorporate highly technical material. To do this, I propose to amend the Telecommunications Act so that amendments to material incorporated into these regulations by reference can be given legal effect through notice in the Gazette.

Implementation

- 33 Confidential advice to Government
- 34 If changes to local fibre company constitutions are agreed, MBIE will lead implementation of these changes with the other LFCs and seek the Minister of Finance's signature once changes are drafted.

Cost-of-living Implications

- 35 Telecommunications providers that are not already in an industry dispute resolution scheme and must join one are likely to pass the cost of membership through to consumers. There may be a small cost impact for these consumers. The exact financial impact will depend on the annual fee of the scheme (which is set by the scheme provider, typically proportionate to a provider's annual revenue),
- 36 I note that for the majority of telecommunications consumers, there will be no cost-of-living implications.

Financial Implications

- 37 No financial implications for the Crown would arise from the proposals in this paper.

Legislative Implications

- 38 A telecommunications amendment bill and a telecommunications omnibus bill will be needed to implement the proposals in this paper. The omnibus bill will implement proposals relating to the extra-territorial effect of the regulatory regime and will amend the Telecommunications Act 2001, the Telecommunications (Interception Capability and Security) Act 2013 and the Radiocommunications Act 1989.
- 39 Confidential advice to Government

Impact Analysis

Regulatory Impact Statement

- 40 The regulatory impact analysis requirements apply to the legislative proposals in this paper. A Regulatory Impact Statement is appended to this paper. The attached Regulatory Impact Statement was assessed by the Ministry of Business, Innovation and Employment's Regulatory Impact Assessment Quality Assurance Panel as meeting the quality assurance criteria.

Population Implications

- 41 This proposal does not have any impacts on specific population groups.

Human Rights

- 42 I consider the proposals in this paper are consistent with the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993.

Consultation

- 43 I released a public discussion document to inform my decisions on the proposals in this paper in May. MBIE received 28 submissions from a range of telecommunications industry stakeholders and related advocacy groups.
- 44 Officials from the Treasury, Commerce Commission, Government Communications Security Bureau, New Zealand Security Intelligence Service, Ministry of Justice, Ministry of Foreign Affairs and Trade and New Zealand Police were consulted on the proposals in this paper. The Department of the Prime Minister and Cabinet was informed.

- 45 Confidential advice to Government

Communications

- 46 MBIE will publish information about policy decisions on its website, as well as contacting those that submitted on the discussion document directly.

Proactive Release

- 47 I intend to release this paper proactively, along with the Regulatory Impact Statement, following Cabinet decisions. This proactive release would be subject to redactions as appropriate under the Official Information Act 1982.

Recommendations

The Minister for Media and Communications recommends that the Committee:

- 1 **note** Cabinet previously agreed to release a discussion document on enhancements to telecommunications regulatory and funding frameworks [CAB-22-MIN-0365] and that feedback from consultation has informed the proposals in this paper;

Amendments to other local fibre company constitutions

- 2 **agree** that the Minister of Finance, acting on behalf of the Crown, may give consent to amend the company constitutions of Enable Networks, Tuatahi First Fibre and Northpower Fibre to expand their permitted activities, in line with permitted activities for Chorus in the Telecommunications Act;

Legislative changes

- 3 **agree** to amend the Telecommunications Act to permanently reinstate the rights that allow fibre providers to access shared property to install fibre in certain circumstances and maintain the protection mechanisms for affected persons;
- 4 **agree** to two policy changes so that the rights to access shared property to install fibre can be invoked in a greater range of situations:

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- 4.1 amend the Telecommunications (Property Access) Regulations 2017 to expand the scope of the 'medium impact' category, permitting impacts on hard surfaces to have a maximum length of 8m and a maximum area of 5m²;
- 4.2 amend the Telecommunications Act to allow for the rights to be invoked when a fibre installation order is placed directly with a fibre provider;
- 5 **agree** to amend the Telecommunications Act to mandate membership in an industry dispute resolution scheme for retail telecommunications service providers with an annual telecommunications revenue over \$10 million;
- 6 **agree** that enforcement options in section 156B of the Telecommunications Act apply where a telecommunications provider in scope of the requirement in recommendation 5 fails to join a scheme after six months of becoming liable to do so;
- 7 **agree** to amend the Telecommunications Act to ensure industry dispute resolution schemes can emerge from outside the telecommunications industry, if they serve the telecommunications industry and have notified the Commerce Commission of their operation for the purposes of its review under the Telecommunications Act;
- 8 **agree** that further industry consultation will be undertaken to determine if there is a need to make amendments to ensure consistency between industry dispute resolution schemes (particularly in relation to industry codes) if more industry dispute resolution schemes emerge, and that any changes of this nature will be reported to Cabinet when seeking approval to introduce the bill;
- 9 **agree** to amend the Telecommunications Act to create a new regulation making power that would enable the Telecommunications Development Levy amount to be set in regulations via an Order in Council, following the recommendation of the relevant Minister under the Telecommunications Act;
- 10 **note** the intention is to carry forward the current amount of the Telecommunications Development Levy into the first set of regulations giving effect to recommendation 9;
- 11 **agree** the first set of regulations to give effect to recommendation 9 will exclude a consultation requirement if the amount is set at the same level as in the Telecommunications Act, but the making of any regulations to increase the levy amount will require consultation with levy payers;
- 12 **agree** to amend the Telecommunications Act and Telecommunications (Interception Capability and Security) Act so that offshore telecommunications providers are explicitly subject to relevant parts of these Acts, including:
 - 12.1 liability for the Telecommunications Development Levy and Telecommunications Regulatory Levy (where the provider meets the test in the Telecommunications Act);
 - 12.2 part 7 of the Telecommunications Act, relating to the provision of services by retail service providers to consumers (including proposed mandatory dispute resolution services);
 - 12.3 regulations made under part 5 of the Telecommunications Act;

- 12.4 part 2 of the Telecommunications Act, relating to designated and specified services;
- 12.5 network operator obligations in TICSA;
- 13 **agree** to create a new enforcement regime in legislation so that a party's ability to hold or use radio spectrum licences can be prohibited or restricted in the event that the party does not comply with relevant New Zealand telecommunications law and existing enforcement mechanisms are exhausted or not feasible (including through New Zealand courts);
- 14 **agree** to make the minor amendments to legislation and regulations described at paragraphs 30 and 31 and to mitigate any unintended consequences;
- 15 **note** that proposals will be given effect through a telecommunications amendment bill and a telecommunications omnibus bill, permitted under Standing Order 267(1)(a);
- 16 Confidential advice to Government
- 17 **note** that following the passage of the legislative amendments I will seek to make regulations to give effect to recommendations 4.1, 9 and 10;
- 18 **invite** the Minister for Media and Communications to issue drafting instructions to the Parliamentary Counsel Office to give effect to the recommendations in this paper;
- 19 **authorise** the Minister for Media and Communications to approve the release of an exposure draft of the legislation, if the Minister considers it appropriate to do so;
- 20 **authorise** the Minister for Media and Communications to make further decisions on minor and technical matters that are in line with the policy decisions in this paper and existing Cabinet decisions where necessary;

Broader telecommunications regulatory reform work programme

- 21 Confidential advice to Government

Authorised for lodgement

Hon Paul Goldsmith

Minister for Media and Communications