



**MINISTRY OF BUSINESS,
INNOVATION & EMPLOYMENT**
HIKINA WHAKATUTUKI



Exposure draft of regulations to be made under section 226 of the Telecommunications Act 2001

Request for submissions

June 2019

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How to have your say

Submissions process

The Ministry of Business, Innovation and Employment (MBIE) seeks written submissions on the exposure draft of the Telecommunications (Fibre Regulatory Settings) Regulations 2019, made under section 226 of the Telecommunications Act 2001 (the Act) by 3 July 2019. Your submission may respond to any element of these draft regulations (the draft Regulations). Where possible, please include evidence to support your views, for example references to independent research, facts and figures, or relevant examples.

Please include your name and the name of your organisation in 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 Team
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

Use of information

The information provided in submissions will be used to inform MBIE's policy development process, and will inform advice to Ministers on the type of regulation applying to each regulated fibre service provider as well as the description of the Fibre Fixed Line Services subject to regulation.

Release of information

MBIE intends to upload PDF 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 clearly specify otherwise in your submission. If your submission contains any information that is confidential 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.

Private information

The Privacy Act 1993 establishes certain principles with respect to the collection, use and disclosure of information about individuals by various agencies, including MBIE. Any personal information you supply to MBIE in the course of making a submission will only be used for the purpose of assisting in the development of policy advice in relation to this review. Please clearly indicate in the cover letter or e-mail accompanying your submission if you do not wish your name, or any other personal information, to be included in any summary of submissions that MBIE may publish.

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List of Acronyms

the Act	Telecommunications Act 2001
CIP	Crown Infrastructure Partners
FFLAS	Fibre Fixed Line Access Services
LFC	Local Fibre Companies
MBIE	Ministry of Business, Innovation and Employment
UFB	Ultra Fast Broadband

1 Introduction

Purpose of this consultation paper and context

Purpose

1. The purpose of this consultation paper is to obtain stakeholders views on the proposed content for regulations to be made under section 226 of the Telecommunications Act, 2001 (the Act). The draft regulations prescribe the type of regulation applying to each regulated fibre service provider as well as the description of the Fibre Fixed Line Access Services (FFLAS) subject to regulation.

Context

2. The Act, as amended in November 2018 by the Telecommunications (New Regulatory Framework) Amendment Act 2018, supports the government objectives for access to broadband communications technologies, in particular the Ultra Fast Broadband (UFB) initiative.
3. The amendments introduced a new regulatory framework that aims to provide a stable and predictable regulatory environment to further encourage network investment and innovation, prevent excessive profits arising from monopoly services and more generally ensure that consumers have access to quality services at affordable prices.
4. To further these objectives, the Governor-General may make regulations. The regulations will identify the fibre service providers subject to regulation, the type of regulation applying to each of them and the services subject to regulation.

Legal Framework

5. The Governor-General may make regulations under section 226 of the Act prescribing a person who provides FFLAS, as being subject to information disclosure, price quality regulation, or both.
6. The effect of being subject to information disclosure is that the Commission will require the fibre service provider to disclose information that will allow the Commission and stakeholders to assess whether the purpose of Part 6 of Act is being met.
7. The effect of being subject to price quality regulation is that the Commission will determine the maximum prices and/or revenues the fibre service provider is allowed to earn from its regulated fibre services, as well as the quality at which those services must be provided.
8. Regulations under section 226 of the Act must also describe the services in respect of which the person is subject to regulation.
9. The Governor-General may also make regulations prescribing which services are Anchor Services under section 227 of the Act, and which services are Direct Fibre Access services

under section 228 of the Act. This paper does not cover these draft regulations, which will be made later.

What does this consultation paper do?

10. This consultation paper seeks your views on the exposure draft of the regulations under section 226 of the Act.

The proposed content of the draft regulations

Fibre service providers subject to regulation

11. We intend to regulate all existing UFB service providers. These are:
 - a. **Chorus Limited (Chorus)**, the largest wholesale fibre service provider. Crown Infrastructure Partners (CIP) has contracted Chorus to deploy and operate 69.4 per cent of the UFB network, covering about 1.3 million homes, businesses, schools and medical centres right across New Zealand (except in the areas contracted to other Local Fibre Companies) by 2022.
 - b. **Other Local Fibre Companies (LFCs)**, who were contracted by CIP to deploy and operate UFB in specific geographic regions:
 - i. UltraFast Fibre Limited (13.7 per cent of the network);
 - ii. Enable Networks Limited (15.3 per cent of the network); and
 - iii. Northpower Fibre Limited and Northpower LFC2 Limited (together covering 1.6 per cent of the network).

Description of the services subject to regulation

12. We intend to regulate all FFLAS.
13. FFLAS are described in the Act as:

fibre fixed line access service—

(a) means a telecommunications service that enables access to, and interconnection with, a regulated fibre service provider's fibre network; but

(b) does not include the following:

(i) a telecommunications service provided by a regulated fibre service provider (F) if the ultimate recipient of the service is F or a related party of F (as if the test for related parties were the same as the test in section 69U, applied with any necessary modifications):

(ii) a telecommunications service provided, in any part other than a part located within an end-user's premises or building, over a copper line:

(iii) a telecommunications service used exclusively in connection with a service described in paragraph (ii)

fibre network means a network structure used to deliver telecommunications services over fibre media that connects the user-network interface (or equivalent facility) of an end-user's premises, building, or other access point to a regulated fibre service provider's fibre handover point

telecommunications service means any goods, services, equipment, and facilities that enable or facilitate telecommunication

Type of regulation applying to each UFB provider

14. We intend to make Chorus subject to price-quality regulation given its dominant position in the wholesale market.
15. The purpose of price-quality regulation is to limit the ability of the fibre service providers to earn excessive profits while providing incentives to innovate and invest in the network infrastructure. This type of regulation aims to ensure that providers deliver services efficiently and meet the quality standards expected by consumers.
16. We intend to make Chorus and the other LFCs subject to information disclosure regulation. We acknowledge that the other LFCs face some competition (for example, from Chorus' copper network). However, we consider it appropriate that these companies be subject to information disclosure regulation, as it is still unclear whether other technologies will be able to match fibre's capabilities in the future and provide effective competition.
17. The purpose of information disclosure regulation is to enable the Commission and stakeholders to assess the performance and pricing of the fibre service provider's services. It enables the Commission to test whether the regulated provider is earning excessive profits. It also enables the Commission to assess whether there are grounds to introduce further price-quality regulation in the future.
18. Annex 1 of this paper includes the proposed draft regulations.

Questions

1	Is the proposed content of these draft regulations sufficient to describe the services in respect of which the identified UFB providers are subject to information disclosure regulation, price-quality regulation, or both?
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Process and timeline

The process for making regulations

19. This consultation paper focuses on the draft regulations which identify the wholesale fibre companies subject to regulation and the type of regulation they will be subject to. Subsequent consultation papers will focus on regulations prescribing which services are Anchor Services and which services are Direct Fibre Access Services.

20. The proposed regulations are intended to come into force on 31 December 2021. They will then continue in force unless the Commission, after a review, recommends changes to the Minister of Broadcasting, Communications and Digital Media, and the regulations are amended in light of those recommendations.
21. After consultation on this document, we will analyse feedback, submissions and any other evidence before making recommendations to the Minister on the final text for the regulations.

2 Recap of questions

1	Is the proposed content of these draft regulations sufficient to describe the services in respect of which the identified UFB providers are subject to information disclosure regulation, price-quality regulation, or both?
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Annex 1: Exposure draft

DRAFT FOR CONSULTATION

Telecommunications (Fibre Regulatory Settings) Regulations 2019

Governor-General

Order in Council

At Wellington this day of 2019

Present:
in Council

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

- (a) on the advice and with the consent of the Executive Council; and
- (b) on the recommendation of the Minister of Broadcasting, Communications, and Digital Media given in accordance with section 226(1) of that Act.

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Transitional, savings, and related provisions

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Regulations

1 Title

These regulations are the Telecommunications (Fibre Regulatory Settings) Regulations 2019.

2 Commencement

These regulations come into force on 31 December 2021.

3 Interpretation

In these regulations, unless the context otherwise requires,—

Act means the Telecommunications Act 2001

4 Transitional, savings, and related provisions

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

5 Persons subject to information disclosure regulation

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

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

6 Persons subject to price-quality regulation

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

Column 1	Column 2
Person subject to price-quality regulation	Services subject to regulations
Chorus Limited	All fibre fixed line access services

Schedule
Transitional, savings, and related provisions

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Part 1
Provisions relating to these regulations as made

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

Clerk of the Executive Council.

Explanatory note

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

Issued under the authority of the Legislation Act 2012.

Date of notification in *Gazette*:

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