



## Telecommunications Operators (Commerce Commission Costs) Levy Regulations 2019

Patsy Reddy, Governor-General

### Order in Council

At Wellington this 23rd day of September 2019

Present:

Her Excellency the Governor-General in Council

These regulations are made under sections 11 and 12 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 made in accordance with sections 12(5) and 13 of that Act.

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## Regulations

### 1 Title

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

### 2 Commencement

These regulations come into force on 31 October 2019.

### 3 Interpretation

In these regulations, unless the context otherwise requires,—

**Act** means the Telecommunications Act 2001

**final qualified revenue**, in relation to a telecommunications operator and a financial year, means the amount included in the Commission's determination in accordance with section 88(a) of the Act as the operator's qualified revenue for the financial year

**minimum telecommunications revenue** has the meaning set out in section 80 of the Act

**telecommunications operator**, in relation to a financial year (**financial year A**), means every liable person except the following:

- (a) a liable person who was not trading in the financial year preceding financial year A;
- (b) a liable person whose telecommunications revenue for the financial year preceding financial year A was less than the minimum telecommunications revenue.

### 4 Levy on telecommunications operators

- (1) Every person who is a telecommunications operator during all or part of a financial year must pay a levy for that financial year to the Minister.
- (2) For the financial years beginning on 1 July 2018, 1 July 2019, 1 July 2020, and 1 July 2021,—
  - (a) the levy is made up of the relevant sub-levies specified under clause 1 of Schedule 1; and
  - (b) each sub-levy is calculated under clause 2 of Schedule 1.
- (3) For the financial year beginning on 1 July 2022 and each subsequent financial year, the levy is calculated under Schedule 2.

### 5 How and when levy must be paid

- (1) The Minister must collect the levy annually.

- (2) The due date for each payment is the 30th working day after the Commission's final liability allocation determination for the financial year is publicly notified under section 87 of the Act.

#### **6 Minister must notify levy amount**

The Minister must notify each telecommunications operator of the amount of its levy (calculated under clause 2 of Schedule 1, or Schedule 2, as applicable) at least 5 working days before payment is due.

#### **7 Revocation**

The Telecommunications Operators (Commerce Commission Costs) Levy Regulations 2011 (SR 2011/325) are revoked.

### **Schedule 1**

#### **Calculation of levy for financial years beginning 1 July 2018, 2019, 2020, and 2021**

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#### **1 Sub-levies payable**

The sub-levies for, or in connection with, the functions, powers, and duties set out in column 1 of a row of the following table must be paid by the persons who, during all or part of the financial year for which the sub-levy is payable, are the telecommunications operators specified in column 2 of that row:

<b>Column 1</b>	<b>Column 2</b>
<b>Functions, powers, and duties for which sub-levy payable</b>	<b>Telecommunications operators who must pay sub-levy</b>
Regulation of the telecommunications sector (other than information disclosure regulation and price-quality regulation)	All telecommunications operators
Information disclosure regulation	Chorus Limited, Enable Networks Limited, Northpower Fibre Limited, Northpower LFC2 Limited, UltraFast Fibre Limited
Price-quality regulation	Chorus Limited

#### **2 Basis of calculation of sub-levy**

- (1) A sub-levy payable for the financial year must be calculated as follows:

$$(a \div b) \times c$$

where—

- a is the amount of the telecommunications operator's final qualified revenue
- b is the sum of the final qualified revenue of all telecommunications operators who are liable to pay the sub-levy
- c is the amount of the Commission's costs for the financial year.

- (2) In this clause, **Commission's costs**—
- (a) means the amount identified in the Commission's audited financial statements for the financial year as the costs of the Commission for, or in connection with, the performance of the Commission's functions and duties, and the exercise of its powers, set out in column 1 of the table in clause 1 for the sub-levy; but
- (b) does not include—
- (i) any costs of the Commission in relation to a determination or an application for a determination that are met by the parties to the determination under section 55 of the Act; and
- (ii) any costs of the Commission in relation to a determination that are met by a TSO provider under section 94A or 94B of the Act; and
- (iii) any costs of litigation incurred for, or in connection with, the Commission's performance of its functions and duties, and exercise of its powers, under the Act.

## Schedule 2

### Calculation of levy from 1 July 2022

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#### Basis of calculation of levy

- 1 The levy payable for the financial year must be calculated as follows:

$$(a \div b) \times c$$

where—

- a is the amount of the telecommunications operator's final qualified revenue
- b is the sum of final qualified revenue of all telecommunications operators
- c is the amount of the Commission's costs for the financial year.
- 2 In this schedule, **Commission's costs**—
- (a) means the amount identified in the Commission's audited financial statements for the financial year as the costs of the Commission for, or in connection with, the performance of the Commission's functions and duties, and the exercise of its powers under the Act; but
- (b) does not include—
- (i) any costs of the Commission in relation to a determination or an application for a determination that are met by the parties to the determination under section 55 of the Act; and
- (ii) any costs of the Commission in relation to a determination that are met by a TSO provider under section 94A or 94B of the Act; and

- (iii) any costs of litigation incurred for, or in connection with, the Commission's performance of its functions and duties, and exercise of its powers, under the Act.

Michael Webster,  
Clerk of the Executive Council.

### Explanatory note

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

These regulations, which come into force on 31 October 2019, revoke and replace the Telecommunications Operators (Commerce Commission Costs) Levy Regulations 2011 (the **2011 regulations**). They impose levies on telecommunications operators to cover the costs incurred by the Commerce Commission in performing and exercising its functions, powers, and duties under the Telecommunications Act 2001 (the **Act**) (except certain determinations, where costs are required to be met by parties to the determination, and litigation).

The main difference between these regulations and the 2011 regulations is that, for the financial years beginning 1 July 2018, 1 July 2019, 1 July 2020, and 1 July 2021, 2 additional sub-levies are payable as follows:

- regulated service providers who will be subject to information disclosure regulation must pay a sub-levy for costs associated with that regulation:
- regulated service providers who will be subject to price-quality regulation must pay a sub-levy for costs associated with that regulation.

Issued under the authority of the Legislation Act 2012.

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