

2 August 2024

**To:** Providers of fibre fixed line access services subject to information disclosure regulation under Part 6 of the Telecommunication Act 2001

Attention: [REDACTED]

By e-mail only: [REDACTED]  
[REDACTED]

Tēnā koutou,

## **Notice of conditional exemption applying to ID-only regulated fibre providers in relation to reporting on quality (availability) under the Fibre Information Disclosure Determination 2021**

1. The Commerce Commission (the **Commission**) is issuing a conditional exemption to certain providers of fibre fixed line access services (**fibre providers**) under the Fibre Information Disclosure Determination 2021, as amended (the **ID Determination**), for certain quality reporting requirements.<sup>1</sup> This conditional exemption expires on 31 December 2024.
2. This notice provides an exemption for all ID-only regulated providers (**ID-only fibre providers**) from disclosing information within the monthly Report on Quality that relies on the term “outage” in the ID Determination, on the condition that the term “outage” as outlined in paragraph 19 of this notice is applied instead.<sup>2</sup> This conditional exemption applies to the Report on Quality required for each month of disclosure year 2024 and the months of disclosure year 2025 up to and including the month of December 2024, as specified in paragraph 18 of this notice. Our decision to grant this conditional exemption and further details are outlined in paragraphs 16 – 23 of this notice.

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<sup>1</sup> Commerce Commission, *Fibre Information Disclosure Determination 2021* [2021] NZCC 24, as amended, 28 July 2022.

<sup>2</sup> The ID-only fibre providers are Enable Networks, Northpower Fibre and Tuatahi First Fibre. Clause 1.4.3 of the ID Determination defines **ID-only regulated provider** as a person who is prescribed in regulations made under s 226 of the Act as being subject to information disclosure regulation, but excludes Chorus.

3. We have issued this conditional exemption because we understand it is challenging for ID-only fibre providers to complete certain ID requirements within the Reports on Quality, specifically those related to calculations used as an input to availability and fault reporting. The challenge arises from the “cessation in the supply” aspect of the “outage” definition combined with the limitations of ID-only fibre providers’ current systems.
4. We note that the term “outage” is defined in the Fibre Input Methodologies Determination 2020, as amended (the **IM Determination**). The IM Determination definition of “outage” is also used in the ID Determination. For ID purposes, the term “outage” currently means “for the purposes of Part 2, a cessation in the supply of ID FFLAS; [...]”.<sup>3</sup>
5. We also recently published a draft decision to amend to the IM Determination definition of “outage”.<sup>4</sup> We will take into account stakeholder feedback on the IM determination draft decision to consider whether an amendment to this exemption may be required.
6. Our full notice is below, including an outline of the background surrounding this exemption, and the basis for our decision.

### Background

7. All fibre providers are subject to information disclosure (**ID**) regulation as a result of regulations made by the Governor-General under s 226 of the Telecommunications Act 2001 (the **Act**).<sup>5</sup> The fibre providers are:
  - 7.1 Chorus Limited (**Chorus**); and
  - 7.2 Enable Networks Limited (**Enable**), Northpower Fibre Limited (**Northpower**), and Tuatahi First Fibre Limited (**Tuatahi**) (together, the **ID-only fibre providers**).
8. Fibre providers must complete and publicly disclose a Report on Quality no later than five months after the end of each disclosure year.<sup>6</sup> The fibre provider's disclosure years and corresponding due dates are available under the “Part 4 & Part 6 Information Disclosure Annual Public Due Dates Graphic” on our website.<sup>7</sup>

<sup>3</sup> For the full definition of “outage”, see clause 1.1.4(2) of *Fibre Input Methodologies Determination 2020* [2020] NZCC 21, as amended, 28 June 2023.

<sup>4</sup> Commerce Commission, *Draft IM determination on expenditure, quality and revenue*, 17 July 2024. Documents available here: <https://comcom.govt.nz/regulated-industries/input-methodologies/input-methodologies-for-fibre/projects/amendments-to-the-fibre-input-methodologies-for-the-2025-2028-fibre-price-quality-path?target=documents&root=358742>

<sup>5</sup> Telecommunications (Regulated Fibre Service Providers) Regulations 2019, regulation 5.

<sup>6</sup> Commerce Commission, *Fibre-Information-Disclosure-Amendment- Determination-28-July-2022*. ID Determination Clauses –2.3.3 and 2.4.4. Page 33 and 37.

<sup>7</sup> Commerce Commission, *Current information disclosure requirements for fibre*, available here: <https://comcom.govt.nz/data/assets/image/0023/324680/Part-4-and-part-6-information-disclosure-annual-public-due-dates.jpg>



9. Chorus and the ID-only fibre providers each have their own quality Schedules to complete for each disclosure year. The Excel template for Chorus' Report on Quality is in Schedule 19, while the template for the ID-only fibre providers is in Schedule 20.<sup>8</sup> Schedule 23 of the ID Determination sets out the definitions used for certain line items within these schedules. Of these line items, only the definitions listed in paragraph 18 rely on the term "outage."
10. In September 2023, Enable sent the Commission an ID enquiry which included a query regarding the "cessation in the supply of ID FFLAS" aspect of the definition of "outage."<sup>9</sup> Enable noted that, from technical workshops between staff from the Commission and ID-regulated providers prior to the ID Determination first coming into effect, it had understood that faults/outages would be reported from:
  - 10.1 when fibre providers are notified by a Retail Service Provider (**RSP**) that a fault/outage has occurred; and
  - 10.2 when it has obtained all requisite customer information (i.e, a validated fault ticket).
11. Enable considered the above process to be the only practical way it can measure faults, apart from when its own systems indicate a major fault has occurred, which leads to a fault ticket being raised by Enable staff.
12. In November 2023, we issued a conditional exemption (and an amendment) to Enable in relation to ID reporting that relied on the defined term "outage" for its disclosures due by 30 November 2023.<sup>10, 11</sup> As noted in these exemption notices:
  - 12.1 Commission staff reviewed correspondence from fibre providers and explored practices undertaken in the industry by engaging with the other ID-regulated providers to determine how they measured outages for ID purposes.
  - 12.2 The "cessation in the supply" aspect of the definition for "outage" is difficult to comply with in the majority of instances of outages occurring, largely because the technology is not currently available that notifies fibre providers of the details of outages when they occur in real-time (i.e. there is a delay from when the outage actually begins and when an RSP/access seeker

<sup>8</sup> Commerce Commission, *Fibre Information Disclosure Final Decisions Reasons Paper (30 November 2021)*, Table 7.1 , Overview – Decisions on quality metrics and performance measures.

<sup>9</sup> Email enquiry from Enable to the Commerce Commission, on 6 September 2023.

<sup>10</sup> Commerce Commission, *Notice of conditional exemption to Enable Networks Limited in relation to reporting on quality (availability) under the Fibre Information Disclosure Determination 2021*, 17 November 2023. Available here: [https://comcom.govt.nz/\\_data/assets/pdf\\_file/0026/336671/Fibre-ID-Exemption-Notice-Enable-Networks-Limited-Measuring-27Cessation-of-Supply27-for-Outages-17-November-2023.pdf](https://comcom.govt.nz/_data/assets/pdf_file/0026/336671/Fibre-ID-Exemption-Notice-Enable-Networks-Limited-Measuring-27Cessation-of-Supply27-for-Outages-17-November-2023.pdf)

<sup>11</sup> Commerce Commission, *Information disclosure conditional exemption amendment to Enable Networks Limited in relation to reporting on quality (availability) under the Fibre Information Disclosure Determination 2021*, 29 November 2023. Available here: [https://comcom.govt.nz/\\_data/assets/pdf\\_file/0029/336674/Fibre-ID-Exemption-Amendment-Notice-Enable-Networks-Limited-Measuring-27Cessation-of-Supply27-for-Outages-29-November-2023.pdf](https://comcom.govt.nz/_data/assets/pdf_file/0029/336674/Fibre-ID-Exemption-Amendment-Notice-Enable-Networks-Limited-Measuring-27Cessation-of-Supply27-for-Outages-29-November-2023.pdf)

notifies providers of the details of those outages). In some instances, the “cessation in the supply” aspect of the definition for “outage” can be complied with, such as when a major fault occurs on a fibre provider’s network which is picked up in real-time via that provider’s monitoring systems.

13. On 14 February 2024, Tuatahi and Enable requested that the Commission consider amending the IM Determination definition of “outage.”<sup>12</sup> The Office of the Auditor-General subsequently raised this matter with Commission staff with respect to providing assurance on the Report on Quality with regard to the definition.
14. When Commission staff contacted the fibre providers to understand their appetite for a potential exemption similar to the disclosure year 2023 exemption issued to Enable Networks, the ID-only fibre providers confirmed their interest with respect to, at a minimum, disclosure year 2024.

#### *Legal Framework*

15. Clause 2.10.1(1) of the ID Determination allows the Commission to, by written notice to a provider, exempt the provider from any requirement of the ID Determination, for a period and on such terms and conditions as the Commission specifies in that notice. Furthermore, clause 2.10.1(2) gives the Commission the power to amend or revoke any such exemptions.

#### **Conditional exemption issued**

16. Using its exemption powers under clause 2.10.1(1) of the ID Determination, the Commission has decided to issue a conditional exemption to the ID-only fibre providers. This conditional exemption pertains to the ID requirements within the Report on Quality, as required under clause 2.4.4.(1) of the ID Determination, which relies on the definition of “outage” in clause 1.1.4(2) of the IM Determination.
17. This exemption specifically applies to:
  - 17.1 the information requirements outlined in paragraph 18, on the condition set out in paragraph 19; and
  - 17.2 the monthly Report on Quality requirement for all twelve months of disclosure year 2024 and the months of disclosure year 2025 up to and including the month of December 2024. Figure 1 below demonstrates the exemption period for the ID-only fibre providers and as noted in paragraph 8, reporting due dates are available on our website.

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<sup>12</sup> Email from Enable Networks Limited (on behalf of Enable Networks and Tuatahi First Fibre), on 14 February 2024.



Figure 1: Timeline visualisation of exemption period for ID-only fibre providers

		2023												2024												2025		
		J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M
ID exemption coverage	Northpower Fibre																											
	Tuatahi First Fibre																											
	Enable Networks																											

18. As indicated in paragraph 17.1, this exemption applies to the completion and public disclosure of the following information requirements (line items) in the Report on Quality, as set out in Schedule 20 for ID-only fibre providers of the ID Determination:

- 18.1 **faults per 100 connections**, as used in Schedule 20(ii): Faults;
- 18.2 **number of faults**, as used in Schedule 20(ii): Faults;
- 18.3 **percentage of regulated provider faults not restored within 2 calendar days**, as used in Schedule 20(ii): Faults;
- 18.4 **percentage of regulated provider faults that met expected restoration time**, as used in Schedule 20(ii): Faults;<sup>13</sup>
- 18.5 **average unplanned downtime**, as used in Schedule 20(iii): Availability;
- 18.6 **average unplanned downtime excluding force majeure events**, as used in Schedule 20(iii): Availability;
- 18.7 **percentage of notified unplanned outages**, as used in Schedule 20(iii): Availability;
- 18.8 **planned downtime**, as used in Schedule 20(iii): Availability;<sup>14</sup>
- 18.9 **planned outage**, as used in Schedule 20(iii): Availability;
- 18.10 **unplanned downtime**, as used in Schedule 20(iii): Availability; and
- 18.11 **unplanned downtime attributable to force majeure events**, as used in Schedule 20(iii): Availability.

<sup>13</sup> We note that this line item is referred to as "percentage of regulated provider faults that met expected restore date" in Schedule 23 of the ID Determination.

<sup>14</sup> We note that this line item is referred to as "planned downtime (minutes)" in Schedule 23 of the ID Determination.

19. As indicated in paragraph 17.1, this exemption is provided on the condition that the ID-only fibre providers must, for the purpose of clause 2.4.4(1) of the ID Determination, instead apply the following definition for “outage” when calculating and completing information required for a Report on Quality:<sup>15,16</sup>

**outage** means a cessation in the supply of **ID FFLAS** that is either:

- (i) identified by the **ID-only regulated provider** based on its systems that indicate a cessation in supply; or
- (ii) in respect of which the **ID-only regulated provider** has received a notification from an **RSP** that:
  - (a) confirms a cessation in the supply of **ID FFLAS** to an **end-user**; and
  - (b) includes sufficient information for the **ID-only regulated provider** to identify and address the cessation in supply

20. We consider that granting this exemption is reasonable given that:

- 20.1 the condition of the exemption requires ID-only fibre providers to disclose the information they do hold in relation to the duration of outages. We understand that the approach to recording the duration of outages is generally consistent across industry; and
- 20.2 the issue is outside of the ID-only fibre providers' control in that they do currently not hold, and do not appear to be reasonably capable of obtaining, the information that complies with the current definition of “outage” under the ID Determination.

21. We have considered the impact of the conditional exemption on the purpose of ID under section 186 of the Act and have concluded that the purpose will still be met if this exemption is granted. We consider that the information provided under the conditional exemption will help ensure that sufficient information is available for interested persons to assess whether the purpose of Part 6 of the Act is being achieved. In particular, we consider that the information provided under the conditional exemption will ensure that interested persons can assess whether the ID-only fibre providers are supplying FFLAS of a quality that reflects end-user demands.<sup>17</sup>

<sup>15</sup> “ID FFLAS”, “end-user”, and “regulated provider” have the meanings set out in the ID Determination, which use the corresponding definitions set out in the IM Determination. See clause 1.1.4(2) of *Fibre Input Methodologies Determination 2020* [2020] NZCC 21, as amended.

<sup>16</sup> Commerce Commission, *Draft IM determination on expenditure, quality and revenue*, 17 July 2024.

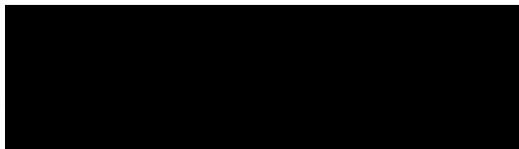
<sup>17</sup> Section 162(b), the Act.

22. For the avoidance of doubt, this exemption is intended to allow the ID-only providers to disclose reporting that relies on the current definition of “outage” on the same basis as previously published reporting. This consistency will help ensure that the reporting covered by this exemption is comparable to historical reporting for interested persons.
23. We note that this exemption is intended to be a temporary solution for ID-only providers to more closely align the definition of “outage” with current industry practice. A long-term solution is expected to be implemented through the IM Determination amendment process noted in paragraph 5.

**Further information**

24. This exemption may be revoked or amended by the Commission at any time in accordance with clause 2.10.1(2) of the ID Determination.
25. A copy of this exemption response letter will be published on the Commission’s website.
26. If you have any questions regarding this matter, please contact Rhys Williams at [infrastructure.regulation@comcom.govt.nz](mailto:infrastructure.regulation@comcom.govt.nz).

Nāku iti noa, nā



**Tristan Gilbertson**  
Telecommunications Commissioner

