

2 August 2024

[REDACTED]
[REDACTED]
Northpower Fibre Limited
28 Mount Pleasant Road
Raumanga
Whangarei 0110

By e-mail only: [REDACTED]

Tēnā koe [REDACTED],

Response to Northpower Fibre Limited's request for an exemption relating to quality disclosure requirements under the Fibre Information Disclosure Determination 2021

1. We write in response to Northpower Fibre Limited's (**Northpower**) letter that requested the Commerce Commission (**Commission**) grant it an exemption for disclosure year 2024, from calculating port utilisation according to the methodology set out under Schedule 22 of the Fibre Information Disclosure Determination 2021 (the **ID Determination**).^{1,2,3}
2. We have decided to grant Northpower a conditional exemption from the requirement under Schedule 22 of the ID Determination to use five-minute intervals when calculating port utilisation (the **Schedule 22 methodology**) for disclosure year 2024, being the period 1 April 2023 to 31 March 2024. This exemption is granted on the condition specified in paragraph 19. Our decision to approve this exemption is outlined in paragraphs 16 -20 of this letter.
3. Our full response is below, including an outline of the background surrounding Northpower's exemption request, and the basis for our decision.

¹ [Fibre Information Disclosure Determination 2021 \[2021\] NZCC 24](#) (consolidated as of 1 May 2024)

² Northpower Fibre Limited, *Exemption request from Northpower Fibre Limited (NFL) in relation to the required methodology for calculating port utilisation (the methodology) as per Schedule 22 of the Fibre Information Disclosure Determination 2021 (the ID Determination)*, dated 31 May 2024.

³ Email from Northpower Fibre Limited, on 26 July 2024 in reply to information request from Commerce Commission staff.

Background

4. Fibre providers (the **providers**) are subject to information disclosure (**ID**) regulation under section 168 of the Telecommunications Act 2001 (the **Act**). The providers are:⁴
 - 4.1 Enable Networks, Northpower, and Tuatahi (the **ID-only regulated providers**); and
 - 4.2 Chorus.
5. The providers must disclose information on the quality of fibre services supplied. Clauses 2.3.3(1) and 2.4.4(1) of the ID Determination require the providers to:
 - 5.1 complete a Report on Quality (Schedule 20 of the ID Determination for ID-only regulated providers) in respect of each month of the relevant disclosure year (except in respect of the first nine months following the commencement date);⁵
 - 5.2 when completing those reports, apply the methodologies outlined in Schedule 22 of the ID Determination, including the methodology for calculating port utilisation (ie, the Schedule 22 methodology); and
 - 5.3 publicly disclose the reports no later than 5 months after the end of the disclosure year.
6. Schedule 23 of the ID Determination (**Schedule 23**) sets out the defined terms used in relation to quality reporting. The definition of “port utilisation” requires it to be calculated in accordance with the Schedule 22 methodology.
7. The Schedule 22 methodology requires each provider to:
 - 7.1 under clause 1, calculate and record port utilisation for all ports on their fibre networks as a percentage figure by applying a defined formula. The formula requires the providers to use five-minute intervals; and
 - 7.2 under clause 2, record the “percentage of ports” each month for each of the port utilisation thresholds defined under Schedule 23.⁶
8. The port utilisation thresholds and their definitions are as follows:⁷

⁴ As defined under clause 1.4.3, ID Determination.

⁵ The commencement date was 1 January 2022, clause 1.2.1, ID Determination.

⁶ Under Schedule 23 of the ID Determination, “percentage of ports” means the percentage of **ports utilised** within each **POI area** up to (and including) or down to (and including) (as applicable) the specified threshold, divided by the total number of **ports** in that **POI area**.

⁷ Schedule 23, ID Determination.

- 8.1 **≥ 90% threshold** – means the percentage of ports with port utilisation equal to or greater than 90%;
 - 8.2 **≥ 95% threshold** – means the percentage of ports with port utilisation equal to or greater than 95%; and
 - 8.3 **≤ 70% threshold** – means the percentage of ports with port utilisation equal to or less than 70%.
- 9. For ID-only regulated providers, port utilisation is reported under port performance within Schedule 20(iv) of a Report on Quality.⁸
 - 10. Northpower must publicly disclose its Reports on Quality for disclosure year 2024 by 31 August 2024.⁹

Prior exemption request

- 11. Northpower previously requested an exemption on 26 June 2023 from calculating port utilisation according to the methodology in Schedule 22 in perpetuity, on the basis that its system could not measure port utilisation at 5-minute intervals, and could only provide port utilisation calculations at 7.2-minute intervals.
- 12. Northpower's reasoning for the exemption request was that the substitution of 7.2-minute intervals in place of 5-minute intervals would not have a material impact on consumers or the disclosure, and that compliance with the 5-minute interval requirement would be costly and labour intensive to implement.
- 13. We decided to decline Northpower's request for that exemption on 29 August 2023, and noted we intended to undertake an assessment of Northpower's non-compliance as a result.
- 14. Our reasons for declining Northpower's exemption request on 29 August 2023 included:
 - 14.1 we consulted extensively on this metric when setting ID requirements in November 2021;
 - 14.2 Northpower was the only provider unable to comply with the requirement for port utilisation at 5-minute intervals, and 7.2-minute intervals do not adhere to the accuracy required by the ID Determination;
 - 14.3 cost of compliance alone is not reasonable grounds for an exemption; and
 - 14.4 the Commission is not minded to grant exemptions in perpetuity.

⁸ Port performance shows the percentage of ports in each POI area that meet the threshold criteria.

⁹ Definition of "disclosure year", clause 1.4.3, ID Determination.

15. In our letter declining Northpower’s exemption request, we urged Northpower to propose to Commission staff a plan for coming into compliance with the ID Determination requirements as soon as possible. On 15 September 2023, Northpower proposed a plan to implement the required systems to report port utilisation at 5-minute intervals in line with the Schedule 22 methodology, and expected to have this system in place by the end of March 2024. In April 2024 Northpower confirmed that system had been commissioned and that from 21 March 2024, the port utilisation data was being collected at 5-minute intervals.

Exemption request

16. Northpower requested an exemption from the requirement to measure port utilisation using five-minute intervals for disclosure year 2024, on the basis that it has deployed the necessary port utilisation component and data is being collected at 5-minute intervals from 21 March 2024 onwards.^{10,11}

Legal framework

17. Clause 2.10.1(1) of the ID Determination allows the Commission to, by written notice to a provider, grant an exemption 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 exemption.

Conditional exemption approved

18. By this notice, under clause 2.10.1(1) of the ID Determination, the Commission has decided to **approve** Northpower’s request for an exemption for disclosure year 2024, being the period 1 April 2023 to 31 March 2024, from calculating port utilisation according to the methodology set out under Schedule 22 of the ID Determination.
19. The exemption referred to in paragraph 18 is provided on the condition that Northpower provides notes on its disclosure that describe this exemption, and how the information that it is disclosing differs from what would normally be required under the Schedule 22 methodology. This would inform interested parties on the difference between the information being disclosed and the information required under the Schedule 22 methodology.
20. We have considered the impact of the exemption on the purpose of ID under section 186 of the Act. We have approved Northpower’s request for the reason that it promptly engaged with us with a plan to achieve compliance and kept to the stated timeline. This, coupled with the condition to provide notes on the alternate

¹⁰ Northpower Fibre Limited, *Exemption request from Northpower Fibre Limited (NFL) in relation to the required methodology for calculating port utilisation (the methodology) as per Schedule 22 of the Fibre Information Disclosure Determination 2021 (the ID Determination)*, dated 31 May 2024.

¹¹ Email from Northpower Fibre Limited, on 26 July 2024 in reply to information request from Commerce Commission staff.

information disclosed, limits the harm and extent to which the purpose of ID is not met and keeps the impact to a single disclosure year.

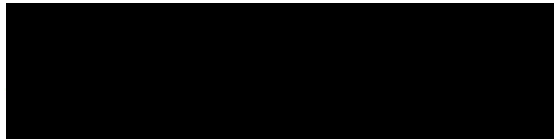
Non-compliance with port utilisation calculations for disclosure year 2023

21. We intend to undertake an assessment of Northpower's non-compliance in relation to port utilisation calculations for DY23 and develop an appropriate enforcement response in due course.

Further information

22. 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.
23. A copy of this exemption response letter will be published on the Commission's website.
24. If you have any questions regarding this matter, please contact Sam Chevin at infrastructure.regulation@comcom.govt.nz.

Nāku iti noa, nā



Tristan Gilbertson

Telecommunications Commissioner

