COMMERCE
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NEW ZEALAND

Draft liability allocation determination for the Telecommunications Development Levy for 1 July 2012 to 30 June 2013

Draft Telecommunications Development Levy liability allocation determination under section 84 of the Telecommunications Act 2001 of matters set out in section 85 of the Act for the period 1 July 2012 to 30 June 2013.

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Contents

List of defined terms and abbreviations

Act	Telecommunications Act 2001
Amendment Act	Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011
ETP	external termination point
ITP	internal termination point
LAD	liability allocation determination
Liable person	a person who provides a telecommunications service in New Zealand by means of some component of a PTN that is operated by the person
Minimum telecommunications revenue	is defined in section 80 of the Act as meaning $10 million of gross revenue (as may be determined by any specifications set by the Commission) that a liable person receives during a financial year for supplying either or both of the following: (a) telecommunications services by means of its PTN; and (b) telecommunications services by means that rely primarily on the existence of its PTN or any other PTN
NZ GAAP	New Zealand Generally Accepted Accounting Principles
NZ IFRIC	New Zealand International Financial Reporting Interpretations Committee
ONT	optical network terminal
PDN or public data network	a data network used, or intended for use, in whole or in part, by the public
PSTN or public switched telephone network	a dial-up telephone network used, or intended for use, in whole or in part, by the public for the purposes of providing telecommunication between telephone devices
PTN or public telecommunications network	a network used, or intended to be used, in whole or in part, by the public for the purpose of telecommunication, and includes a PSTN and a PDN
QLP	qualifying liable person
Qualifying liable person	a liable person that has met the minimum telecommunications revenue threshold and has attracted liability under a TDL LAD

Qualified revenue	revenue determined by the Commission that is used to assess the amount of the TDL that a liable person must pay
Specified information	information requested by the instructions we issued on 1 July 2013
Telecommunication	the conveyance by electromagnetic means from one device to another of any encrypted or non-encrypted sign, signal, impulse, writing, image, sound, instruction, information, or intelligence of any nature
Telecommunications services	any goods, services, equipment, and facilities that enable or facilitate telecommunication
TDL	Telecommunications Development Levy
TDL year	the period from 1 July to 30 June for which a TDL liability allocation determination is being made. TDL year is referred to as year A in section 81 of the Act
TSO	Telecommunications Service Obligations in relation to a TSO instrument

Executive summary

Allocation of levy

X1. This is the draft Telecommunications Development Levy liability allocation determination (draft LAD) for the period 1 July 2012 to 30 June 2013, required by section 84 of the Telecommunications Act 2001 (Act). It allocates the amount each qualifying liable person (QLP) is required to pay of the total Telecommunications Development Levy (TDL) of $50 million as shown in the following table.

X2. This draft LAD explains our methodology for determining the amount of the levy payable by each QLP. The methodology that we have used for this draft LAD is consistent with the methodology used for the 2011/12 TDL LAD.

Summary of methodology

X3. In keeping with subpart 2 of Part 3 of the Act, we determined the below allocations by apportioning the $50 million TDL between QLPs, based on their qualified revenue.

QLP	Qualified revenue ($)*	% of industry qualified revenue	Amount of TDL to pay ($)
Telecom	1,724,903,742.88	39.46%	19,729,644.17
Vodafone NZ	996,719,896.79	22.80%	11,400,594.95
Chorus	980,965,000.00	22.44%	11,220,388.66
Vodafone Fixed	262,993,566.11	6.02%	3,008,150.16
Two Degrees Mobile	194,963,066.00	4.46%	2,230,009.61
Teamtalk	35,095,000.00	0.80%	401,420.58
Orcon	31,760,477.59	0.73%	363,279.94
FX Networks	26,391,757.70	0.60%	301,871.91
Vector	24,290,000.00	0.56%	277,831.77
CallPlus	19,843,596.31	0.45%	226,973.30
WorldxChange	14,392,000.00	0.33%	164,617.32
Kordia**	10,489,000.00	0.24%	119,974.37
Woosh Wireless	8,062,060.00	0.18%	92,214.75
Bay City Communications	7,770,400.89	0.18%	88,878.72
Compass	7,171,796.14	0.16%	82,031.82
Snap	6,920,000.00	0.16%	79,151.74
REANNZ**	4,547,000.00	0.10%	52,009.10
Transpower**	4,273,000.00	0.10%	48,875.06
Enable Networks**	3,954,000.00	0.09%	45,226.30
Trustpower	3,206,000.00	0.07%	36,670.59
Ultrafast Fibre**	2,054,000.00	0.05%	23,493.88
Northpower**	585,000.00	0.01%	6,691.30
Total Industry	**4,371,350,360.41**	**100%**	**50,000,000.00**

*A firm with an operating revenue over the $10m threshold for inclusion, may have a reported qualified revenue of under $10m due to adjustments

**These Crown companies are required by s79 to be treated as one person

X4. The key parts of our methodology are:

X4.1 **Identifying QLPs for the 2012/13 TDL**. After identifying the liable persons we considered could potentially qualify for the TDL, we distinguished the QLPs who will contribute to the 2012/13 TDL based on gross telecommunications services revenue. We also reviewed shareholding information from publicly available sources, to identify those within the extended ambit of a liable person required by s79 of the Act.

X4.2 **The approach to calculating qualified revenue.** Each firm's qualified revenue was assessed using a net revenue approach, which subtracted from gross telecommunications services revenue:

X4.2.1 total payments made to other QLPs for telecommunications services;

X4.2.2 total payments made to non-QLPs for telecommunications services initially provided by another QLP; and

X4.2.3 the total cost of any non-telecommunications goods and services that were included in gross telecommunications services revenue.

X4.3 **Compliance and assurance.** To ensure the accuracy and integrity of our draft LAD, each liable person had to provide us with an assurance report prepared by an independent auditor. We also reviewed each firm's qualified revenue calculation for compliance and followed up on several issues that we identified.

Our compliance review identified several issues, some that may be material for one QLP. While these issues may, in percentage terms, significantly increase this QLP's amount payable, they are unlikely to significantly decrease the amounts that other QLPs will have to pay towards the levy.

Introduction

1. The Act regulates the supply of telecommunications services in New Zealand.

2. Subpart 2 of Part 3 of the Act prescribes our annual procedure for determining the amount of TDL payable by each QLP. The TDL was established under the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (Amendment Act) to assist the government in paying TSO charges and funding improvements to New Zealand's telecommunications infrastructure.

3. This document is the draft TDL liability allocation determination (draft LAD) for the period 1 July 2012 to 30 June 2013, required by section 84 of the Act. This

draft LAD allocates the amount each QLP is required to pay of the total TDL amount of $50 million.[1]

Outline

4. This document also sets out:

    4.1 The legislative background including terminology and the prescribed liability allocation process.

    4.2 Our methodology and reasoning, including:

        4.2.1 How we identified QLPs for the 2012/13 TDL.

        4.2.2 The approach used to calculate qualified revenue.

        4.2.3 The compliance and assurance process used to improve the accuracy and integrity of our LAD. This included a review of each QLP's calculations of their qualified revenue by both us and independent auditors.

    4.3 Our allocation of the levy between the QLPs.

5. For the 2012/13 draft LAD we continued using the methodology for the 2011/12 TDL LAD, although we adopted certain technical revisions. We developed the methodology used for the 2011/12 TDL LAD from 2012 through to mid-2013 after a lengthy policy development process, which included consultation on several discussion documents, and a workshop involving telecommunications service providers and other key stakeholders.[2]

Submissions

6. In accordance with section 84(1)(c), we invite submissions on this draft LAD for the 2012/13 TDL.

7. The closing date for submissions is **5pm, 19 November 2013**. Your submission should be provided as an electronic copy in an accessible form.[3] You do not need to provide a hard copy. Submissions should be sent by email to: telco@comcom.govt.nz.

8. We intend to publish all submissions on our website. Any confidential information should be clearly marked and preferably included in an appendix. When confidential information is provided, submitters should provide both confidential and public versions of their submissions. The responsibility for

1 $50 million is the total TDL levy amount that applies to the 2012/13 TDL financial year as provided for in Schedule 3B of the Act.

2 Our website www.comcom.govt.nz contains material relating to the process.

3 Electronic copies of submissions should be 'unlocked' and have text that can be easily transferred.

ensuring that confidential information is not included in a public version of a submission rests with the party making the submission.

Next steps

9. After considering the submissions, we will publish our final LAD for the 2012/13 TDL. At this stage we anticipate issuing our final decision by 17 December 2013. We do not plan to hold any workshops or conferences on the 2012/13 TDL.

Legislative background

The TDL

10. The TDL was introduced by the Amendment Act. It replaced the net cost calculation and allocation process for the TSO, and requires the Crown to pay TSO charges from the TDL.

11. Schedule 3B of the Act stipulates that the TDL is $50 million dollars per annum from the 2010/11 financial year through to the 2015/16 financial year.[4]

12. Subpart 2 of Part 3 of the Act requires us to make a TDL liability allocation determination on an annual basis and in respect of the TDL year, which is the financial year of 1 July to 30 June.[5]

13. Section 83 of the Act specifically requires liable persons to provide us with qualified revenue information for the entire TDL year.

14. Qualified revenue is defined in section 5 of the Act as the revenue a liable person receives during a financial year for supplying either or both:

    14.1 telecommunications services by means of its PTN; and/or

    14.2 telecommunications services by means that rely primarily on the existence of its PTN or any other PTN.

15. The TDL is allocated among liable persons who:

    15.1 have been trading in the year prior to the TDL Year[6] and

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4 The TDL for the 2016/17 financial year will be $10 million, and subsequent years will be an inflation-adjusted value based on the preceding year's TDL amount.

5 'Financial year' is defined in section 5 of the Act as meaning "a period of 12 months beginning on 1 July in any year and ending on 30 June in the following year". Section 81(2) provides that the Commission may request certain financial information from liable persons "for the purpose of determining whether a person is a liable person to whom this subpart applies *in respect of a financial year*". Section 81(2)(b) also states that the Commission may request any further information "for the purpose of enabling it to verify the telecommunications revenue of that person *for the year preceding financial year A*".

6 Section 81(1)(a) of the Act.

15.2 have derived telecommunications revenue of $10 million or more from operating their PTN or any other PTN during the year prior to the TDL year.[7]

16. Sections 85(1)(a) and 88(a) of the Act state that the allocation determination must include “the amount of each liable person’s qualified revenue”.

17. Under s79 of the Act a liable person and other bodies corporate must be treated as one person if certain conditions are met. The relevant qualified revenue for purposes of assessing the amount of the TDL a liable person must pay, therefore consists of the combined telecommunications revenue of the liable person and all other firms that are treated with it as one person.

18. Section 89 of the Act requires each liable person to pay the amount set out in our final TDL determination to the Crown.

Terminology

19. It is important to note that information for the year preceding the TDL year is used to identify *if* a party is required to pay, and that information from the TDL year (sourced later in the year) identifies *how much* a party is required to pay.

20. We use the term ‘qualifying liable person’ (QLP) to describe the liable persons that must pay a portion of the TDL. A service provider is a liable person (and therefore potentially a QLP) for the purposes of the TDL if it:[8]

20.1 provides a telecommunications service, which may include the transmission of voice, data, SMS, or any other content, but excludes broadcasting (ie, the transmission of programmes for the reception by the public);

20.2 provides the telecommunications service in New Zealand;

20.3 operates a component of the PTN over which the telecommunications service is provided;

20.4 operates a component of a PTN that falls within the public side of the network demarcation point – the component must be operated by the service provider, not a third party; and

20.5 operates a network that is publicly available, ie, not limited to private use.

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7 Section 81(1)(b) of the Act.

8 Details of our development of these rules can be found on our website, including in the 2011/12 LAD, http://www.comcom.govt.nz/regulated-industries/telecommunications/tdl/tdl-2011-12/.

21. We consider that a party operates a component of the PTN where that party does one or more of the following:[9]

21.1 owns the component or has rights similar to ownership, such as a long-term lease, or exclusive licence;

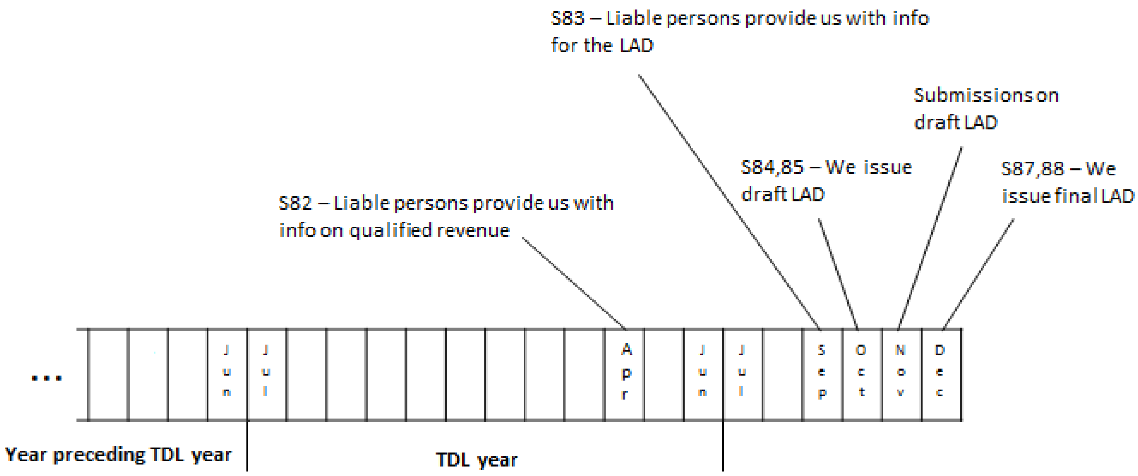
21.2 has a right to exclude use of the component by other parties; or

21.3 can authorise third party use of, and access to, the component to provide a telecommunications service.

The liability allocation determination process

22. Subpart 2 of Part 3 of the Act requires us to complete an annual LAD. This section describes our annual process, which was developed for the 2011/12 TDL. We have used the same methodology for this draft LAD, with some differences highlighted in paragraphs 34-41 and 117-127. The process commences before the end of the TDL year that the obligation applies to. In a usual year, the process is expected to start in April and last about eight or nine months.

TDL Timeline



Identifying QLPs

23. Section 82 of the Act requires that liable persons provide the Commission with information to verify their liability to pay a portion of the TDL. This financial and shareholding information is required 60 working days prior to the end of the financial year (which usually equates to the first week of April), and relates to the year preceding the TDL year.

24. We collate the information received from liable persons complying with section 82. At that time, we may also undertake an additional process of serving

[9] This approach was first indicated in our TDL Final Notification, 24 July 2012 and the third criterion clarified during the liable persons identification process. Further details are available on our website including in the 2011/12 LAD.

notices to require information under section 81 of the Act. This may be done with telecommunications service providers who we:

24.1 suspect may have met the criteria and should have complied with section 82; or

24.2 do not have sufficient financial or shareholding information to assess their status in terms of the criteria.

25. We then analyse all the information that we receive from liable persons complying with section 82 requirements (and notices under section 81), to confirm those liable persons that qualify to pay a portion of the TDL that year.

Requesting further information

26. Towards the end of June of the TDL year, the QLPs will be notified that we require information from them, with instructions on the type and format of that information. This information will relate to the TDL year (the full financial year just completed).

27. Under section 83, QLPs must provide us with specific financial information. The information is due 60 workings days after the end of each TDL year, which is late September. We use this information to confirm the QLPs' qualified revenue and then calculate the portion of the TDL they are required to pay.

28. The Act requires that this information from companies is accompanied by a report, prepared by a qualified auditor, which includes a statement of the extent that the information provided by the QLP is correct and complete.[10]

Preparing and completing the liability allocation determination

29. We are required to make reasonable efforts to complete the draft LAD no later than 80 working days after the end of the TDL year, which is mid-October. The draft LAD needs to contain:[11]

29.1 each QLP's qualified revenue;

29.2 each QLP's TDL liability, calculated in accordance with section 85(1)(b); and

29.3 our reasoning, and the methodology we used.

30. We are required to give public notice when the draft LAD is released.[12] The Act provides that the closing date for submissions cannot be more than 20 working days after the date of public notice.[13]

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10 Section 83(2)(b) of the Act.

11 Section 85 of the Act.

12 Section 84(1)(b) of the Act.

31. In addition to submissions, we may convene a conference to discuss matters related to the draft LAD.[14] We can invite to a conference any person who has a material interest in the draft LAD. Conferences are generally reserved for situations where there is a serious need, such as where issues arise that require further discussion among the parties.

32. Once we have completed the consultation on the draft LAD, we will complete a final LAD. We are required to make reasonable efforts to complete a final LAD no later than 20 working days after the closing date for submissions on the draft LAD, which could be mid-December.[15] The final LAD has the same content requirement as the draft.[16] Our general practice is to also include a summary of any submissions or consultative processes, and any resulting changes.

33. A list of relevant statutory references can be found in Attachment C of this draft LAD.

Methodology and reasoning

Introduction

34. For this draft LAD we have maintained much of the same methodology used for the 2011/12 LAD. We made several revisions to our specified information instructions to address technical issues that we identified during our review of the 2011/12 TDL process. For example we made revisions to address issues on which QLPs sought clarifications.

35. On 1 July 2013 we published a number of documents on our website to help QLPs adhere to section 83 of the Act. We published the new list of QLPs, the specified information templates, specified information instructions, a list of relevant statutory references and a list of specified information. QLPs were notified of these documents and were sent an email containing links to our website.

36. An email was sent to all QLPs on 28 August 2013 reminding them of the specified information deadline and links to the instructions on our website.

37. This process differed to the 2011/12 LAD where we sent qualified revenue notices to each QLP, and highlights the self-reporting nature of the TDL.

38. Once we received the specified information from the QLPs, we conducted a compliance review, details of which can be found in paragraphs 117-127.

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13 Section 84(1)(c) of the Act.

14 Section 86 of the Act.

15 Section 87(2) of the Act.

16 Section 88 of the Act.

Identifying QLPs for the 2012/13 draft LAD

39. For this draft LAD, we reviewed information provided during the 2011/12 TDL process and sought information from other potentially liable persons that we identified.

40. The list of QLPs for 2012/13, which can be found in Attachment D, differs from 2011/12.

41. While Bay City Communications Ltd (Bay City) and TelstraClear (also known as Vodafone Fixed) both ceased to be separate entities during the 2012/13 TDL year, they are both liable because they traded for part of the TDL year and met the other relevant criteria.

42. The following section outlines the framework that we developed for the 2011/12 TDL LAD, which formed the basis for this draft LAD.

TDL framework development for 2011/12

43. The 2011/12 TDL year was the first year that required us to produce a TDL LAD. The intention was to develop a consistent approach, to be used in subsequent years, to reduce future compliance costs, as QLPs may reuse the same processes. Industry supported maintaining our approach on *"a consistent basis from year to year".*[17]

44. The purpose of the TDL process is to allocate a fixed levy amount between QLPs in proportion to each person's qualified revenue. In previous consultation, parties agreed that additional precision in measuring the components of qualified revenue would not necessarily change the allocation of the levy appreciably.[18]

45. For this reason, and to reduce compliance costs, we developed an approach to calculating qualified revenue that:

    45.1 relies on information that is readily available across a wide range of firms.

    45.2 is applicable across a wide range of firms with varying products, business models, and reporting capabilities, rather than being designed to meet the business practices and concerns of any one firm.

    45.3 where possible, relies on common auditable information that QLPs are likely to keep for other purposes (such as statutory reporting and billing).

[17] Telecom, *Submission on draft TDL liability allocation determination 2011/12*, 5 June 2013. Page 1.
[18] Commerce Commission, *TDL Qualified Revenue Workshop,* Wellington, 13-14 November 2012. Day 1.

Outline

46. The rest of this section:

    46.1 explains our net revenue approach to calculating qualified revenue, which was adopted last year and continued this year, our reasons for this approach and the accounting practices supporting its implementation; and

    46.2 explains the compliance and assurance process used to improve the integrity and accuracy of the information used in the TDL process.

47. The approach presented in this section was developed specifically for the TDL process and should not be taken as guidance for compliance with any other notice, determination or other requirements we may issue.

Approach to calculating qualified revenue

48. The qualified revenue notice that we sent to QLPs last year, and the specified information instructions this year, required that calculations of qualified revenue:

    48.1 calculate gross telecommunications services revenue by applying the directions provided on the inclusion and exclusion of common revenue streams; [19] and

    48.2 apply the net revenue assessment method, which assesses a QLP's telecommunications revenue and subtracts:

        48.2.1 total payments made to other QLPs for telecommunications services

        48.2.2 total payments made to non-QLPs for telecommunications services initially provided by another QLP; and

        48.2.3 the total cost of any non-telecommunications goods and services that were included in gross telecommunications services revenue.[20]

49. Section 85(2) allows us to determine what revenue basis to use.

[19] These directions were provided in the form of an attachment, which is Attachment B of this draft LAD.

[20] Revenue from the sale of a non-telecommunications good or service can only be included in the gross telecommunications services revenue if the qualifying liable person does not have separately identifiable revenue stream relating to the sale. Therefore, equipment retailed in bundles must have been sold in a bundle by the qualifying liable person (eg, through its own retail outlets). If equipment is wholesaled unbundled at an arms-length price and later bundled by an independent retailer, then the qualifying liable person must value the sale at the wholesale price (and treat it as non-telecommunications services revenue).

Qualified revenue conventions

50. This section presents the framework we developed last year, and have continued this year, for calculating qualified revenue, which is used to determine the proportion of the TDL payable by each QLP. This section:

    50.1 summarises our reasons for using the net revenue method to calculate the qualified revenue for each QLP; and

    50.2 explains our formula for calculating each QLP's qualified revenue.

<u>Rationale for choosing the net revenue method</u>

51. In selecting the method for assessing the relative proportion payable by liable parties for the 2011/12 TDL, we considered the approach adopted for the previous TSO regime, changes since the TSO regime, the relative merits of different approaches, and submissions on our consultation documents.

52. We chose to adopt the net revenue approach, which had previously been used for the TSO regime. The net revenue method includes all revenues received by each liable person after the deduction of payments between liable persons for the sale/provision of telecommunications services.

53. We considered that the net revenue method was the appropriate revenue method because it captures revenues earned by both wholesale and retail service providers, which is the intention behind the definition of qualified revenue. We also consider that it avoids double taxation.

54. The gross revenue method was ruled out because it taxes some revenue streams twice.[21]

55. The retail revenue method was ruled out because a segment of the QLPs would not contribute to the TDL as this method would not capture revenue for wholesale service providers.[22] In our view this does not reflect the objectives of subpart 2 of Part 3 of the Act.

56. Further details on how we chose the net revenue method can be found in our 2011/12 LAD and previous consultation.[23]

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[21] *Gross revenue method*: includes all relevant revenues received by each liable person, regardless of whether the revenue is from sales to end-users or not.

[22] *Retail revenue method*: includes only the revenues earned by each liable person from selling services directly to end-users.

[23] This information is on our website http://www.comcom.govt.nz/regulated-industries/telecommunications/tdl/tdl-2011-12/. Attachment A of the 2011/12 LAD provides an example to illustrate the differences between the three possible revenue assessment methods.

Formula to calculate qualified revenue based on the net revenue method

57. Our specified information instructions included a formula for how each QLP should calculate its qualified revenue. The formula is set out in Table 2 below.

58. The formula directs QLPs to:

58.1 calculate qualified revenue based on the net revenue approach; and

58.2 exclude non-telecommunications goods and services revenue, which was sold in a bundle, by subtracting it at cost, as explained below.

Table 2: Formula to calculate qualified revenue[24]

Step		Disclosed Items	Value	Value	Formula
a		Operating revenue as per the relevant statutory accounts		$ a	
b		Non-telecommunications services revenue,(if any)	$ b		
c		Other non-telecommunications services revenue	$ c		
d	less	Total non-telecommunications service revenue, sold separately		$ d	d = b + c
e	plus	Timing adjustment (if required)		$ e	
f		**Gross telecommunications services revenue**		**$ f**	f = a - d + e
g	less	Total payments made to other respondents		$ g	
h	less	Total payments made to non-respondents for services initially provided by a respondent		$ h	
i	less	Total cost of non-telecommunications goods and services included in gross telecommunications services revenue		$ i	
j		**Qualified revenue**		**$ j**	j = f –g – h- i

59. On our website, we provided templates to implement this formula and our specified information instructions to help QLPs complete the templates. These instructions have been refined for this year and can be found in Attachment A, and explain what each line item represents and how it should be determined.

60. In developing this formula for the 2011/12 LAD, we consulted on how to treat bundles that include both telecommunications and non-telecommunications goods and services.[25] We also specifically considered the treatment of subsidies and rebates paid on mobile handsets and tablets.

61. The next section presents an overview of the position we formed on valuing the non-telecommunications component of a bundle. Our 2011/12 LAD contains further explanation of our position and the issues we considered in reaching it.

24 Step (e) 'timing adjustment' is only required if the company has a statutory year end other than 30 June. The timing adjustment will typically represent the effect on gross telecommunications revenue from the statutory accounts and TDL financial year having different year ends and thus relating to different revenue periods.

25 For example, Commerce Commission, *Establishing the Qualified Revenue Framework for the Telecommunications Development Levy,* 19 October 2012, para 77-97.

Allowing for non-telecommunications services revenue when bundled with telecommunication services

62. Operators are increasingly selling services to consumers in bundles and in particular, triple play bundles.[26,27] The bundled price is typically less than the combined prices of purchasing all the products in the bundle separately.

63. If telecommunications goods and services and non-telecommunications goods and services are sold by a QLP in a bundle, the qualified revenue calculation needs to subtract the revenue for non-telecommunications goods and services. We, therefore, need to impute the revenue for non-telecommunications goods and services.

64. Treating the cost of the bundled non-telecommunications goods as costs of sale of the telecommunications services and not deducting, would disadvantage QLPs that sold bundles, including those who gave away free devices (eg, handsets) compared to those who did not offer bundles.

Approaches to valuing the non-telecommunications component of a bundle

65. We consider that the value of non-telecommunications goods and services sold in a bundle with telecommunications services should be deducted based on their input cost.

66. We chose the input cost approach for the 2011/12 LAD because it provides benefits in terms of compliance costs, objectivity and fairness in the TDL allocation. We have continued to use the input cost approach this year because we consider that this approach:

    66.1 avoids (or minimises) manipulation in the calculation of the value for the non-telecommunications services component of the bundle;

    66.2 ensures a consistent approach between QLPs due to consistency across business models in relation to input costs;

    66.3 can be calculated using existing accounting records that QLPs should have recorded for other purposes (such as paying suppliers); and

    66.4 avoids some of the implementation problems of the observable value approach, such as the lack of an observable price for some components of a bundle, or there being a large spread in the observable prices for one component of a bundle.

[26] Bundling refers to a situation where two or more goods are sold together. Most cases that we deal with in the TDL are mixed bundling, which is where components of the bundle are available on a standalone basis and available in a bundle.

[27] This was noted in Vodafone's submission on the 2011/12 LAD, *Submission on draft liability allocation determination for the TDL*, 5 June 2013, page 1.

67. It should be noted that this approach is only for TDL purposes, to determine relativity between QLPs, and does not predetermine our future decisions in other areas.

68. Our qualified revenue instructions last year included directions on how the QLPs should calculate the input costs for the different types of non-telecommunications goods and services. Each approach sought to capture the relevant direct or directly attributable costs as calculated in accordance with NZ GAAP. These approaches were designed to promote consistency across QLPs and to tie the cost to readily available information, such as invoices, to reduce compliance costs. For the 2012/13 TDL, we revised this part of our specified information instructions to provide greater clarity and address issues identified during the 2011/12 TDL process.

Handset subsidies and rebates

69. Our specified information instructions only allowed deductions for the cost of non-telecommunications equipment included in bundled sales where the QLP provided the non-telecommunications equipment to the end customer. Therefore, rebates (or a value derived from the rebates) paid to indirect channels (independent retailers such as national electronics shops and franchisees) cannot be deducted from gross telecommunications revenue.

70. The treatment of rebates paid to indirect channels was raised as an issue for the 2011/12 LAD in the context of rebates paid by mobile operators to indirect channels who supplied 'subsidised' handsets to customers that entered into term contracts for mobile services.

71. After considering submissions on our 2011/12 draft LAD, and other information provided to us, we confirmed our view on rebates in our 2011/12 LAD. We have adopted the same approach for the 2012/13 draft LAD. Reasons for our view include:

71.1 Information provided to us indicated that mobile operators wholesale handsets at arm's length values to indirect channels and retain information on the invoices. This identifiable revenue should be treated as non-telecommunications revenue, and excluded from gross telecommunications revenue. Therefore, these handsets are excluded from qualified revenue in the same manner as the QLP's other non-telecommunications activities are excluded.

71.2 The handsets on which rebates are paid are typically supplied to the end-user by the indirect channel and not by the QLP.

71.3 Handset rebates are typically not set at the arm's length wholesale price of a handset, but rather are determined by numerous commercial factors.[28]

Other matters: accounting practices

72. Our qualified revenue instructions last year required QLPs to calculate their qualified revenue in accordance with a set of regulatory reporting principles and several prescribed accounting practices. These provided guidance on issues that we had identified as requiring further clarity, and sought to ensure that the information disclosed was sufficiently objective, accurate and reliable for the purposes of the TDL. We have retained the same requirements for the 2012/13 LAD.

<u>Reporting principles</u>

73. Our specified information instructions required QLPs to apply the following five overarching reporting principles when preparing the disclosed information. The principles were developed as part of the 2011/12 TDL framework development process and are correct(ness), complete(ness), objectivity, consistency and data retention.[29]

74. During the TDL framework development process, industry was generally supportive of these principles. In response to consultation feedback, we revised the definition of correctness to make it clearer that the level of accuracy required was not beyond that required under NZ GAAP, to address a concern raised in submissions.

75. These principles provide our interpretation on the extent that the information generally requested under section 83 (or via other means) must be correct and complete.

76. We consider that these interpretations mean that the assurance reporting requirements provided for the draft LAD will be similar to the audit reports provided under the TSO regime. This is appropriate because the information being provided for the LAD process, and the way that information is to be used, is very similar to previous TSO cost allocation processes.

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[28] Information provided to us and available in retail outlets indicated that rebates are often based on the value and term of the mobile access plan that the customer signs up to. For example, a rebate paid above the wholesale fair value of the handset may allow an indirect channel to recover retail margins including 'lost' retail profits.

[29] Refer to Attachment A of this document for the definition of each principle.

July to June financial year

77. Our specified information instructions for this draft LAD required QLPs to provide the specified information for the TDL year of 1 July 2012 to 30 June 2013.

78. We included instructions for firms with statutory year ends other than 30 June, on how to complete the required disclosures. We sought to balance the compliance costs of making the adjustments, with the need for a reasonable level of accuracy. For example, the instructions recognised that a QLP may need to make estimates of which TDL year specific revenue is recognised in. However, the instructions also had provisions to ensure that these estimates do not result in revenue never being counted as qualified revenue (which would disadvantage other liable persons).

Changes in accounting practices

79. Our qualified revenue instructions last year required firms to make reasonable efforts regarding the effects of changes in accounting practices on qualified revenue. This was included to reflect that firms have valid reasons for changing their accounting practices, but also to require them to make reasonable efforts to ensure that these changes do not result in them under-reporting their long-term qualified revenue. We have retained this view in our specified instructions for the 2012/13 TDL process.

Other matters: particular revenue streams

80. Our specified information instructions included guidance on how QLPs should classify common types of telecommunications revenue when calculating their qualified revenue. This guidance is found in Attachment B of this draft LAD and includes our rationale for including or excluding these revenue streams from qualified revenue.

81. The rest of this subsection explains our view on several of the revenue streams.

Revenue from building, maintaining and renewing network infrastructure

82. The Act requires QLPs to pay the levy on revenue received from providing services by means of the PTN, or which rely primarily on the existence of the PTN. This requires us to identify what payments (capital contributions) towards the construction and enhancement of the PTN should be deductible when calculating qualified revenue, and which one-off payments should be included in qualified revenue.

83. The specified information instructions for this draft LAD are consistent with last year's, and instruct QLPs to treat:

83.1 capital contributions made towards developing a PTN by a QLP's customer, as deductible when calculating gross telecommunications revenue, subject to several conditions;[30] and

83.2 revenue from operational contribution for building, maintaining and renewing the PTN as qualified revenue.

<u>Capital contributions</u>

84. Our specified information instructions allow QLPs to deduct capital contributions made towards material non-routine additions or enhancements of the PTN network's ability to serve the public, from qualified revenue. These payments provide benefits to users other than the person making the payment, and may include contributions such as those by developers to run infrastructure through new subdivisions, by commercial users for providing new capability that benefits other users in the area, and payments from Crown Fibre Holdings to the local fibre companies.

<u>Revenue from operational contributions</u>

85. Our specified information instructions require revenue from operational contributions for building, maintaining and renewing the PTN, to be included as qualified revenue. This could include routine telecommunications service connection fees, maintenance charges and fees for routine changes to a customer's telecommunications service offerings.[31]

86. This approach is consistent with the Act's intent that the TDL covers revenue from providing services based on the PTN, as such revenue is earned (largely) from the existing capability of the PTN to provide service to that customer. This approach is also consistent with NZ GAAP and is equitable, as some operators may recover the cost of these activities via monthly tariffs. To allow some firms to separate out these operational contributions (and exclude them from qualified revenue) would result in inconsistent and inequitable outcomes.

<u>Porting charges</u>

87. We consider that revenue from porting charges (also known as plan change fees) is qualified revenue. These charges are paid when a subscriber changes network provider (ports) but keeps their number. The network provider acquiring the

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30 Our specified information instructions also include requirements that QLPs record related asset(s) as a fixed asset(s) under NZ GAAP to claim the capital contribution as a deduction.

31 Examples include payments to connect a customer to the network when the PTN already passed their property (eg, residential drop leads), and payments to upgrade to a service which was already available to the customer (such as upgrading to ADSL when the customer's exchange was already ADSL capable).

subscriber pays the subscriber's previous network provider a porting charge. This is a wholesale charge and is distinct from any fees that operators may charge retail customers for early termination or changing their monthly or pre-pay plans.

88. As network providers earn this revenue from the day to day operations of their networks, we consider that it is earned by means that rely primarily on the existence of the PTN. Therefore, it fulfils the statutory definition of qualified revenue in section 5 of the Act.

89. As this revenue is qualified revenue, QLPs can deduct the porting charges they pay to other QLPs from their gross telecommunication services when calculating their qualified revenue.

90. We intend to add guidance to our 2013/14 specified information instructions on the treatment of porting charges to improve clarity and promote consistency.

<u>Fibre network equipment located inside end-user premises</u>

91. We consider that the costs of fibre-network-related equipment located inside a customer's premises that is part of a QLP's PTN, should not be deducted from qualified revenue. This is because the deduction for the cost of non-telecommunications goods and services does not apply to goods that form part of a PTN.

92. On 4 September 2013 we issued a clarification about the treatment for the TDL of fibre-related equipment located inside end-user premises in response to questions from Ultrafast Fibre Ltd (Ultrafast). The clarification stated that the cost of an optical network terminal (ONT) installed inside the end-user's premises, external termination point (ETP) and internal termination points (ITPs) are not deductible as these items are part of the QLP's fibre PTN. We provided this clarification after reviewing the technical material, and contract terms and conditions on the webpages for the LFCs.

93. Our clarification also stated that deductions may be claimed for the cost of residential gateways (such as Wi-Fi capable routers) and other equipment located on the end-user side of the ONT, subject to the conditions in paragraphs 28 to 31 of our specified information instructions.

<u>Satellite revenues</u>

94. Our specified information instructions require QLPs to include in qualified revenue any revenue from telecommunications services provided in New Zealand via satellite. This reflects that the TDL is a revenue based levy, and the services provided using satellite technology are telecommunications services provided by means of a PTN.

95. During the 2011/12 TDL framework development, this issue was raised by Bay City Communications Ltd (Bay City) who provide services using satellite technology.[32]

96. The services Bay City derives revenue from (which include the use of satellite technology) are telecommunications services provided by means of a PTN in New Zealand, to customers located in this country. While the satellite may be considered to be outside of New Zealand, the part of the PTN operated by Bay City relevant to the delivery of those services is located in New Zealand. Therefore, this revenue fulfils the statutory definition of qualified revenue in section 5 of the Act.

97. The payments that Bay City makes to its satellite services provider are not permitted to be deducted because the satellite services provider is not, at this stage, a QLP. If we permitted a deduction for payments for these services, it would be inconsistent with the net revenue approach, and create an inequality with other QLPs who use alternative non-contributing technologies to deliver their services.

Video on-demand

98. We consider that revenue derived from video on-demand content is not qualified revenue. We only consider revenue clearly related to this content exempt, whereas revenue related to the conveyance of this content is qualified revenue.

99. Video on-demand content can be distinguished from broadcasting as it is content provided to a single-user for use at their discretion. Broadcasting revenue is also not qualified revenue as the definition of 'telecommunication' defined in section 5 of the Act excludes *any conveyance that constitutes broadcasting*.

Private versus public telecommunications network

100. We consider that revenue earned from operating a physically private telecommunications network is not qualified revenue. This is only when the private network is not physically able to connect to another telecommunications network, and is therefore not part of a PTN.

101. We consider that if the network is physically capable of being accessed by the public for any purpose (even private uses of the public network) then revenue that the QLP derives from providing the services by means of a PTN (or that rely primarily on the existence of a PTN) is qualified revenue.

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32 For example, Bay City, *Submission on the Liability Allocation for the Telecommunications Development Levy for 2011 / 2012 and Beyond*, 28 February 2012.

102. This means that the QLPs do not need to know (or incur the costs of knowing) how their clients use the services they provide. If the QLP derives revenue from providing telecommunications services over a publicly accessible telecommunications network, then it is qualified revenue.

103. As explained in our specified information instructions, and consistent with our approach last year, this means revenue from providing services via layer one and above (including ducting and dark fibre) is qualified revenue. Revenue from fibre or copper dedicated to a single-user is also included in qualified revenue, unless that fibre or copper is part of a physically separate telecommunications network that does not connect to a PTN.

Co-location

104. Our specified information instructions state that revenue from selling co-location services on cellular transmission sites and wireless towers for TDL purposes must be included in qualified revenue. This is because the co-location revenue is earned by means of a facility that is predominately operated as part of a PTN located in New Zealand.

Customer loyalty programs

105. Some telecommunications providers offer points in customer loyalty programs.[33]

106. The accounting profession has issued an interpretation statement on the treatment of loyalty programs.[34] For retailers issuing points in a program run by a third party (such as Fly Buys) the statutory operating revenue should be net of the amount paid to the third party operating the program for providing the loyalty points. To date we have not identified any problems with the treatment of customer loyalty programs in TDL disclosures.[35]

107. We intend to add guidance to our 2013/14 specified information instructions on the treatment of customer loyalty programs by explicitly requiring qualified liable persons to comply with the NZ IFRIC 13. This would make the existing requirement to comply with NZ GAAP explicit for customer loyalty programs. We intend to make this revision to improve clarity, promote consistency, and because our experience indicates that it is beneficial to clarify what is deductible for TDL purposes.

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33 For example, Two Degrees Mobile in New Zealand offers Fly Buy points and Optus offers Qantas points in Australia. The respective customer loyalty program websites were referenced 11 September 2013.

34 NZ IFRIC 13 New Zealand Equivalent to IFRIC Interpretation 13 Customer loyalty programs.

35 For example, we have not identified the potential double deduction of the cost of customer loyalty programs as both a reduction in gross telecommunications revenue and the cost of a bundled non-telecommunications goods or service.

Compliance and assurance

108. This section discusses the compliance process for the identification of QLPs and timing of when information is provided to us, and the assurance requirements relating to the accuracy of the calculation of qualified revenue.

Compliance and assurance for the qualified revenue calculations

109. We required QLPs to provide us with an assurance report by an independent qualified auditor, providing an opinion on the information each company provided to us in response to our qualified revenue notice.

110. The scope of the assurance report for the this draft LAD was the same as for the 2011/12 LAD, which we had determined after considering the requirements of the Act, relevant auditing standards, feedback from our consultation process, and our assurance requirements for other disclosures (such as under Part 4 of the Commerce Act) that some of the QLPs must provide us.

111. This included requirements that the assurance report included statements by the auditor:

    111.1 that it was prepared in accordance with the relevant professional standards (Standard on Assurance Engagements 3100 – Compliance Engagements (SAE 3100) and International Standard on Assurance Engagements 3000 (ISAE (NZ) 3000);

    111.2 whether proper accounting records have been kept by the company to enable the complete and accurate compilation of required information; and

    111.3 whether the information provided by the company is prepared in all material respects in accordance with our notice.

112. Our requirements for the assurance report included that the auditor recognise that we and the QLP's directors are the intended users of the assurance report. This recognises that the audited information was prepared for us (and is not subject to scrutiny by other interested parties) to use when preparing our TDL LAD.

113. The Act requires that all information requested under section 83 must be accompanied by a report prepared by a qualified auditor that details the extent to which this information is *correct* and *complete*. The Act provides us with discretion in specifying the scope of the auditor's report (the assurance report).

114. Assurance reports prepared by independent qualified auditors provide us with a reasonable level of confidence to the processes used to prepare information and the reliability of information. An independent auditor is expected to identify and correct deficiencies in processes and information, and provide assurance of its reliability.

115. For this draft LAD we made it explicit that an auditor appointed by the Auditor-General could prepare the assurance reports. This was done in response to a proposal by the Office of the Auditor-General.[36] We consider that such auditors meet the Act's intent for having an independent and qualified auditor. This revision made it clear that QLPs that are audited by Audit NZ for other purposes may engage Audit NZ for TDL assurance purposes.

116. The following section outlines the compliance review that we conducted this year after receiving the specified information disclosure from the QLPs.

Our compliance review for this draft LAD – technical issues

117. We reviewed all information received from QLPs for compliance with the qualified revenue notice. This included checking the disclosures for completeness, the reasonableness of the information provided, and the consistency of how different QLPs addressed comparable issues.

118. Our review identified several issues, which we have raised with the relevant QLPs. These issues were technical in nature, relating to the specifics of the individual QLPs, and therefore did not require consultation. Some issues resulted in changes to the QLP's qualified revenue and others did not.

119. One issue was whether porting charges were non-telecommunications services revenue. We asked the QLP for an explanation of why they had treated this revenue as non-telecommunications services revenue. After considering their response we decided that it was earned by means that rely primarily on the existence of the PTN. Therefore, we adjusted their qualified revenue accordingly.

120. The above issue specifically relates to the porting of mobile subscribers. We shall contact all mobile network operators to discuss their treatment of mobile porting charges to ensure consistency. The net effect is likely to be small, relative to the size of the amounts these QLPs will have to pay towards the levy.

121. One QLP had treated revenue earned from overseas telecommunications providers for transporting traffic that terminated in New Zealand as non-telecommunications services revenue. We asked the QLP for an explanation and after considering its response, we decided to adjust its qualified revenue by treating this item as telecommunications services revenue. We consider that it was earned in New Zealand by means that rely primarily on the existence of a PTN that is located in New Zealand.

122. We also experienced delays in receiving information from some QLPs. In most cases the QLPs either kept us informed of when they would or will provide the outstanding information, or promptly responded to our requests for missing information. We are currently waiting on one QLP's statutory accounts.

[36] Email from Roy Glass, Office of the Auditor-General to Neville Lord, Commerce Commission 12/4/2013.

123. We consider that the issues outlined in this section (paragraphs 117-122) were generally immaterial, and do not require further formal compliance action.

Our compliance review for this draft LAD – inclusion of all qualified revenue

124. Our compliance review identified several issues, some that may be material for one QLP. While these issues may, in percentage terms, significantly increase this QLP's amount payable, they are unlikely to significantly decrease the amounts that other QLPs will have to pay towards the levy.

125. We found information that suggests that the group, to which this QLP belongs, may earn telecommunications services revenue that was not included in the QLP's TDL disclosures. This may understate the QLP's (and/or that of related companies) qualified revenue and therefore, the group's combined share of the TDL.

126. We issued section 98 notices[37] requiring this QLP to provide us with further information. We have received this information and will use it to assess what revenue streams should be treated as telecommunications services revenue for the purposes of the TDL. If appropriate, we will update the TDL allocations.

127. If our investigations reveal a material shortcoming by this QLP, we may take further enforcement action.

Allocation of levy

128. The proportion of the TDL required to be paid by each QLP is determined by their share of the total qualified revenue earned by all QLPs for the TDL period.

129. In accordance with section 85(1)(a) and (b) of the Act, the following table shows the qualified revenue amounts that we have determined, and the amount of the TDL payable by each liable person.

[37] Section 98 of the Commerce Act enables the Commerce Commission to require a person to supply information or documents, or give evidence where we consider it necessary or desirable for the purposes of carrying out our functions.

QLP	Qualified revenue ($)*	% of industry qualified revenue	Amount of TDL to pay ($)
Telecom	1,724,903,742.88	39.46%	19,729,644.17
Vodafone NZ	996,719,896.79	22.80%	11,400,594.95
Chorus	980,965,000.00	22.44%	11,220,388.66
Vodafone Fixed	262,993,566.11	6.02%	3,008,150.16
Two Degrees Mobile	194,963,066.00	4.46%	2,230,009.61
Teamtalk	35,095,000.00	0.80%	401,420.58
Orcon	31,760,477.59	0.73%	363,279.94
FX Networks	26,391,757.70	0.60%	301,871.91
Vector	24,290,000.00	0.56%	277,831.77
CallPlus	19,843,596.31	0.45%	226,973.30
WorldxChange	14,392,000.00	0.33%	164,617.32
Kordia**	10,489,000.00	0.24%	119,974.37
Woosh Wireless	8,062,060.00	0.18%	92,214.75
Bay City Communications	7,770,400.89	0.18%	88,878.72
Compass	7,171,796.14	0.16%	82,031.82
Snap	6,920,000.00	0.16%	79,151.74
REANNZ**	4,547,000.00	0.10%	52,009.10
Transpower**	4,273,000.00	0.10%	48,875.06
Enable Networks**	3,954,000.00	0.09%	45,226.30
Trustpower	3,206,000.00	0.07%	36,670.59
Ultrafast Fibre**	2,054,000.00	0.05%	23,493.88
Northpower**	585,000.00	0.01%	6,691.30
Total Industry	**4,371,350,360.41**	**100%**	**50,000,000.00**

*A firm with an operating revenue over the $10m threshold for inclusion, may have a reported qualified revenue of under $10m due to adjustments

**These Crown companies are required by s79 to be treated as one person

Attachment A – 2012/13 TDL Specified Information Instructions

Instructions for preparing specified information under section 83 to identify a qualifying liable person's qualified revenue for the purposes of the Telecommunications Development Levy

1. These instructions provide guidance for parties seeking to comply with the information disclosure requirements in section 83 of the Telecommunications Act 2001 (the 'Act').

2. Each year the Commerce Commission (the 'Commission') identifies a group of telecommunications service providers (TSPs) who are liable to pay a portion of the annual Telecommunications Development Levy (TDL). A list identifying these TSPs is produced at the end of June, and these parties are known as qualifying liable persons (QLPs). This list of qualifying liable persons for the 2012/13 TDL has been provided on the Commission's website.[38]

3. Each QLP is required to provide specified information that helps identify their estimated qualified revenue total, and this information is used by the Commission to assist in determining the QLP's portion of the TDL.[39] In accordance with section 83 of the Act, the specified information is due 60 working days after the end of the financial year (30 June).

4. These instructions provide guidance on what the specified information required under section 83 includes and how it is to be presented.

5. Along with these instructions and the List of qualifying liable persons, a set of templates and relevant statutory references have also been made available on the Commission's website. We recommend QLPs utilise these materials as they have been designed to properly meet the Commission's requirements. Specific instructions for using the templates are provided in this document.

Interpretation

6. For the purpose of these instructions, 'specified information' includes information used to identify a QLP's qualified revenue.

7. Qualified revenue is the amount of revenue that, during the 2012/13 financial year (1 July to 30 June), the QLP received from supplying all or any of the following:

[38] A qualifying liable person is a person or company that meets the criteria set out in section 81(1) of the Act, thereby having earned more than $10 million in telecommunications revenue (either independently or alongside a group of companies connected via significant shareholding interests) in the year preceding the year under review.

[39] Specified information is information that is specified by the Commerce Commission under section 83(1)(a) for the purpose of enabling the Commission to make its determination in accordance with section 88(a) of the Act.

7.1 ‘telecommunications services’ by means of its public telecommunications network (PTN); and

7.2 ‘telecommunications services’ by means that rely primarily on the existence of its PTN or any other PTN.

8. Qualified revenue does not include revenue acquired by payment from the Crown to a QLP as compensation for the cost of complying with a TSO instrument that contains a specified amount. This type of revenue is expressly excluded in the definition of qualified revenue in section 5 of the Act.

9. Qualified revenue also excludes non-telecommunications services revenue (such as broadcasting), payments for telecommunications services between QLPs and in some specific circumstances payments to non-QLPs for telecommunications services purchased from another QLP.

10. It is considered for the purposes of these instructions that ‘telecommunications services’ (as defined in section 5 of the Act) can only be services (rather than goods, equipment and facilities), as goods, equipment and facilities cannot be supplied by means of a PTN or by means that rely primarily on the existence of a PTN.

11. All specified information used to identify qualified revenue must be calculated on an accruals basis.

12. For the purpose of these instructions, ‘end-user equipment’ means any or all handsets, tablets, USB modems, other consumer equipment, and business and other office end-user equipment.

13. Except where otherwise expressly provided, all information provided to the Commission in accordance with these instructions must be prepared in accordance with the following principles.

13.1 Correct: the information has been prepared by the company in all material respects in accordance with these instructions, and disclosure must occur in accordance with New Zealand generally accepted accounting practice (NZ GAAP).

13.2 Complete: the company has provided all the information requested, in an appropriate format.

13.3 Objectivity: the company must apply regulatory reporting processes which are objectively justifiable and reasonable. These processes, any changes to them, and any supporting assumptions or data must be documented in such a way that an informed reader can easily judge their reasonableness.

13.4 Consistency: the company must treat similar types of information consistently, both within a reporting year and from year to year.

13.5 Data retention: the company must retain copies of all documentation detailing the processes related to information disclosed for seven years.

Operational changes for QLPs

14. The Commission acknowledges there will be situations where a QLP may cease trading during a financial year, or cease to operate the telecommunications component of their business.

15. If a QLP ceased trading or operating a component of a PTN in the 2012/13 financial year, they will continue to have liability for the TDL in that year. This is because the QLP would have met the qualifying criteria in the preceding financial year, and will have some qualified revenue for the 2012/13 year. Only the revenue earned during the period that the provider was a liable person (as defined in section 5 of the Act) needs to be counted as qualified revenue.

Instructions for completing the templates

Template 1: Consolidated Return & Qualified Revenue Calculation

16. Template 1 requires the QLP to:

16.1 provide information about whether the disclosure is a consolidated return which applies to more than one QLP; and

16.2 provide a calculation of the QLP's qualified revenue for the 2012/2013 financial year.

Template 1a: Consolidated Return

17. Under the heading 1a: Consolidated Return QLPs (captured by section 79 of the Act) are required to identify in the drop-down box, if they are filing a consolidated return, and if so, state which parties are included in the consolidated return. Section 79 of the Act identifies when the Commission must treat two or more corporate bodies as one person.[40] The List of qualifying liable persons gives an indication of whether the company is captured by section 79 and if so, who the other parties are that the company is associated with.

Template 1b: Qualified Revenue

18. To calculate its estimate of qualified revenue, the company must first calculate gross telecommunications services revenue, that is, the company's operating revenue:

18.1 less any non-telecommunications services revenue, and

[40] For example, section 79(1)(e) of the Act provides that any two or more bodies corporate must be treated as one person if a third person owns or controls shares in each of them that carry the right to exercise, or control the exercise of, 20% or more of the voting power at meetings of each of them.

18.2 allowing for any timing adjustments which arise should the company have a statutory year end which differs from the financial year ending 30 June 2013 that is used for calculating qualified revenue.

19. The company must then net off from the gross telecommunications services revenue total, the following items:

19.1 the total of any payments made to other QLPs (which is calculated in Template 2);

19.2 the total of any payments made to non-respondents for services initially provided by a respondent (which is calculated in Template 3); and

19.3 in specified circumstances, the cost of any non-telecommunications goods and services (eg, handsets in discounted bundles with telecommunications services) for which the revenue is included in gross telecommunications services revenue.

20. The company's qualified revenue for the 2012/13 financial year is calculated in accordance with the formulas in Template 1, which are summarised in Table 1.

21. Table 1 is provided to assist the company in calculating its qualified revenue and as such, is for information and explanation purposes only. The information required to be provided to the Commission is that set out in Template 2.

Table 1: Calculating Qualified Revenue

Step		Disclosed Items	Value	Value	Formula
a		Operating revenue as per the relevant statutory accounts		$ a	
b		Non-telecommunications services revenue,(if any)	$ b		
c		Other non-telecommunications services revenue	$ c		
d	less	Total non-telecommunications service revenue, sold separately		$ d	d = b + c
e	plus	Timing adjustment (if required)		$ e	
f		**Gross telecommunications services revenue**		**$ f**	f = a - d + e
g	less	Total payments made to other respondents		$ g	
h	less	Total payments made to non-respondents for services initially provided by a respondent		$ h	
i	less	Total cost of non-telecommunications goods and services included in gross telecommunications services revenue		$ i	
j		**Qualified revenue**		**$ j**	j = f –g – h- i

Calculating gross telecommunications services revenue

22. To calculate gross telecommunications services revenue (step f), the company must identify the following features.

22.1 In step (a), the operating revenue. The relevant statutory accounts are the company's most recent statutory accounts (or equivalent information if the company does not publish statutory accounts) that have the most overlap with the financial year ending 30 June 2013. For a company with a 31 December year end, the operating revenue is to be for the period ending 31 December 2012.

22.2 In step (d), the value of total non-telecommunications services revenue. This is the sum of the disaggregated major non-telecommunications revenue streams individually disclosed in step (b) under the heading ‘non-telecommunications services revenue (if any)’, and the value of any other revenue streams that are disclosed in aggregate in step (c) as ‘other non-telecommunications services revenue’. These are calculated in the following manner.

22.2.1 Under the heading, ‘non-telecommunications services revenue’, the company must disclose each of its major disaggregated non-telecommunications revenue streams. When the information is reasonably available and appropriate, the company must use the revenue types listed in Attachment A.[41] If this information is not readily available, then the company must provide sufficient detail that an informed reader can reasonably identify the major activities that generate the non-telecommunications services revenue.

22.2.2 Under the heading, ‘other non-telecommunications services revenue’ the company may disclose the non-telecommunications services revenue earned from minor activities as a combined value. This value must not exceed 10% of the company’s operating revenue as disclosed in step (a).[42]

22.2.3 The values deducted for non-telecommunications services revenue must be consistent with those used in calculating operating revenue as per the relevant statutory accounts.

23. Step (e), the ‘timing adjustment’, is only required if the company has a statutory year end other than 30 June. This facility allows the company to make adjustments for the effect of both:

23.1 the statutory accounts report operating revenue for a different period than the TDL’s financial year ending 30 June year, and

23.2 estimates of when revenues and costs should be recognised for TDL purposes.

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41 Such as revenue derived from outside New Zealand, revenue earned from the standalone sales of handsets and other end-user equipment, and revenue earned from non-telecommunications products that were not bundled with telecommunications services.

42 The option of disclosing revenue earned from these minor activities as a combined ‘other’ value, rather than separate line items, is provided to reduce the company’s compliance costs. The 10% threshold exists to provide transparency in the calculation.

24. If the timing adjustment results in either an increase or decrease in gross telecommunications services revenue, it should have a corresponding positive or negative value.

25. The timing adjustment will typically represent the effect on gross telecommunications revenue caused by differences in the revenue periods for the statutory accounts and the TDL financial year.[43] It may also include some of the adjustments relating to past assumptions about timing, which were made in accordance with paragraph 23.2, which relate to:

 25.1 estimates of gross telecommunications services revenue (step (f));

 25.2 total payments made to other QLPs (step (g));

 25.3 total payments made to non-QLPs for services initially provided by a QLP (step (h)); and

 25.4 total cost of non-telecommunications goods and services included in gross telecommunications services revenue (step (i)).[44]

26. The company must provide explanations of any material differences between the revenue disclosed in the most recent statutory accounts and the revenue disclosed in Template 1, that are not due to the timing adjustment disclosed in step (e).

27. If the company does not have separate statutory accounts, it must disclose the total audited revenue of its business for the financial year and reconcile this to the gross telecommunications services revenue disclosed in step (f).

Deducting the cost of non-telecommunications goods and services

28. If revenue from non-telecommunications goods and services can be identified separately it must be deducted at step (b). If revenue from these non-telecommunications goods and services is not reasonably identifiable (such as when they are sold through the QLPs website or own retail stores (direct channels) in a discounted bundle with telecommunications services) then the Commission will permit a QLP to deduct the cost of purchasing these goods or services in step (i).

[43] For example, if a company with a 31 March year end earned $10m more telecommunications services revenue in the quarter ending 30 June 2013 than it did in the quarter ending 30 June 2012, the timing adjustment would be $10m.

[44] For example, if a company with a March year end, in its TDL year 1 templates assumed that the revenue from a shipment of handsets sold in April was included in the March statutory accounts, later recognises the sale as an April transaction, could address this as a timing adjustment in TDL year 2. Whether this effect is disclosed as a timing adjustment or addressed elsewhere on template 1 depends on how the company calculates the values in template 1.

29. For the cost of these non-telecommunications goods and services to be deducted, the associated revenue must be included in the gross telecommunication services revenue total at step (f). This could include the cost of end-user equipment (such as handsets and modems), broadcasting services and video on-demand content that were provided by the company in a bundle with telecommunications services. Typically this means the entire revenue value of the bundle is included in the total at step (f).

30. The cost of these non-telecommunications goods and services must be disaggregated into one of the four categories listed in Template 1b and calculated in the following manner.

30.1 For end-user equipment that was sourced in New Zealand, the direct cost paid to the external supplier(s) in accordance with NZ GAAP.

30.2 For end-user equipment that was sourced outside New Zealand, the direct cost paid to the external supplier(s) in accordance with NZ GAAP, plus direct freight costs and customs duties.

30.3 For broadcasting services and video on-demand content, the direct cost paid to the external supplier(s) in accordance with NZ GAAP.

30.4 For other non-telecommunications goods and services that were sold as part of a bundle with telecommunications services, the directly attributable costs in accordance with NZ GAAP. This category is likely to include services such as maintenance services, which were sold as part of a bundle with telecommunication services.

31. For the avoidance of doubt, in step (i) the cost of non-telecommunications goods and services:

31.1 can only be deducted at this point if the associated revenue could not reasonably have been identified and deducted as non-telecommunications services revenue at step (b);

31.2 can only be deducted if the associated revenue was included in the company's gross telecommunications services revenue;

31.3 must not include any allocation of corporate overhead, charges for the cost of capital, or mark up for indirect costs;[45]

31.4 (for non-telecommunications goods specifically) can only be deducted if at the time when the associated revenue transaction occurred, the QLP had legal ownership of the goods; and

[45] These accounting practices are specific to these instructions and the calculation of qualified revenue for TDL purposes. This should not be taken as guidance for compliance with any other notice, determination or other requirements issued by the Commission.

31.5 (for a non-telecommunications goods specifically) cannot be the price charged by a party (eg, retailer) who had purchased the same good in a previous transaction from the QLP; if the QLP had repurchased the good from such a party, then the revenue from the first sale must be fully reversed in calculating gross telecommunications revenue, and the cost of the non-telecommunications good must be set at the original cost the QLP incurred in acquiring it as allowed under clauses 30.1 and 30.2.

Changes in accounting practices and the treatment of estimates

32. In calculating qualified revenue, the company must make reasonable efforts to ensure that the reported value of its qualified revenue is accurate both within a year and in aggregate across years. This includes, but is not limited to:

32.1 when a change in accounting practices impacts when revenues or costs are recognised, the company must make reasonable efforts to ensure that the affected qualified revenue is reported either in the year that the change in accounting policy is made, or in the year when the revenue or cost is first recognised; and

32.2 when a company with a statutory year end other than 30 June makes estimates as to which of two TDL financial years an item of revenue (or cost) should be recognised in, then the company must make reasonable efforts to ensure that a revenue (or cost) item, if not recognised in the first of the two TDL financial years, is recognised in the later of the two TDL financial years, regardless of how it is recognised for other purposes.

33. For the avoidance of doubt, the above paragraph 33.2 may result in the timing recognition of revenue or input costs for TDL purposes being different to that used for statutory reporting under NZ GAAP or other reporting requirements.

<u>Template 2: Payments made to other QLPs</u>

34. This template requires the company to disclose the total amount payable to other QLPs that is being deducted in accordance with these instructions for the 2012/13 financial year.

35. Amounts payable to each of the QLPs to whom payments are made must be disclosed separately.

36. Deductions are only permitted when the telecommunications services acquired were used by the QLP to provide telecommunications services to its own customers in New Zealand.

<u>Template 3: Payments made to non-QLPs for services originally purchased from a QLP</u>

37. The QLP can deduct payments made to a non-QLP for telecommunications services, but only if that non-QLP is acting as an intermediary for another QLP, ie,

payments to a non-QLP for the provision of telecommunications services which the non-QLP has purchased from another QLP.

38. The intention of this exception is to deal with situations where a non-QLP is effectively acting as an intermediary between a liable upstream provider and a liable downstream provider for telecommunications services. This is likely to be rare and the Commission needs to be convinced that any deduction claimed is genuine.

39. Again, deductions are only permitted when the telecommunications services acquired were used by the QLP to provide telecommunications services to its own customers in New Zealand.

40. Template 3 requires the company to disclose details about payments claimed in Template 1 (step (h)) as a deduction for payments made to non-QLPs for services originally purchased from another QLP in the 2012/13 financial year.

41. To claim a deduction in Template 3, the QLP is required to provide:

41.1 the name of the non-QLP(s) from whom it purchased the services;

41.2 the QLP(s) the non-QLP purchased the services from originally;

41.3 a description of the service(s) provided;

41.4 the value of transaction(s) and the allocated value of the payments deducted from TDL qualified revenue.

42. Any allocations are to be calculated in accordance with the principles in paragraph 13. The value of transactions(s) should reconcile to invoices and must include both the allocated value deducted for TDL qualified revenue and non-deductible amounts (such as payments for non-telecommunications services).

The qualified revenue status of common revenue streams

43. In general, telecommunications services can be divided into two groups; voice services, and data services. This reflects the definition of the network these services are to be provided over. PTN is defined in the Act as meaning *a network used or intended to be used, in whole or in part, by the public for the purposes of telecommunication* including a public switch telephone network (PSTN) and a public data network (PDN).

44. Voice services are generally those services provided over a PSTN, and what is captured in this category is largely unchanged from the previous TSO cost allocation processes. Common types of voice based telecommunication services include:

44.1 local and residential telephone services;

44.2 long distance direct dial and toll calls; and

44.3 calling cards.

45. Data services are generally those services provided over a PDN. Common types of data based telecommunication services include:

    45.1 mobile broadband services;

    45.2 business data services; and

    45.3 xDSL services, naked DSL services and services provided using an unbundled copper local loop.

46. Further information on the qualified revenue status of common types of voice and data telecommunications services is provided in Attachment A.

What does not constitute qualified revenue for the purposes of these qualified revenue instructions?

47. Revenue earned from international transit arrangements for calls neither originating nor terminating in New Zealand is not qualified revenue.

48. Revenue earned from the provision of end-user equipment (including handsets discounted or otherwise) is not qualified revenue as it is not revenue relating to the supply of telecommunications services by means of the company's PTN or the supply of telecommunications services by means that rely primarily on the existence of the company's or any other PTN.

49. Any revenue received by a company from the Crown as compensation for the cost of complying with a TSO instrument containing a specified amount, is not included in the calculation of qualified revenue.

50. Revenue from providing broadcasting is not qualified revenue. The definition of 'telecommunications' in section 5 of the Act excludes *any conveyance that constitutes broadcasting*.

51. Revenue derived from video on-demand content is not qualified revenue. Video on-demand is distinguished from broadcasting as it is provided to a single-user for use at their discretion. Furthermore, video on-demand content revenue is distinguished from conveyance revenue, and only revenue related to the conveyance of this content is qualified revenue.

52. Receipts from capital contributions that were made towards assets which develop the PTN are not qualified revenue if the company records the asset(s) as a fixed asset(s) under NZ GAAP. The value of any deduction must not exceed the value of the related asset as recorded in the fixed asset register under NZ GAAP.

Qualified revenue and the public telecommunications network

53. Revenue earned from operating a physically private telecommunications network (a network that is not physically able to connect to another telecommunications network) is not qualified revenue. If the network is physically capable of being accessed by the public for any purpose (even private uses of the public network) the revenue the QLP derives from providing the telecommunications service is qualified revenue.

54. This means that a QLP is not required to know how their clients use the services they provide. If the company derives revenue from providing telecommunications services by means of a PTN (or that rely primarily on the existence of a PTN) then that revenue is qualified revenue.

55. Therefore, revenue from providing services via layer one and above (including ducting and dark fibre) is qualified revenue. Fibre or copper dedicated to a single-user is also included unless that fibre or copper is part of a physically separate telecommunications network that does not connect to a PTN.

Assurance report requirements

56. The QLP must provide to the Commission an assurance report by an independent qualified auditor in respect of all specified information. This assurance report must be prepared in accordance with the Standard on Assurance Engagements 3100 – Compliance Engagements (SAE 3100), and the International Standard on Assurance Engagements 3000 (ISAE (NZ) 3000) or their successor standards, and signed by the auditor (either in his or her own name or that of his or her firm).

57. The assurance report must be addressed to the directors of the company and to the Commission as the intended users of the assurance report. The report must state:

    57.1 that it has been prepared in accordance with Standard on Assurance Engagements 3100 – Compliance Engagements (SAE 3100) and International Standard on Assurance Engagements 3000 (ISAE (NZ) 3000) or their successor standards;

    57.2 the work done by the independent qualified auditor;

    57.3 the scope and limitations of the assurance engagement;

    57.4 the existence of any relationship (other than that of auditor) which the independent qualified auditor has with, or any interests which the independent auditor has in, the company or any of its subsidiaries;

    57.5 whether the independent qualified auditor has obtained sufficient recorded evidence and explanations that he or she required and, if not, the information and explanations not obtained;

57.6 whether, in the independent qualified auditor’s opinion, proper accounting records have been kept by the company to enable the complete and accurate compilation of required information, and if proper accounting records have not been kept by the company, identify the records not so kept; and

58. The assurance report must also state whether or not in the independent qualified auditor’s opinion the information provided by the company in templates 1 to 3 is prepared in all material respects in accordance with these instructions.

59. For the purposes of these instructions, an independent qualified auditor means, in relation to any information, a person who:

59.1 is qualified for appointment as auditor of a company under the Companies Act 1993, or is an auditor appointed by the Auditor-General;

59.2 has no relationship with, or interest in, the company that is likely to involve the person in a conflict of interest;

59.3 has not assisted with the compilation of the information or provided advice or opinions (other than in relation to audit reports or in respect of the interpretation of this determination) on the methodologies or processes used in compiling the information; and

59.4 is not associated with nor directed by any person who has provided any such assistance, advice, or opinion.

Attachment B – Qualified revenue status of common types of revenue

Revenue stream	Rationale	Status
Revenue from building, maintaining and renewing network infrastructure	The criteria for qualified revenue as defined in section 5 of the Act require telecommunications services to be provided by means of a public telecommunications network (PTN) or by means that rely primarily on the existence of the PTN. Therefore, the Commission considers revenue from operational contributions for building, maintaining and renewing PTN infrastructure, recorded by the QLP accordingly under NZ GAAP, is qualified revenue, because it is part of the telecommunications service provided by means of a PTN. Receipts from capital contributions made towards assets which develop the PTN are not qualified revenue (and can be deducted) if the QLP records the asset(s) as a fixed asset(s) under NZ GAAP. This is because the building, maintaining and renewing activity is significant enough to define it as the creation of an asset rather than the operation of one. However, the value of any deduction must not exceed the value of the related asset as recorded in the fixed asset register under GAAP.	Operational revenue is qualified revenue and receipts from capital contributions are legitimate deductions.
Revenue from the sale of mobile phone handsets that is not recovered through mobile access or calling charges (ie, sold separately)	The Commission considers that this revenue is not captured by the definition of qualified revenue in section 5 of the Act.	Non-qualifying telecommunications services revenue.
Revenue from the sale of mobile phone handsets recovered through mobile access or calling charges (sold as part of services provided in a bundle)	The Commission considers that this revenue is not captured by the definition of qualified revenue in section 5 of the Act. Due to difficulties in identifying the true value of this revenue stream, the Commission has allowed QLPs to deduct the cost of handsets which were provided as part of a bundle which includes telecommunication services.	Non-qualifying telecommunications services revenue.
Revenue derived from services provided in other countries	The criteria for qualified revenue as defined in section 5 of the Act still require telecommunications services to be	Non-qualifying telecommunications services revenue.

Revenue stream	Rationale	Status
	provided by means of a PTN operated in New Zealand. These services fall outside the definition of qualified revenue.	
Expenditure on purchasing telecommunications services from other QLPs	The Commission considers that the avoidance of double counting of revenue is a concern and allows a deduction for this type of expenditure as the value of the service is picked up in the QLP providing the service.	Legitimate deduction.
Expenditure on purchasing telecommunications services from a non-QLP that on-sells those services it purchased from another QLP	The Commission considers that this situation is analogous to purchasing services from another QLP directly. QLPs can claim this expenditure as a deduction but they will need to provide detailed information to support these claims.	Legitimate deduction.
Prompt payment discounts and credits for billing errors and omissions	The Commission allows deductions for prompt payment discounts and credits for billing errors and omissions as this allows the QLP to represent their true revenue totals.	Legitimate deduction.
Revenue from calling cards and prepay credits	The Commission considers all calling card and prepay credit revenue, whether used or expired is qualified revenue as it was acquired for the purposes of providing a telecommunications service .	Qualified revenue.
Inbound roaming revenue	The Commission considers that revenue from inbound roaming is a telecommunications service as defined in the Act and is therefore qualified revenue.	Qualified revenue.
Mobile access and calling revenue	The Commission considers that this revenue stream is a telecommunications service as defined in the Act and is qualified revenue.	Qualified revenue.
Revenue earned from voice over IP calls that terminate or originate on a PSTN (PTN)	The Commission considers that this revenue stream is a telecommunications service as defined in the Act and is therefore qualified revenue.	Qualified revenue.
Revenue earned from mobile voice and SMS – a PTN includes that part of a mobile network that facilitates voice calls and SMS	The Commission considers that this revenue stream is a telecommunications service as defined in the Act and is therefore qualified revenue.	Qualified revenue.
Revenue earned from toll by-pass/ direct dial calls by the QLP	The Commission considers that this revenue stream is a telecommunications service as defined in the Act and is therefore qualified revenue.	Qualified revenue.
Revenue earned by the QLP	The Commission considers that this	Qualified revenue.

Revenue stream	Rationale	Status
from late payment fees levied on customers for the late payment of outstanding accounts for telecommunications services	revenue stream is a telecommunications service as defined in the Act and is therefore qualified revenue.	
Revenue earned from dial-up ISP service (Including modem banks)	Revenue from telecommunications services using a PTN is captured – PTN includes public data networks (PDN) and this service is captured under the PDN definition.	Qualified revenue.
xDSL services, Naked DSL services and services provided using a UCLL	The Commission considers that this revenue stream is a telecommunications service as defined in the Act and is therefore qualified revenue.	Qualified revenue.
Mobile broadband services	Revenue from telecommunications services using a PTN is captured – PTN includes PDNs and this service is captured under the PDN definition.	Qualified revenue.
Business data services	Revenue from business data telecommunications services using a PTN is captured.	Qualified revenue.
Revenue derived from the supply of video on-demand content	The Commission considers that video on-demand content revenue is not captured as a telecommunications service as it can be distinguished from the conveyance revenue which is the intended focus of the definition of telecommunications services.	Content revenue is non-qualifying telecommunications services revenue, and conveyance revenue is qualified revenue.
Mobile radio services (campus networks)	Revenue derived from providing telecommunications services by means of a PTN are qualified revenue, irrespective of how a QLP's client uses the services. Therefore, because the mobile radio network fits within the definition of a PTN the fact that a QLP's client uses it for a private purpose is not relevant to its qualified revenue status.	Qualified revenue.
Broadcasting services	The definition of 'telecommunications' in section 5 of the Telecommunications Act expressly excludes broadcasting.	Non-qualifying telecommunications services revenue.
Dark fibre, layer one, two and above services	Revenue from telecommunications services using a PTN are captured – revenue from providing telecommunications services by means of a PTN are captured regardless of the ISO layer.	Qualified revenue.

Revenue stream	Rationale	Status
Satellite revenues	Telecommunications services provided in New Zealand via a satellite are supplied by means of the qualifying liable person's PTN.	Qualified revenue.
Revenue from selling customer premises equipment	Revenue from selling customer premises equipment is revenue from selling goods that are not considered to be related to a PTN.	Non-qualifying telecommunications services revenue.
Revenue from dumb caches, servers, content delivery networks (CDN)	Revenue derived from operating this equipment relies on the existence of a PTN and is therefore within the definition of qualified revenue.	Qualified revenue.
Revenue from fibre dedicated to a single-user	Revenue derived from providing telecommunications services by means of a PTN is qualified revenue, irrespective of how a QLP's client uses the services.	Qualified revenue.
Revenue from early termination charges (telecommunications services revenue)	Early termination charges revenue derived from services or bundles of services that are all telecommunications services is qualified revenue. Early termination charges revenue derived from a bundle that includes end-user equipment which was sold by the QLP to the customer paying the early termination charge and the cost of the equipment is deducted (or had been deducted in a previous TDL year) from gross telecommunications services revenue is qualified revenue. This avoids the problem of a QLP deducting both the cost of equipment while not recognising the matching revenue when calculating qualified revenue	Qualified revenue.
Revenue from early termination charges (non-telecommunications revenue)	Early termination charges revenue derived from a bundle that includes non-telecommunications revenue (eg, end-user equipment), which was sold by the QLP to the customer paying the early termination charge and the cost of the equipment is not deducted (or has not been deducted in a previous TDL year) from gross telecommunications revenue, is not qualified revenue (to the extent it relates to the non-telecommunications equipment). This recognises that it relates to non-telecommunications equipment for which the cost had not	Non-qualifying telecommunications services revenue.

Revenue stream	Rationale	Status
	been deducted when calculating qualified revenue.	
Revenue from co-location	Revenue earned from co-location on cellular transmission sites (as the term is used in Schedule 1 of the Act) or a wireless tower, is captured as it is earned from facilities which are predominately operated by the qualifying liable person as part of a PTN. Revenue earned from other qualifying liable persons for co-location services which allow other qualifying liable persons to use a facility as part of a public telecommunications network (PTN) should be included in qualified revenue.	Qualified revenue.

Attachment C – Relevant statutory references

Relevant extracts from the Telecommunications Act 2001

Section 5 Interpretation

Liable person means a person who provides a telecommunications service in New Zealand by means of some component of a PTN that is operated by the person

PTN or **public telecommunications network –**

(a) means a network used, or intended to be used, in whole or in part, by the public for the purpose of telecommunication:

(b) includes –
 (i) a PSTN:
 (ii) a PDN.

Qualified revenue means the revenue (as determined in accordance with any specifications set by the Commission) that a liable person receives during a financial year for supplying either or both of the following (excluding any amount paid to the liable person by the Crown as compensation for the cost of complying with a TSO instrument that contains a specified amount):
(a) telecommunications services by means of its PTN:
(b) telecommunications services by means that rely primarily on the existence of its PTN or any other PTN.

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

Section 79 When 2 or more bodies corporate must be treated as 1 person

(1) For the purposes of this Part, any 2 or more bodies corporate must be treated as 1 person if—

(a) 1 of them is a body corporate of which the others are subsidiaries; or
(b) all of them are subsidiaries of the same body corporate; or
(c) all of them are associates of each other; or
(d) 1 of them owns or controls shares that in the aggregate carry the right to exercise or control the exercise of 20% or more of the voting power at meetings of the others; or
(e) a third person owns or controls shares in each of them that carry the right to exercise or control the exercise of 20% or more of the voting power at meetings of each of them.

(2) For the purposes of subsection (1)(c), a body corporate is an associate of another if that body corporate is able, whether directly or indirectly, to exert a substantial degree of influence over the activities of the other.

(2) A body corporate is not able to exert a substantial degree of influence over another body corporate for the purposes of subsection (2) just because—

(a) those bodies corporate are in competition in the same market; or
(b) 1 of them supplies goods or services to the other.

Section 80 Interpretation

In this subpart, unless the context otherwise requires,—

financial statements,—

(a) except if section 79 applies, has the same meaning as in section 8 of the Financial Reporting Act 1993; and

(b) if section 79 applies, means a consolidated statement of financial performance of the 2 or more bodies corporate required by that section to be treated as 1 person, prepared in accordance with generally accepted accounting practice, as defined in section 3 of the Financial Reporting Act 1993

minimum telecommunications revenue means $10 million, or such other amount, as may be prescribed by regulations made under section 101(1)(a), of gross revenue (as may be determined in accordance with any specifications set by the Commission) that a liable person receives during a financial year for supplying either or both of the following (excluding any amount paid to a liable person by the Crown as compensation for the cost of complying with a TSO instrument that contains a specified amount):

(a) telecommunications services by means of its PTN:
(b) telecommunications services by means that rely primarily on the existence of its PTN or any other PTN.

<u>Section 81 Subpart does not apply to certain liable persons</u>

(1) This subpart does not apply to a liable person in respect of a financial year (financial year A) if –
(a) the liable person was not trading in the financial year preceding year A; or
(b) the liable person’s telecommunications revenue for the year preceding financial year A was less than the minimum telecommunications revenue.

(2) For the purpose of determining whether a person is a liable person to whom this subpart applies in respect of a financial year, the Commission may, by written notice to that person, require the person to provide to the Commission, within the time specified in the notice,—
(a) a copy of the person's financial statements for the year preceding financial year A; and
(b) any further information specified by the Commission for the purpose of enabling it to verify the telecommunications revenue of that person for the year preceding financial year A; and
(c) a certificate that complies with subsection (3).

(3) A certificate complies with this subsection if—
(a) it certifies the person's telecommunications revenue for the year preceding financial year A; and
(b) it is signed by 2 directors of the person with the authority of the other directors.

<u>Section 82 Liable persons must produce information on qualified revenue</u>

Not later than 60 working days before the end of each financial year (**financial year A**), each liable person must provide to the Commission a copy of—
(a) its financial statements for the financial year preceding financial year A; and
(b) any further information specified by the Commission for the purpose of enabling it to verify the qualified revenue of that person for the financial year preceding financial year A.

<u>Section 83 Liable persons must produce information for purposes of liability allocation determination</u>

(1) Not later than 60 working days after the end of each financial year, each liable person must provide to the Commission—
(a) all prescribed information or, if there is no prescribed information, information specified by the Commission, for the purpose of enabling the Commission to make its determination in accordance with <u>section 88(a)</u>; and

(b) a report that complies with subsection (2).

(2) A report complies with this subsection if—

(a) it is prepared by a qualified auditor; and

(b) it includes a statement of the extent to which the information provided by the liable person under subsection (1)(a) is correct and complete.

Section 84 Commission to prepare draft liability allocation determination

(1) The Commission must—

(a) prepare a draft liability allocation determination for each financial year; and

(b) give public notice of that draft determination; and

(c) include in the public notice the closing date for submissions, which must be not later than 20 working days after the date of giving public notice.

(2) The Commission must make reasonable efforts to do the things referred to in subsection (1) not later than 80 working days after the end of the financial year.

Section 85 Matters to be included in draft liability allocation determination

(1) A draft liability allocation determination must include—

(a) the amount of each liable person's qualified revenue; and

(b) the amount of the telecommunications development levy payable by each liable person for the financial year, calculated in accordance with the following formula:

$$\frac{a}{b} \times c$$

where—

a is the amount of the liable person's qualified revenue

b is the sum of all liable persons' qualified revenue

c is the telecommunications development levy specified for the relevant year in Schedule 3B; and

(c) the methodology applied by the Commission in preparing the determination; and

(d) the reasons for the determination.

(2) To avoid doubt, the Commission may determine what revenue basis to use for the purposes of subsection (1)(a) (for example, a net revenue basis).

Section 86 Conferences on draft liability allocation determination

The Commission may—

(a) hold conferences in relation to the draft liability allocation determination; and

(b) invite to those conferences any person who has a material interest in the determination.

Section 87 Commission to prepare final liability allocation determination

(1) The Commission must—

(a) prepare a final liability allocation determination; and

(b) give public notice of that final determination; and

(c) give a copy of that final determination to all liable persons.

(2) The Commission must make reasonable efforts to do the things referred to in subsection (1) not later than 20 working days after the closing date for submissions specified in accordance with section 84(1)(c).

Section 88 Matters to be included in final liability allocation determination

A final liability allocation determination must include—

(a) the amount of each liable person's qualified revenue; and

(b) the amount of the telecommunications development levy payable by each liable person, calculated in accordance with the formula set out in section 85(1)(b); and

(c) the methodology applied by the Commission in preparing the determination; and

(d) the reasons for the determination.

Attachment D - List of qualifying liable persons

1. The Commerce Commission has identified the parties that are qualifying liable persons (QLPs) for the purposes of the 2012/13 Telecommunications Development Levy (TDL) in a list outlined in Tables 1 and 2 below. This means these parties are required to provide the Commission with specified information in accordance with section 83 of the Telecommunications Act 2001 (the 'Act'), which the Commission will use to identify the portion of the TDL they are required to pay.

2. In addition to this list, the Commission has also separately provided instructions for preparing the specified information required under section 83, templates for preparing the specified information, and a document containing relevant statutory references. These materials can be found on the Commission's website.

Meeting the criteria

3. These QLPs identified in Tables 1 and 2 meet the criteria for "liable person" as defined in section 5 of the Act[46]. They have also met the minimum telecommunications threshold as set out in sections 80 and 81 of the Act (meaning they earned more than $10 million in gross telecommunications revenue in the year preceding year A, which in this case is the 2011/12 financial year).

4. Some groups of QLPs (as listed in Table 2) are treated as a single entity as required by section 79 of the Act. This means they are connected by means of a significant level of shareholding (as identified in section 79 of the Act), and the Commission is required to treat them as a single entity for the purposes of the TDL.

5. The parties listed in Table 3 are considered to be potential QLPs. This means the Commission does not have enough information to either properly include or exclude these parties as QLPs. These parties have been identified in this list to enable other QLPs to proceed with their 2012/13 TDL liability allocation process[47] At this stage, these parties do not have to provide specified information in accordance with section 83 of the Act.

[46] In section 5 of the Act, liable person means a person who provides a telecommunications service in New Zealand by means of some component of a public telecommunications network that is operated by that person.

[47] For example, services purchased from one or more of these parties by a QLP could be included as a legitimate deduction as indicated in the specified information instructions and templates.

Listing the QLPs

6. The Commission has identified primarily two sets of QLPs: parties that are independent QLPs (identified in Table 1); and parties that are considered to be a single QLP entity under section 79 of the Act (identified in Table 2).

7. As indicated in paragraph 5, a third set of companies has also been identified that the Commission believes are potential QLPs that we are currently unable to exclude from 2012/13 TDL liability allocation process. The Commission will be undertaking further inquiries in relation to this third set of companies to establish whether, in fact, they are QLPs. QLPs will be advised of these companies' status well in advance of the due date for the specified information required in accordance with section 83 of the Act.

Explaining the reporting requirements

8. Parties that are independent QLPs (Table 1) are required to provide the specified information in a report specific to their company. Parties that are captured by section 79 of the Act (Table 2) can choose to provide the specified information in a report specific to their company, or elect to provide a consolidated report.

9. For the 2012/13 TDL period, some QLPs are included both as independent QLPs (in Table 1) and as parties that are captured by section 79 of the Act with other QLPs (Table 2). Furthermore, some QLPs that are included with one group in Table 2 are also included with another group in Table 2. These situations arise when one QLP acquires another QLP part way through the 2012/13 TDL period.

10. When this happens, the purchased QLP will need to file separate specified information reports for the periods prior to and after the sale. For QLPs that this scenario applies to, they are required to comply with the following reporting requirements.

    10.1. If for a period during the 2012/13 TDL year, a party was or became an independent QLP then that party must provide a report specific to their company for that period.

    10.2. If for a period during the 2012/13 TDL year a party was or became part of a group of QLPs captured by section 79 (or they became a part of another group of QLPs captured by section 79) then that party will have the choice of providing either a report specific to their company (for that period) or be part of a consolidated report (for that period).

Table 1

Parties that are independent qualifying liable persons	• Bay City Communications Ltd (considered a single entity that is a QLP during the period 1 July – 16 December 2012).[48] • Compass Communications Ltd. • FX Networks Ltd. • Trustpower (Kinect) Ltd. • Two Degrees Mobile Ltd. • Snap Ltd. • TelstraClear New Zealand Ltd (considered a single entity that is a QLP during the period 1 July – 31 October 2012). • Vector Communications Ltd. • Vodafone New Zealand Ltd (considered a single entity during the period 1 July – 31 October 2012). • Woosh Wireless (NZ) Ltd. • WorldxChange Communications Ltd.

Table 2

Parties that are considered to be a single qualifying liable person entity under section 79 of the Act	Chorus group: • Chorus Ltd; and • Chorus New Zealand Ltd. CallPlus group: • CallPlus Ltd; and • 2Talk Ltd. Crown companies group: • Enable Networks Ltd; • Kordia Ltd; • Orcon Ltd (considered part of the Crown companies group during the period 1 July 2012 – 14 April 2013); • REANNZ (Research & Education Advanced Network New Zealand Ltd); • Transpower New Zealand Ltd; • Ultrafast Fibre Ltd; and • Whangarei Local Fibre Company Ltd (trading as Northpower Fibre).

[48] Teamtalk has advised that it acquired Bay City Communications Ltd (BCL) on 17 December 2012 – a separate QR return will be required for BCL from 1 July – 16 December 2012, and from 17 December to 30 June 2013 BCL can be part of a consolidated report with Teamtalk.

	<u>Orcon/Vivid Networks group:</u> • Orcon Ltd (considered part of a group with Vivid Networks Ltd during the period 15 April 2013 – 30 June 2013); and • Vivid Networks Ltd.[49] <u>Teamtalk group:</u> • Teamtalk Ltd; • Araneo Ltd; • Bay City Communications Ltd (considered part of the Teamtalk group during the period 17 December 2012 – 30 June 2013); and • Citylink Ltd. <u>Telecom group:</u> • Telecom Corporation of New Zealand Ltd; and • Telecom New Zealand Ltd. <u>Vodafone group:</u>[50] • Vodafone New Zealand Ltd; • Vodafone Fixed Ltd (formerly TelstraClear New Zealand Ltd).

[49] According to the Companies Office website, Orcon Holdings Ltd acquired a 100% interest in Orcon Ltd on 15 April 2013. Semple Investments Ltd has a 48% interest in Orcon Holdings Ltd. Semple Investments Ltd also owns a 100% interest in Vivid Technologies Ltd, which in turn owns a 70% interest in Vivid Networks Ltd. As both Orcon Ltd and Vivid Networks Ltd are liable persons, they are required to be considered as a single entity for the TDL under section 79 of the Act. This is because both these liable persons have a significant common shareholder in the form of Semple Investments Ltd, albeit through Semple's wholly owned subsidiaries.

[50] According to the Companies Office website, Vodafone New Zealand Ltd acquired TelstraClear New Zealand Ltd on 1 November 2012, and shortly after TelstraClear then became Vodafone Fixed Ltd. Vodafone Fixed Ltd operated as a separate entity 100% owned by Vodafone New Zealand Ltd from 1 November 2012 through to 31 March 2013 when the two companies were formerly merged. Notwithstanding the rules established in paragraph 10, should Vodafone wish to do so, the Commission will permit the Vodafone group to file a single consolidated specified information report for the period between 1 November 2012 and 30 June 2013. For the period between 1 July 2012 and 31 October 2012, TelstraClear New Zealand Ltd and Vodafone New Zealand Ltd were separate companies and must provide separate specified information reports for that specific period.