

**Reprint
as at 20 October 2011**



**Telecommunications Operators
(Commerce Commission Costs)
Levy Regulations 2002**

(SR 2002/336)

Telecommunications Operators (Commerce Commission Costs) Levy Regulations 2002: revoked, on 20 October 2011, by regulation 9 of the Telecommunications Operators (Commerce Commission Costs) Levy Regulations 2011 (SR 2011/325).

Silvia Cartwright, Governor-General

Order in Council

At Wellington this 7th day of October 2002

Present:

The Right Hon Helen Clark presiding in Council

Pursuant to sections 11 and 12 of the Telecommunications Act 2001, Her Excellency the Governor-General, acting on the advice and with the consent of the Executive Council, and in accordance with the recommendation of the Minister of Communications made after consult-

Note

Changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in this reprint.

A general outline of these changes is set out in the notes at the end of this reprint, together with other explanatory material about this reprint.

These regulations are administered by the Ministry of Economic Development.

ation in accordance with section 13 of that Act, makes the following regulations.

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Regulations

- 1 Title**

These regulations are the Telecommunications Operators (Commerce Commission Costs) Levy Regulations 2002.
- 2 Commencement**

These regulations come into force on the 28th day after the date of their notification in the *Gazette*.
- 3 Application**

These regulations apply to the financial year ending on 30 June 2002 and subsequent financial years.
- 4 Interpretation**

In these regulations, unless the context otherwise requires,—

Act means the Telecommunications Act 2001

Estimates has the meaning set out in section 2(1) of the Public Finance Act 1989; and includes the Supplementary Estimates (within the meaning of that section)

final TSO revenues means the total of—

 - (a) all TSO providers' TSO-qualified revenues; and
 - (b) all liable persons' TSO-qualified revenues

financial year means a year ending on 30 June

Minister means the Minister of Communications

quarter means a period of 3 consecutive months that ends on the last day of September, December, March, or June

revenue amount, in relation to a telecommunications operator, means—

- (a) the amount of the TSO provider's TSO-qualified revenue; or
- (b) as the case may be, the amount of a liable person's TSO-qualified revenue

telecommunications operator means Telecom and every liable person in relation to all deemed TSO instruments in force during the relevant financial year.

Regulation 4 **final TSO revenues**: substituted, on 22 December 2006, by section 61(2) of the Telecommunication Amendment Act (No 2) 2006 (2006 No 83).

Regulation 4 **revenue amount**: substituted, on 22 December 2006, by section 61(3) of the Telecommunication Amendment Act (No 2) 2006 (2006 No 83).

5 Levy on telecommunications operators

- (1) Each person who is a telecommunications operator during all or part of a financial year must pay a levy for that financial year to the Minister.
- (2) The levy—
 - (a) must be initially calculated under regulation 7 on the basis of the estimated Commission costs for the financial year and of the most recent final TSO revenues and revenue amounts determined by the Commission; and
 - (b) must be subsequently reconciled under regulation 9 against the levy that would have been payable on the basis of the actual Commission costs and of the final TSO revenues and revenue amounts for the financial year.
- (3) However, there are modified transitional requirements under these regulations for the calculation of the levy for the financial year ending on 30 June 2002.

6 How and when levy must be paid

- (1) The Minister must collect the levy in quarterly instalments.

- (2) The due date for payment of each instalment is the 15th day after the beginning of each quarter.
- (3) In addition, any shortfall included in the levy under regulation 9 must be collected by invoice. The due date for payment of that amount is the 15th day after the telecommunications operator receives the invoice.
- (4) If a person becomes a telecommunications operator part way through a financial year, the telecommunications operator—
 - (a) is liable to pay the levy for that financial year only after the Minister has made the calculation referred to in regulation 9(1); and
 - (b) must pay the levy in accordance with subclause (3) as if it were a shortfall.
- (5) For the levy for the financial year ending on 30 June 2002,—
 - (a) subclauses (1) to (4) do not apply; and
 - (b) the Minister must collect the levy in 1 instalment; and
 - (c) the due date for that instalment is the 15th day after the telecommunications operator receives an invoice for the instalment.
- (6) For the levy for the financial year ending on 30 June 2003,—
 - (a) subclauses (1) to (3) do not apply; and
 - (b) the Minister must collect the levy in 4 consecutive monthly instalments; and
 - (c) the first instalment is due in the next month after notification of the amount of the levy to the telecommunications operator; and
 - (d) each instalment is due on the 15th day of the month.

7 Basis of calculation of levy

- (1) The levy payable for a financial year by a telecommunications operator must initially be calculated by the Minister as follows:

estimated Commission costs \times the relevant proportion

where—

estimated Commission costs is the appropriation, or proposed appropriation in the Estimates, at the time of the Minister's calculation, for the financial year within Vote Communications for the Non-departmental output class that

authorises expenses to be incurred for, or in connection with, the Commission's performance and exercise of its functions, powers, and duties under the Act

the relevant proportion for each telecommunications operator, is the proportion that its revenue amounts, as most recently determined by the Commission under section 90 of the Act in relation to all deemed TSO instruments, bears to the total of the final TSO revenues for all deemed TSO instruments determined by the Commission in the same determinations.

- (2) The levy for the financial year ending on 30 June 2002 must be calculated using the formula in subclause (1) except that, instead of the estimated Commission costs, the calculation must use the sum of—
 - (a) the actual Commission costs referred to in regulation 9(2); and
 - (b) the costs referred to in section 12(2) of the Act.

8 Minister must notify levy amount

- (1) The Minister must notify each telecommunications operator of the amount of its levy calculated under regulation 7 at least 7 days before the first instalment is due.
- (2) For the levies for the financial years ending on 30 June 2002 and on 30 June 2003, the Minister must notify each telecommunications operator of the amount of each levy calculated under regulation 7 as soon as practicable after the final TSO revenues and revenue amounts for the year ending on 30 June 2002 have been determined.

9 Reconciliation of levy

- (1) The Minister must, within 1 month after the Commission gives public notice of its final determination under section 90 of the Act for a financial year,—
 - (a) reconcile the levy for each telecommunications operator for that financial year against the levy that would have been payable if the calculation under regulation 7 had used—

- (i) the actual Commission costs for that financial year rather than the estimated Commission costs; and
 - (ii) the final TSO revenues and revenue amounts for that financial year rather than the most recent final TSO revenues and revenue amounts at the time of the initial calculation; and
 - (b) notify the relevant telecommunications operator of the final annual amount of its levy on that basis; and
 - (c) if there has been an over-recovery of the levy from a telecommunications operator, refund to the telecommunications operator the amount over-recovered from it; and
 - (d) if there has been a shortfall in the levy charged to a telecommunications operator, invoice the telecommunications operator for the amount under-recovered from it, as part of the levy for that financial year.
- (2) For the purposes of subclause (1), **actual Commission costs** for a financial year is the amount—
- (a) that is identified in the Commission's audited financial statements for that year as the cost to the Commission for, or in connection with, the performance and exercise of its functions, powers, and duties under the Act; but
 - (b) that does not exceed the total amount appropriated for that year within Vote Communications for the Non-departmental output class that authorises expenses to be incurred for, or in connection with, the Commission's performance and exercise of its functions, powers, and duties under the Act; and
 - (c) that does not include—
 - (i) any costs of the Commission in relation to a determination or application for a determination that are met by the parties to the determination under section 55 of the Act; and
 - (ii) costs of litigation incurred for, or in connection with, the Commission's performance and exercise of its functions, powers, and duties under the Act.

- (3) No reconciliation is needed for the levy for the financial year ending on 30 June 2002.

Regulation 9(2)(c)(i): substituted, on 22 December 2006, by section 61(4) of the Telecommunication Amendment Act (No 2) 2006 (2006 No 83).

Marie Shroff,
Clerk of the Executive Council.

Issued under the authority of the Acts and Regulations Publication Act 1989.
Date of notification in *Gazette*: 10 October 2002.

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Notes

1 *General*

This is a reprint of the Telecommunications Operators (Commerce Commission Costs) Levy Regulations 2002. The reprint incorporates all the amendments to the regulations as at 20 October 2011, as specified in the list of amendments at the end of these notes.

Relevant provisions of any amending enactments that have yet to come into force or that contain relevant transitional or savings provisions are also included, after the principal enactment, in chronological order.

2 *Status of reprints*

Under section 16D of the Acts and Regulations Publication Act 1989, reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by the amendments to that enactment. This presumption applies even though editorial changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in the reprint.

This presumption may be rebutted by producing the official volumes of statutes or statutory regulations in which the principal enactment and its amendments are contained.

3 *How reprints are prepared*

A number of editorial conventions are followed in the preparation of reprints. For example, the enacting words are not included in Acts, and provisions that are repealed or revoked

are omitted. For a detailed list of the editorial conventions, see <http://www.pco.parliament.govt.nz/editorial-conventions/> or Part 8 of the *Tables of New Zealand Acts and Ordinances and Statutory Regulations and Deemed Regulations in Force*.

4 Changes made under section 17C of the Acts and Regulations Publication Act 1989

Section 17C of the Acts and Regulations Publication Act 1989 authorises the making of editorial changes in a reprint as set out in sections 17D and 17E of that Act so that, to the extent permitted, the format and style of the reprinted enactment is consistent with current legislative drafting practice. Changes that would alter the effect of the legislation are not permitted. A new format of legislation was introduced on 1 January 2000. Changes to legislative drafting style have also been made since 1997, and are ongoing. To the extent permitted by section 17C of the Acts and Regulations Publication Act 1989, all legislation reprinted after 1 January 2000 is in the new format for legislation and reflects current drafting practice at the time of the reprint.

In outline, the editorial changes made in reprints under the authority of section 17C of the Acts and Regulations Publication Act 1989 are set out below, and they have been applied, where relevant, in the preparation of this reprint:

- omission of unnecessary referential words (such as “of this section” and “of this Act”)
- typeface and type size (Times Roman, generally in 11.5 point)
- layout of provisions, including:
 - indentation
 - position of section headings (eg, the number and heading now appear above the section)
- format of definitions (eg, the defined term now appears in bold type, without quotation marks)
- format of dates (eg, a date formerly expressed as “the 1st day of January 1999” is now expressed as “1 January 1999”)

- position of the date of assent (it now appears on the front page of each Act)
- punctuation (eg, colons are not used after definitions)
- Parts numbered with roman numerals are replaced with arabic numerals, and all cross-references are changed accordingly
- case and appearance of letters and words, including:
 - format of headings (eg, headings where each word formerly appeared with an initial capital letter followed by small capital letters are amended so that the heading appears in bold, with only the first word (and any proper nouns) appearing with an initial capital letter)
 - small capital letters in section and subsection references are now capital letters
- schedules are renumbered (eg, Schedule 1 replaces First Schedule), and all cross-references are changed accordingly
- running heads (the information that appears at the top of each page)
- format of two-column schedules of consequential amendments, and schedules of repeals (eg, they are rearranged into alphabetical order, rather than chronological).

5 *List of amendments incorporated in this reprint (most recent first)*

Telecommunications Operators (Commerce Commission Costs) Levy Regulations 2011 (SR 2011/325): regulation 9

Telecommunication Amendment Act (No 2) 2006 (2006 No 83): section 61
