

Reprint
as at 31 October 2019



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

Telecommunications Operators (Commerce Commission Costs) Levy Regulations 2011: revoked, on 31 October 2019, by regulation 7 of the Telecommunications Operators (Commerce Commission Costs) Levy Regulations 2019 (LI 2019/233).

Jerry Mateparae, Governor-General

Order in Council

At Wellington this 19th day of September 2011

Present:

His Excellency the Governor-General in Council

Pursuant to section 11 of the Telecommunications Act 2001, His Excellency the Governor-General makes the following regulations, acting—

- (a) on the advice and with the consent of the Executive Council; and
- (b) in accordance with a recommendation of the Minister for Communications and Information Technology made in accordance with section 13 of that Act.

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Note

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this official reprint.
Note 4 at the end of this reprint provides a list of the amendments incorporated.

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

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Regulations

1 Title

These regulations are the Telecommunications Operators (Commerce Commission Costs) Levy Regulations 2011.

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 2012 and subsequent financial years.

4 Interpretation

In these regulations, unless the context otherwise requires,—

Act means the Telecommunications Act 2001

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

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

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

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

5 Levy on telecommunications operators

Every person who is a telecommunications operator during all or part of a financial year must pay a levy for that financial year to the Minister.

6 How and when levy must be paid

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

7 Basis of calculation of levy

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

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

where—

- a is the amount of the telecommunications operator's final qualified revenue
 - b is the sum of all telecommunications operators' final qualified revenue
 - c is the amount of the Commission's costs for the financial year, as specified in subclause (2).
- (2) The amount of the Commission's costs for the financial year is the amount—
 - (a) identified in the Commission's audited financial statements for the financial year as the costs of the Commission for, or in connection with, the performance and exercise of its functions, powers, and duties under the Act; but
 - (b) that does not exceed the total amount appropriated for that 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; 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) any costs of the Commission in relation to a determination that are met by a TSO provider under section 94A or 94B of the Act; and
 - (iii) costs of litigation incurred for, or in connection with, the Commission's performance and exercise of its functions, powers, and duties under the Act.

8 Minister must notify levy amount

The Minister must notify each telecommunications operator of the amount of its levy calculated under regulation 7 at least 7 days before payment is due.

9 Revocation

The Telecommunications Operators (Commerce Commission Costs) Levy Regulations 2002 (SR 2002/336) are revoked.

Rebecca Kitteridge,
Clerk of the Executive Council.

Explanatory note

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

These regulations, which come into force on the 28th day after the date of their notification in the *Gazette*, replace the Telecommunications Operators (Commerce Commission Costs) Levy Regulations 2002 (the **2002 regulations**). They impose levies on telecommunications operators to cover the costs incurred by the Commerce Commission (the **Commission**) in performing and exercising its functions, powers, and duties under the Telecommunications Act 2001 (the **Act**) (except certain determinations, where costs are required to be met by parties to the determination, and litigation).

The main differences between these regulations and the 2002 regulations are as follows:

- the methodology for allocating the levies is based on the methodology for allocating the new telecommunications development levy, introduced by amendments made to the Act by the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (the **2011 Amendment Act**). Under the 2002 regulations, the allocation was based on the methodology for allocating the telecommunications service obligations levy, which was removed by the 2011 Amendment Act;
- the levy is payable annually in arrears and is calculated on the basis of the Commission's actual costs for the financial year for which the levy is payable, rather than being payable quarterly in advance and being calculated on the basis of the Commission's estimated costs as under the 2002 regulations;
- the Commission's actual costs are apportioned among telecommunications operators according to the proportion of their telecommunications revenues for the financial year, as determined by the Commission and set out in its final liability allocation determination in accordance with section 88(a) of the Act, in relation to the sum of all telecommunications operators' telecommunications revenues set out under that provision:

- telecommunications operators that were not trading in the financial year preceding the financial year for which the levy is calculated, or whose telecommunications revenue for that preceding financial year was less than the minimum telecommunications revenue (as defined in section 80 of the Act), are not liable for payment of the levy and not included as telecommunications operators for the purpose of calculating the levy.

Issued under the authority of the Legislation Act 2012.
Date of notification in *Gazette*: 22 September 2011.

Reprints notes

1 *General*

This is a reprint of the Telecommunications Operators (Commerce Commission Costs) Levy Regulations 2011 that incorporates all the amendments to those regulations as at the date of the last amendment to them.

2 *Legal status*

Reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by any amendments to that enactment. Section 18 of the Legislation Act 2012 provides that this reprint, published in electronic form, has the status of an official version under section 17 of that Act. A printed version of the reprint produced directly from this official electronic version also has official status.

3 *Editorial and format changes*

Editorial and format changes to reprints are made using the powers under sections 24 to 26 of the Legislation Act 2012. See also <http://www.pco.parliament.govt.nz/editorial-conventions/>.

4 *Amendments incorporated in this reprint*

Telecommunications Operators (Commerce Commission Costs) Levy Regulations 2019 (LI 2019/233): regulation 7