



# Telecommunications Operators (Commerce Commission Costs) Levy Regulations 2002

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

### Contents

1	Title	6	How and when levy must be paid
2	Commencement	7	Basis of calculation of levy
3	Application	8	Minister must notify levy amount
4	Interpretation	9	Reconciliation of levy
5	Levy on telecommunications operators		

---

## 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 revenue amounts referred to in section 92(a)(ii) and (b)(i) of the Act

**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** means a telecommunications operator's unweighted revenue amount referred to in section 92(a)(ii) or (b)(i) of the Act (as the case may be)

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

## 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) the costs of the Commission in relation to a determination or application for a determination that

- must be 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.

Marie Shroff,  
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*, impose levies on telecommunications operators. The levy recovers the costs incurred by the Commerce Commission in performing and exercising its functions, powers, and duties under the Telecommunications Act 2001 (except determinations and litigation under Part 2).

Every telecommunications operator must pay a levy for each financial year. With the exception of the financial years ending on 30 June 2002 and 30 June 2003 (to which transitional arrangements apply), the levy is assessed before the financial year begins. It must be paid in quarterly instalments. The due date for each instalment is the 15th day after the beginning of each quarter.

The levy must be calculated by the Minister of Communications under *regulation 7* on the basis of the estimated Commission costs for the financial year. The **estimated Commission costs** are the relevant appropriation or proposed appropriation within the relevant Vote. These costs are apportioned among telecommunications operators according to their proportion of the revenues referred to in section 92(a)(ii) and (b)(i) of the Act in relation to all deemed TSO instruments. The Minister must notify each telecommunications operator of the amount of its levy at least 7 days before the first instalment is due.

Because the levy is based on estimated Commission costs and TSO revenue shares for a previous financial year, the Minister must reconcile the levy after the end of the financial year with the actual Commission costs and actual TSO revenue shares. The reconciliation will show an over-payment or an under-payment by a telecommunications operator. The discrepancy must be repaid to the telecommunications operator (in the case of over-payment) or paid as part of the levy for the current financial year (in the case of under-payment). The **actual Commission costs** are those that are identified in the Commerce Commission's audited financial statements that are presented to the House of Representatives. However, they are capped at the total relevant appropriation for the year.

Transitional provisions are included for—

- calculation of the levy payable for the first financial year to which the levy applies (the year ending on 30 June 2002); and
- collection of the levies for the financial years ending on 30 June 2002 and 30 June 2003.

These provisions are set out in *regulations 6(5) and (6)* (collection of levies for the first 2 financial years) and *7(2) and 9(3)* (calculation of the levy for the first financial year).

---

Issued under the authority of the Acts and Regulations Publication Act 1989.

Date of notification in *Gazette*: 10 October 2002.

These regulations are administered in the Ministry of Economic Development.

---