

Determining Specified Fibre Areas: cross submission on Process and Issues paper

1 March 2019



OVERVIEW

- 1 This cross submission responds to submissions on the Commission's consultation paper *Determining specified fibre areas: process and issues paper* (**issues paper**) dated 26 November 2018.
- 2 Over the past decade there has been significant investment in ultra-fast broadband (**UFB**) facilitated by Chorus and the other local fibre companies' (**LFCs**) partnerships with the Crown. Fibre provides the best possible connectivity for New Zealanders, and is a critical enabler of innovation, economic growth, and improved social wellbeing.
- 3 Through the legislative review, the government consulted extensively with interested stakeholders on the best approach to copper deregulation and withdrawal. The policy decisions, given effect to in the Telecommunications (New Regulatory Framework) Amendment Act 2018 (**Amendment Act**), provide for two separate steps. These steps are:
 - 3.1 Declaration of Specified Fibre Areas (**SFAs**) where fibre is available leading to deregulation; and
 - 3.2 The ability to withdraw subject to the requirements of a Copper Withdrawal Code.
- 4 We see the declaration of SFAs as intended to be a simple mechanism based on the Commission satisfying itself that fibre is available.
- 5 Making fibre available, and being able to demonstrate that it is available, is at the core of our agreement with Crown Infrastructure Partners (**CIP**). We welcome the recognition by most submitters that the processes established for CIP's purposes should form the basis of assessing whether fibre is available and therefore be leveraged by the Commission to allow it to declare SFAs.
- 6 The Amendment Act is intended to provide consumer protections to help with the transition to fibre, not act to prevent it.
- 7 In general, we see the key concerns raised by submitters as relating to:
 - 7.1 Uncertainty over the commercial terms for copper services once an SFA is declared and those services are deregulated; and
 - 7.2 Uncertainty as to how, as an industry, we address any third party access issues that may arise.
- 8 We see these uncertainties as best resolved through industry dialogue and cooperation rather than reconsidering policy decisions on fibre availability and deregulation.
- 9 In responding to other parties' submissions we make the following key points:
 - 9.1 Declaration of an SFA where fibre services are available means unbundled bitstream access (**UBA**) and unbundled copper low frequency (**UCLF**) services in those areas cease to be subject to the Commission's standard terms

determinations (**STDs**). In response to submitters' concerns, we note end-users remain protected where copper is deregulated, as by virtue of being in an SFA they have access to a superior product (fibre) at a fixed price.

- 9.2 Chorus is preparing to engage with RSPs in coming months on commercial copper arrangements following de-regulation. The current uncertainty, following deregulation and prior to withdrawal, may be driving the positioning of some submitters.

Fibre availability

- 10 There was general agreement in submissions that fibre availability is best determined by leveraging the assessment already performed by CIP on the basis of premises passed. We agree and continue to believe this is the best approach.
- 11 We also agree with the following comments from other submitters about fibre availability:
- 11.1 Enable and UFF noted there was no point in creating a new process when all the information necessary to assess fibre availability is already available;
- 11.2 TUANZ noted that SFAs must be declared simply so end-users are able to determine whether their premises is in a SFA. We agree and note end-users are already able to determine whether fibre is available at their address in Chorus areas at www.chorus.co.nz and nationally at Internet NZ's www.broadbandmap.co.nz.
- 11.3 Enable and UFF stated that LINZ data is not reliable. We note that our fibre availability information is based on CoreLogic data which is used by Local Fibre Companies, RSPs and emergency services among others.
- 12 There was also a suggestion that if declaring an SFA actually results in deregulation, that the test for availability has to change. Some submitters suggested fibre pre-qualification for individual addresses could be used as a test for availability. Such an approach is not required, as the declaration of an SFA simply requires an assessment of whether fibre is available, and this has already been determined by the detailed assessments CIP has made under network providers' contractual obligations.

Clear policy of copper deregulation

- 13 RSPs argue the STDs will continue to apply to existing copper services in SFAs until the UBA and UCLF services are withdrawn in accordance with the CWC¹. These arguments are inconsistent with:

¹ UCLL and UCLL sub-loop backhaul services were deregulated in the Telecommunications (New Regulatory Framework) Amendment Act.

- 13.1 The policy intent and legislative purpose of copper service deregulation; and
- 13.2 The relevant legislative provisions (as outlined in our original submission).
- 14 One submitter argues copper deregulation is limited to no longer requiring Chorus to provide copper services to new end-users. Taking this interpretation would elevate a provision in the legislation which is explicitly included 'to avoid doubt'² into the key provision implementing the purpose of the part.
- 15 Deregulation was intended to give Chorus the flexibility to use efficient price signals to shift demand away from copper services towards fibre. RSPs are already using price signals to shift users off copper services and continued wholesale price regulation for copper allows them to capture any value to be gained.
- 16 Some submitters also expressed concern for end-users who are unable to connect to fibre due to consenting issues. The number of people in this situation has been reduced through recent legislative changes. However, as discussed in our submission, this may need further support from policy makers if industry can't solve it alone. In any case, this shouldn't prevent a geographical area from being designated an SFA.
- 17 In addition, there are numerous protections for end-users of copper services within both Part 2AA and the broader scheme of the Act, as outlined in our original submission.

Copper services after deregulation

- 18 We understand that continued copper regulation has appeal for RSPs and deregulation introduces an element of uncertainty for them. It's therefore incumbent upon us to work with the industry on the commercial framework for the relevant copper services once the STDs cease to apply. This may help to reduce uncertainty and support our ongoing work of ensuring New Zealanders can make the most of faster connectivity.

² Sections 69AC(3)