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TRUSTPOWER SUBMISSION: DETERMINING SPECIFIED FIBRE AREAS - PROCESS AND ISSUE PAPER

1 Background

- 1.1.1 Trustpower Limited (**Trustpower**) welcomes the opportunity to provide a submission to the Commerce Commission (the **Commission**) on its Determining Specified Fibre Areas – Process and Issue Paper (the **Paper**).
- 1.1.2 Following amendments to the Telecommunications Act 2001 (the **Act**) the Commission is required to carry out an assessment to determine the geographical areas in which specified fibre services are available to end-users. These geographical areas will be known as Specified Fibre Areas (**SFA**).
- 1.1.3 The establishment of an SFA is an essential prerequisite for Chorus Limited (**Chorus**) to withdraw copper fixed line access services (**copper services**) to end-users. However, Chorus must also comply with the Commission's Copper Withdrawal Code (**CWC**) and more broadly, also with the Commission 111 Contact Code (**111 Code**). We understand both the CWC and the 111 Code, as well as other changes introduced by the Act are being developed by the Commission under separate work streams to this SFA process.

2 Trustpower's views

- 2.1.1 Protecting end-users from monopolist behaviour is an important feature of the amendments to the Telecommunications Act 2001. A central element of the new regulatory framework will be the development of appropriate safeguards for end-users, along with consideration of how to mitigate any price shocks that may arise.
- 2.1.2 Trustpower agrees with the Commission's interpretation of the type of regulation that would be in place for Chorus should they choose to retain copper services in an SFA.
- 2.1.3 We support the Commission's criteria for fibre being 'available' to end-users as well as the additional test of end-users being 'able to connect' as the determining principles for assessing whether an area should be an SFA.

2.1.4 We would also like to take this opportunity to mention it would be appropriate for the sake of clarity and transparency for the Commission to prescribe a notice period in which Chorus must notify the public, RSPs and other LFCs as to when they intend to withdraw copper in an SFA area.

2.1.5 These matters are addressed in the rest of this submission.

2.2 Deregulation of copper services in an SFA

2.2.1 The Act gives the Commission the ability to create SFA's in s 69AB. The Act does not give Chorus the obligation to withdraw copper in SFA's, only the ability to withdraw copper fixed line access services (unbundled bitstream access (**UBA**) and unbundled copper low frequency service (**UCLF**)) provided¹:

- (a) the geographical area is determined as an SFA; and
- (b) Chorus complies with the CWC and the 111 contact code is in place; or
- (c) the end-user chooses to have the service disconnected (other than a temporary disconnection).

2.2.2 The Act also gives Chorus the ability to withdraw certain designated access services (which are defined as unbundled copper local loop network and unbundled copper local loop network backhaul) under the similar circumstances.²

2.2.3 The Commission agrees that it is up to Chorus to make the final commercial decision as to whether or not to withdraw copper services in an SFA area.

'The declaration of an area as an SFA is an essential prerequisite for the process of withdrawing copper services from an area, but does not necessarily mean copper services will be withdrawn. Chorus, as the network operator, ultimately makes the final decision on the withdrawal of copper services and can then only do so if the requirements of the CWC are met'.³

2.2.4 In the event Chorus chooses to retain copper services in an SFA area because it is commercially sensible to do so, Trustpower supports the Commission's interpretation of the Act that Chorus copper services (UBA and UCLF) in an SFA will continue to be subject to price regulation.

'To the extent that Chorus chooses to continue to supply copper services in relation to an end-user in an SFA, those services similarly continue to be subject to price regulation under Schedule 1 of the Act, including the unbundled bitstream access (UBA) and unbundled copper low frequency (UCLF) standard terms determinations (STD)'.⁴

2.2.5 Maintaining the existing regulatory arrangements for copper services in an SFA would help ensure end users interests continue to be safe guarded.⁵ This might be particularly pertinent for end-users in areas where other LFCs are the network operators because:

- (a) Chorus will have a stronger incentive to continue supplying copper services in an LFC SFA than in a Chorus SFA, and
- (b) As other LFCs are not subject to price-quality regulation (at this time), competitive price tension will largely come from copper services acting as an anchor. It is unclear

¹ Telco Act 2001 69AC

² Telco Act 2001 69AD

³ Determining Fibre Specified Areas Process and Issues Paper 2018 pg. 9

⁴ Determining Fibre Specified Areas Process and Issues Paper 2018 pg.8

⁵ The Act's definition of 'LFC' includes Chorus. When we refer to the non-Chorus LFCs, we use the term 'other LFCs'.

how removing regulated copper pricing in SFA areas where Chorus chooses *not* to withdraw would protect end-users against price shocks.

- 2.2.6 Furthermore, we have concerns that there may be a risk of costs being disproportionately allocated to some end-users who cannot afford or access substitute technologies (fixed wireless or mobile) in the event fibre is not ‘available’ (or they are not ‘able’ to connect). An important element of the new regulatory framework will be the development of appropriate safeguards for end-users who might be at risk of falling through the gaps, along with consideration of how to mitigate any price shocks that may arise.
- 2.2.7 Accordingly, Trustpower supports the Commission’s interpretation of the Act, and considers that section 69AG of the Act states that the Standard Terms Determinations will continue to apply to the UBA and UCLF services.

2.3 The definition of ‘able’ and ‘available’ in an SFA

2.3.1 The Act states:

*‘The Commission must, by public notice, declare an area to be a specified fibre area if the Commission determines in an assessment under subsection (1) that a specified fibre service is **available** to end-users in the area.’⁶(Emphasis added)*

- 2.3.2 The Commission’s current interpretation of the above clause appears to be that a ‘specified fibre service’ will be deemed as being ‘available’ when ‘an end-user is **able to connect** to a specified fibre service in a particular geographic area, such as an end-user’s address point’⁷ (emphasis added).

*‘The purpose of Part 2AA of the Act to ‘deregulate copper fixed line access services in areas where fibre fixed line access services are **available**’, definition is appropriate because it will only allow Chorus to withdraw copper services when end-users are **able to connect** to fibre fixed line access services.’⁸ (emphasis added).*

- 2.3.3 We acknowledge determining an area as an SFA does not guarantee Chorus will withdraw copper services. Whether or not Chorus is able to withdraw copper services relies on a number of tests, including the CWC. The Commission recognises that it is up to Chorus to make the final commercial decision as to whether or not to withdraw copper services in an SFA area.

‘The declaration of an area as an SFA is an essential prerequisite for the process of withdrawing copper services from an area, but does not necessarily mean copper services will be withdrawn. Chorus, as the network operator, ultimately makes the final decision on the withdrawal of copper services and can then only do so if the requirements of the CWC are met.’⁹

- 2.3.4 Trustpower believes that appropriate end-user protections should be in place irrespective of whether Chorus chooses to withdraw or retain copper. We support the Commission in ensuring whatever changes are implemented result in minimal end user impact and prevent unintended consequences arising.
- 2.3.5 Therefore, we support the Commission’s proposed approach that a ‘specified fibre service’ will be deemed as being ‘available’ when ‘an end-user is able to connect to a specified fibre service in a particular geographic area, such as an end-user’s address point’.

⁶ Telecommunications Act 2001, s 69AB(1).

⁷ Determining Fibre Specified Areas Process and Issues Paper 2018 pg. 16

⁸ Determining Fibre Specified Areas Process and Issues Paper 2018 pg. 16

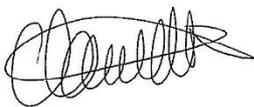
⁹ Determining Fibre Specified Areas Process and Issues Paper 2018 pg. 9

2.4 Notice period in for withdrawal of copper in an SFA

- 2.4.1 Withdrawing copper services will potentially have a significant impact on certain end users. The related matters are complex and not always easily understood by the general public, particularly the elderly and those for whom English is a second language.
- 2.4.2 We consider that prior to copper withdrawal occurring it is important that the LFCs and RSPs have an opportunity to meaningfully engage with end users so they understand the changes and what it will mean to them.
- 2.4.3 While Trustpower understands the Commission will be working separately to develop the CWC and may deal with this through that consultation, we are of the view it may be valuable to require an SFA determination to include a minimum notice period that Chorus must adhere to in order to notify the public, RSPs and other LFCs as to when they intend to withdraw copper in an SFA area.
- 2.4.4 This would enable RSPs and other LFCs to engage with impacted customers in advance and ensure a clear and efficient transition from copper to fibre occurs and that some end users are not unintentionally left behind.

For any questions relating to the material in this submission, please contact me on 021 681 206.

Regards,

A handwritten signature in black ink, appearing to read "Claudia Vianello". The signature is stylized and somewhat cursive.

Claudia Vianello

Advisor – Strategy & Regulation