



ENABLE NETWORKS LIMITED AND ULTRAFast FIBRE LIMITED

**SUBMISSION ON NZCC FIBRE INFORMATION DISCLOSURE AND
PRICE-QUALITY REGULATION PROPOSED PROCESS AND
APPROACH FOR THE FIRST REGULATORY PERIOD**

14 OCTOBER 2020

1. Introduction

- 1.1 This submission is made by Enable Networks Limited (**Enable**) and Ultrafast Fibre Limited (**Ultrafast Fibre**) in response to the Commerce Commission's *Fibre information disclosure and price-quality regulation - Proposed process and approach for the first regulatory period* dated 15 September 2020 (**Process Paper**).
- 1.2 This submission sets out our high-level reflection on a small number of issues raised in the Process Paper. Our substantive responses on these and other issues will be made during the forthcoming consultation process.

2. Use of precedents

- 2.1 While we support referencing existing disclosure precedents and the undertakings to determine the Information Disclosure (**ID**) requirements for the first regulatory period, this is subject to ensuring that the disclosure requirements are consistent with the s186 purpose of ID. In this context we note:
 - (a) while the ID requirements need to be sufficient to assess performance, they should not be excessive;
 - (b) the ID requirements will be refined over time, which may require transitional, one-off disclosures in addition to annual disclosure requirements; and
 - (c) the ID requirements must be proportionate; the benefits to access seekers or end-users must justify the costs to regulated providers. This objective should apply to all ID information, not just the quality of service requirements as suggested in the Process Paper.
- 2.2 The primary objectives for the first regulatory period should therefore be to:
 - (a) establish a baseline set of data against which future performance can be assessed; and
 - (b) implement the input methodologies (**IM**) in the first disclosure period.

3. Workshops

- 3.1 We support the proposal to host a technical workshop to develop service quality disclosures.
- 3.2 We submit that technical workshops should also be scheduled in Q1 2021 for other aspects of the disclosures, for example: expenditure categories, asset information and network information.
- 3.3 As one of the objectives of the ID regime is to establish a consistent reporting framework across all regulated FFLAS providers, it is important that:
 - (a) there is a consistent understanding and implementation of regulatory definitions;
 - (b) the regulatory definitions are sensible, and able to be implemented without unnecessary cost or complexity; and
 - (c) the regulatory definitions reflect information that a regulated provider reasonably requires to provide FFLAS services.
- 3.4 Workshops are a useful way to test options, develop regulatory definitions and gain an understanding of the information which is maintained by regulated providers.

4. Timing

- 4.1 The proposed timetable is for the final ID decision to be made in Q4 2021. The ID requirements will come into effect from 1 January 2022.

4.2 As it may not be possible for regulated providers to be able to implement the systems required to generate the disclosure data immediately, transitional provisions may be required. For example, it may be appropriate for less aggregated data to be disclosed for the first year, while internal reporting systems are modified to align to regulatory requirements.

5. Disclosure year

5.1 As we have previously submitted, we do not support a common balance date for ID regulatory disclosures because of the additional cost and complexity involved for those with different financial reporting dates¹. This is particularly relevant to financial information and regulatory audit processes. Financial audited disclosures should be aligned to the financial year end of each regulated provider.

5.2 The compliance costs associated with implementing common reporting dates which differ to financial reporting dates for non-financial information are likely to be less significant. It may be possible to align the timing of some of these disclosures across regulatory providers if the benefits outweigh the costs of doing so. We are happy to work with the Commission on this during the forthcoming consultation.

6. Quality measures.

6.1 The quality measures set out in Table B1, which have been extracted from service levels in the UFB contracts, do not form a useful starting point for the appropriate ID quality measures. Many are either duplicates, meaningless, too prescriptive, too ambiguous or simply unnecessary.

6.2 We look forward to working with the Commission in its consultation with stakeholders on quality standards, including participating in the workshop proposed for Q1 2021, to ensure the standards adopted are relevant and proportionate.

7. Regulation 6 exception: Chorus ID-only geographic areas

Q1: Do you agree with our proposed approach to treat all addresses within an LFC's UFB area as subject to the reg 6 proviso, irrespective of the exact reach of the other LFC's network? If you disagree, please provide an alternative proposal.

7.1 Regulation 6 specifies that Chorus will not be subject to PQ regulation, but subject to ID only "*in a geographical area where a regulated fibre provider other than Chorus has installed a fibre network as part of the UFB initiative*".

7.2 The proposed approach described in Q1 does not reflect the Commission's proposed approach as described in the Process Paper.

7.3 The Commission's emerging view is that in areas where it is "**arguable**" whether the other LFC has installed a fibre network Chorus should be subject to ID only² but it does not define that area.

7.4 In any event, "arguable" is not a legal test that has any degree of precision and is inappropriate as a regulatory test. As we discuss below, consistent with the Commission's views on specified fibre areas, whether a fibre network has been installed in a specific geographical area is a question of fact.

7.5 Nowhere in the Process Paper does the Commission conclude that the LFC UFB coverage area is a single geographical area subject to the exception in regulation 6. In fact, it says the opposite:

¹ Enable Networks Limited and Ultrafast Fibre Limited, *Submission on NZCC fibre regulation input methodologies, Regulatory processes and rules*, 27 May 2020, pp 2 - 4

² Process Paper Table 6.1

- (a) “the LFC’s UFB coverage area does not provide complete information, given there may be a gap between the coverage area specified under the UFB contract and the actual UFB network the LFC built”;³
- (b) “the UFB coverage area maps focus on broader areas and reflect expected network geographical coverage, rather than the actual geographical coverage of the network that the LFC built”;⁴ and
- (c) “the UFB coverage areas do not provide sufficient detail **of the end-users supplied by Chorus within another LFC’s geographic area to enable us to determine in all cases whether the exemption from PQ under reg 6 applies**”.⁵

7.6 The Commission instead suggests an approach consistent with its identification of geographical areas as specified fibre areas:

- (a) “the SFA database contains all of the addresses where regulated providers have installed a fibre network. That is, **it contains all addresses that can be connected to a fibre network**”;⁶
- (b) the SFA database [adapted to record whether an address was given certification by CIP as part of the UFB initiative] “can be used to identify **addresses served by Chorus that are subject to ID regulation**”;⁷
- (c) “SFAs include **properties where a fibre network has been installed but is not yet connected**. It will therefore allow the identification of addresses that have access to fibre services from both Chorus and another LFC. As such, the Commission can draw on the SFA data in order to determine ‘geographical areas’ for the purpose s of reg 6”;⁸ and
- (d) “the advantage of relying on the SFA database **to determine the boundaries of the geographical areas where the reg 6 proviso will apply** is that this database is already being maintained and updated as part of the Commission’s telecommunications regulation.”⁹

7.7 Specified fibre areas are “geographic areas in which a specified fibre service is available to end-users”.¹⁰ The Commission has interpreted “available to end-users” in that context to mean that “the key components of the service exist; ie a regulated fibre service provider, a fibre network, and a fibre handover point. We do not consider it necessary that an end-user be able to connect to the fibre network for there to be a specified fibre service available to an end-user. This is because issues relating to an end-user’s actual ability to connect to the fibre network are more appropriately addressed in the Copper Withdrawal Code”.¹¹

7.8 It has further recognised that “the existence of a specified fibre service is a factual question, depending on the existence of a ‘regulated fibre service provider’, a ‘fibre network’ and a ‘fibre handover point’”.¹²

³ Process Paper [6.26]

⁴ Process Paper [

⁵ Process Paper [6.44]

⁶ Process Paper [6.50]

⁷ Process Paper [6.53]

⁸ Process Paper [6.49]

⁹ Process Paper [6.50]

¹⁰ Telecommunications Act 2001 s69AB

¹¹ NZCC *Determining specified fibre areas – Framework and initial approach* 31 October 2019 [44] (SFA Framework)

¹² SFA Framework [31]

- 7.9 It follows that the determination of the geographical areas that are subject to the regulation 6 exception is, as is the case for geographical areas which are SFA, a factual question. That question is simply whether an LFC has installed a fibre network under the UFB initiative in the geographical area under consideration.
- 7.10 The Commission has concluded that the geographical area for SFA “needs to be at a level of granularity that interested parties can identify an end-user location (for example an address point and property boundary). It is important to be able to identify individual end-user locations so that Chorus, RSPs and end-users can understand Chorus’ obligations under s 69AC of the Act and the CWC”.¹³
- 7.11 There is no reason to adopt a different approach for a regulation 6 geographical area. The same level of granularity is needed to enable LFCs, Chorus and RSPs to identify whether the exception to regulation 6 applies to the end-user in question.
- 7.12 The Commission acknowledges that it is arguable whether the other LFC has installed a fibre network in its UFB area:
- (a) where the other LFC has not installed a lead-in to connect and end-user in its UFB coverage area; or
 - (b) has not installed common infrastructure required to serve that end-user.
- 7.13 We submit the factual question of whether an end-user premise is served by a fibre network installed by the LFC under the UFB Initiative is easily answered:
- (a) if the premise is passed by communal infrastructure, whether it has been connected by a lead-in or not, it is in an area where a fibre network has been installed, but
 - (b) if the premise has not been passed by communal infrastructure, it is not in an area where a fibre network has been installed.

Q2: What are your views on our proposed approach to use SFA addresses to assign addresses as subject to both PQ and ID regulation, or to ID regulation only?

- 7.14 The SFA database identifies all addresses that can be connected to the LFC fibre network. Accordingly, it will define areas where Chorus will be subject to ID regulation only.
- 7.15 While the database does not identify addresses that cannot be connected to fibre, the Commission can conclude that all geographical areas that are not identified by the SFA database must fall outside the regulation 6 exception.

Q3: Do you agree with our intended approach [to update the geographic areas where regulation 6 applies]

- 7.16 The Commission’s proposal is unclear, but seems to be:
- (a) new FFLAS installed by Chorus in an area where an LFC has installed a UFB fibre network will automatically be subject to ID only;
 - (b) Chorus FFLAS may revert from ID to PQ in a geographical area if the LFC decommissions its UFB network in that area.
- 7.17 We agree, subject to the relevant geographical area being defined as outlined above.

¹³ SFA Framework [46], [47]