



Response to Commerce Commission Specified Points of Interconnection Consultation Paper

PUBLIC VERSION

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Introduction

2degrees appreciates the opportunity to submit on the Commerce Commission's Specified Points of Interconnection Consultation Paper. Points of Interconnection specified under section 231 (specified POIs) of the Telecommunications Act 2001 (the Act) determine the upstream boundary of the regulated fibre network under Part 6 of the Act. As a result, it is essential that specified POIs reflect the intended scope of the Part 6 regime.

Having reviewed the Commission's Consultation Paper, 2degrees' key comments are:

- **Scope:** The scope of the Commission's list of proposed specified POIs is limited to UFB Initiative POIs. Both Layer 1 and Layer 2 services require specified POIs. Unless the Commission clarifies that the proposed specified POIs listed in Attachment A are also applicable to Layer 1 services, the Commission will have to use its power under section 231 (5)(b) to specify Layer 1 points of interconnection at a later date.
- **Revisions to the UFB POI list:** The Commission's list of UFB Initiative specified POIs needs to be updated. Since the UFB contracts were executed there have been amendments to the POIs applicable to those contracts, which needs to be taken into account.

The Commission is only defining Layer 2 POIs at this stage but will need to specify Layer 1 POIs

Under section 231 of the Act, the Commission can propose specified POIs by reference to one or more of the following: (a) the regulated fibre service provider's network; (b) a geographical location; or (c) the UFB initiative.

At this stage, the Commission has chosen to specify POIs by reference to the UFB initiative only. The legislation allows for this, with the first notice required to specify UFB Initiative POIs and allowing the Commission to determine whether to specify additional POIs at this point or at a later stage.

We note:

- Defining 'UFB initiative' POIs is narrower than the POIs applying to Part 6 regulations more generally. The Part 6 regime of the Act is wider than the UFB initiative. It was clarified that services such as DFAS and ICABS were FFLAS under Part 6.¹ In addition, the definition of 'fibre network' in the legislation was specifically changed from reference to UFB fibre-to-the-premises networks to reflect that FFLAS services are not limited to the UFB.²

¹ "DFAS and ICABS are both fibre fixed line access services and will be subject to regulatory oversight under the new Part 6": Telecommunications (New Regulatory Framework) Amendment Bill, Departmental Report to the Economic Development, Science and Innovation Committee, 20 April 2018, at Appendix 2 page 20.

² See Ministry of Business and Innovation "Addendum to the Departmental Report to the Economic Development, Science and Innovation Committee"; and Bills Digest, Telecommunications (New Regulatory Framework) Amendment Bill 2017 (293-2) Digest No. 2551 at 2. "The bar-2 bill also provides for an amendment to the new definition of "fibre network" the bill is inserting "to ensure that the intended fibre network footprint is regulated under the new regime ... [the] definition would cover an end-user premise or access point, such as a mobile tower, to the defined fibre handover point."

- By only considering the UFB Initiative POIs, the Commission appears to be only considering Layer 2 FFLAS at this time. It is not the intention of the Act that Part 6 should be limited to the fibre-to-the-premises access network of the UFB Initiative.
- 2degrees has been consistent in its position that DFAS and ICABS FFLAS services must be subject to regulatory oversight, consistent with the legislation and competition purpose of the fibre regime. The scope of regulated Layer 1 services must include the footprint of Layer 2 services, which go to the specified POI the Commission has identified (subject to our comments below). Layer 1 services connect 2degrees' RSP network to regulated fibre service providers' networks including for fixed, fixed wireless and mobile services. Some of these end-services compete against the regulated service provider and are especially important as a challenger operator,³ making it particularly important that these are subject to regulatory oversight. Clearly a similar Layer 1 scope is also required in order for Layer 1 access seekers to replicate Layer 2 services.
- As an alternative to the Commission's decision to only specify UFB Initiative POIs at this time, the Commission could choose to clarify that the list of proposed specified POIs in Attachment A are also applicable to Layer 1 DFAS/ICABS services.

The remainder of this submission focusses on the Commission's list of proposed UFB Initiative specified POIs.

The Specified Points of Interconnection in the UFB Agreements and 2018 document referred to by the Commission are outdated

The list of proposed UFB Initiative specified POIs provided by the Commission in Attachment A, based on the Chorus UFB Services Agreement Bitstream Services: Operations Manual for Bitstream Reference Offer [Approved at Product forum and published as interim pending CIP Approval], June 2018, is out of date.

The one POI per candidate area is a feature designed to enable competition, so that Access Seekers only need to build to one POI in each area. However, due to capacity reasons Chorus have added a number of 'Alternative Exchanges' used as POI since June 2018. Access Seekers have built out to these new POI exchanges.

In Table 1 below we list the "Alternative Exchanges" added by Chorus. If these alternative exchanges are not included in the Commission's section 231 list, the Commission will leave Access Seekers who rely on these POI exchanges with less regulatory oversight, undermining the competition purpose of the Act. While the addition of these alternative exchanges does result in more than one POI in some UFB candidate areas, it maintains the principle that access seekers are only required to build to one POI per candidate area and that each POI is treated equally, facilitating competition.

³ To 'handover' to 2degrees' network at local exchanges, for example, would require 2degrees to build out to 100's more sites. This is not consistent with the purpose of the fibre regulatory regime, which includes to constrain fibre operators with market power and enabling competition.

Table 1:

Table 1			
	Existing Exchange	New Alternative Exchange	UFB initiative geographic area
1	Riccarton	Avonhead	Christchurch
2	Wellington	Courtenay Place	Wellington
3	Glenfield	Forrest Hill	Auckland
4	Hamilton	Frankton	Hamilton
5	Whangarei	Kensington	Whangarei
6	Tauranga	Otumoetai	Tauranga
7	Dunedin	South Dunedin	Dunedin
	New UFB Handover Sites		
8	Palmerston North	Feilding	Palmerston North
9	Napier	Marewa	Napier
10	Invercargill	Waikiwi	Invercargill

The Commission's list also proposes specified POIs that were initially suggested for UFB but which are not used in practice. For example, Chorus does not serve Waiheke through a separate Waiheke-specific exchange and Access Seekers have built their networks accordingly.

In Table 2 below, we have included a list of the Commission's proposed specified POIs that are unused in practice. If unused POIs are specified, RSPs may be forced to invest in building to those exchanges. These should be removed.

Table 2:

Table 2			
	Name	Region	UFB initiative geographic area
1	Waiheke Exchange	Auckland	Auckland
2	Waiuku Exchange	Auckland	Auckland
3	Pukekohe Exchange	Auckland	Auckland