

Submission from

The Internet Service Providers Association of New Zealand (ISPANZ)

Specified Points of Interconnection – Draft framework and decision relating to amending the s 231 notice and changes since 2019

September 2022

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ISPANZ Submission on Specified Points of Interconnection – Draft framework and decision relating to amending the s 231 notice and changes since 2019

[Introduction and General Comment](#)

Thank you for the opportunity to comment on this review.

ISPANZ is the industry organisation representing internet service providers (ISPs). Whilst membership is open to all ISPs, our members are largely mid-size to smaller industry players, ranging from Trustpower to small wireless ISPs. Some of our members target particular market segments, such as business or education, whilst others are geographically focussed, being well known in their local area but with no national presence.

From our members' perspective specified points of interconnection (SPOIs) are critical infrastructure. Other POIs can also be just as important. For the internet services provision market to function effectively and in the interests of all consumers it is essential that the location and the accessibility of all POIs are managed fairly.

In general, ISPANZ members regard the following principles as necessary for them to operate efficiently and therefore for the market to function in consumers' best interests:

- Chorus and other LFCs should provide facilities for colocation of service provider equipment at all POIs.

- If Chorus or other LFCs are running out of handover ports at POIs (whether SPOIs or not) or colocation points, they should be required to inform their customers well in advance of it happening.
- If Chorus or other LFCs grandfather any POI or are unable to deliver a Handover Link at a POI within a reasonable provisioning period, or are unable to provide backhaul of a handover link from a POI, or are unable to provide facilities for an access seeker to provide alternative backhaul facilities for handover links from a POI, then the LFC should pay the reasonable costs for an RSP to relocate its handover links and L2 End User connections to another POI with the UFB Candidate Area where these facilities are available.
- Chorus and other LFCs should be required to charge a fair price for intra-candidate area backhaul (ICAB) services from Alternate POIs.
 - There are some POIs where the only backhaul service available to RSPs are ICAB services from the LFC itself. If an RSP needs to use ICAB services from an Alternate POI to connect back to their network at an existing POI or other site, controls should be in place to prevent LFCs from price gouging on these “bottleneck” services. For example, to extend a Chorus handover link to another POI, two ICAB links @ \$461.25+GST each are required. Other LFCs charge \$120+GST per month for ICAB links between two local Central Offices. Chorus charge 384% of what other LFCs charge for an equivalent service.
- When Chorus and other LFCs provide OSI Layer 1 or 2 services such as dark fibre, DWDM or ethernet services for the backhaul of Handover

Links from POIs and SPOIs, they must provide the same facilities to other access seekers that the LFC provides to itself in the provision of these services. This provision is required by the Fibre Deed of Equivalence.

These facilities include, but are not limited to, accommodation of equipment (such as Fibre splice trays, DWDM Nodes, Ethernet switches), use of cable-ways, cable distribution frames, exchange entry points, protected power systems and air-conditioning.

- When new POIs are to be established, backhaul from those sites should not just be open to competition, it should in addition be currently available from at least two wholesale providers.

Comment on Part A – your proposed framework for exercising your powers under s231 of the Act

Purpose of the framework

It could be beneficial to add a sub-paragraph 15.4 along these lines:

15.4 ensure that changes do not reduce the ability of the market to work in end customers' best interests and are consistent with s162 of the Act.

Change request process

Paragraph 48.1 makes reference to TCF's Change Management Forum.

Contrary to your understanding outlined in Paragraph 52, the Change Management Forum has never been established by the TCF. The UFB product forum operates independently of the Change Management Forum and excludes any negotiation on commercial matters between LFCs and RSPs. It focusses solely on technical fibre product matters and issues. The purpose of

the Product Forum is to provide an industry-wide forum for technical and operational level discussions in respect of wholesale services

It is understood that the TCF are currently review the Terms of Reference for the UFB product forum and are suggesting splitting the Forum into two: a Change Management Forum and a general meeting.

It is recommended that you contact TCF to discuss and clarify their intentions and whether or not they intend to become involved in the change request process. At present they are not.

Industry process

The fact that the Change Management Forum does not exist means that the proposed process illustrated in your Figure 1.2 cannot work. It does not represent current practice. The parts of the process ‘owned by industry’ (Steps 1 to 3) need to be replaced with an agreed industry process. The Change Management Forum should be established. RSPs should be able to be represented at forum meetings and groups of RSPs should be able to elect an individual or organisation to represent them.

Any Regular Member or their representative, including RSPs who are a signatory of a wholesale Service Agreement with a Regulated Fibre Service Provider, must be allowed to submit a change to the Change Management Forum, not just LFCs.

Commission process

At Step 5 of your proposed process, you illustrate that a change request can be rejected but you do not illustrate the possibility of a potential change being

amended during consultation. It is assumed that such amendment is intended to occur during the consultation discussed in Paragraph 58.2.

Evaluation of change requests

ISPANZ strongly supports the provisions for promotion of workable competition detailed in Paragraphs 71 – 73.

ISPANZ strongly supports the principles detailed in Paragraph 76.

Imposition of conditions

ISPANZ agrees with your analysis in Paragraph 85 that the imposition of conditions that promote competition in telecommunications markets is necessary.

Comments on Part A consultation questions

| Number | Question | ISPANZ comment |
|--------|---|---|
| 1 | Does this Consultation Paper reflect the process administered by the NZ Telecommunications Forum? Please describe the consultation process within the industry if it differs. | No, it does not. There is no consultation process within industry. As noted above, the Change Management Forum has never been established. The Change Management Forum should be established. RSPs should be able to be represented at forum meetings and RSPs should be able to elect an individual or organisation to represent them. |
| 2 | How would the industry continue to ensure adequate opportunities for all interested parties to comment on any proposed change request? Who do you see as stakeholders? | All access seekers should be consulted and should be able to represent their views directly to the Commerce Commission. All access seekers, including all ISPANZ members, are stakeholders. |

| Number | Question | ISPANZ comment |
|--------|--|--|
| 3 | What would you consider to be an appropriate technical purpose for adding or amending a SPOI? | No further comment. |
| 4 | What principles or factors do you consider to be relevant in considering s 166 and s 162? | The principles and factors that you have outlined are appropriate. |
| 5 | Do you agree that the Commission can impose conditions as part of its decision to amend the s 231 notice? Why/why not? | Yes, so long as they are to support competition. |

Comment on Part B – your draft decision prescribing Chorus’ nine additional POIs which were approved under the UFB initiative after the date of your initial notice

ISPANZ considers that your statement in paragraph 92.2 on page 23 of the consultation paper is an incorrect interpretation of the NIPA. The NIPA does not say “each POI must support no more than 50,000 layer 2 end users”, it says the following:

- 26 No Central Office may serve more than 50,000 Premises Passings.
- 27 All Layer 2 End Users within a Candidate Area must be accessible from a single POI.
- 28 A sole POI in a Candidate Area must not support more than 50,000 Layer 2 End Users. Where a Candidate Area has more than 50,000 End Users, then at least two POIs must be supplied, and each POI must provide access to all End Users at the standard price and terms.

This does not preclude the Company from offering additional optional POIs within a Candidate Area where a Service Provider can choose to pick up a subset of the Candidate Area.

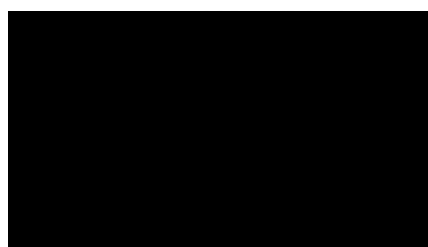
Our interpretation of this is that one POI per candidate area is OK, if it supports less than 50k L2 end users (possibly aggregated across many COs), but if you have more than 50k users, you must have more than one POI in that candidate area, not one for every 50k L3 end users.

ISPANZ agrees with your draft decision provided that:

- all additional POIs are served by at least two backhaul providers, and
- ICAB services to access these POIs are fairly priced rather than priced at Chorus' current pricing. (see our Introduction and General Comment).

Comments on Part B consultation questions

| Number | Question | ISPANZ comment |
|--------|--|---|
| 1 | Do you agree with our draft decision to prescribe Chorus' nine additional POIs approved under the UFB initiative? Why/why not? | Yes, provided that: <ul style="list-style-type: none"> • all additional POIs are served by at least two backhaul providers, and • ICAB services to access these POIs are fairly priced rather than priced at Chorus' current pricing. (see our Introduction and General Comment). |
| 2 | Were any other POIs approved under the UFB initiative between 31 December 2019 and 1 January 2022? | No comment. |



David Haynes

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