

# Cross-submission on the Commerce Commission's specified points of interconnection consultation paper

4 December 2019



## OVERVIEW

- 1 This is Chorus' cross-submission on the Commerce Commission's (**Commission**) Specified Points of Interconnection Consultation Paper (**Paper**), released 12 November 2019. This addresses issues raised by other submitters, and confirms the positions set out in our submission of 26 November 2019 (**Submission**).
- 2 The key issue arising from the submissions is the definition of points of interconnection, as the definition determines what points should be specified as the fibre handover points (which is the Commission's task under section 231 of the Telecommunications Act (**Act**)). The starting point for specifying Chorus' points of interconnection is Chorus' Network Infrastructure Project Agreement (**NIPA**), as:
  - 2.1 The Act specifies that the Commission's first notice must prescribe the points of interconnection based on the points of interconnection that apply as at the close of 31 December 2019 under the UFB initiative;
  - 2.2 The NIPA specifies what "points of interconnection" means, and the NIPA includes both layer 2 points of interconnection (known as "POIs") and layer 1 points of interconnection; and
  - 2.3 The NIPA reflects the network architecture that was agreed between CIP and Chorus, which should be carried forward.

Accordingly, both layer 1 and layer 2 points of interconnection should be specified under section 231.

- 3 The identification of different points of interconnection for both layer 1 and layer 2 is important because these points determine the scope of the regulated service for each of the layer 1 and layer 2 services. In particular:
  - 3.1 Fibre handover points define the upstream boundary of the regulated network with the downstream boundary demarcated by the user network interface. Accordingly, the fibre fixed line access service (**FFLAS**) should be defined as everything between the user network interface and a specified point of interconnection, which is why it's important that the Commission includes specification of layer 1 and layer 2 points of interconnection;<sup>1</sup>
  - 3.2 Layer 1 service ends at the layer 1 handover point, and backhaul services beyond this point are outside the NIPA and the Fibre Deed<sup>2</sup>, so are not subject to

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<sup>1</sup> Spark submission, paragraph 2; Vodafone submission, p 2.

<sup>2</sup> The Fibre Deed applies to services provided using, or that provide access to, a fibre-to-the-premises access network as defined in s 156AB of the Act. This is defined as "network structure used to deliver telecommunications services over fibre media that connects a powered node in a central office location (an exchange or equivalent powered facility) to an end-user's premises or building, or the optical distribution facility of an end-user's premises or building" – i.e., a network structure terminating at the central office location.

regulation, but available on commercial terms. There is no basis for changing this.

- 4 The majority of submitters support the position that points of interconnection cover both layer 1 and layer 2 points (although there are varied views as to how and what to actually specify). In addition to this commonality, we are aligned with several submitters on the following:
  - 4.1 Both layer 1 and layer 2 points of interconnection should be specified under section 231;
  - 4.2 The NIPA provides for a minimum of one layer 2 point of interconnection per candidate area, as there are requirements for more than one under certain circumstances. All submitters were in agreement on this point, and we understand that the Commission's initial statement in the Paper referring to a single POI per candidate area may have been an oversimplification;
  - 4.3 The Commission shouldn't limit itself to specifying points of interconnection in the UFB contracts. The Commission has the ability to recognise additional points of interconnection beyond the UFB initiative under the Act. As we provide services outside UFB areas, additional points of interconnection should be included in the Commission's notice;
  - 4.4 Recognition that the scope of our fibre services is defined by the handover points at our points of interconnection and we have both layer 1 and layer 2 handover points today; and
  - 4.5 There will be a need to amend the points of interconnection over time, and a process for doing so that appropriately takes into account the interests of industry participants.
- 5 However, we disagree with the following positions taken by a minority of submitters:
  - 5.1 Layer 1 and layer 2 handover points should be the same, and be set as the layer 2 points of interconnection, including because of our non-discrimination obligations;
  - 5.2 Section 231 doesn't apply to layer 1 services as we aren't required to supply them until after 1 January 2020; and
  - 5.3 The Commission should include fibre flexibility points (**FFPs**) as handover points.
- 6 These arguments are incorrect as they misrepresent the current legal and commercial position. For clarity: we already provide layer 1 services; we are entitled to determine the handover points for the point-to-multipoint service (**PONFAS**); different layer 1 and layer 2 handover points do not create a discrimination issue; and FFPs are not in fact handover points for our services now or under PONFAS.
- 7 Clarifying the nature of our services at layer 1 and layer 2, and the consequential impact on the specification of points of interconnection as fibre handover points, is the focus of our cross-submission.

## Scope of Process

- 8 In addition, there are a number of positions put forward by various submitters that are outside of the scope of this process. These issues should not be considered as part of the specifying of points of interconnection process under section 231:
  - 8.1 Specifying any obligation to provide backhaul services. The Commission should not be looking to regulate backhaul as it is largely competitive and we provide a number of commercial solutions;
  - 8.2 Availability of handover types at POIs. An obligation to provide all handover types at all POIs would negate Chorus' ability to address capacity constraints and manage technology lifecycle factors through the establishment of new POIs;<sup>3</sup> and
  - 8.3 An obligation to provide handover capacity information.<sup>4</sup>

The Commission does not have the power under section 231 to determine the above matters and accordingly, we don't comment further. However, we would be happy to discuss further if useful to the Commission.

## LAYER 1 AND LAYER 2 POINTS OF INTERCONNECTION

### Identification of layer 1 points of interconnection

- 9 We agree with the majority of submitters in recognising that points of interconnection cover both layer 1 and layer 2 points of interconnection, based on the definition in the NIPA and in order to accurately reflect the network architecture. We understand that Crown Infrastructure Partners (**CIP**) supports this approach.
- 10 Some submitters suggest that section 231 does not apply to layer 1 (and so layer 1 points of interconnection should not be specified) but this fails to correctly interpret section 231.<sup>5</sup>
- 11 The starting point under the Act is to base specified points of interconnection on those included under the NIPA. The Commission's task is to reflect the points of interconnection agreed with CIP under the NIPA and this might differ across network providers.
- 12 With respect to Chorus, the NIPA includes both layer 1 and layer 2 points of interconnection. Therefore both layer 1 and layer 2 points of interconnection must be

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<sup>3</sup> Spark submission, paragraph 5.

<sup>4</sup> Vodafone submission, p 4.

<sup>5</sup> See submissions from Vector, Vodafone and Spark (however, we note Spark's submission is ambiguous).

included to meet the requirement under the Act. Other LFCs' NIPAs may differ from Chorus', and may not refer to both layer 1 and layer 2 points of interconnection.

- 13 We addressed the scope of section 231 and the NIPA in our Submission.<sup>6</sup> Briefly, the section refers to "points of interconnection", and it is a misreading of the section to interpret this as solely referring to layer 2 POIs. This point is not addressed by any of the submitters arguing for a narrow reading of section 231.

### **Can the Commission ignore layer 1 handover points?**

- 14 We disagree with submissions suggesting that the Commission can set Chorus' points of interconnection only to the layer 2 points of interconnection, despite the NIPA, or that it can set additional points of interconnection that don't apply to our layer 1 services, but appear to reflect other further unbundled layer 1 services that the submitters consider should be offered.

- 15 One submitter wants the Commission to:

15.1 Specify points of interconnection for layer 1 that are the same as for layer 2; and

15.2 Find that the layer 1 service should be delivered to the layer 2 point of interconnection,<sup>7</sup> and a failure to do so creates a non-discrimination issue between layer 1 and layer.

- 16 This position does not reflect the current regulatory environment. Under the Act, from 1 January 2020 we are required to:

16.1 Provide the DFAS service (as it was previously required under the NIPA, now preserved under the transitional provisions of the Act); and

16.2 Provide a layer 1 PONFAS service, under our Fibre Deed obligations, and the unbundled fibre service when we become subject to price quality regulation.

- 17 DFAS handover points or points of interconnection are currently set by the NIPA at the central office. Once the DFAS service is regulated under Part 6, the terms and conditions of the service are to be set by regulation. However, to ensure consistency between the NIPA and the regulated DFAS, the Minister must not recommend a description of a service, or conditions of the service, that are materially different from the terms set out in the UFB contract.<sup>8</sup> Handover points are an obvious description or condition of the service.

- 18 We are free to determine the terms and conditions on which we supply the layer 1 PONFAS service. Consistent with the approach to DFAS and the definition of the fibre-

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<sup>6</sup> Primarily at paragraphs 6-7 and 13-19.

<sup>7</sup> Vodafone submission.

<sup>8</sup> Schedule 1AA, cl 15(3).

to-premises access network regulated by the Fibre Deeds, we have set the handover points or points of interconnection at the central office/local exchange. We are not setting handover points at FFPs, and this is not where our services are delivered to, so therefore the Commission should not specify FFPs as the points of interconnection.

- 19 The Act envisages consistency between the services offered under the NIPA and required to be provided in the Act, and coherence between the regulation under Part 6 and our obligations under the Fibre Deeds as regulated under Part 4AA.
- 20 The proposal that points of interconnection should be specified at the FFP is inconsistent with how services are operated, and with Chorus' obligations under Part 4AA. Our Fibre Deed obligation is to provide a layer 1 point to multipoint service. If the end to end service were deconstructed to pick up fibre at the splitter at the FFP, then we would no longer be providing a point to multipoint service over the UFB network.
- 21 The proposal that points of interconnection for layer 1 are set at layer 2 POI rather than central office locations is also inconsistent with how services are operated, with Chorus' obligations under Part 4AA and with s 231 itself. Section 231(5) requires points of interconnection under the NIPA to be transferred into the new regime. This includes layer 1 handover points which are currently provided for the DFAS service (and will be the same for the PONFAS service).
- 22 This position would also create an inconsistency between the point of interconnection for the layer 1 service under Part 6 and the service required to be provided under the Fibre Deed under Part 4AA. As explained above, the regulated network under Part 4AA for the purposes of the layer 1 service terminates at the central office.
- 23 The submission suggesting that layer 1 points of interconnection can be ignored because they don't apply until 1 January 2020 is incorrect on two levels:
  - 23.1 We have been supplying DFAS since demerger, so layer 1 points of interconnection do apply under the UFB initiative and s 231(5) applies accordingly; and
  - 23.2 In any event, the Commission is not limited to specifying points of interconnection under the UFB initiative, and should ensure that the regulation under the Act is coherent. As we begin supplying PONFAS from 1 January 2020 (as required under the Fibre Deed), the Commission should ensure that the first notice of specified points of interconnection also cover the PONFAS service.
- 24 In addition, having different points of interconnection for our layer 1 and layer 2 services does not give rise to any non-discrimination issue. The layer 1 and layer 2 services are different; no discrimination can occur between these distinct services.

## **CHANGES TO SPECIFIED POINTS OF INTERCONNECTION**

- 25 In general submitters recognised the need for new points of interconnection to be specified by the Commission going forward, although one submission suggested that Chorus and other LFCs should not be able to specify new points of interconnection

where there is physical capacity remaining at an existing one.<sup>9</sup> This position overlooks the following factors:

- 25.1 Chorus (as with other LFCs) does not establish new points of interconnection unilaterally. There are currently change processes under the NIPA and the Wholesale Services Agreement (**WSA**), our contract with RSPs. These provide for industry consultation (where appropriate) and the approval of CIP. This process prevents Chorus acting without taking into account the interests of industry participants. We would expect that the Commission would take a similar role in exercise of its section 231 powers;
- 25.2 Section 231 already constrains the Commission in specifying additional points of interconnection, which have to be required for technical reasons and to be consistent with the purpose in section 162. If Parliament had intended additional hurdles presumably it would have specified them;
- 25.3 Requiring that existing capacity is exhausted before adding a point of interconnection would unreasonably constrain the efficient development of the network, and risk network resiliency and ability to meet increased demand.<sup>10</sup> As a prudent network operator, we need to plan for anticipated constraints or risks in a timely manner in order to minimise disruption and allow for our customers to plan their own necessary changes; and
- 25.4 We may need to establish additional points of interconnection for reasons outside our control such as damage to site infrastructure caused by earthquake, fire, or flood; or changes to contractual arrangements.

We would not compromise the network in the manner suggested, and we encourage the Commission to carefully consider the risks if it is persuaded by this submitter. The outcome would not provide desirable outcomes for RSPs or end-users.

- 26 The same submitter also suggested that Chorus should not be able to change existing POIs, referring to Chorus wanting to restrict access to the existing Palmerston North POI (and divert traffic to Fielding) as an example. This is incorrect. We have encouraged use of new POIs (including at our new POI at Fielding) where we believe that better serves the customer demand, and may not offer all handover types at all POIs, but we have never sought to withdraw a POI, and would only do so after a proper process of consultation and approval, should future circumstances warrant it. We do not envisage any change to this process once the Commission takes over the specification of points of interconnection.

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<sup>9</sup> Vodafone submission, p 3.

<sup>10</sup> Refer to our Submission para 34 for examples.