

Dr Stephen Gale
Telecommunications Commissioner
Commerce Commission
Level 6
44 The Terrace
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13 June 2019

Dear Stephen

Specified Fibre Areas – continued application of Standard Terms Determinations

During the next few years, as the initial roll-out of our UFB fibre network is completed, Chorus is keen to ensure an orderly migration of users away from the copper network in those areas that have access to fibre. The purpose of this letter is to provide you with a written commitment regarding Chorus' conduct with respect to end users that are being provided with a UBA or UCLFS service on Standard Terms Determinations (**STD**) terms when an area is declared to be a specified fibre area (**SFA**).

The Telecommunications Act 2001 (**Act**) requires the Commerce Commission (**Commission**) to make an initial declaration of Specified Fibre Areas – that is, areas where a fibre service is available to end-users – by 31 December 2019. The effect of an SFA is that Chorus is permitted to withdraw copper services from premises within that area, provided that it has complied with the Copper Withdrawal Code (**CWC**), including that the 111 Contact Code (**111 Code**) is in force.

The Commission and Chorus have genuinely differing legal interpretations as to the effect of declaration of an SFA on the copper services to be deregulated under the Act; in particular, whether STDs for those copper services continue to apply. An option that we have discussed with the Commission is whether to make an application for a 'case stated' opinion from the High Court under section 100A of the Commerce Act 1986. However, the Commission has noted in discussions that seeking clarification from the High Court is likely to delay its completion of the CWC.

Our priority is to have in place a CWC with terms that will support the objective of enabling copper withdrawal in the most customer friendly way possible, and we see a well-crafted CWC as critical to this. We are prepared to take a pragmatic view to ensure the CWC is not delayed, but not to completely waive our future options.

The Commission is also aware that Chorus is left vulnerable in Local Fibre Companies (**LFC**) areas where, under the Commission's interpretation, Chorus would remain subject to copper price regulation but LFCs are not price regulated. This does not seem like a desirable outcome, nor does imposing further regulation on legacy technologies.

Despite these reservations, Chorus is willing to commit to the Commission that where Chorus is providing one of the relevant copper services to premises on STD terms, and those premises lie within an area that is declared an SFA, Chorus will continue to provide the service in compliance with the STD terms, unless the end-user chooses to have the service disconnected (other than a temporary disconnection). This commitment is provided until either:

- the Commission finalises the CWC; or
- 30 June 2020,

whichever is earlier.

We hope the Commission agrees that the sooner we get clarity on the requirements of the CWC, the sooner we can plan our approach and provide clarity for consumers. We would, therefore, expect that the timeframes for the development of the Codes will not slip past June 2020.

We also think it is important to acknowledge the context in which the CWC is being developed. We support the Commission's objective to ensure that consumers are protected through the process of copper withdrawal. Currently we are aware of increasing numbers of consumers being migrated off copper and onto fixed wireless services based on advice from retail service providers (**RSPs**) that their copper services will no longer be available to them. This is occurring well in advance of the declaration of any SFAs and does have the potential to confuse consumers.

I understand that you intend to publish this letter on the Commission's website in order to bring this commitment to the attention of interested parties, including RSPs.

Yours sincerely



Kate McKenzie
Chief Executive