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19 May 2022

Dear Rachel,

### Specified points of interconnection – request to update s 231 notice

We refer to the Commerce Commission's (the **Commission's**) Notice of points of interconnection under section 231 of the Telecommunications Act 2001, dated 19 December 2019 (the **Section 231 Notice**).

#### **Request for Section 231 Notice to be updated to include new POIs**

As the Commission is aware, Chorus has added new points of interconnection (**POIs**) since the Commission published the Section 231 Notice on 19 December 2019. We have provided regular updates to the Commission with details of these new POIs including via email and as part of the Commission's annual backhaul questionnaire.

Many of these new POIs have been active for one to two years. However, these have not yet been added to the Commission's Section 231 Notice. We note the Commission has not updated the Section 231 Notice since it was first published in December 2019. Accordingly, we request that the Commission update the Section 231 Notice as a matter of priority to include the details of the new POIs.

It is important that the Section 231 Notice is updated periodically to include new POIs. "Specified point of interconnection" is defined in the Act as "*a POI prescribed under a section 231 notice*".<sup>1</sup> As the Commission has acknowledged, the location of specified POIs is "*central to identifying and specifying FFLAS available for regulation under s 226*"<sup>2</sup> because specified POIs "*prescribe the outermost boundaries of a regulated provider's fibre network (with the other end being the user-network interface), and establish the fibre handover points for the network.*"<sup>3</sup> It is therefore important that the Section 231 Notice continues to accurately reflect the footprint of the regulated fibre network as it develops.

As the Commission acknowledged in its Specified POIs Reasons Paper, it is not required to satisfy section 231(4) when prescribing new POIs (as opposed to amending existing POIs). The Commission noted that "*section 231(4) provides that we must not amend a specified POI unless the amendment is*

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<sup>1</sup> Telecommunications Act 2001, s 5.

<sup>2</sup> Commerce Commission, *Fibre input methodologies: Main final decisions – Reasons Paper*, 13 October 2020, at [2.176].

<sup>3</sup> Commerce Commission, *Fibre input methodologies: Main final decisions – Reasons Paper*, 13 October 2020, at [2.163].

*for an appropriate technical purpose and is consistent with the purpose in section 162 of the Act...However, we note the thresholds in section 231(4) do not apply to adding new specified POIs.”<sup>4</sup>*

While the Commission is yet to outline the process that it intends to follow for updating the Section 231 Notice, we understand from the comments in the Reasons Paper and recent discussions that it should be straightforward to formalise the architecture already in place.

### **Rationale and Process for New POIs**

To support this request for an updated Section 231 Notice and provide context to the Commission, we have set out below the rationale for, and process of, Chorus developing and putting in place new POIs. The decisions about new POIs have largely been driven by network architecture requirements and customer demand, as well as ensuring that Chorus is meeting its obligations under the Network Infrastructure Project Agreement (**NIPA**) with Crown Infrastructure Partners. Specifically, Chorus has added nine new POIs for the following reasons:

- In 2016 Spark notified Chorus that there were capacity constraints (particularly relating to power and space) at a number of POIs located at Spark owned exchanges which would impact Chorus’ ability to offer new handovers to RSPs at these POIs. As a result, Chorus launched a project in 2017 to build additional POIs in candidate areas that were affected by the lack of capacity. This is an ongoing project, and we have added a number of new POIs since the Commission’s December 2019 section 231 notice as part of this project.
- We have added additional POIs to meet our obligations under the NIPA in relation to population density. Annexure 2 of Schedule 3 of the NIPA states that each POI in a candidate area must support no more than 50,000 Layer 2 end users.<sup>5</sup> This means that where a candidate area has more than 50,000 end users, then at least two POIs must be available in that candidate area.
- Finally, we have also added additional POIs as part of our ongoing planning for future demand for handovers and to provide greater resilience in the network.

We have regularly updated RSPs and the Commission with the details of new POIs. For example, in 2018 we shared information with RSPs about the location of the new POIs that would be built to address the capacity constraints at Spark owned exchanges. We have also provided regular updates via the Product Forum and on our website, including inviting RSPs to comment on their preferred handover sites.<sup>6</sup> The new sites have been selected based on location, population density, and to

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<sup>4</sup> Commerce Commission, *Specified points of interconnection: Reasons Paper*, 19 December 2019 at [68.2].

<sup>5</sup> Network Infrastructure Project Agreement, Telecom Corporation of New Zealand Limited and Crown Fibre Holdings Limited, 24 May 2011, Schedule 3 Annexure 2 at [26] to [28].

<sup>6</sup> See for example the following updates provided to RSPs via our website:

<https://sp.chorus.co.nz/product-update/new-mt-eden-nga-point-interconnection>

<https://sp.chorus.co.nz/product-update/additional-auckland-point-interconnection-ponsonby>

<https://sp.chorus.co.nz/product-update/new-christchurch-fibre-poi-linwood>

<https://sp.chorus.co.nz/product-update/introducing-new-handover-exchange-availability>

<https://sp.chorus.co.nz/product-offer/extended-handover-icabs-offer>

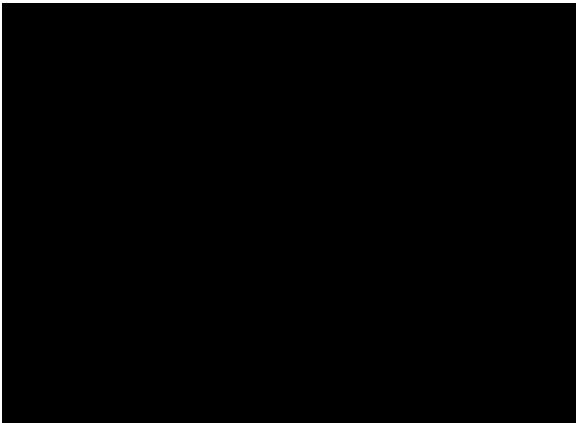
<https://sp.chorus.co.nz/product-offer/hub-site-icabs-offer>

ensure alignment with our Layer 2 architecture. RSPs have supported the specification of these POIs and we have seen significant uptake of handover at the new POIs.<sup>7</sup>

**Updated Section 231 Notice**

Please find **attached** an updated version of the Section 231 Notice which includes, in tracked changes, details of the new POIs that Chorus has added since the notice was published on 19 December 2019. We request that the Commission publish the updated Section 231 Notice as soon as possible. We would be happy to provide any additional information or to discuss this further if that would assist.

Yours sincerely,



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<sup>7</sup> The only exception is where we have added additional POIs as part of our ongoing planning for future demand for handovers. While we have not seen immediate take up of handover at these POIs, we expect RSPs to take up handover at these POIs over the coming months as demand increases in these candidate areas.