



NEW REGULATORY FRAMEWORK FOR FIBRE

**Submission of Enable Networks Limited and Ultrafast Fibre Limited
(collectively LFCs) on NZCC process and issues paper on
determining specified fibre areas**

14 February 2019

1. Introduction

1.1 This submission is made by Enable Networks Limited and Ultrafast Fibre Limited (collectively **LFCs**).

1.2 We focus on five specific issues:

- (a) the inclusion of non-building access points (**NBAPs**) in the Commission's interpretation of "specified fibre service";
- (b) the consequences of a declaration by the Commission that an area is a specified fibre area (**SFA**);
- (c) the criteria for fibre being "available" to end-users;
- (d) information required to determine where "specified fibre services" are located; and
- (e) the suitability of LINZ data.

2. Inclusion on non-building access points in definition of SFA

2.1 We do not agree with the Commission's interpretation that a fibre service to a NBAP is a "specified fibre service" for the purposes of Part 2AA of the Telecommunications Act 2001 (**Act**).

2.2 Part 2AA sets out the regime for deregulating copper fixed line access services; the purpose set out in s69AA of the Act is to "*deregulate copper fixed line access services in areas where fibre fixed line access services are available*".

2.3 "*Copper fixed line access services*" are defined in section 5 of the Act to mean "*(as they are described in subpart 1 of Part 2 of Schedule 1)*"

- (a) *Chorus' unbundled bitstream access*
- (b) *Chorus' unbundled copper low frequency service*".

2.4 Both those services are described in Schedule 1 as terminating at "*the end-user's building (or, where relevant, the building's distribution fibre)*".

2.5 SFA is defined in section 5 of the Act as "*an area that has been declared under section 69AB to be a specified fibre area*". As none of the services being deregulated under Part 2AA terminate at an access point which is not a building, the availability of fibre services to NBAPs has no relevance to, and should not be considered in, the Commission's analysis under s69AB(1) of the Act.

2.6 Our answers to Q2, Q3, Q4 and Q6 are accordingly:

Q2	We welcome your views on the appropriateness of our interpretation of a 'specified fibre service' under s69AB(6) of the Act.
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2.7 We do not agree with the Commission's interpretation that a fibre service to a non-building access point (NBAP) is a "specified fibre service" for the purposes of Part 2AA of the Act.

Q3	We welcome your views on whether or not our diagram is an accurate representation of where a telecommunications service is a 'specified fibre service'.
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2.8 For the reasons set out in response to Q2, the third alternative in Figure 1, illustrating a fibre lead in to an NBAP, should be removed.

Q4	We welcome your views on the appropriateness and practicality of our interpretation of the term 'end-user'.
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2.9 For the reasons set out in response to Q2, an end-user's location should not include an access point that is not a "premise" or "building".

Q6	We invite your views on how we can ascertain the locations of end-users' 'other access points' within NZ.
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2.10 There is no need to identify the location of "other access points", for the reasons set out in our response to Q2.

3. The consequences of a declaration by the Commission that an area is an SFA

3.1 We agree with the Commission [at 30] that where it has declared an area to be an SFA, Chorus remains subject to price regulation under Part 1 for as long as it continues to supply copper services to an end-user in that SFA.

3.2 In other words, until Chorus has complied with the requirements of the copper withdrawal code, and stopped supplying the service in the SFA in accordance with section 69AC, its regulatory obligations remain.

3.3 This is particularly important in LFC areas, where Chorus will not be providing the new fibre service. Chorus has no incentive to withdraw copper fixed line access services in LFC areas as it does not have the opportunity to replace its lost copper revenue with revenue from a replacement fibre service.

3.4 It is therefore unlikely that Chorus will ever voluntarily withdraw copper services in LFC areas. It has invested \$20 million to upgrade its copper network in LFC areas¹, and is vigorously promoting an "upgraded VDSL" copper service to reduce migration to fibre:



¹ Reseller News, Chorus reports half year, 26 February 2018

3.5 All of this is inconsistent with an intent to withdraw copper services. To the contrary, Chorus has stated publicly the purpose of its strategy is to abate the loss of Chorus copper customers to LFC fibre networks².

3.6 If Chorus were no longer subject to price regulation in an LFC area that the Commission had declared under section 69AB(2) to be an SFA, it could engage in pocket pricing to further discourage migration from Chorus copper to LFC fibre.

4. **Criteria for fibre being 'available' to end-users**

Q5	We welcome your views on the criteria for fibre being 'available' to end-users.
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4.1 We agree with the submission by the TCF that fibre is "available" to end-users for the purposes of declaration of an SFA under section 69AB(1) if the end-user's premises has been passed as defined in the LFCs' contracts with CIP.

4.2 We also agree that the requirement in Schedule 2A that an end-user "*must be able to access a fibre service*" before a copper service can be withdrawn is a more onerous test.

4.3 As was the case with the RSP members of the TCF, our view is based on our interpretation (discussed in section 3 of this submission) that Chorus' regulatory obligations in relation to copper fixed line access services do not cease when the Commission has declared an area to be an SFA.

5. **Information required to determine where "specified fibre services" are located**

Q7	We invite views on whether we need precise information on where 'specified fibre services' are located in NZ, including the location of regulated fibre service provider's fibre networks and fibre handover points (eg through coordinates or GIS information).
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5.1 LFCs already provide the Commission with "*information about the routing, topology, capacity and end-user active connections for its LFC network*" in accordance with the requirements of the Commission's LFC Information Disclosure Determination 2018³. This information is sufficient to enable the Commission to establish the location of 'specified fibre services' in LFC areas.

5.2 LFCs should not be subject to compliance obligations than are more onerous those set out in the Determination.

6. **Reliability of LINZ data**

Q8	We invite views on the suitability of using LINZ data to determine end-users' address points and property boundaries within NZ compared to other available data sets.
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6.1 LINZ data is not reliable. It includes multiple addresses for a section implying more end-users than actually exist. This is particularly the case for corner sections.

6.2 The data includes a huge amount of pseudo addresses such as graveyards, parks, recreation spaces and other structures.

END

² Above

³ Decision No. NZCC 10, 22 August 2018