



Public Version

DETERMINING SPECIFIED FIBRE AREAS
Process and Issues Paper

Commerce Commission
12 February 2019

Summary

1. Spark supports Chorus having flexibility to remove its copper network. Copper is a legacy technology which increasingly offers an inferior service when compared to alternative technologies in terms of performance and reliability.
2. In locations where fibre alternatives are available, Chorus should be able to grandfather, then remove, copper by following the prescribed industry process. We also agree with the position set out in the process paper, that the statutory provisions require that where Chorus continues to offer copper in a Specified Fibre Area (SFA) then such copper services will be subject to price regulation, including the UBA and UCLF STDs. Chorus can withdraw the copper service in an SFA if it complies with the Copper Withdrawal Code (CWC), which provides the necessary consumer safeguards. However, copper regulatory protections for an end user only drop away when the copper service is withdrawn.
3. Since the CWC provides the necessary safeguards at a per premise level, the definition of an SFA can happen at a less granular level, consistent with existing reporting of fibre rollout to Crown Infrastructure Partners.
4. If, however, all copper regulation were to drop away from the moment an area is declared to be an SFA, then the SFA would need to be defined significantly more tightly – to ensure it provides regulatory safeguards for those end users who have not or cannot actually connect to the fibre network. We don't consider this is a correct interpretation of the Act though as it is inconsistent with a managed, predictable grandfathering of copper, and provides insufficient consumer safeguards. Further, this approach would mean that in practice Chorus could only remove a specific copper cable following an SFA review which would need to be more granular in level. This creates a more complex and resource intensive information regime for both RSPs and Chorus and where Chorus will (rightly) have incentives to request more regular SFA reviews as it looks to withdraw copper more widely.

Policy objective for a customer friendly forced-migration from copper

5. Spark is keen to move its customers off legacy copper networks as it is more costly to manage copper connections than other types of broadband. In September 2018 we noted¹ that customers with copper broadband are roughly two times more likely to get in touch about an issue than fibre customers, and nearly three times more likely to get in touch about an issue than wireless broadband customers.
6. We support Chorus' ability to remove copper connections and migrate customers to better technologies for them (whether that be fibre, fixed wireless or cable technologies). However, the transition needs to be predictable and provide adequate consumer protections. For example, we would not want a customer who is unable to actually connect to the fibre network to be left without any broadband connection because Chorus removed the copper network unless every feasible alternative solution has been comprehensively investigated.
7. This is consistent with the policy behind the legislation, which grandfathers copper once an area has been notified as an SFA. This allows Chorus to stop support of new copper connections (or

¹ <https://i.stuff.co.nz/business/industries/106843633/spark-ups-price-of-copper-broadband-by-5-a-month>

reconnect customers who have disconnected) while ensuring customers who continue to receive copper are protected by price regulation².

A multi-level regime to protect individuals if copper is withdrawn

8. At a high level, when the Commerce Commission notifies that an area is an SFA, this is the first step towards copper removal and copper grandfathering begins. Notifying an area as an SFA sends a signal to Chorus, LFCs, RSPs and consumers that copper service withdrawal is a possibility in an area. Ultimately though it is the Copper Withdrawal Code (CWC) which determines whether copper can be withdrawn at an individual premises.
9. The CWC is at the heart of the government's copper withdrawal policy. It provides the essential protections for consumers, at an individual premise level, to ensure an orderly transition away from copper. As the Commerce Commission notes in its consultation paper³, the CWC is just one prerequisite, with another being that the area in which the premises is located has been assessed and notified as a Specified Fibre Area (SFA).
10. It is important, therefore, to consider how these two regulatory instruments work together to understand where the respective protections for consumers lie.
11. For example, we would have a different view of how the SFA should be determined if all copper regulation was removed from the remaining copper connections as soon as an area is declared as an SFA, as this would leave customers without safeguards ahead of a migration. In this case we would want to see a more granular SFA notification to protect customer who are unable to connect to fibre.

The SFA Process

12. We support the Commission taking a broader view of an SFA to include all parts of the geographic region where fibre has been rolled out. It should not require analysis of whether each individual premises in the area is able to actually connect to the fibre to declare an SFA. But this type of approach only works if the individual premises within the SFA that are actually on copper retain the benefit of the dual consumer protection measures including the STD price and the CWC. Individual premise protections are a function of the CWC which need only be performed if Chorus decides it actually wants to remove copper to the premises. It is therefore more efficient to adopt a 'homes passed' approach to the definition of an SFA.
13. There is no need to overcomplicate the Specified Fibre Areas (SFA) process. It can simply mirror the UFB rollout reporting to Crown Infrastructure Partners today and can be updated on an ongoing basis as new areas are completed. If the SFA were to go down to individual premise level it would require an analysis on the premise's ability to connect. This would be similar to the current fibre prequalification process and doing for each individual premises on an area basis would be time consuming, inefficient and subject to change over time.

² Commerce Commission consultation document, paragraphs 72-73

³ Paragraph 4, Determining Specified Fibre Areas, Process and Issues Paper

Ongoing regulation in SFA areas

14. We agree with the Commission that once an area is determined to be an SFA then the copper grandfathering process begins, but that the regulated STD service only drops away as the copper service is withdrawn from an end user. The Commission notes⁴ that if Chorus chooses to continue to supply copper service in relation to an end-user in an SFA, those services similarly continue to be subject to price regulation under Schedule 1 of the Act (including UBA and UCLF).
15. The Act is relatively clear on this and is consistent with the progressive deregulatory policy intent of the Amendment Bill. Grandfathering of copper (via the removal of the network TSO) is the first step of deregulation and copper is fully deregulated if Chorus choose to remove the copper.
16. Our understanding of how copper grandfathering/deregulation would apply in practice is show in the summary table below:

	Before notified as an SFA	After notified as an SFA but CWC process not yet completed	After copper withdrawn following CWC process
Copper customer who is force migrated to fibre	STDs applies	Price regulation continues to apply	Copper withdrawn and copper no longer need be supplied
Copper customer who is unable to be migrated to fibre	STDs applies	Price regulation continues to apply	Price regulation continues to apply until a satisfactory solution is found CWC must address how copper can be eventually removed for this customer
Customer never had copper	STDs applies	No obligation to supply copper	No obligation to supply copper
Customer had copper until after SFA notified, then cancels the copper connection	STDs applies	No obligation to resupply copper once they have disconnected	No obligation to supply copper
New home built in an SFA area after it is notified as an SFA	n/a	No obligation to supply copper	No obligation to supply copper

Removing All Regulation From Copper Would Require A Different Approach to SFAs

17. We know from discussions at the TCF that Chorus will argue that this interpretation of the Act is incorrect and in fact all copper regulation should drop away once an area has been notified as an SFA. We do not agree with this interpretation. If Chorus is free to adjust price or non-price terms of its

⁴ Paragraph 30 of the consultation paper

copper products it can distort the market to its own benefit as it seeks to maximise its returns from the copper network. In some areas this may be in conflict with the preferred migration to fibre.

18. For example, Chorus may lower copper prices in areas where they are subject to competition from other networks (such as LFC fibre areas or areas where fixed wireless broadband are available) to encourage people to remain on copper.
19. In other areas Chorus may be incented to increase copper prices in locations where it is harder for customers to take up fibre. These might be areas where there are charges for fibre installations (eg non-standard installations), which act as a barrier to take up, and there will also be households who cannot actually connect to the fibre, even though it passes their home and they want to connect. Examples of the latter would be a neighbour refusing access down a right of way where Land Access legislation does not apply or premises which cannot be connected for other legitimate reasons.
20. If the Chorus interpretation of the Act were correct then, in order to provide appropriate consumer safeguards, the SFA should be defined with much more specificity (including considering whether individual premises can actually access the fibre service which passes their premise) to minimise the risks for customers who cannot connect to fibre.

Conclusion

21. Notifying an area as an SFA is the first step in deregulation and starts the grandfathering process for copper.
22. The CWC provides protection to customers at a per premises level meaning that the SFA regime can be a more broad brush approach, identifying premises passed by fibre without the need to analyse whether an individual premises can connect to the fibre. These are areas which are 'on notice' that in future Chorus could choose to remove copper.
23. If Chorus does decide to remove copper from some premises which fall within a SFA then it must comply with the CWC. Only once the copper is removed will the price regulation drop away.
24. This provides adequate protections to consumers while providing a clear, predictable and stable regulatory framework for the removal of copper, if Chorus so wishes.
25. If, however, our interpretation of the Act is incorrect and in fact all copper regulation drops away from the moment that an area is notified (as Chorus argues), then the SFA should be more tightly defined to minimise the potential incentives on Chorus related to copper pricing ahead of its withdrawal.

Q1 We welcome your views on the appropriateness of the interpretation of our obligations.

Q2 We welcome your views on the appropriateness of our interpretation of a 'specified fibre service' under s 69AB(6) 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'.

Q4 We welcome your views on the appropriateness and practicality of our interpretation of the term 'end-user'.

We agree with the Commission on all the above points

Q5 We welcome your views on the criteria for fibre being 'available' to end-users.

Q6 We invite your views on how we can ascertain the locations of end-users' 'other access points' within NZ.

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 (e.g. through coordinates or GIS information).

The Commission has taken an overly prescriptive approach – an SFA should only consider whether a premises has been passed by the fibre network. It does not need to consider whether the end user can actually connect to those 'specified fibre services' at the time of the assessment.

From a policy perspective this is not required as the CWC provides the safeguards at an individual premises.

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.

We have no specific view on how the data is calculated, other than noting that the data is already reported by the LFCs and CIP and this seems to work ok. The key from an RSP's perspective is to understand in what areas Chorus can grandfather copper from the point where an area is notified as an SFA.

Q9 We welcome your views on the timing and frequency of assessments, including the review period, publication, outputs and phase-in period between declaring an area and the effective date.

Once an area has been declared an SFA then Chorus can grandfather copper and can refuse to provide copper to new connections (or offer them on a commercial basis). This has implications for RSPs who sell copper in to these areas and a period of notice is needed to ensure we are correctly informing new customers of the options available to them.

We therefore propose a period of notice before an area is declared an SFA and the copper grandfathering commences to give retail providers warning of the change.

Q10 We welcome your views on the adequacy of the data requirements for SFA assessments. If you consider additional data is required, please provide details.

Q11 Under what circumstances could supplementary assessments be required?

Q12 What is an acceptable number of premises to justify a supplementary assessment? (ie, greater than x?).

Q13 Do you consider that the criteria for supplementary assessments are satisfactory and appropriate?

If assessments are quarterly then there is no need to do supplementary assessments.

Q14 We welcome your views on the timing of the annual assessments.

Q15 We welcome your views on the likely compliance costs (including time) for providing the data.

The compliance cost of a simplified 'premises passed' type SFA will be minimal as this information is already reported to CIP

If the SFA is based on per premise information, we expect the time to collect data and the quality of the data to be a considerable burden as it requires a prequalification visit to every premise

Q16 We welcome your views on how we should ensure quality assurance of the data provided.

The quality assurance elements of a simplified 'premises passed' type SFA will be of minimal concern as this information is already reported to CIP

If the SFA is based on per premise information, we expect the quality of the data to be more variable as it is based on an individual technician's view on whether a premises can be connected. It is therefore likely to be less accurate in nature which is of a concern as once a premise is considered an SFA it cannot be removed from the list.

Q17 We welcome your views on how our public notices should declare an area to be a specified fibre area.

We agree with the Commission. The key thing is that RSPs should be able to identify which premises are in the SFA so they know what products will be available to end users

Q18 Are there any other relevant documents or data that we should make available as part of our assessment(s)?

Q19 We welcome your views on the adoption of UFB area names as a narrative description of SFAs and of alternative naming conventions that interested parties, including end-users, can identify with.

Q20 Are there any other aspects of data confidentiality that we need to consider ?

All of these factors are simplified if the data is as per the current reporting to CIP rather than per premise reporting.