

Submission on Determining Specified Fibre Areas: Process and Issues Paper dated 26 November 2018

15 February 2019



OVERVIEW

- 1 This submission responds to the Commerce Commission (**Commission**) consultation paper on *Determining specified fibre areas – Process and issues paper* (**issues paper**) dated 26 November 2018.
- 2 We appreciate the Commission’s early attention to consulting and engaging on the implementation of the Telecommunications (New Regulatory Framework) Amendment Act 2018 (**Amendment Act**), which sees a significant transition from public private contracts to a new utility model from 2020.
- 3 By the end of this year, 75% of New Zealand will have access to fibre to the home (**FTTH**), with more to come thereafter. Fibre uptake and usage has exceeded expectations. New Zealanders are using more data than ever before with no signs of slowing.
- 4 The Ultra-Fast Broadband (**UFB**) initiative is a public private partnership and policy initiative that recognises fibre represents the best, future-proof technology for enabling connectivity and supporting economic and social wellbeing for New Zealanders. We want as many people as possible to use the fibre infrastructure. The declaration of SFAs, and the subsequent deregulation and withdrawal of copper services, is an important enabler for getting people onto the best technology.

Continuing to improve the fibre installation process

- 5 A nation-wide FTTH deployment is a once in a generation undertaking. Fibre to the home requires an installation on both the outside and inside of a dwelling. Every property is unique. We have a continuous focus on improving the installation experience and we are making good progress. Working with retail service providers (**RSPs**) and service companies, we are now able to complete around 50% of connections in a single appointment with rising customer satisfaction levels. This is a significant transformation to a single appointment from what was previously multiple visits over a period of days. There is more work to do and we are continuing to develop further improvements to make the installation process quicker and smoother.
- 6 The policy processes over the last five years, culminating in the Amendment Act, recognise the significant investment in fibre, that a market led transition is underway, and that there will be a time when it makes sense to start to withdraw copper in areas with fibre. The Amendment Act facilitates those commercial choices subject to minimum conditions to be set out in the Copper Withdrawal Code.

Fibre regulation in / copper regulation out

- 7 Under the Telecommunications Act 2001 (**Act**) as amended, fibre will be regulated under a utility style model. The Act includes a transition path to that utility style model.
- 8 As part of the fibre utility model we are required to provide voice and anchor services to ensure a smooth transition into the new regulatory framework and avoid price

shocks for investors and end-users. The anchor services not only provide certainty for fibre customers, they provide a point of easy transition from copper-based services.

9 The policy principle is that fibre regulation provides a basis for deregulating copper-based services. Where these services are available, Chorus is free to remove copper services where it makes commercial sense to do so. This is the process under discussion in this submission.

10 The explanatory note for the Telecommunications (New Regulatory Framework) Amendment Bill (**Bill**) provides a clear and simple summary of the legislative intent:¹

In the areas where fibre services are available, the copper network by Chorus will be deregulated and the [TSO] obligations will cease to apply. Chorus may continue to operate the copper fixed-line network in these areas, but it will not be required to do so by regulation.

Withdrawal of the copper network by Chorus in a given area will, however, be regulated by a copper withdrawal code that sets out minimum conditions that must be met before a copper line can be withdrawn.

11 From 1 January 2020, the Commission will declare specified fibre areas (**SFAs**) where fibre services are available. Unbundled bitstream access (**UBA**) and unbundled copper low frequency (**UCLF**) services in those areas cease to be subject to the Commission's standard terms determinations (**STDs**). At the same time, fibre voice and broadband services become controlled by the Act rather than Crown contracts. In line with this, Telecommunications Service Obligations (**TSO**) also cease to apply from 1 January 2020 in those areas.

12 The declaration of SFAs is faithful to the legislative policy and delivers deregulation of copper-based services in SFAs. The deregulatory effect of declaring an SFA requires no Commission decision and is intended to be a mechanical exercise of understanding where fibre is available.

13 As Crown Infrastructure Partners (**CIP**) has already had a process to test and approve the build of fibre, that process should be leveraged and transitioned into the new regulatory regime for the declaration of SFAs by the Commission. This means SFAs should essentially align with 75% of New Zealand being so declared on 1 January 2020 reflecting the delivery on the UFB contracts. This avoids unnecessarily constructing a completely different approach.

¹ Telecommunications (New Regulatory Framework) Amendment Bill 2017 (293-1) (explanatory note) at p 2.

Withdrawal occurs only when makes sense & minimum requirements are met

- 14 As noted above, Chorus continues to work on continuously improving the installation experience. We are doing this because it is the right thing to do and because the easier it is to get fibre installed the more demand there will be for fibre services.
- 15 Chorus cannot withdraw copper without meeting the minimum requirements of the Copper Withdrawal Code. We are actively engaging in the development of that code with industry and the Commission. We favour the industry working together on market led approaches to encourage transition and improved customer experience. Where there are barriers to installation through third party consent issues we may need further support from policy makers if industry can't solve it alone.
- 16 In the interim Chorus will continue to provide a service meeting the UBA and UCLF designated service descriptions in the Act on commercial terms and will work with the industry on the terms to apply from 1 January 2020. We expect this will largely amount to a transfer of existing STD specifications and non-price terms to a commercial footing, with change mechanisms to be discussed with RSPs.
- 17 Copper deregulation is an important element of market led migration. It provides further flexibility to support continuing market led initiatives and incentives to transition customers to fibre.
- 18 Given the clearly communicated and consistent policy framework it is surprising there are suggestions that copper STD regulation continues in tandem with the fibre regulation in SFAs. The consequences of such an approach include:
 - 18.1 Inconsistency with MBIE's analysis of such a proposal and that it would not represent 'best regulatory practise by only regulating where necessary'.²
 - 18.2 Inconsistency with the purpose in Part 2AA of the Act, which expressly references deregulation of copper;
 - 18.3 Inconsistency in that the TSO would be removed but the regulated STDs would not.
- 19 Some RSPs have raised concern regarding pricing for consumers in recent discussions on this matter. We note those RSPs have implemented significant increases for their customers taking copper services, when wholesale prices have not increased, with the explicit intention of moving consumers away from copper.

² MBIE *Regulatory Impact Statement: Implementing a post-2020 fixed line communications regulatory framework* (February 2017) at [119 - 121].

Copper regulation outside SFAs

- 20 For completeness, in areas where fibre services are not available, copper regulation will be maintained including the TSO. In those non-SFAs, Chorus is required to continue to supply certain regulated services (including UBA and UCLFS) capped at STD regulated 2019 prices, with inflation adjustments over time.³ This is consistent with the principle that end-users do not have the choice to move to fibre based services at this time.
- 21 This submission focuses on two issues:
- 21.1 **The process for assessing SFAs** – leveraging the existing, thorough assessments of fibre availability carried out by CIP; and
 - 21.2 **The effect of SFAs** – how the rules implement the policy of deregulating copper where fibre is available while ensuring end-users remain protected.
- 22 We respond to the Commission’s specific questions in **Appendix A**.

³ Telecommunications (New Regulatory Framework) Amendment Bill 2017 (293-1) (explanatory note) p 5.

PROCESS FOR ASSESSING SFAS

- 23 The Commission is tasked under Part 2AA with assessing geographic areas in which specified fibre services are available. We agree with the Commission that the assessment of availability should be carried out reasonably broadly on the basis of premises passed by a fibre network.
- 24 The concept of 'premises passed' underpins the UFB agreements. Accordingly there is scope for the Commission to leverage the work done to demonstrate where premises are passed by fibre for the purposes of the UFB initiative. The table below sets out the three categories of fibre availability and summarises our proposed approach to assessing SFAs:

	Category	Description	Approach
1	Completed UFB	All UFB1 areas (depending on timing) and those UFB2/2+ areas completed prior to the Commission's initial assessment.	Use existing records of fibre availability and UFB testing by CIP.
2	Further UFB	UFB 2/2+ areas completed after the Commission's initial assessment.	Leverage UFB testing process so information is provided to Commission as build is accepted by CIP.
3	Non-UFB Fibre	Areas where fibre is built outside UFB areas.	Regulated providers to submit information as fibre becomes available.

- 25 Below we discuss how fibre availability could be assessed in UFB fibre areas (categories 1 and 2) and non-UFB fibre areas (category 3) respectively. We then discuss the timing of assessments. We'd be happy to discuss this in more detail at the Commission's upcoming technical workshop.

UFB fibre

- 26 UFB involves network providers committing to the Crown to make fibre available to certain premises. Accordingly, the UFB agreements involve detailed arrangements for CIP to assess the availability of fibre to ensure the network providers have met their contractual obligations.
- 27 We propose that the Commission leverages this assessment in determining SFAs to avoid significant duplication of work. This can be done in both Chorus UFB areas and UFB areas served by other local fibre companies (**LFCs**) which together will comprise the vast majority of areas where fibre is available.

- 28 The process for CIP to test UFB build, called user acceptance testing (**UAT**), is set out in the UFB agreements.⁴ A summary of this process is set out in Appendix B. In summary, CIP carries out testing to ensure the required network functionality has been delivered and complies with the UFB agreement.
- 29 The testing by CIP is robust and extensive, going beyond what is required of the Commission in assessing fibre availability. If a network stage has received UAT certification from CIP, the Commission can be confident of fibre availability in the area.
- 30 Therefore we recommend the Commission approach assessing UFB fibre availability as follows:
- 30.1 **Completed UFB** – for the Commission’s initial assessment we will provide geographic information systems (**GIS**) information (shape files) and address data setting out areas which have received UAT certification from CIP.⁵ We can also provide UAT Certificates and other documentation from the CIP process if required.
- 30.2 **Further UFB build**– we would provide the Commission with GIS information and address data as we issue Notices of Completion. If UFB1 is complete before the initial assessment, this further UFB build will be under the UFB2/2+ agreement meaning completed towns will be certified (rather than the more granular approach to network stages taken under UFB1) so the number of notices should not be excessive.
- 31 This way the Commission can assess UFB fibre availability efficiently without creating any new or additional processes.

Non-UFB fibre

- 32 Chorus builds fibre additional to our UFB obligations in a number of scenarios, for example:
- 32.1 **Greenfields developments** – where new property developments are reticulated with fibre. The development could be residential, commercial/industrial or mixed. We generally only deploy fibre to new developments so, as the Commission notes, declaration of an SFA will be of little practical relevance in this scenario as no copper service is available to these addresses.⁶
- 32.2 **Priority connections** – where fibre is built to a major premises such as a factory or school in a remote area. It’s desirable that these addresses should be included in SFAs so any existing copper services are deregulated and can be

⁴ See Schedule 3 of the [Network Infrastructure Project Agreement](#) for UFB1, in particular clause 6.3; and Schedule 3 of the [UFB2 Network Infrastructure Project Agreement](#), in particular clause 9.

⁵ Note the information may include addresses additional to those set out at the time of certification where, for example, a property has been subdivided.

⁶ Commerce Commission, *Determining specified fibre areas –Process and Issues paper*, at [71].

withdrawn. In some cases we may choose to make fibre services available to other premises adjacent to the fibre build for the priority connection. In that case, these premises should also fall within an SFA.

- 32.3 **Exchange area overbuild** – in future we may look to overbuild copper on the margins of UFB areas so the whole exchange area has fibre available and we can retire the copper exchange. This action would be based on the potential cost saving from copper withdrawal in the area. So declaration as an SFA is important.
- 33 When we decide to build fibre beyond our UFB obligations we use a process similar to that required for UFB network to ensure fibre services are available. However, instead of CIP assessing the availability of fibre to ensure we have met our obligations, there is a quality assurance (**QA**) process overseen by Chorus. A summary of this process is set out in Appendix B.
- 34 We think this process means the Commission can have confidence that the GIS information and address data we would submit accurately describe fibre availability.
- 35 The data we propose to provide would also be published on our website and provided to RSPs as a record of where fibre is available. We will provide fibre services from any of the addresses set out in that published list when requested and, if any build modification or augmentation is required to complete a connection, we would do that work.
- 36 It's also important to remember non-UFB fibre is likely to be the reason for declaring an SFA in only a small number of cases. Most of these are likely to be greenfields developments where the declaration of an SFA is inconsequential because only fibre has been deployed. So any additional certification and auditing for non-UFB fibre availability seems unnecessary.

Timing of assessments

- 37 Chorus' preference is for the initial assessment to take place late in 2019. Ideally we, and the other LFCs, would have the entire UFB1 build completed such that all UFB1 areas could be declared SFAs. The deadline for completion of the UFB1 build under the UFB agreements is the end of 2019.
- 38 As noted above, we propose to inform the Commission of UFB2/2+ (and any remaining UFB1) build completed after the end of 2019 as it is certified by CIP. We do not think that means the Commission needs to declare it immediately. Rather, we propose that the Commission carry out an annual assessment as required at which it would declare all the areas notified since the last assessment.
- 39 We agree with the Commission that from time to time it might be necessary for us to request supplementary assessments of SFAs outside the annual cycle.⁷ We don't think it's necessary to subject such requests to rigid criteria ex ante. It's difficult to predict

⁷ Commerce Commission, *Determining specified fibre areas –Process and Issues paper*, at [86].

all the scenarios where such an assessment might be desirable. So it's difficult to come up with reasonable and appropriate limiting criteria.

- 40 Whatever the reasons, we don't expect these requests would be frequent. The initial assessment at the end of 2019 will capture most of the country and UFB2/2+ will be completed by the end of 2022. Accelerating the assessment of any further SFAs might only have value in the exchange area overbuild scenario described above. The decision to build fibre in that scenario is predicated on the economics of copper withdrawal, so it might depend on the ability to get copper deregulated and on the path to withdrawal quickly.
- 41 We propose instead that the Commission carry out supplementary assessments where reasonably requested by Chorus. In determining whether a request is reasonable, the Commission could have regard to matters such as the time since the last/until the next scheduled assessment; the number of premises affected and the reasons for the request. But these should be considerations, not rigid requirements.

EFFECT OF SFAS

42 As Minister Faafoi noted in his Third Reading Speech on the Bill:⁸

The bill provides for the modernisation of the Act and improved regulation of the New Zealand telecommunications sector by, in essence, doing six things: first of all, introducing a stable and predictable framework for the regulation of ultra-fast broadband (UFB) or fibre; secondly, removing regulation of copper fixed-line services where consumers have a choice to move to regulated fibre services...

43 Following declaration of an SFA by the Commission, deregulation of copper services happens by operation of law and no further decision is required by the Commission. However it is useful for the Commission, Chorus, our customers and other stakeholders to have a shared understanding of the effect of an SFA being declared. Therefore we discuss below the effect of declaring an SFA in order to foster such an understanding.

44 The explanatory note to the Bill set out a clear vision for copper deregulation:⁹

In the areas where fibre services are available, the copper network by Chorus will be deregulated and the [TSO] obligations will cease to apply. Chorus may continue to operate the copper fixed-line network in these areas, but it will not be required to do so by regulation.

Withdrawal of the copper network by Chorus in a given area will, however, be regulated by a copper withdrawal code that sets out minimum conditions that must be met before a copper line can be withdrawn.

45 This statement is one of many made throughout the policy and legislative development process that articulates the policy of copper deregulation. Ultimately this policy intent was embodied in section 69AA(a) of the Act which states the purpose of Part 2AA is to “*deregulate copper fixed line access services in areas where fibre fixed line access services are available*”.

46 The effects of declaring an SFA as described in the issues paper are inconsistent with this clear policy intent. In particular, the proposal that copper services will remain regulated by STDs within SFAs until Chorus complies with the copper withdrawal code and actually withdraws copper service is at odds with the policy and is inconsistent with the way the new provisions of the Act operate.¹⁰

47 Rather, the provisions of the Act as amended mean Chorus is not required to provide UBA and UCLF service on STD terms in SFAs. Chorus’ obligation is to provide a service meeting the UBA and UCLF designated service description (in Schedule 1 of

⁸ Hon Kris Faafoi, Minister of Broadcasting, Communications and Digital Media, 3rd reading speech on the Telecommunications (New Regulatory Framework) Amendment Bill, 6 November 2018.

⁹ Telecommunications (New Regulatory Framework) Amendment Bill 2017 (293-1) (explanatory note) at p2.

¹⁰ Commerce Commission, *Determining specified fibre areas –Process and Issues paper*, at [73]. See also [30].

the Act) on commercial terms until it complies with the copper withdrawal code, at which point it may stop supplying those services (i.e. withdraw copper service). This differs from the interpretation in the issues paper in that the requirement to continue to provide copper services on STD terms does not apply in SFAs.

48 We appreciate that Part 2AA involves a series of interlocking provisions, which must be read in conjunction with the general provisions regulating the supply of copper fixed line access services contained in Part 2 and Schedule 1 of the Act. In interpreting these provisions it's necessary to remain focussed on the purpose of the provisions. Accordingly in the sections below we step through:

48.1 The clear articulations of the policy underlying Part 2AA and the purpose set out in section 69AA(a);

48.2 The ways end-users remain protected when deregulation of copper occurs prior to withdrawal consistent with the purpose set out in section 69AA(b); and

48.3 How the provisions of the Act implement the policy of copper deregulation.

Policy of copper deregulation

49 The policy development process evidences a clear intention by policymakers that copper should be deregulated where fibre is available. This intention was embodied in the purpose of Part 2AA set out at section 69AA(a). An interpretation which results in STDs continuing to apply where fibre is available cannot be said to be consistent with that policy, or with the purpose of Part 2AA.

50 The February 2017 Cabinet paper that preceded the introduction of the Amendment Act recorded the policy settings to be implemented in the legislation as follows:¹¹

50.1 Outside fibre areas, Chorus would be required to continue supplying copper services at prices capped at 2019 levels; and

50.2 Inside fibre areas, copper would be deregulated, "*leaving Chorus free to continue operating it or close it down*". "*Closing it down*" would be subject to minimum customer protection requirements.

51 MBIE's Regulatory Impact Statement, accompanying the Cabinet Paper, provided for three options in relation to copper: continue with regulation, deregulation, or the preferred option of deregulating copper services where UFB services are available.¹² The last option was preferred on the basis that copper services faced competitive

¹¹ Cabinet Paper "Review of the Telecommunications Act 2001: Final Policy Decisions for Fixed Line Communications Services" (February 2017) at [29].

¹² MBIE *Regulatory Impact Statement: Implementing a post-2020 fixed line communications regulatory framework* (February 2017) at [102].

constraint where competing networks were available.¹³ MBIE's analysis of the advantages of this option was that:¹⁴

51.1 It "*represented regulatory best practice by only regulating where necessary*";

51.2 End-users in non-UFB areas would still be protected through continuing regulation; and

51.3 It would allow Chorus to compete effectively with copper services and would incentivise Chorus to invest in its copper network or close it down where that was more efficient.

52 The only disadvantage identified was that end-users may face price increases unrelated to the cost of the service, and poor information or transaction costs might prevent them from switching to fibre.¹⁵ On the other hand, RSPs would compete to migrate customers rather than face the higher input cost, and so would try to increase consumer awareness of competitive choices.¹⁶

53 In accordance with the Minister's recommendations in the Cabinet paper, Cabinet agreed in February 2017 that:

53.1 Outside UFB areas Chorus would be required to continue to provide UBA and UCLF,¹⁷ and that their prices would be rolled over to "*those copper services that remain regulated from 1 January 2020*";¹⁸

53.2 Copper services would be deregulated inside fibre areas;¹⁹ and

53.3 In relation to withdrawing copper services, Chorus would have the option of withdrawing services and removing the copper network on its own timeframes, providing it met minimum customer protection requirements²⁰ (which Cabinet

¹³ At [115].

¹⁴ At [119]-[121].

¹⁵ At [122].

¹⁶ At [122].

¹⁷ Cabinet Minute "Review of Telecommunications Act 2001: Final Policy Decisions for Fixed Line Communications Services (February 2017) EGI-16-MIN-0361 at [62].

¹⁸ At [63].

¹⁹ At [64].

²⁰ Cabinet Minute, above n 14, at [69].

also agreed).²¹

- 54 MBIE's February 2017 discussion paper reflected the February 2017 Cabinet paper and decision:²²
- 54.1 Outside UFB areas, Chorus would be required to continue supplying UBA and UCLF at capped (2019) prices;
 - 54.2 Inside UFB areas, copper would be deregulated, "*removing oversight of copper services, and leaving Chorus free to continue operating it or close it down (subject to some consumer safeguards)*"; and
 - 54.3 Inside areas where UFB later became available, a fast-track review process would apply to determine whether copper should be deregulated in that area.
- 55 The paper suggested that this approach would incentivise Chorus to expand its fibre footprint to replace fibre.
- 56 The final Cabinet paper, which followed comment on MBIE's February 2017 discussion paper, recorded that there was "*broad support for the proposal to deregulate copper*" in fibre areas.²³ In discussing the process for determining fibre areas, the Minister recorded agreement that "*deregulation of copper (where there is newly deployed fibre) is a factual question which the Commission is well-equipped to assess without Ministerial oversight*".²⁴ The Minister proposed that the Commission be responsible for "*ongoing deregulation of copper as fibre expands*".²⁵ In other words, the availability of fibre was the trigger for deregulation. The paper went on to recommend that:
- 56.1 The Commission would decide whether "*a particular area can be deregulated*" based on there being "*sufficiently available*" fibre;²⁶ and
 - 56.2 Regulated prices for UBA and UCLF would "*continue to apply to those copper services that remain regulated from 1 January 2020*".²⁷

²¹ At [71].

²² MBIE *Telecommunications Act Review: Post-2020 Regulatory Framework for Fixed Line Services* (February 2017) at pages 5-6.

²³ Cabinet Paper "Review of the Telecommunications Act 2001: Final Decisions on Fixed Line Services, Mobile Regulation and Consumer Protection" (May 2017) at [21].

²⁴ At [21].

²⁵ At [21].

²⁶ At [11].

²⁷ At [18].

- 57 Cabinet agreed with those recommendations in June 2017.
- 58 This demonstrates a clear policy intent for copper to be deregulated in areas where fibre is available with regulation remaining in areas where fibre is not available.
- 59 The issues paper's proposed continued application of STDs in SFAs contradicts this policy. In the section below we discuss whether departing from the clear policy of deregulation might be necessary in order to protect end-users.

End-user protection

- 60 The proposal for the effect of declaring an SFA set out in the issues paper is inconsistent with the purpose of Part 2AA articulated in section 69AA(a). However, the other limb of the purpose relevant to the effect of SFAs is section 69AA(b). This provides that the purpose of Part 2AA is to: "*provide protections for end-users of copper fixed line access services and certain other designated services in deregulated areas*".
- 61 It's therefore legitimate to ask whether interpreting the Act to determine the effect of declaring SFAs brings the purpose of end-user protection under section 69AA(b) into conflict with the purpose of deregulation set out in section 69AA(a) such that a trade-off in favour of end-user protection is desirable.
- 62 We don't think any such trade-off is necessary. A better interpretation of Part 2AA results in both limbs of the purpose statement in section 69AA being achieved. It results in deregulation of copper where fibre is available and provides protections to end-users of deregulated copper services in SFAs.
- 63 As noted above, the better interpretation is Chorus is not required to continue to provide UBA and UCLF on STD terms in SFAs. Chorus' obligation is to provide a service meeting the UBA and UCLF designated service description (in Schedule 1 of the Act) on commercial terms until we comply with the copper withdrawal code, at which point we may stop supplying those services (i.e. withdraw copper service) altogether.
- 64 This interpretation means Part 2AA provides the following protections for end-users of copper services in SFAs:
- 64.1 Chorus will be required to continue to provide a wholesale copper bitstream service (UBA as described in Schedule 1) and wholesale voice over copper service (UCLF as described in Schedule 1) on commercial terms unless and until copper is withdrawn;
- 64.2 Chorus cannot withdraw copper service unless and until the requirements of the regulated Copper Withdrawal Code are met. This code will set out a number of end-user protections;²⁸ and

²⁸ The minimum set of which is set out in Schedule 2A to the Act.

- 64.3 The Commission is required to carry out an investigation into regulation of copper services before the end of 2025 (or provide reasons why there were no reasonable grounds for doing so) so there is a mechanism for any adverse effects of copper deregulation to be identified and addressed.
- 65 The position of end-users also needs to be seen in the broader context of the Act. The declaration of an SFA necessarily means regulated fibre services are available. In Chorus areas this means there will always be a price capped broadband and voice only input service available where copper is deregulated.²⁹
- 66 In non-Chorus UFB areas we expect the LFCs will have strong incentives to offer service on reasonable terms in order to win business away from deregulated copper services and other competing technologies such as fixed wireless and hybrid fibre-coaxial.
- 67 The only way in which end-users of copper services might be adversely affected is if Chorus changes the terms of copper service in a way that is unfavourable, these changes are passed on by RSPs to end-users, and the end-user is unwilling to move to fibre or another alternative technology.
- 68 The risk of such changes to copper terms in SFAs (specifically copper price increases) was expressly recognised in the Regulatory Impact Statement accompanying the February 2017 Cabinet paper, and was considered sufficiently mitigated by the incentives RSPs would have to migrate end-users to fibre.³⁰
- 69 We also note that some large RSPs have increased their prices for copper services in recent months³¹ (including in areas where alternatives are not available) even though Chorus pricing remains subject to STD price caps. This demonstrates the reality that maintaining a requirement to charge STD prices in SFAs would offer little protection to copper end-users, particularly where RSPs make a decision to incentivise a move away from copper.
- 70 In that context, an interpretation of Part 2AA that allows for actual deregulation of copper in SFAs (i.e. removal of the requirement to provide on STD terms) continues to provide significant protections to copper end-users and is consistent with the purpose set out in section 69AA(b).

²⁹ From 1 December 2019 to 31 December 2021 this will be any of the set of UFB services price capped by operation of the transitional mechanism in Part 2 of Schedule 1AA . From 1 January 2022 this will be the broadband and voice anchor services.

³⁰ MBIE *Regulatory Impact Statement: Implementing a post-2020 fixed line communications regulatory framework* (February 2017) at [122].

³¹ E.g. <http://www.spark.co.nz/broadbandpricechange/> (retrieved 11 February 2019); and <http://www.vodafone.co.nz/broadbandpricechange/> (retrieved 11 February 2019)

How the Act implements the policy

- 71 Having established the clear policy intent, and how that can be achieved in a manner consistent with all parts of the Part 2AA purpose statement, we set out below how the provisions of Part 2AA operate to give effect to that.
- 72 In short:
- 72.1 The changes to the UBA and UCLF designated service descriptions in Schedule 1 make it clear that services to premises in SFAs do not fall within the designated access service;
 - 72.2 Section 69AC(1) explicitly records that the amendments to the designated service description have the effect of deregulating the UBA and UCLF services in SFAs;
 - 72.3 Section 69AC(2) requires us to provide the UBA and UCLF services on commercial terms until we stop supplying those services in accordance with the copper withdrawal code or end-user consent; and
 - 72.4 Section 69AG implements a separate regulatory policy, as articulated in the explanatory note to the Bill. Section 69AG freezes the price caps and non-price terms of the regulated UBA and UCLF services in non-SFA areas and removes the Commission's powers to review and amend the STDs.³²

STDs regulate Schedule 1 designated and specified services

- 73 The starting point for regulating any service under the Commission's STD powers is that it must be either a designated or specified service in Schedule 1 of the Act.³³ Our obligation to provide designated services on STD terms, in section 30S, applies only in the case of services that are designated. Both the UBA and UCLF services are designated access services, which means the Commission has the power to regulate both price and non-price terms provided they are consistent with the service descriptions in Schedule 1.
- 74 The amendments to the UBA and UCLF service conditions in Schedule 1 to the Act are key. From 1 January 2020, a service to an end-user in an SFA is no longer within the designated access service. So the effect of the Commission determining an SFA is that the provisions of Part 2, including the obligation to supply the service on STD terms within the SFA, no longer applies.

³² Section 69AG(4) – (6).

³³ See section 30C.

Subpart 2 – Deregulating copper fixed line access services

- 75 Part 2AA was introduced to deregulate the copper fixed line access services, as its name suggests. Subpart 2 specifically implements the policy:
- 75.1 To deregulate and withdraw the UBA and UCLF services in SFAs;³⁴
 - 75.2 For the withdrawal of the UCLL and the UCLL Backhaul services that were also deregulated under section 13 of the Amendment Act;³⁵
 - 75.3 To deregulate TSO services in SFAs;³⁶ and
 - 75.4 To establish the copper withdrawal code.³⁷
- 76 Section 69AC(1) records the policy³⁸ that the UBA and UCLF services are deregulated in SFAs. In particular, the wording in section 69AC(1)(c)(ii) makes this explicit and links back to the changes in Schedule 1: *“the service ceases to be a designated access service in the specified fibre area on and after the date specified in the notice”*.
- 77 The effect of section 69AC(2) is to then require continued supply of ‘the service’, which has been acknowledged as deregulated under section 69AC(1)(c)(ii), to an end-user within a SFA unless either Chorus complies with the copper withdrawal code or the end-user chooses to have the service disconnected.
- 78 Chorus complies with section 69AC(2) if it supplies ‘a service’ that meets the definition of the designated access service in Schedule 1 – the definition of ‘copper fixed line access services’ in section 5 refers to the description in Schedule 1, not any STD.
- 79 Here there’s a distinction between the ‘service’ provided (being a service within the description of the designated access service in Schedule 1), and the terms and conditions on which a service is required to be provided as set out in an STD. This distinction is consistent with Part 2 of the Act (used to set the STDs), which distinguishes between the service and the terms on which it’s offered. So in supplying a service that meets the service description of UBA or UCLF, Chorus is not required by section 69AC to supply the service on any particular terms (either price or non-price).

Subpart 3 – Price regulated copper services

- 80 Subpart 3 implements a separate regulatory policy. That policy is that the terms, including price caps, of services that remain subject to regulation under STDs is frozen and cannot be changed during the period from 16 December 2019 until the copper

³⁴ Section 69AC.

³⁵ See section 69AD.

³⁶ See section 69AE.

³⁷ See section 69AF.

³⁸ Both the policy in behind the legislative changes and in section 69AA(a).

review date. This is contrary to what would otherwise be the case under the Act because in the absence of the freezing provision the Commission would have the ability to review and amend both the price and non-prices terms of STDs.

- 81 Section 69AG provides for the continuation of the UBA and UCLF STDs to services that remain within the designated access service from 1 January 2020 (i.e. where premises are not in SFAs), and provides for how those services are to be regulated until the copper review date. But it does not apply the UBA and UCLF STD to services that no longer fall within the designated access services from 1 January 2020 (i.e. those within the SFA).
- 82 The Commission's powers to amend the relevant STD are also removed from 16 December 2019 until the copper review date. The words "Despite anything in this Act" in section 69AG(5) need to be read in the particular context of subpart 3. The Commission's amendment powers under sections 30R and 59 of the Act are being removed in respect of these STDs during this period. Those four words cannot be read to override the clear legislative policy, purpose of Part 2AA³⁹, Schedule 1 changes, and section 69AC.
- 83 This interpretation is also consistent with the fact that those same words are used in section 69AG(2) where similar provisions apply to the UBA Backhaul, UCLL Co-location and UCLL Backhaul services.
- 84 It is important to note that UBA Backhaul is not deregulated under the Act. The UCLL Backhaul and UCLL Co-location STDs also continue to be regulated in the sense that those same STDs also provide for backhaul and co-location services for the UCLF service, where UCLF continues to be provided in non-SFA areas.

³⁹ The purpose in section 69AA(a).

APPENDIX A

Responses to key questions

Question		Response
Q1	We welcome your views on the appropriateness of the interpretation of our obligations.	<p>While we broadly agree with how the Commission has interpreted its obligations, there is scope to simplify the approach to assessment of SFAs and leverage the existing work done to determine fibre availability.</p> <p>We also disagree with the interpretation of the effects of declaring and SFA. Please refer to the body of this submission for discussion.</p>
Q2	We welcome your views on the appropriateness of our interpretation of a 'specified fibre service' under s 69AB(6) of the Act.	We urge the Commission to avoid overcomplicating a simple task – i.e. determining areas where premises are passed by regulated fibre network.
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'.	We think the diagram depicts accurately the requirements of the defined elements comprising a specified fibre service.
Q4	We welcome your views on the appropriateness and practicality of our interpretation of the term 'end-user'.	<p>We agree with the Commission that the purpose of Part 2AA requires end-users to include potential recipients of fibre services, not just those already connected to fibre.</p> <p>We invite the Commission to consider whether its interpretation of 'end-user' in the issues paper is consistent with how that term is interpreted in its paper "<i>New regulatory framework for fibre: Invitation to comment on our proposed approach</i>" of 9 November 2018. In particular, paragraph 5.28 of that paper sets out that end-users of FFLAS includes end-users of retail fibre fixed line broadband services and often FWA.</p>
Q5	We welcome your views on the criteria for fibre being 'available' to end-users.	<p>'Available' to end-users should mean 'premises passed' as per the UFB agreements.</p> <p>It's not clear whether, in paragraph 56 of the issues paper, the Commission is proposing any addition to, or variation from, the assessment of 'premises passed' in the UFB agreement. We oppose any such variation or addition as it would amount to setting new requirements for the UFB network after its</p>

		completion. It would also necessitate a new assessment process which is unnecessary.
Q6	We invite your views on how we can ascertain the locations of end-users 'other access points' within NZ.	It is reasonable for the Commission to assume that if specified fibre services are available to end-user premises in an area then those services will be available to other access points in the area as well.
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).	<p>We don't think location information for handover points is required.</p> <p>For example, our records only indicate fibre can be made available if a central office and handover capability exists and is in place. The location of the handover point is irrelevant to the availability of a specified fibre service. Handover locations may also change to address technical capacity issues or RSP requirements.</p>
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.	<p>We suggest the Commission use CoreLogic data instead of LINZ data.</p> <p>It is important the data accurately represents coverage such that we can be certain where our copper services are deregulated.</p> <p>We think CoreLogic data (which includes LINZ data and is an enhancement to LINZ data) is more appropriate – we use this and contribute to its enhancement, as do LFCs, RSPs and emergency services among others. Using CoreLogic data would avoid discrepancies between our data (and LFCs and RSP data) and the data the Commission uses to determine SFAs.</p>
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.	<p>We propose the initial assessment should take place late in 2019. Assessments can be carried out annually provided that there is scope for supplementary assessments at Chorus' request. Please see the body of this submission for more detail.</p> <p>We do not support a long phase-in period for SFAs. Stakeholders should have sufficient time to identify errors and seek correction but no longer. Alternatively, notice of withdrawal under the copper withdrawal code should be able to be given during the phase-in period (i.e. the copper remains regulated during the phase-in period but the notice period for copper withdrawal can begin).</p>

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.	<p>We agree that GIS information and datasets setting out addresses where fibre is available is sufficient.</p> <p>We use CoreLogic data rather than LINZ data so the information submitted by us would be based on that. If the Commission were to require LINZ data this would require us to maintain parallel datasets for the same information. This duplication would incur some cost and could also result in discrepancies in fibre availability between the datasets.</p>
Q11	Under what circumstances could supplementary assessments be required?	<p>We agree with the Commission there is likely to be a need to request assessment of SFAs outside the annual cycle from time to time. It's difficult to predict all the scenarios where such an assessment might be desirable.</p> <p>One scenario could be we would look to overbuild copper on the margins of UFB areas so the whole exchange area has fibre available and we can retire the copper exchange. The decision is predicated on the economics of copper withdrawal, so it might depend on the ability to get copper deregulated and on the path to timely withdrawal.</p> <p>Another scenario could be replacement of a faulty copper feeder with fibre. We'd expect to be able to convince those affected to switch to better service over fibre but could potentially support copper service to a small number unwilling to move. However, it would be valuable to get those remaining copper connections on the path to withdrawal as soon as possible.</p>
Q12	What is an acceptable number of premises to justify a supplementary assessment? (i.e. greater than x?).	We don't think it's necessary to subject such requests to rigid criteria ex ante. We don't expect these requests would be frequent and the Commission should agree where the requests are reasonable. Please refer to the body of this submission for further discussion.
Q13	Do you consider that the criteria for supplementary assessments are satisfactory and appropriate?	As above for Q12.
Q14	We welcome your views on the timing of the annual assessments.	We support a fixed assessment at the same time each year, provided there is the opportunity for supplementary assessments when reasonably required.

Q15	We welcome your views on the likely compliance costs (including time) for providing the data.	<p>We welcome the Commission’s interests in ensuring compliance costs are minimised. It is possible to keep expenses in this process to a minimum by leveraging existing information and current processes used to assess fibre availability.</p> <p>In the body of this submission we propose an approach which will avoid duplication of existing processes and minimise compliance costs.</p>
Q16	We welcome your views on how we should ensure quality assurance of the data provided.	<p>We recommend different approaches for UFB and non-UFB fibre. UFB fibre build is extensively tested by CIP prior to accepting any UFB build as complete. By using the current CIP process, and accepting the CIP testing and certification.</p> <p>Non-UFB fibre will be at the margins and, given Chorus commits to our customers to make fibre available where indicated in our availability information, we don’t think any further QA of the information is necessary.</p> <p>However, if something more is required a technical certification would certainly be sufficient. We would not support an executive or board certification requirement which would drive significant additional process and cost for little benefit.</p> <p>We also note the Commission’s suggestion at paragraph 95 of the issues paper that the certification regime currently provided under existing information disclosure may be appropriate. We don’t think this level of certification is necessary or appropriate. We also note that certification of existing information disclosure is required under specific powers to require certification (see section 69ZD(1)(e)). No equivalent power exists in relation to SFA assessment.</p>
Q17	We welcome your views on how our public notices should declare an area to be a specified fibre area.	Notices will need to clearly set out the effect of the SFA declaration and, in particular, the protections of the copper withdrawal code. This will be important to avoid causing concern to end-users, and minimise objections based on any potential misunderstandings.
Q18	Are there any other relevant documents or data that we should make available as part of our assessment(s)?	The information made available needs to be sufficient to ensure stakeholders are able to determine where Chorus’ copper services are deregulated and where they remain regulated.

		The information described by the Commission in paragraph 100 of the issues paper seems likely to be sufficient for this purpose.
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.	UFB area names are likely to be fine for UFB fibre. For non-UFB fibre we (or other regulated providers) can suggest names which may be based on copper area names, names of property developments, geographic locations or roads depending on the reason for the fibre build. We agree its desirable end-users and other interested parties can get at least a rough idea of the location of the SFA from the name.
Q20	Are there any other aspects of data confidentiality that we need to consider?	We publish our data on the availability of fibre in geographic areas. This enables the public to see where our fibre services are available. We don't think confidentiality is an issue.

APPENDIX B

Summaries of assurance processes

UFB build

- 1 The detailed requirements of CIP UAT are set out in the UFB agreements.⁴⁰ In summary:
 - 1.1 When Chorus completes the build of a network stage we issue a notice to CIP indicating the network is ready to be tested and commissioned.
 - 1.2 CIP carries out testing to determine whether or not the required functionality of the network has been delivered and it is in compliance with all applicable terms of the UFB agreement.
 - 1.3 At the conclusion of their test, CIP may issue a:
 - (a) *UAT Certificate* – indicating the network stage has passed the testing; or
 - (b) *Test Problem Report* – setting out one or more failures identified during the testing. There are 3 categories of error based on severity, the most serious of which is *Sev1*. A UAT Certificate will not be issued until Sev1 issues are resolved.
 - 1.4 Following a Test Problem Report, Chorus completes a re-check, resolves any Sev1 issues and submits a remediation plan (to solve any Sev2 and Sev3 issues).
 - 1.5 If CIP approves the remediation plan, and is happy that the Sev1 issues have been resolved, it will issue a *Qualified UAT Certificate*. A Qualified UAT Certificate indicates acceptance subject to Chorus warranting to resolve the issues as identified in the remediation plan.
 - 1.6 Once Chorus has received a UAT Certificate or Qualified UAT Certificate we will issue a *Notice of Completion* which sets out, amongst other things, the premises passed in that network stage.

Non-UFB developments

- 2 Where we deal with a property developer to build fibre network for a development our QA process can be summarised as follows:
 - 2.1 The developer will engage a service company to build Chorus' network infrastructure.

⁴⁰ See Schedule 3 of the [Network Infrastructure Project Agreement](#) for UFB1, in particular clause 6.3; and Schedule 3 of the [UFB2 Network Infrastructure Project Agreement](#), in particular clause 9.

- 2.2 When the service company completes the build they advise us that the network is ready to be checked by Chorus.
 - 2.3 We then release a clearance letter to the developer stating there is network available.
 - 2.4 The service company carries out QA to determine whether or not the required functionality of the network has been delivered and it complies with all applicable terms of the service company agreement and Chorus network standards.
 - 2.5 We will then sample QA and issue a non-conformance notices for instances of standards not met in the build. The service company is required to remedy all non-conformance. All remediation work is tracked via our systems.
- 3 Where a customer wants fibre service outside of the existing footprint the request will come in via RSP:
- 3.1 The RSP will place an order through the Chorus Portal which will come into Chorus' provisioning teams;
 - 3.2 A job for the network build is generated and sent to a service company to scope and price the work.
 - 3.3 The resulting quote is passed back to the RSP and, if accepted, the service company will provide a ready for service date which will be passed onto the RSP.
 - 3.4 The solution is then built. Unlike a property development scenario where a service may not be provisioned over the build for some time, in this scenario the service is provisioned at the same time as the build. Therefore the build is complete when the service is operating and being paid for.