

Chorus submission on SPOI consultation

23 February 2024

C H ● R U S

Introduction

1. This is Chorus' response to the Commerce Commission's (**Commission's**) consultation paper which seeks submissions on its draft decision to amend the s 231 Notice to:¹
 - 1.1. prescribe the three additional points of interconnection (**POIs**), being Gleniti, Spotswood and Claudelands, as specified in our request of 3 October 2023;
 - 1.2. amend the specified points of interconnection (**SPOIs**) for the Frankton (FJN), Hamilton (HN) and New Plymouth (NU) POI areas; and
 - 1.3. correct the spelling of Feilding for the POI Area name of Chorus' Palmerston North Exchange (PM).
2. We agree with the Commission's Draft Decision, particularly, to prescribe the three additional POIs and not to impose any conditions on the change request.
3. This submission comments on selected points in the Draft Decision, in particular:
 - 3.1. The consultation we undertook with industry prior to the SPOI request was appropriately thorough and feedback demonstrated consensus in favour of the new SPOIs, being a largely technical matter with no specific impact on end-users. Further Commission consultation was not necessary in this case;
 - 3.2. These three new POIs provide additional opportunities for competitive services, and there are no negative competition impacts. However, there is a cost of delay in drawn-out decision-making processes and so we encourage a speedy consideration of straightforward requests such as this one; and
 - 3.3. There is no extension to POI areas as a result of this request.

New SPOIs

Consultation

4. As the Commission set out in its Framework, there is benefit in regulated fibre service providers consulting with industry on POI change requests and there is a presumption that regulated fibre service providers will take a consultative and considered approach, including on impacts to other parties' investments, and that industry will engage.² We have carried out such consultation in this case, as detailed in our change request and the Commission's Draft Decision.³ The Commission acknowledged that access seekers have had an opportunity to provide input to our proposal. However, it considered that broader consultation would ensure that proper regard of the impact on access seeker's networks was considered.⁴ It therefore decided to undertake the current consultation.
5. We acknowledge the importance of appropriate consultation being undertaken and that broader consultation beyond our service provider website (which would encapsulate end-users as well as RSPs) can be beneficial in some circumstances. However, the benefits are

¹ See Commerce Commission "Specified Points of Interconnection – draft decision to amend the s 231 notice – consultation paper" (19 December 2023) (the **Draft Decision**) and Commerce Commission "Notice of points of interconnection under section 231 of the Telecommunications Act 2001" (16 February 2023) (**s 231 Notice**).

² Commerce Commission "Specified Points of Interconnection – Framework for exercising our power under s 231 of the Telecommunications Act 2001" (16 February 2023) at p 15.

³ Chorus "Specified Points of Interconnection (SPOIs) – Request to prescribe new SPOIs" (3 October 2023) (**Change Request**) at [41] – [44] and Draft Decision at [23] – [24].

⁴ Draft Decision at [26].

likely to be non-existent in relation to this request, where there will be no impact on end-users. Engaging end-users on this decision has not raised any relevant new issues, and risks being seen as superficial rather than substantively adding to the analysis. It is important to balance the likely value from consultation against the cost of delay. This is recognised by the Commission in its SPOI Framework, where it says “*we will tailor the extent of our consultation based on the extent of industry consultation which has already taken place during the industry-led process and the scope of the proposed changes to the notice*”.⁵

6. Based on the Commission’s proposed timeframe for making a final decision (and amending the change request),⁶ it will have taken nearly six months for a decision. Given the relatively straightforward nature of this change request (simply adding three new POIs, which RSPs are supportive of) we are concerned about how this process will be applied to more complex change requests, potentially delaying the deployment of POIs as SPOIs to the disadvantage of not only Chorus but its customers. The Commission should be cautious of engaging in drawn-out processes where this is of limited benefit, creates an extended period of uncertainty and where the time and effort could be better spent in other areas.

S 166(2) requirements – competing backhaul providers

7. We agree that third parties located close to the three POI locations will have the ability to develop and offer backhaul services, providing competitive constraints in markets for intra-candidate/inter-candidate areas and national backhaul services.⁷ We do not have specific visibility of third-party provision of services from POIs. However, our own experience is that new POIs are likely to create additional demand for backhaul at those locations as it will aggregate traffic at these locations, thus creating the opportunity for third parties to develop and offer backhaul services.

S 166(2) - GCP

8. We also agree that geographically consistent pricing (**GCP**) under s 201 of the Act may provide a degree of pricing constraint on intra candidate area backhaul (**ICABS**).⁸ We are unable to price ICABS running to/from these new POIs on a different basis to our other ICABS services as it (and other FFLAS pricing) is set at a nationally consistent level, so any change in price would need to be nationwide. The same constraint would apply to other backhaul FFLAS services such as CXC.

POI Area extensions

9. The Commission has characterised the proposed changes to the Frankton, Hamilton and New Plymouth areas as a “POI Area extension”.⁹ We do not agree with this terminology.
10. As we explained in an email to the Commission,¹⁰ our intention was not to create new POI areas or extend current POI areas, but to update the s 231 Notice to reflect a change that was already made. These existing POIs were extended some time ago to include (for Hamilton) Cambridge, Tokoroa and Te Awamutu and (for New Plymouth) Hawera. These

⁵ At [58.2].

⁶ With the Change Request being submitted on 3 October 2023 and proposed date for a final decision being 29 March 2024. See Draft Decision at Table 1.1.

⁷ Draft Decision at [28.1].

⁸ Draft Decision at [28.2]. Although, for completeness, we note that this is not the purpose of the GCP constraint and therefore demonstrates that GCP is misplaced.

⁹ Draft Decision at Table 1.2, [20] and [30] – [31].

¹⁰ See Chorus – Email – RE Request to prescribe additional SPOIs (dated 6 November 2023 and published on the Commission’s website on 19 December 2023).

changes were recognised by Crown Infrastructure Partners (**CIP**) shortly before the new regulatory regime came into effect. The Commission has accepted this explanation.¹¹

11. We note that these changes were already made in the s 231 Notice for other LFCs, for example, Tuatahi First Fibre’s UFB areas are recorded as being:

POI Identifier	Name	UFB Geographic area (POI Area)	Region	Date prescribed
HME	Hamilton East	Hamilton, Tokoroa, Cambridge and Te Awamutu	Waikato	19/12/2019
HMW	Hamilton West	Hamilton, Tokoroa, Cambridge and Te Awamutu	Waikato	19/12/2019
NPL	New Plymouth	New Plymouth and Hawera	Taranaki	19/12/2019

12. The inclusion of these broader area terms for other LFCs suggests that the updated POI areas were mistakenly excluded from Chorus’ UFB areas in the Commission’s previous s 231 Notice in relation to Chorus. It therefore makes sense to correct this now to use consistent terminology to describe the relevant POI areas, but we request that the Commission does not refer to this clarification as an “extension” of the relevant POI areas, but simply a clarification of the s 231 Notice for changes that have already been made.

¹¹ Draft Decision at [30].