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Specified Points of Interconnection – Framework for exercising our powers under s 231 of the Telecommunications Act 2001

The Commission: Tristan Gilbertson
Sue Begg
Elisabeth Welson
Nathan Strong

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Glossary

access seeker Act	Has the same meaning as defined in s 5 of the Act Telecommunications Act 2001
central office	Has the same meaning as in the Fibre Information Disclosure Determination 2021
change request	A request to the Commission to prescribe a POI or amend a SPOI under s 231 of the Act
CIP	Crown Infrastructure Partners
end-user	In relation to a telecommunications service, means a person who is the ultimate recipient of that service or of another service whose provision is dependent on that service
FFLAS	Fibre fixed line access service
ID	Information Disclosure
NIPA	Network Infrastructure Project Agreement
POI	Point of Interconnection
POI Area	Has the same meaning as in the Fibre Information Disclosure Determination 2021
PQ	Price-quality
RAB	Regulatory Asset Base
regulated fibre service provider	A person prescribed by the Governor-General as being subject to regulation under s 226 of the Act
SPOI	A POI which has been prescribed by the Commission under section 231 of the Act
UFB initiative	The competitive tender programme, known as the Ultra-fast Broadband Initiative, and any extension to that programme
UFB services agreements	The Wholesale Services Agreements for UFB services between regulated fibre service providers and access seekers

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Introduction

Purpose and structure of this paper

1. This paper provides a framework and guidance on how we will exercise our ongoing role to prescribe POIs under s 231 of the Telecommunications Act 2001 (the **Act**).
2. Section 231 of the Act gives the Commerce Commission (the **Commission**) the power to prescribe points of interconnection (**POIs**) for the purposes of establishing fibre handover points. A POI that has been prescribed under section 231 is a “specified point of interconnection” (**SPOI**).
3. We published our initial [Notice of points of interconnection under section 231 of the Telecommunications Act 2001 \(initial notice\)](#) along with our [Specified Points of Interconnection Reasons Paper \(SPOI reasons paper\)](#) on 19 December 2019.
4. For our initial notice, we were required to prescribe those POIs that applied as at the close of 31 December 2019 under the Ultra-fast Broadband (UFB) initiative and had the option to prescribe additional POIs under s 231(5)(b) of the Act.¹ We did not prescribe any additional POIs at the time, which meant that we simply prescribed those POIs that had been adopted by the industry under the Network Infrastructure Project Agreement (**NIPA**).²
5. The purpose of this paper is to:
 - 5.1 ensure our processes and considerations for amending or revoking the s 231 notice are clear, transparent and proportionate;
 - 5.2 clarify how our process fits with existing industry processes;
 - 5.3 provide guidance on how we will apply the legal framework and evaluate any change request; and
 - 5.4 provide guidance on the information/evidence that we expect **regulated fibre service providers** to provide to enable us to assess any change request.
6. The remainder of this paper has the following sections:
 - 6.1 Process followed;
 - 6.2 Background;
 - 6.3 Legal framework;
 - 6.4 Issues considered in our 2019 reasons paper;

¹ See definition of “UFB initiative” in s 5 of the Act.

² Crown Infrastructure Partners “Network Infrastructure Project Agreement – Chorus Limited and Crown Fibre Holdings Limited” (26 January 2017).

- 6.5 Inclusion of POI assets in the Regulatory Asset Base;
 - 6.6 Scope of the framework;
 - 6.7 Change request process;
 - 6.8 Framework for amending a s 231 notice; and
 - 6.9 Evaluation of change requests.
7. We may revise or update this framework from time to time, if required, and at our discretion.
 8. This framework, and any guidance contained within it, should not be used as a substitute for, or relied on as, legal advice on any matter.

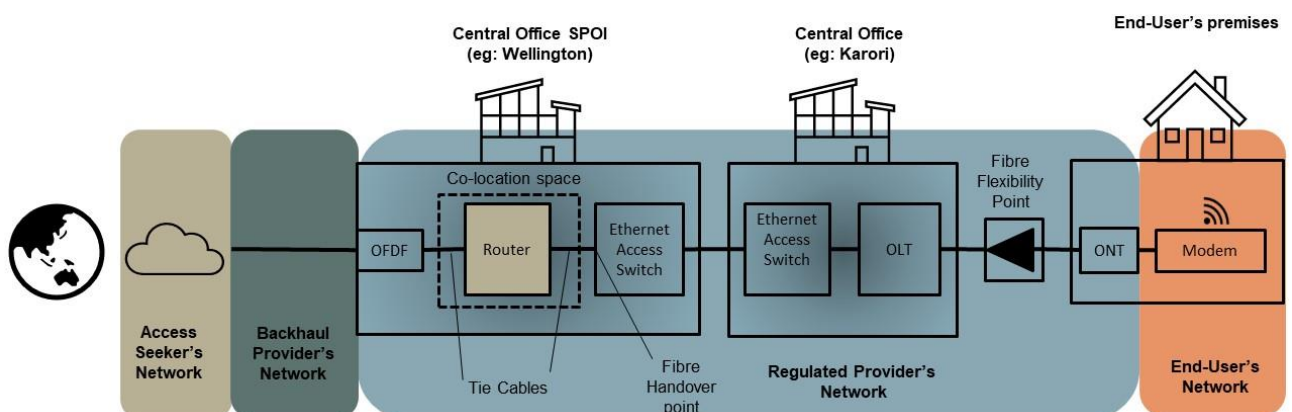
Process followed

9. We published our draft framework on 19 August 2022.³ We received submissions from seven stakeholders on our draft framework and considered those submissions in preparing this framework.

Background

10. SPOIs are part of a regulated fibre service provider's fibre network and delineate the boundary with the access seeker's network.
11. SPOIs are central office locations with co-location services where there is a fibre handover point. Fibre handover points enable access seekers to connect to a regulated fibre service provider's (layer 2) bitstream services.
12. Figure 1.1 below shows where the SPOI sits between the access seeker's network and the regulated fibre service provider's fibre network.

Figure 1.1 SPOI location in the fibre network



³ Commerce Commission "Specified Points of Interconnection – Draft framework and decision relating to amending the s 231 notice and changes since 2019: Consultation paper" (19 August 2022).

Legal framework

Section 231

13. The Telecommunications (New Regulatory Framework) Amendment Act 2018 inserted s 231 into the Act.
14. Section 231, which is in Part 6 of the Act, gives the Commission the power to prescribe POIs. It provides:

231 Specified points of interconnection

- (1) The Commission may, by public notice, prescribe points of interconnection for the purposes of establishing fibre handover points.
- (2) The notice may prescribe a point of interconnection by reference to 1 or more of the following:
 - (a) a regulated fibre service provider's network:
 - (b) a geographical location:
 - (c) the UFB initiative.
- (3) The Commission may amend or revoke a notice in the manner in which it was made.
- (4) However, the Commission must not amend a specified point of interconnection unless the amendment—
 - (a) is for an appropriate technical purpose; and
 - (b) is consistent with the purpose in section 162.
- (5) The first notice made under this section—
 - (a) must prescribe points of interconnection based on the points of interconnection that apply as at the close of 31 December 2019 under the UFB initiative; and
 - (b) may prescribe additional points of interconnection.
- (6) *[Repealed]*

SPOI definition

15. Section 5 of the Act defines 'specified point of interconnection' as a POI prescribed under s 231.
16. As s 231(1) states, the purpose of prescribing POIs is to establish fibre handover points. The term 'fibre handover point' is defined in s 5 of the Act:

fibre handover point means the external network-to-network interface (or equivalent facility) located at the specified point of interconnection for the relevant end-user's premises, building, or other access point that enables access to, and interconnection with, a regulated fibre service provider's fibre network

17. The definition of 'fibre network' in the Act indicates that the fibre handover point defines the upstream boundary of a fibre network, with the downstream boundary demarcated by the user-network interface:

fibre network means a network structure used to deliver telecommunications services over fibre media that connects the user-network interface (or equivalent facility) of an end-user's premises, building, or other access point to a regulated fibre service provider's fibre handover point

18. In turn 'fibre fixed line access service' (**FFLAS**) is defined with reference to 'fibre network':

fibre fixed line access service—

- (a) means a telecommunications service that enables access to, and interconnection with, a regulated fibre service provider's fibre network [...]

19. The waterfall of definitions outlined above show that POIs play a central role in determining the availability of FFLAS.⁴ SPOIs therefore determine the scope of a regulated fibre service provider's fibre network, in combination with the user-network interfaces (or equivalent facilities).

Provisions relevant to amending the section 231 notice

Section 166

20. Section 166 applies where the Commission is required to make a recommendation, determination, or decision under Part 6 of the Act.
21. We consider that in determining whether to amend or remove any SPOI or prescribe any additional POI, we are making a decision under s 231 and therefore under Part 6 of the Act.
22. Under s 166(2), we must make the decision that we consider best gives, or is likely to best give effect:
- 22.1 to the purpose in s 162; and
- 22.2 to the extent we consider it relevant, to the promotion of workable competition in telecommunications markets for the long-term benefit of end-users of telecommunications services.

⁴ As we noted in our Fibre input methodologies: Draft Decision – reasons paper, regulations under section 226 of the Act then determine the scope of regulated FFLAS.

Section 162

23. All decisions under Part 6 must be consistent with the purpose set out in s 162. In addition, ss 231(4)(b) and 166 each explicitly refer to the s 162 purpose.
24. Section 162 sets out the purpose of Part 6 as follows:

The purpose of this Part is to promote the long-term benefit of end-users in markets for fibre fixed line access services by promoting outcomes that are consistent with outcomes produced in workably competitive markets so that regulated fibre service providers—

- (a) have incentives to innovate and to invest, including in replacement, upgraded, and new assets; and
- (b) have incentives to improve efficiency and supply fibre fixed line access services of a quality that reflects end-user demands; and
- (c) allow end-users to share the benefits of efficiency gains in the supply of fibre fixed line access services, including through lower prices; and
- (d) are limited in their ability to extract excessive profits.

Issues considered in our 2019 reasons paper

25. In our SPOI reasons paper published in 2019, we considered the following issues:⁵
- 25.1 the single POI per candidate area UFB requirement;
 - 25.2 whether layer 1 POIs should be prescribed; and
 - 25.3 the requirements to relate end-user premises, buildings and other access points (for simplicity, referred to as ‘end-user premises’) to a POI.
26. Our views on these issues, as summarised below, remain unchanged from those expressed in our SPOI reasons paper.

Single POI per candidate area

27. The single POI per candidate area requirement applies under the NIPAs entered into by local fibre companies (including Chorus Limited (**Chorus**)) and Crown Infrastructure Partners (**CIP**).⁶
28. In our SPOI reasons paper we confirmed that the single POI per candidate area UFB requirement means there can be more than one POI per candidate area, but that each POI in a candidate area must enable access to all end-users in a candidate area.⁷

⁵ Commerce Commission “Specified Points of Interconnection: reasons paper” (19 December 2019).

⁶ The NIPAs are available at <https://www.crowninfrastructure.govt.nz/ufb/who/>.

⁷ Commerce Commission “Specified Points of Interconnection: reasons paper” (19 December 2019), paragraphs 29 to 32.

Only layer 2 POIs are to be prescribed

29. In our SPOI reasons paper we expressed the view that the UFB initiative POIs were limited to layer 2 handover points and should not be prescribed at layer 1 handover points.^{8, 9} We note that submissions in response to our draft SPOI reasons paper were mixed on this point.
30. Accordingly, we determined that SPOIs:¹⁰
- 30.1 define the upstream boundary of the fibre network, and that this boundary is important as we do not consider it necessary or appropriate to include services beyond a fibre network within the scope of FFLAS;¹¹ and
 - 30.2 are the locations where access seekers interconnect to take layer 2 services. All end-users within a UFB geographic area will be accessible from each specified POI for that area.

Relating end-user premises to POIs

31. In our SPOI reasons paper we provided that we needed to identify the end-user premises which the POI relates to in the public notice issued under s 231.¹²
32. In terms of our approach for relating end-user premises to POIs, we considered that:
- 32.1 end-user premises inside a UFB geographic area are to be related to the UFB 1 candidate area it was created to service, but that the names used in the notice are to be defined to include all geographic areas under the UFB initiative that the POI is intended to service, including UFB 2 and UFB 2+ areas.¹³
 - 32.2 end-user premises outside a UFB geographic area are to be related to the nearest UFB initiative POI (whether on a geographic or network topology basis) such that access seekers can access the end-user premises from a UFB initiative POI.¹⁴

Minimum technical specification of a SPOI

33. As part of the consultation process for our SPOI reasons paper, Spark submitted that we should specify the relevant minimum technical handover functionality at specified POIs (for example, Layer 1 and Layer 2 technical interface at demanded

⁸ The “UFB initiative POIs” are the POIs that applied as at the close of 31 December 2019 under the UFB initiative.

⁹ Commerce Commission “Specified Points of Interconnection: reasons paper” (19 December 2019), paragraph 33.

¹⁰ *ibid*, paragraph 46.

¹¹ Commerce Commission, “Chorus’ price-quality path from 1 January 2022 – Final decision Reasons paper” (16 December 2021), Table D1.

¹² Commerce Commission “Specified Points of Interconnection: reasons paper” (19 December 2019), paragraph 53-54.

¹³ *Ibid*, paragraphs 55-58.

¹⁴ *ibid*, paragraph 61.

capability and capacities).¹⁵ Our view remains that this concerns service levels that may be considered as part of our other Part 6 regulatory functions, such as information disclosure (**ID**) requirements.

Inclusion of POI assets in the Regulatory Asset Base

34. In our view POI assets are “core fibre assets” where they are employed in the provision of FFLAS.¹⁶
35. Accordingly, we consider that any commissioned layer 2 POI assets enter a fibre regulatory asset base (**RAB**) for ID purposes once they are employed to provide FFLAS, subject to asset allocation where they are also used to provide services that are not FFLAS.
36. In terms of a regulated fibre service provider’s RAB for price-quality (**PQ**) purposes, the Fibre Input Methodologies Determination 2020 (**fibre IMs**) require a POI to be forecast to be commissioned in the provision of “PQ FFLAS” (as defined in the fibre IMs) for an upcoming regulatory period before the POI asset can contribute to the forecast RAB via forecast “value of commissioned assets” (capex).¹⁷
37. As with all forecast FFLAS expenditure, POI expenditure can be included in forecast capex (base or individual) provided it meets the 'capital expenditure objective' – that is, where it “reflects the efficient costs that a prudent fibre network operator would incur to deliver PQ FFLAS of appropriate quality” considered in light of the assessment factors in clause 3.8.6(1) of the fibre IMs.^{18, 19}
38. Applying the capex assessment factors – specifically the legal obligations, competition effects, and consultation factors in subclauses (a), (g), and (j) of the fibre IMs – we will consider the extent to which Chorus has followed or intends to follow the SPOI approval process laid out in this document when assessing forecast POI expenditure.²⁰
39. Where Chorus forecast POI expenditure in advance of a regulatory period, and where it meets the 'capital expenditure objective', it may be included in base capex.
40. Where POI expenditure is either: not forecast in advance of a regulatory period, or is forecast but does not meet the 'capital expenditure objective' at that point in time, the individual capex mechanism remains available (subject to the individual capex proposal requirements in clause 3.7.22(4) of the fibre IMs).

¹⁵ Spark “Submission on specified points of interconnection consultation paper” (26 November 2019) at paragraph 5(b).

¹⁶ Commerce Commission, “Fibre Input Methodologies Determination 2020, as amended on 29 November 2021”, clause 1.1.4(2).

¹⁷ Commerce Commission, “Fibre Input Methodologies Determination 2020, as amended on 29 November 2021”, clause 3.3.1(1)-(2).

¹⁸ *ibid*, 3.8.5(2).

¹⁹ *ibid*, 3.8.6(1).

²⁰ *ibid*, 3.8.6 (1) (a)(g)(j).

Scope of the framework

41. Any change which may result in an amendment to the s 231 notice will be considered under the framework set out in this paper.
42. For example, the following changes would require us to make a decision under s 231:
 - 42.1 amending a SPOI (ie, any change to the details of a SPOI which are set out in the s 231 notice), which includes removing a SPOI;
 - 42.2 adding a POI (whether in an existing or new POI Area); and
 - 42.3 changing a POI Area for a SPOI.
43. We do not consider that augmentation of capability at a SPOI requires a change request. This would include changes like the addition or removal of ports for handover connections, and reconfiguration of co-location space. We would expect any expenditure associated with this to be part of an expenditure proposal and assets included in the RAB.

Change request process

44. This section sets out:
 - 44.1 the process we expect regulated fibre service providers to undertake prior to submitting a change request; and
 - 44.2 the process we intend to follow for amending or revoking the s 231 notice.

Background

45. We have a statutory decision-making function in respect of our powers to prescribe POIs under the Act.
46. Prior to the introduction of s 231 in the Act, POIs and the requirements for them were initially set by CIP under the terms of the NIPAs and requests to change POIs were managed under the processes for changes described in the Chorus UFB Services Agreement that ended on 31 December 2021.²¹
47. We have drawn on the existing CIP process to inform the process we intend to follow in terms of amending the s 231 notice. However, we note the following:
 - 47.1 We see benefit in utilising the current industry process noted below. While the information and outcome coming from that industry process will be a useful input into our decision making under s 231, it is not determinative.

²¹ Chorus “Chorus UFB Services Agreement General Terms” (10 December 2012).

- 47.2 In order to assess a change against the legal framework, the range of information we require (discussed further below) may be broader than that previously required by CIP.

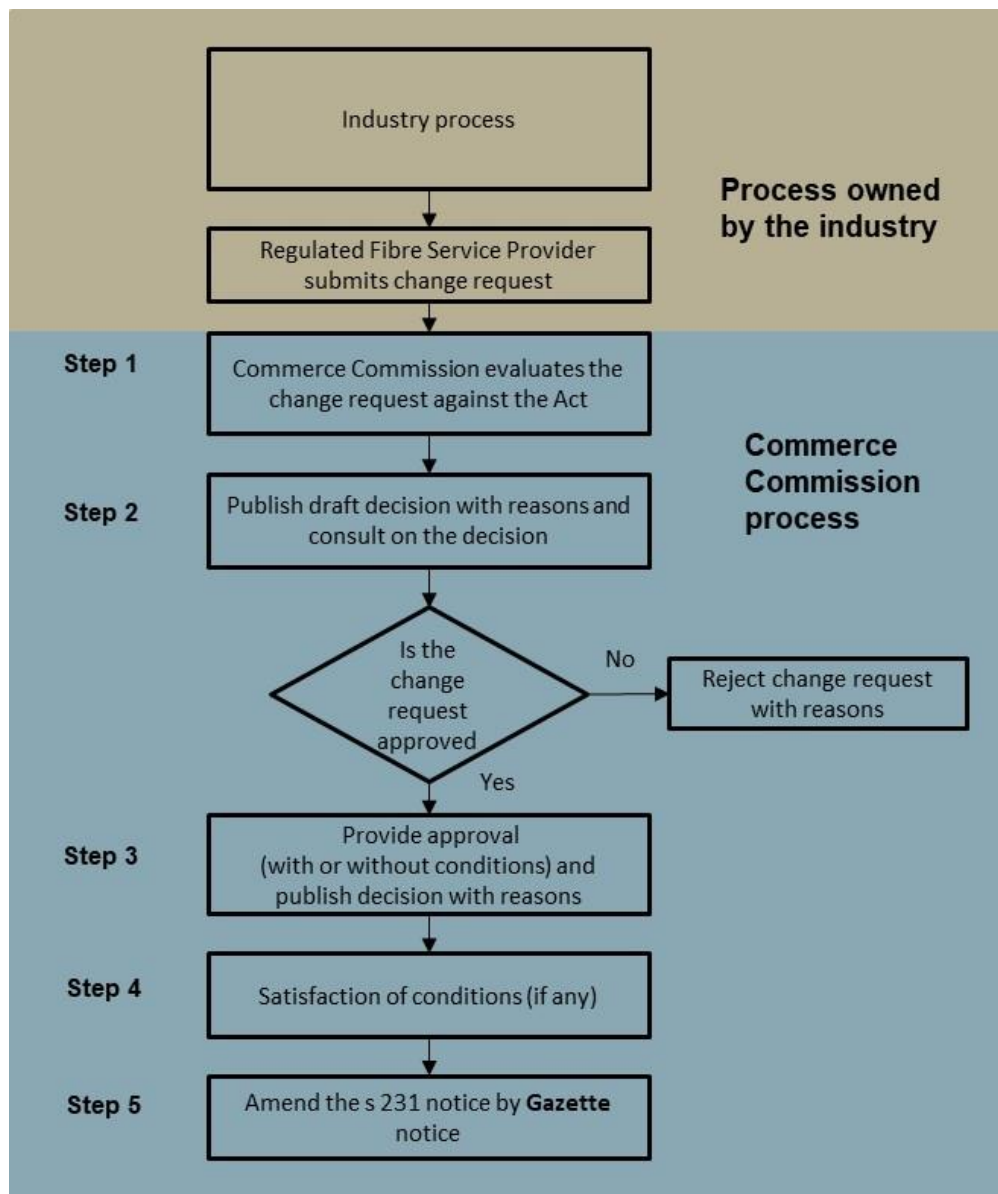
Who may submit a change request

48. We will only accept change requests from regulated fibre service providers.
49. However, to be clear, the Commission can prescribe any POI where it understands that the POI already exists and is in use, irrespective of whether a change request from a regulated fibre service provider is provided.

Outline of change request process

50. The process for amending or revoking the s 231 notice (eg, by prescribing new POIs or amending SPOIs) is set out in Figure 1.2 below.

Figure 1.2 Illustrative flow diagram of change process



Industry process

51. The industry process (highlighted in brown in Figure 1.2) represents a process owned by the industry. It is open to industry stakeholders to shape this process, including how it may change in future.
52. We see benefit in regulated fibre service providers continuing to utilise the change process developed under the UFB Services Agreement – whereby changes are submitted to a relevant forum (eg, Product Forum or Change Management Forum) and considered by industry.
53. Any relevant information produced as part of the industry process (including a summary of the views of industry) will assist the Commission when evaluating any change request and may expedite the Commission’s process.
54. To enable us to effectively evaluate a change request, we require a regulated fibre service provider to provide the documentation outlined in the section titled “Information to be included in change requests” set out from paragraph 63 below.
55. To be clear, our presumption is that regulated fibre service providers will take a consultative approach and that industry will engage.

Commission process

56. Section 231(3) requires that the s 231 notice be amended or revoked in the manner in which it was made.
57. The process we are proposing to follow (highlighted in blue in Figure 1.2) reflects the key aspects of the process we followed in issuing the initial notice.
58. In summary, once a change request is submitted to us, we will follow the process described below.
 - 58.1 We will evaluate the change request in accordance with the legal framework under the Act.
 - 58.2 We will publish our draft decision (including a draft updated s 231 notice if we are proposing to amend that notice) along with our reasons and consult on that draft decision. 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.
 - 58.3 We will make a final decision, which may impose conditions which must be satisfied before we will amend the s 231 notice. See paragraph 96 below for further discussion on the imposition of conditions.
 - 58.4 Depending on our final decision, we will publish a Gazette notice amending the s 231 notice, either at the time of the final decision (if without conditions) or upon the satisfaction of any conditions. We will publish any amended notice on our website and notify all interested parties.

59. We expect change requests to be submitted to us for approval ahead of a new POI being commissioned or a change to a SPOI being made, with the exception of changes required in response to an emergency event.

Emergency events

60. In the event of an emergency (such as an earthquake, flood or fire), we ask that regulated fibre service providers notify us of the event and any proposed change. However, our approval is not required for temporary changes, such as the closure of a SPOI, while maintenance or reconstruction is done.
61. If restitution of the SPOI is not feasible and a permanent change is needed, we require a change request in retrospect. The change request should include the standard information discussed below at paragraph 63.

Framework for amending s 231 notice

62. This section sets out:
- 62.1 The information we expect to be included in a change request;
 - 62.2 How we intend to evaluate a change request, including how we will evaluate the legitimacy of reasons provided and how we will apply the legal framework; and
 - 62.3 Our view on imposing conditions.

Information to be included in change requests

63. To help us evaluate any change request, we would expect a regulated fibre service provider to provide the following information.
- 63.1 **Type of change.** Whether the change request relates to an amendment to a SPOI or the addition of a new POI.
 - 63.2 **Details of the POI.** Including the identifier, central office, address and POI Area (geographic area).
 - 63.3 **Forecasts of costs.** Forecasts of any opex and capex associated with the proposal, including whether those forecasts were included in the most recent opex or base capex allowance.
 - 63.4 **How the change request is consistent with the requirements under the Act.**
 - 63.4.1 The commercial and technical drivers and outcome objectives for the proposal.
 - 63.4.2 The benefits, costs and risks associated with the proposal, including how these have been assessed and justification of reasonableness; the parties on whom they are likely to fall; and what mitigation steps are proposed or have been implemented.

63.4.3 A consideration of the impact on third parties, including (but not limited to) backhaul providers, access seekers and end-users – generally and by comparison to the status quo.

63.5 **A timeline and process for implementation.** Including when the change is expected to be effective from, and transition management (if relevant) that ensures equitable access and competitively neutral migration.

63.6 **Industry evaluation.** Whether there is evidence of industry consensus, and if not, the points of divergence of views, identification of the parties who disagree and the reasons put forward by them in opposition to the proposal.

63.7 **Additional information supporting the reasons for the change request.** Any further information supporting the legitimacy of reasons, including in response to the questions at paragraph 64.

Evaluation of change requests

Assessment of reasons for change request

64. In assessing the information and the reasons provided in support of a change request, we will consider the extent and quality of stakeholder consultation and will look to determine the legitimacy of reasons by assessing different factors such as these set out below.²²

Consultation with industry on the POI change request:

- We see benefit in regulated fibre service providers consulting with industry on POI change requests. Our presumption is that regulated fibre service providers will take a consultative and considered approach, including on impacts to other parties' investments, and that industry will engage.
- What evidence is provided of stakeholder consultation? Is industry largely in favour of the change? (We accept there may be legitimate explanations for divergent views). How has the regulated fibre service provider taken into account or responded to feedback provided by other parties?
- Has the regulated fibre service provider consulted on the drivers and impacts of the proposed POI change (eg, on technical requirements, efficiency, and impacts to third parties' investments)? What evidence is provided of this consultation? Is industry in agreement on the technical requirements for change?

²² Note, however, that we may consider any matters we consider relevant to a particular change request. We also note that we use a similar approach in our airport price setting reviews; see for example the cost of capital evidence framework at Commerce Commission "Review of Wellington Airport's 2019-2024 price setting event - Final Report" (28 September 2022), pages 58-60.

Legitimate reasons supporting a POI change request:

- Has the regulated fibre service provider considered consistency with its past reasoning and past change requests (ie, has it applied the same logic consistently over time)?
- Are there counterarguments (or other off-setting considerations) which would result in different change requests? For example, would reasons provided by other regulated fibre service providers (or the same regulated fibre service provider in other instances) work in the opposite direction for the specific regulated fibre service provider in question?
- Are there any additional factors relevant to the change (for example, any off-setting considerations regarding competition)?
- Has the change request provided sufficient evidence or justification to demonstrate that the proposed change would satisfy the legal requirements under the Act?

Use of information previously disclosed to the Commission

65. In accordance with s 221(1)(d), we may use information previously provided to the Commission under the Act in deciding whether to amend the s 231 notice.
66. We may refer to previous change requests of a regulated fibre service provider when considering new requests from that provider. In particular, we may refer to the reasons provided for any earlier change request so as to enable us to assess the legitimacy of the reasons supporting a change request.

Application of the legal framework

67. We will evaluate change requests in accordance with the requirements under the Act.
68. The following provisions of the Act are relevant as outlined in the “Legal Framework” section above at paragraphs 13 to 24:
- 68.1 s 231 – in particular, s 231(4);
- 68.2 s 166 – which sets out matters the Commission must consider when making decisions under Part 6 of the Act (within which s 231 sits); and
- 68.3 s 162 – which sets out the purpose of FFLAS regulation.

69. We consider that s 231(4) only applies to amendments to SPOIs rather than prescribing additional POIs.²³
70. Section 221(1)(d) may also be relevant in some instances, as it enables the Commission to use information previously disclosed to it under the Act or the Commerce Act 1986 for the purpose of carrying out its functions and exercising its powers under Part 6 of the Act.

Amendment of a SPOI

71. We will evaluate any requests to amend a SPOI in accordance with s 231(4), such that we will only amend the s 231 notice to reflect an amendment to a SPOI where it:
- 71.1 is for an appropriate technical purpose; and
 - 71.2 is consistent with the purpose in s 162.
72. As discussed above, we also consider that s 166(2)(b) is relevant when amending a SPOI, which means we will make the decision that we consider best gives, or is likely to best give, effect:
- 72.1 to the purpose in s 162; and
 - 72.2 to the extent we consider it relevant, to the promotion of workable competition in the telecommunications markets for the long-term benefit of end-users of telecommunications services.
73. An amendment of a SPOI includes any of the following:
- 73.1 removing a SPOI;
 - 73.2 moving a SPOI (revoking an existing SPOI and the addition of a new SPOI in a POI Area); or
 - 73.3 amending any of the details of a SPOI listed in the s 231 notice, eg, the UFB geographic area (POI Area).

Addition of a SPOI

74. We will evaluate any requests to prescribe additional POIs in accordance with ss 231 and 166, such that we will only amend the s 231 notice to include any additional POI where it best gives, or is likely to best give, effect:
- 74.1 to the purpose in s 162; and

²³ This is consistent with our view put forward in "Specified Points of Interconnection: reasons paper" (19 December 2019), paragraph 68.2.

- 74.2 to the extent we consider it relevant, to the promotion of workable competition in telecommunications markets for the long-term benefit of end-users of telecommunications services.

Guide to our evaluation of change requests under Part 6

75. In this section we provide guidance on our approach to applying Part 6 in our evaluation of change requests. This includes our approach to considering the following:

75.1 the promotion of workable competition (s 166(2)(b)); and

75.2 technical purpose (s 231(4)(a)).

Promotion of workable competition - approach to applying s 166(2)(b) in evaluating change requests

76. Prescribing POIs, and amending SPOIs, can have competition effects in telecommunications markets including in wholesale backhaul markets “upstream” and “adjacent” to the POI, and in retail service provider markets “downstream” of the POI.
77. Section 166(2)(b) provides that, to the extent that we consider it relevant, we must make decisions which we consider best give effect to the promotion of “workable competition in telecommunications markets for the long-term benefit of end-users of telecommunications services.” This stands alongside our obligation to make decisions that best give effect, or are likely to best give effect, to the s 162 purpose.
78. Therefore, we will not promote workable competition by default, only where we consider it relevant.
79. Where we consider that the promotion of competition may be relevant (upstream, downstream, or adjacent to a POI), we must consider whether it would be in the long-term interests of both FFLAS end-users and the end-users of telecommunications services that are not regulated FFLAS to promote competition.²⁴
80. We consider that a multi-step approach that starts with competition screening, and only uses other evaluation tools (such as competitive outcomes assessment) where necessary as a backstop, is the most appropriate way to consider competition impacts and trade-offs when applying s 166(2)(b).

High-level ‘competition screening’

81. This means that, as a first step, we will consider whether each change has the potential to promote or limit competition in any telecommunications market

²⁴ We note that this is consistent with our position in the fibre IMs. See Commerce Commission “Fibre input methodologies: Main final decisions – reasons paper” (13 October 2020), paragraph 2.227.

(including retail and wholesale markets).²⁵ Specifically, we will consider whether each change request decision:

- 81.1 has a role in mitigating risks to competition at any telecommunications market level; and/or
- 81.2 could be used to promote competition at a given market level that would result in expected net benefits to telecommunications end-users in the long-term (to both FFLAS end-users and the end-users of telecommunications services that are not regulated FFLAS).

Backhaul 'competition screening'

- 82. We may use backhaul 'competition screening' to assist with our high-level 'competition screening' described above.
- 83. This will enable us to consider whether each change request decision has the potential to promote or limit competition in intra-candidate/inter-candidate area/national backhaul markets.²⁶ Specifically, to assist competition screening, we may have regard to the following factors:
 - 83.1 whether there are alternative providers in backhaul services:
 - 83.1.1 at the POI/SPOI;
 - 83.1.2 in very close proximity to the POI/SPOI; and
 - 83.1.3 in the POI area;
 - 83.2 whether co-location and interconnection services are available to alternate providers in backhaul services at the POI/SPOI;²⁷ and
 - 83.3 whether there are no additional market conditions that could limit the efficient entry and expansion of alternate providers in backhaul services (such as limited ability of alternate providers to efficiently aggregate backhaul traffic from multiple access seekers inside the POI/SPOI).

Competitive outcomes assessment

- 84. In addition to the high-level screening discussed above, we consider that a more in-depth competition assessment may be required for some change request decisions when applying s 166(2)(b). We anticipate that this in-depth assessment would only

²⁵ We determined a similar approach to promoting s 166(2)(b) in the fibre IMs. See Commerce Commission "Fibre input methodologies: Main final decisions – reasons paper" (13 October 2020), paragraph 2.384.

²⁶ For our previous classification of backhaul services into similar categories, see Commerce Commission "Section 9A Backhaul services study – Final findings" (11 June 2019), paragraph 1.13.

²⁷ Note that co-location and interconnection services are categories of services within the scope of FFLAS whether at POI or SPOI, see for example, Commerce Commission, "Chorus' price-quality path from 1 January 2022 – Final decision – Reasons paper" (16 December 2021), Table D1.

be required in limited cases where we consider that the promotion of workable competition may be relevant.

85. For those cases, we would consider the change request in the context of how the proposed amendment to a SPOI or request to prescribe a new POI is likely to impact the competitive outcomes in the wholesale or retail telecommunications markets.
86. As illustrative examples, the types of competitive outcomes we may have regard to could include, among other things, whether the change request might:
 - 86.1 introduce additional costs for some existing retail service providers or for new retail service providers such that these access seekers will be disadvantaged in their ability to compete in downstream (retail) markets compared to other access seekers;
 - 86.2 have an exclusionary effect for some access seekers (eg, because they are unable to extend their network to interconnect at a new location within a reasonable timeframe);
 - 86.3 reduce competition in inter-candidate area/national backhaul markets (eg, because backhaul providers have built their networks to existing SPOIs); and/or
 - 86.4 have a dampening effect on innovation and access seekers' ability to add new services for end-users (eg, because of the technical capabilities of the proposed new SPOI).
87. We note that these examples are for informative purposes and we are not prescribing criteria against which the nominated POI will be assessed.
88. In cases where a potential effect on competition from the change request is identified, we will consider any mitigations proposed by the regulated fibre service provider – for example, in the case of moving a SPOI, options for backhaul services to the new location until the access seekers are able to build their networks to interconnect at the new location. We will also consider the potential effect alongside our obligation to make decisions that best give effect, or are likely to best give effect, to the s 162 purpose statement (as we discuss at paragraph 77).
89. We recognise that a resilient and 'fit for purpose' FFLAS network supported by continued incentives for regulated providers to invest and innovate on the network, including in response to developments in downstream telecommunication markets (s 162(a) and (b)) is essential to promoting the Part 6 purpose.²⁸

Relevant principles - approach to applying s 166(2)(b) in evaluating change requests

90. **Access to all end-users in a candidate area principle.** We consider that the single POI per candidate area requirement referred to in our 2019 SPOI reasons paper is

²⁸ This aligns with our position in the fibre IMs. Commerce Commission "Fibre input methodologies: Main final decisions – reasons paper" (13 October 2020), paragraph 2.393.2.

relevant to our consideration of s 166(2)(b).²⁹ Under this requirement, each POI in a candidate area must enable access to all end-users in a candidate area. This promotes competition in upstream and downstream telecommunications markets and helps to keep interconnection costs low for access seekers.

90.1 As discussed above, the single POI per candidate area requirements means that where there is more than one POI in a POI Area, all end-users in the POI Area must be accessible from each of the POIs. This minimises the national number of POIs and supports competition via open access to the fibre network.

90.2 The fibre network has been implemented with at least one POI per POI Area. If access seekers were required to handover at more than one location in each POI area, they would need to set up co-location at a larger number of locations increasing costs (including to end-users of downstream telecommunications markets), which could result in smaller access seekers being excluded from the market.

91. **Capability for wholesale backhaul providers principle.** It is also our view that capability for third party providers to offer wholesale backhaul at a SPOI is relevant to s 166(2)(b). We consider that co-location and interconnection services should be available to alternative third-party providers of backhaul services at a SPOI (ie, a SPOI should be able to support at least two backhaul providers).

Technical purpose - approach to applying s 231(4)(a) in evaluating change requests

92. As required by section 231(4)(a), any amendment of a SPOI must be for an appropriate technical purpose. As set out above at paragraph 74, this threshold does not apply to prescribing new SPOIs.
93. Generally, a technical purpose requires a practical or physical reason for the change. However, depending on the facts and circumstances, other reasons may be considered an appropriate technical purpose.
94. Examples of technical purpose include (but are not limited to):
- 94.1 where the SPOI location is at physical capacity or there are other capacity constraints and it is not economic or physically capable to be expanded;
 - 94.2 for resilience to spread risk where total end-user connections reach a threshold;
 - 94.3 to provide traffic load distribution across multiple locations; and
 - 94.4 emergency management.

²⁹ Commerce Commission "Specified Points of Interconnection: reasons paper" (19 December 2019), paragraphs 29-32.

95. In addition, there should be a nexus between the technical purpose and the proposed change.

Imposition of conditions

96. As noted above, we consider that we can impose conditions as part of a decision to amend the s 231 notice. Therefore, we will consider whether it is appropriate to impose conditions when evaluating a change request.
97. We note that the Act is silent on this point, and therefore it is open to interpretation whether we can impose conditions.
- 97.1 On one hand, the legislative history indicates that prescribing POIs was viewed by Parliament as a wholly technical function, which did not warrant the involvement of the Minister or Governor-General.³⁰ This could be viewed as at odds with the imposition of conditions.
- 97.2 On the other hand, s 231 provides us with powers to amend the s 231 notice and does not prescribe the process we must follow (other than that the notice must be amended in the manner it was made, eg, we must consult).
98. While we agree that prescribing POIs is generally a technical function, we consider that the interpretation that allows us to impose conditions when amending the s 231 notice best gives effect to the s 166(2) matters (which include the s 162 purpose) because it enables us to consider matters such as the impact of the change proposal on existing or future competition in telecommunication markets or the potential implications for investment by the regulated fibre service provider and/or access seekers active in the POI area.
99. However, this does not mean we would seek to impose conditions in all instances. We will only impose conditions where we consider that doing so best gives effect to the s 166(2) matters.
100. We note that the alternative to imposing conditions as part of amending the s 231 notice is to provide reasons for any decision not to amend the notice. The applicant can then re-submit its request at a later date once our concerns have been addressed. However, we consider that this approach is more time (and resource) intensive and lacks certainty for regulated fibre service providers.
101. Examples of conditions may include (but are not limited to):
- 101.1 Where a new POI is being added, that the s 231 notice only be updated once the new POI has been commissioned.
- 101.2 Where a regulated fibre service provider is proposing to remove a SPOI because it is adding a new POI in the same POI Area, we may impose a

³⁰ Telecommunications (New Regulatory Framework) Amendment Bill (293–2) at 6 (select committee report).

condition that the SPOI only be removed (and the s 231 notice only be updated) once the new POI is in place.