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Specified Points of Interconnection – final decision to amend s 231 notice

Reasons paper

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Glossary and Abbreviations

2degrees	2degrees New Zealand Limited
access seeker	A company that provides telecommunications services to end-users using FFLAS as an input
Act	Telecommunications Act 2001
central office	Has the same meaning as in the Fibre Information Disclosure Determination 2021
Chorus	Chorus Limited
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
ICABS	Intra-candidate area backhaul services, a backhaul product provided by Chorus
ISPANZ	Internet Service Providers Association of New Zealand
Mercury	Mercury Limited
NIPA	Network Infrastructure Project Agreement
POI	Point of interconnection
POI Area	Has the same meaning as in the Fibre Information Disclosure Determination 2021
regulated fibre service provider	A person prescribed by the Governor-General as being subject to regulation under s 226 of the Act
RSP	Retail service provider
Spark	Spark New Zealand Limited
SPOI	A POI which has been prescribed by the Commission under section 231 of the Act
Tuatahi	Tuatahi First Fibre Limited
UFB initiative	The competitive tender programme, known as the Ultra-fast Broadband Initiative, and any extension to that programme
Vodafone	Vodafone New Zealand Limited

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Introduction

Purpose and structure of this paper

1. Section 231 of the Telecommunications Act 2001 (the **Act**) gives the Commerce Commission (the **Commission**) the power to prescribe points of interconnection (**POIs**) for the purpose of establishing fibre handover points. A POI that has been prescribed under s 231 is a “specified point of interconnection” (**SPOI**).
2. 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](#) on 19 December 2019.
3. For our initial notice, we were required under s 231(5)(a) of the Act to prescribe those POIs that applied as at the close of 31 December 2019 under the Ultra-fast Broadband (**UFB**) initiative. We had the option to prescribe additional POIs under s 231(5)(b) of the Act. 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**).¹
4. The purpose of this reasons paper (**Reasons Paper**) is to communicate our final decision to prescribe Chorus Limited’s (**Chorus**) nine additional POIs which were approved under the UFB initiative after the date of our initial notice.
5. The rest of this paper is structured as follows:
 - 5.1 Our process;
 - 5.2 Final Decision to prescribe Chorus POIs:
 - 5.2.1 Final decision;
 - 5.2.2 Chorus’ change request;
 - 5.2.3 Submissions on our draft decision;
 - 5.3 Reasons for our decision; and
 - 5.4 Attachment – List of SPOIs as at 16 February 2023.
6. The attachment sets out the updated full list of SPOIs, including the nine additional POIs we have decided to prescribe. Note that we consider the column UFB geographic area(s) to be a list of the POI Areas,² and we have included an additional column setting out the date the POI was prescribed by the Commission under s 231.

¹ Crown Infrastructure Partners “Network Infrastructure Project Agreement – Chorus Limited and Crown Fibre Holdings Limited” (26 January 2017).

² Commerce Commission [Fibre Information Disclosure Determination 2021](#) as amended 28 July 2022, page 23.

Our process

7. On 19 August 2022 we published a consultation paper (**Consultation Paper**) seeking views on:³
 - 7.1 our proposed framework for exercising our powers under s 231; and
 - 7.2 our draft decision to prescribe Chorus' nine additional POIs which were approved under the UFB initiative between 31 December 2019 and 1 January 2022.
8. We received submissions on our Consultation Paper on 16 September 2022. Submissions were received from Chorus, Internet Service Providers Association of New Zealand (**ISPANZ**), Mercury Limited (**Mercury**), Spark New Zealand Limited (**Spark**), Tuatahi First Fibre (**Tuatahi**), Vodafone New Zealand Limited (**Vodafone**) and 2degrees New Zealand Limited (**2degrees**).
9. Table 1.1 below provides a timeline of the process we have followed.

Table 1.1 – Timeline of process

Key step	Date
Consultation Paper published	19 August 2022
Submissions on Consultation Paper	16 September 2022
Reasons Paper and list of SPOIs published	16 February 2023
Notice of SPOIs published in the <i>Gazette</i>	16 February 2023

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

Final decision to prescribe Chorus' POIs

Final decision

10. Our final decision is to amend the s 231 notice to prescribe Chorus' nine additional POIs set out in Table 1.2 below.

Table 1.2 – Chorus' additional POIs approved under the UFB initiative

POI Identifier	Name	UFB geographic area (POI Area)	Region
AVO	Avonhead Exchange	Christchurch, Rangiora and Rolleston	Canterbury
JV	Johnsonville Exchange	Wellington	Wellington
LIN	Linwood Exchange	Christchurch	Canterbury
LYE	Lynmore Exchange	Rotorua	Bay of Plenty
MRE	Mangere Exchange	Auckland, Pukekohe, Waiheke Island and Waiuku	Auckland
MSY	Massey Exchange	Auckland, Pukekohe, Waiheke Island and Waiuku	Auckland
NVY	North East Valley Exchange	Dunedin	Otago
OTE	Otumoetai Exchange	Tauranga	Bay of Plenty
STK	Stoke Exchange	Nelson	Nelson

Background

11. In our initial notice, we only prescribed those POIs which applied under the UFB initiative as at 31 December 2019, as required under s 231(5)(a).
12. The UFB initiative was in effect until 1 January 2022, and we understand that from 31 December 2019 until 1 January 2022 additional POIs were implemented under the UFB initiative.

Chorus' change request

13. Chorus requested by letter that we amend the s 231 notice to prescribe nine additional POIs which were approved under the UFB initiative between 31 December 2019 to 1 January 2022.⁴
14. Chorus provided the following reasons for adding these POIs:⁵
 - 14.1 There are capacity constraints at a number of Spark-owned central offices in relation to power and space that would impact Chorus' ability to offer new handovers to retail service providers (**RSPs**) at those POIs. As a result, Chorus has built additional POIs in candidate areas affected by the lack of capacity.
 - 14.2 To meet its obligations under the NIPA in relation to population density. As required under the NIPA, each POI in a candidate area must support no more than 50,000 Layer 2 end users. This means that where a candidate area has more than 50,000 end users, then at least two POIs must be available in that candidate area.
 - 14.3 Additional POIs are required for ongoing planning for future demand, and to provide greater resilience in the network.
15. Chorus also noted that it provides regular updates via the Product Forum and on its website, including by inviting RSPs to comment on their preferred handover sites.

Submissions on our draft decision

16. In our Consultation Paper we set out our draft decision to amend the s 231 notice to prescribe Chorus' nine additional POIs which were approved under the UFB initiative between 31 December 2019 to 1 January 2022.
17. In the reasons for our draft decision, we stated that:
 - 17.1 The Act required us to prescribe the POIs that applied under the UFB initiative as at 31 December 2019. Taking a purposive interpretation, this suggests that it was intended for all POIs agreed under the UFB initiative to be prescribed, because all such POIs are approved under the same regime and are subject to the same level of scrutiny.⁶
 - 17.2 Prescribing the nine additional POIs satisfies the requirements of s 166.⁷

⁴ Letter from Chorus to the Commerce Commission "Specified points of interconnection – request to update s 231 notice" (19 May 2022).

⁵ *ibid*, paragraph 2.

⁶ Commerce Commission "Specified Points of Interconnection – Draft framework and decision relating to amending the s 231 notice and changes since 2019" (19 August 2022), paragraph 94.

⁷ *ibid*, paragraphs 97 to 99.

Submissions on our purposive interpretation

18. We received one submission directly on our purposive interpretation. Mercury submitted in support:⁸

We acknowledge the Commission's comments and agree that, in this specific instance, taking a purposive interpretation of the Act lends the Commission prescribing Chorus' nine additional POIs approved under the UFB initiative.

19. We acknowledge Mercury's submission in support of our draft decision, and note that submissions did not oppose our purposive interpretation.

Submissions on our draft decision to prescribe the nine additional POIs

20. Regulated fibre service providers supported our draft decision to prescribe the nine POIs, and most access seekers also expressed support but with some reservations or conditions.

- 20.1 Chorus and Tuatahi supported the draft decision without reservations. Chorus noted that many of these new POIs have been active for one to two years.⁹

- 20.2 Spark also supported the draft decision and noted that additional SPOIs may improve data growth and resilience:¹⁰

We support the addition of new SPOIs to better manage data growth and improve resilience.

- 20.3 Mercury supported the draft decision but expressed concern that specifying additional POIs results in the removal of handover services at existing SPOIs, a concern shared with other submitters including Spark. Mercury, noting its support for the draft decision, cautioned:¹¹

However, we encourage careful consideration of the process to specify additional POIs as we see the current POIs as having some limitations. (...) Our concern is that some of the existing SPOIs are no longer fit for purpose as handover services are not commercially available at these locations today. Over the last several years we have been observing an increased trend of LFCs adding new POIs to the fibre network and discontinue handover services from some of the existing POIs. This has imposed significant costs on ISPs by having to establish new backhaul links to their core network.

- 20.4 Spark submitted that Chorus has indicated a proposal to withdraw pre-existing SPOIs:¹²

⁸ Mercury "Submission on specified points of interconnection draft framework" (31 August 2022), page 1.

⁹ Chorus "Specified points of interconnection: Request to update Section 231 notice" (19 May 2022), page 1.

¹⁰ Spark NZ "Submission on specified points of interconnection draft framework" (16 September 2022), paragraph 43.

¹¹ Mercury "Submission on specified points of interconnection draft framework" (31 August 2022), page 1.

¹² Spark NZ "Submission on specified points of interconnection draft framework" (16 September 2022), paragraph 9.

In addition to Chorus' proposal to establish nine new SPOIs, Chorus has notified service providers that from the end of this year it would no longer accept UFB fibre handover service orders at a further eighteen SPOIs located on Spark sites, with a view to withdrawing all handover products at these sites by 2024 with the service withdrawn 2025.

21. 2degrees and ISPANZ supported the draft decision to prescribe the additional POIs with conditions.
- 21.1 2degrees, stating its opposition to Chorus or any regulated fibre service provider discontinuing handover services at existing SPOI, supported the draft decision provided that:¹³
- Chorus provides a suitable backhaul solution from the existing SPOI that RSPs have built to.
- 21.2 ISPANZ supported provided that:¹⁴
- all additional POIs are served by at least two backhaul providers, and ICAB services to access these POIs are fairly priced rather than priced at Chorus' current pricing.
- 21.3 ISPANZ submitted:¹⁵
- There are some POIs where the only backhaul service available to RSPs are ICAB services from the LFC itself. If an RSP needs to use ICAB services from an Alternate POI to connect back to their network at an existing POI or other site, controls should be in place to prevent LFCs from price gouging on these "bottleneck" services. (...) Chorus charge 384% of what other LFCs charge for an equivalent service.
22. Vodafone did not comment directly on our draft decision but submitted that it does not support the addition of new SPOIs if capacity exists at current SPOIs.¹⁶

Response to submissions on our draft decision to prescribe the nine additional POIs

23. In response to submissions from Mercury and Spark on the withdrawal of all handover services at some existing SPOIs, we note that our current decision is limited in scope to the decision of whether to prescribe the nine additional POIs that were approved under the UFB initiative. Nonetheless, we emphasise that in future change requests, we will carefully consider the legitimacy of reasons supporting the technical purpose given for amending, including removing, a SPOI.
24. In response to 2degrees and ISPANZ submissions requiring that Chorus provide suitable and fairly priced backhaul solutions (such as intra-candidate backhaul services (**ICABS**) to pre-existing SPOIs that access seekers have built to, we note the

¹³ 2degrees "Submission on specified points of interconnection draft framework" (19 August 2022), page 1.

¹⁴ ISPANZ "Submission on specified points of interconnection draft framework" (September 2022), page 8.

¹⁵ Ibid, page 8.

¹⁶ Vodafone "Submission on specified points of interconnection draft framework" (16 September 2022), paragraph 2.

concern and consider that regulatory and competitive conditions may provide some constraint on pricing. In our view:

- 24.1 the geographically consistent pricing under s 201 of the Act for Chorus FFLAS may provide a degree of protection in ICABS pricing; and
 - 24.2 the ability of third party providers to enter and expand in upstream and adjacent backhaul markets does not appear to be limited by market conditions, suggesting competitive constraint could also provide some protection against excessive pricing in backhaul services.
25. In response to ISPANZ’s requirement that all additional POIs are served by at least two backhaul providers:
- 25.1 We note that we have updated our framework for amending the s 231 notice (**Framework Paper**) to reflect that capability for third party providers to offer wholesale backhaul at a SPOI is relevant to s 166(2)(b).¹⁷
 - 25.2 In our view, in addition to our point above, third party wholesale backhaul providers will be able to offer backhaul services from the nine additional POIs if there is sufficient economic incentive (such as a sufficient level of expected demand for backhaul services at each POI).
26. We also acknowledge Vodafone’s view on capacity and resilience thresholds. We consider that it may be appropriate to prescribe these additional POIs to provide resiliency in the network (particularly where capacity thresholds are met) and ensure end users can have a quality of service they expect. We note that Spark has supported the draft decision to prescribe the additional POIs on this basis (see paragraph 20.2).

Reasons for our decision

- 27. Our decision is unchanged from our draft decision. As discussed above (see paragraph 17), taking a purposive interpretation of s 231 suggests POIs agreed under the UFB initiative were intended to be prescribed under the Act.
- 28. The fact that the nine new POIs were agreed under the UFB initiative provides us with some assurance in terms of satisfying the requirements of s 166(2). Accordingly, we do not consider that we require the level of information which we would ordinarily require to make a decision to amend the s 231 notice (as set out in our Framework Paper).

¹⁷ Commerce Commission “Specified Points of Interconnection – Framework for amending the s 231 notice” (16 February 2023). In our Consultation Paper we stated that a SPOI must have access to at least two wholesale backhaul providers, but in our final framework we softened this to refer to a SPOI having capability for third parties to offer wholesale backhaul.

29. In our view, prescribing each of the nine additional POIs promotes the long-term benefit of end-users in markets for FFLAS by promoting outcomes produced in workably competitive markets by:
 - 29.1 investing in new locations by removing capacity constraints at existing SPOIs and planning for future growth (s 162(a)); and
 - 29.2 ensuring services are of a quality that end-users demand by investing in new locations for resilience to spread risk where total end-user connections reach a threshold and to provide traffic load distribution across multiple locations (s 162(b)).
30. In terms of the requirements of s 166(2), and specifically s 166(2)(b):
 - 30.1 where third parties are located close to the nine POI locations, we believe they would have the ability to develop and offer backhaul services in a reasonably short timeframe, thereby providing competitive constraint in intra-candidate/inter-candidate area/national backhaul markets;
 - 30.2 we also believe that geographically consistent pricing under s 201 of the Act may provide a degree of pricing constraint on ICABS; and
31. On concerns over availability of handover services at pre-existing SPOIs, we reiterate that we will examine the legitimacy of reasons for amending a SPOI, including reasons for removal of a SPOI, in future change requests.
32. Overall, when considering 166(2)(a) alongside 166(2)(b), we find the requirements of s 166(2) are satisfied.

Attachment – List of SPOIs as at 16 February 2023

Chorus Limited points of interconnection

POI Identifier	Name	UFB geographic area (POI Area)	Region	Date prescribed
AR	Ashburton Exchange	Ashburton	Canterbury	19/12/2019
AVO	Avonhead Exchange	Christchurch, Rangiora and Rolleston	Canterbury	16/02/2023
BM	Blenheim Exchange	Blenheim	Marlborough	19/12/2019
CH	Christchurch Exchange	Christchurch, Rangiora and Rolleston	Canterbury	19/12/2019
CPC	Courtenay Place Exchange	Wellington	Wellington	19/12/2019
DN	Dunedin Exchange	Dunedin	Otago	19/12/2019
FG	Feilding Exchange	Palmerston North and Feilding	Manawhatu-Whanganui	19/12/2019
FOR	Forrest Hill Exchange	Auckland, Pukekohe, Waiheke Island and Waiuku	Auckland	19/12/2019
FJN	Frankton Exchange	Hamilton	Waikato	19/12/2019
GS	Gisborne Exchange	Gisborne	Gisborne	19/12/2019
GLF	Glenfield Exchange	Auckland, Pukekohe, Waiheke Island and Waiuku	Auckland	19/12/2019
GM	Greymouth Exchange	Greymouth	West Coast	19/12/2019
HN	Hamilton Exchange	Hamilton	Waikato	19/12/2019
HBN	Hastings Exchange	Napier and Hastings	Hawke's Bay	19/12/2019
IN	Invercargill Exchange	Invercargill	Southland	19/12/2019
JV	Johnsonville Exchange	Wellington	Wellington	16/02/2023
KNG	Kensington Exchange	Whangarei	Northland	19/12/2019
LIN	Linwood Exchange	Christchurch, Rangiora and Rolleston	Canterbury	16/02/2023
LVN	Levin Exchange	Levin	Manawatu-Whanganui	19/12/2019

POI Identifier	Name	UFB geographic area (POI Area)	Region	Date prescribed
LYE	Lynmore Exchange	Rotorua	Bay of Plenty	16/02/2023
MAW	Marewa Exchange	Napier and Hastings	Hawke's Bay	19/12/2019
MS	Masterton Exchange	Masterton	Wellington	19/12/2019
MDR	Mayoral Drive Exchange	Auckland, Pukekohe, Waiheke Island and Waiuku	Auckland	19/12/2019
MOD	Mount Eden Exchange	Auckland, Pukekohe, Waiheke Island and Waiuku	Auckland	19/12/2019
MRE	Mangere Exchange	Auckland, Pukekohe, Waiheke Island and Waiuku	Auckland	16/02/2023
MSY	Massey Exchange	Auckland, Pukekohe, Waiheke Island and Waiuku	Auckland	16/02/2023
NA	Napier Exchange	Napier and Hastings	Hawke's Bay	19/12/2019
NN	Nelson Exchange	Nelson	Nelson	19/12/2019
NU	New Plymouth Exchange	New Plymouth	Taranaki	19/12/2019
NVY	North East Valley Exchange	Dunedin	Otago	16/02/2023
OTE	Otumoetai Exchange	Tauranga	Bay of Plenty	16/02/2023
OU	Oamaru Exchange	Oamaru	Otago	19/12/2019
PM	Palmerston North Exchange	Palmerston North and Fielding	Manawatu-Whanganui	19/12/2019
PRM	Paraparaumu Exchange	Paraparaumu and Kapiti	Wellington	19/12/2019
POY	Ponsonby Exchange	Auckland, Pukekohe, Waiheke Island and Waiuku	Auckland	19/12/2019
PRO	Porirua Exchange	Wellington	Wellington	19/12/2019
QST	Queenstown Exchange	Queenstown	Otago	19/12/2019
RO	Rotorua Exchange	Rotorua	Bay of Plenty	19/12/2019
SOD	South Dunedin Exchange	Dunedin	Otago	19/12/2019
STK	Stoke Exchange	Nelson	Nelson	16/02/2023

POI Identifier	Name	UFB geographic area (POI Area)	Region	Date prescribed
TPO	Taupo Exchange	Taupo	Waikato	19/12/2019
TG	Tauranga Exchange	Tauranga	Bay of Plenty	19/12/2019
TU	Timaru Exchange	Timaru	Canterbury	19/12/2019
WKW	Waikiwi Exchange	Invercargill	Southland	19/12/2019
WN	Wellington Exchange	Wellington	Wellington	19/12/2019
WG	Whanganui Exchange	Whanganui	Taranaki	19/12/2019
WR	Whangarei Exchange	Whangarei	Northland	19/12/2019
WHK	Whakatane Exchange	Whakatane	Bay of Plenty	19/12/2019

Enable Networks Limited points of interconnection

POI Identifier	Name	UFB geographic area (POI Area)	Region	Date prescribed
HRB	Hornby	Christchurch, Rangiora and Rolleston	Canterbury	19/12/2019
RIC	Riccarton	Christchurch, Rangiora and Rolleston	Canterbury	19/12/2019

Northpower Fibre Limited/Northpower LFC2 Limited points of interconnection

POI Identifier	Name	UFB geographic area (POI Area)	Region	Date prescribed
ALX	Alexander St	Whangarei	Northland	19/12/2019

Tuatahi First Fibre points of interconnection

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

POI Identifier	Name	UFB geographic area (POI Area)	Region	Date prescribed
TGE	Tauranga East	Tauranga	Bay of Plenty	19/12/2019
TGW	Tauranga West	Tauranga	Bay of Plenty	19/12/2019
WAN	Whanganui	Whanganui	Manawatu-Whanganui	19/12/2019