

# Chorus response to MBIÉ's request for views on its revised approach to regulations to be made under section 226 of the Telecommunications Act 2001

2 August 2019



## CHORUS RESPONSE

- 1 This is Chorus' response to the Ministry of Business, Innovation and Employment's (**MBIE**) request for views on its revised approach to regulations to be made under section 226 of the Telecommunications Act 2001 (**Act**).
- 2 MBIE and the Commerce Commission are implementing parts of a regime that was put in place after five years of policy review and discussion. The outcome of that was to regulate fibre only in the UFB areas for each of the fibre providers – namely Chorus and local fibre companies (**LFCs**). Given the time required for the Commission to implement the new fibre utility regime, there are transitional legislative provisions in force at 1 January 2020 that regulate the transitional period for fibre.
- 3 MBIE needs to look at the coherence of the overall implementation. Fibre regulation is in place in LFC areas from 1 January 2020 as outlined above. Yet MBIE and the Commission have been incrementally consulting on duplicative or triplicate regulation being in place at the same time. We're not aware of any regulatory precedent or previously signalled policy, political or legislative intent to require such an approach.
- 4 We appreciate MBIE's consideration of our submission and agreed that an outcome where Chorus fibre services are subject to more restrictive regulation than other UFB suppliers would be disproportionate.
- 5 We agree with MBIE's proposal to modify the regulations so that price-quality regulation (**PQ**) does not apply to Chorus in respect of Fibre Fixed Line Access Services (**FFLAS**) in geographic areas where Chorus is not the UFB supplier (**other LFC areas**). We also consider it proportionate that information disclosure regulation (**ID**) is applied to LFCs in their areas given their status as incumbent providers of FFLAS in those areas.
- 6 We strongly disagree that ID should apply to Chorus in other LFC areas. The scale of Chorus' fibre services in those areas doesn't justify any regulatory intervention and the limited competition regulatory policy determined that the utility model (albeit in light form) should apply to the LFCs. We note that ID is not being proposed for any other providers of fixed line services in those areas.
- 7 The application of ID regulation for Chorus adds to a picture of implementation incoherence in non-Chorus LFC areas. Notwithstanding the existing LFC fibre deployments, Chorus is potentially subject to ID regulation on its fibre network and price and non-price regulation on its copper network. Other operators in those areas are not subject to any regulation and Spark's TSO requirements are removed. Below is a table illustrating the overall regulatory effect of this proposal.

	Chorus Fibre Areas	Non-Chorus LFC Areas	Rest of New Zealand
<b>TSO obligations</b>	Removed	Removed	Retained
<b>Chorus Fibre network</b>	PQ Regulation	[now proposed] ID Regulation	N/A
<b>Chorus Copper network</b>	<p><b>Commission view</b> Subject to copper STDs until Copper Withdrawal Code conditions are met<sup>1</sup></p> <p><b>Chorus view</b> Deregulated</p>	<p><b>Commission view</b> Subject to copper STDs until Copper Withdrawal Code conditions are met (NB: Whether those conditions are met may be subject to LFC actions)</p> <p><b>Chorus view</b> Deregulated</p>	Copper STDs continue
<b>Local Fibre Companies</b>	Unregulated	ID Regulation	N/A
<b>Other fixed line service providers</b> – e.g. Vector Communications, Vocus, CityLink, Vodafone	Unregulated	Unregulated	Unregulated

- 8 When designing the new regulatory framework MBIE set out its intent to follow regulatory best practice. One of the features of a regulatory best practice framework was "*clear necessity – regulation is only imposed where it is clearly justified, and deregulation considered where sufficient competition exists*".<sup>2</sup> ID is a form of regulation and would come at considerable cost. No case is made for it being a clear necessity in these circumstances.
- 9 In addition to our in principle objection, requiring Chorus be subject to ID in other LFC areas would require significant additional work to establish and manage an additional ID framework. While some may argue the solution to such complexity would be to maintain PQ regulation on Chorus in other LFC areas but this would be inconsistent with principles of good regulation to impose disproportionate regulation merely because it is practically expedient.
- 10 We also note that the Commission’s market monitoring powers under s9A of the Act would allow it to obtain information on Chorus’ activities in other LFC areas if necessary.
- 11 We understand the proposal for the regulations to come into force this year does not indicate an intention to bring PQ regulation into effect prior to 2022. This is important

<sup>1</sup> This reflects the view of the Commerce Commission on which we disagree. Chorus’ view is that we are no longer bound by STD terms once an area has been declared a Specified Fibre Area.

<sup>2</sup> MBIE, “Telecommunications Act Review: Options Paper” (July 2016), at p 17.

because elements of PQ operate independently of determinations by the Commerce Commission (e.g. declared services regulations and geographically consistent pricing). This means if the regulations provide for PQ to take effect prior to 1 January 2022, restrictions will apply prior to the implementation date that are likely to conflict with the transitional provisions set out in Schedule 1AA to the Act. This would create significant difficulty for Chorus and is clearly not what was intended when the implementation process was set out in the Act. Accordingly, we would appreciate the opportunity to review amended regulations prior to them being finalised so that we can be assured that they do not inadvertently trigger element of PQ that are not intended to be in effect until 2022.