

Submission template

Declaration of anchor and direct fibre access services: Exposure draft of regulations to be made under sections 227 and 228 of the Telecommunications Act 2001 (May 2021)

Instructions

This is the template for those wanting to submit their response to the *Declaration of anchor and fibre access services: Exposure draft regulations to be made under sections 227 and 228 of the Telecommunications Act 2001 (May 2021)* discussion document.

The Ministry of Business, Innovation and Employment (MBIE) seeks written submissions on the discussion document by 5pm on Tuesday 22 June 2021. Please make your submission as follows:

1. Fill out your name, organisation and contact details in the table, “Your name and organisation”.
2. Fill out your responses to the discussion document questions in the table below. Your submission may respond to any or all of the questions in the discussion document. Where possible, please include evidence to support your views, for example references to independent research, facts and figures, or relevant examples.
3. If you would like to make any other comments that are not covered by any of the questions, please provide these in the “Other comments” section.
4. When sending your submission, please:
 - a. Delete this first page of instructions.
 - b. If your submission contains any confidential information:
 - i. Please state this in the cover page or in an e-mail accompanying your submission, and set out clearly which parts you consider should be withheld and the grounds under the Official Information Act 1982 that you believe apply. MBIE will take such objections into account and will consult with submitters when responding to requests under the Official Information Act.
 - ii. Indicate this on the front of your submission (e.g. the first page header may state “In Confidence”). Any confidential information should be clearly marked within the text of your submission (preferably as Microsoft Word comments).

Note that submissions are subject to the Official Information Act and may, therefore, be released in part or full. The Privacy Act 2020 also applies.

5. Send your submission as a Microsoft Word document to CommunicationsPolicy@mbie.govt.nz

Please direct any questions that you have in relation to the submissions process to CommunicationsPolicy@mbie.govt.nz

Submission template

Declaration of anchor and direct fibre access services

Your name and organisation

Name	Tom Thursby
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Organisation/Iwi	Vodafone New Zealand Limited

[Double click on check boxes, then select 'checked' if you wish to select any of the following.]

The Privacy Act 2020 applies to submissions. Please check the box if you do not wish your name or other personal information to be included in any information about submissions that MBIE may publish.

MBIE intends to upload submissions received to MBIE's website at www.mbie.govt.nz. If you do not want your submission to be placed on our website, please check the box and type an explanation below.

N/a

Please check if your submission contains confidential information:

I would like my submission (or identified parts of my submission) to be kept confidential, and **have stated below** my reasons and grounds under the Official Information Act that I believe apply, for consideration by MBIE.

N/a

Questions for Submitters

Do you have any comments about basing the service description for the 100/20Mbps broadband anchor service on Chorus' Service Description for Bitstream 2 Accelerate service (June 2017)? Are you comfortable with the proposed changes? Do you think that additional changes should be made? Please explain why.

1

We agree that the broadband anchor service should be provided in accordance with a description of the service that is based on Chorus' UFB Services Agreement Bitstream Services: Service Description for Bitstream 2 Accelerate Reference Offer (June 2017) with appropriate amendments.

We consider that the proposed modifications to this service description as set out in Schedule 2 of the Draft Regulations are appropriate technical amendments and go no further than is necessary to provide a clear and workable service description for the 100/20Mbps broadband anchor service. We do not consider that the proposed modifications result in a service description that is materially different from the terms offered pursuant to Chorus' UFB Services Agreement Bitstream Services.

2

Do you agree that Chorus' UFB General Terms (December 2012), Operations Manual for Bitstream Services (October 2020), Service Level Terms for Bitstream Service (October 2020), the notice points of interconnection (December 2019), the TCF UFB Ethernet Access Service Description (May 2017) and the technical standards listed in Part 1 of Schedule 3, should be referenced as additional service description for the 100/20 Mbps broadband anchor service? If not, please explain why.

Yes, we agree that Chorus' UFB General Terms (December 2012), Operations Manual for Bitstream Services (October 2020), Service Level Terms for Bitstream Service (October 2020), the notice points of interconnection (December 2019), the TCF UFB Ethernet Access Service Description (May 2017) and the technical standards listed in Part 1 of Schedule 3 should be referenced as proposed. We consider that such referencing is necessary to ensure that there is no future disagreement as to the minimum technical standards and specifications that Chorus must meet when providing the broadband anchor service.

Section 208(7) of the Telecommunications Act 2001 provides that the purpose of anchor services is:

- (a) to ensure that baseband equivalent voice and basic broadband services are available to end-users at reasonable prices; and*
- (b) to act as an appropriate constraint on the price **and quality** of other fibre fixed line access services (emphasis added).*

To ensure that this purpose is met, it is important that regulations made pursuant to section 227 of the Telecommunications Act properly specify the quality dimensions of anchor services, and provide an effective regulatory fallback in the event that Chorus were to reduce the quality of other fibre services offered. In other words, anchor services provide both a baseline that enables measurement of the quality of alternative fibre services – and a constraint on Chorus' ability to reduce the quality of those services. Logically, this requires the quality dimensions of anchor services to be specified with some precision in regulations.

However, we also note that if Chorus wished to improve the price or quality terms of anchor services, or provide services in a different way while maintaining quality, regulation should make provision for this where it is both supported by and agreed to by retailers.

3

Do you have any comments about basing the service description for the voice anchor service on Chorus' Service Description for baseband service (June 2017)? Are you comfortable with the proposed changes? Do you think that additional changes should be made? Please explain why.

We support basing the service description for the voice anchor service on Chorus' Service Description for baseband service (June 2017). Our position on proposed and additional changes is as set out in response to Q1 above.

4

Do you think Chorus' UFB General Terms (December 2012), Operations Manual for Bitstream Services (October 2020), Service Level Terms for Bitstream Service (October 2020), the notice points of interconnection (December 2019), and the technical standards listed in Part 2 of Schedule 3, should be referenced as additional service description for the voice anchor service?

Yes, we agree that these items should be referenced in the service description for the voice anchor service.

5

Do you have any comments about basing the service description for the large-user direct fibre access service on Chorus' Service Description for direct fibre access services (June 2017)? Are you comfortable with the proposed changes? Do you think that additional changes should be made? Please explain why.

We agree that the service description for the large-user direct fibre access service should be based on Chorus' Service Description for direct fibre access services (June 2017).

6

Do you agree Chorus' UFB General Terms (December 2012), Operations Manual for DFAS (October 2020), Service Level Terms for DFAS (October 2020) and the technical standards listed in Part 3 of Schedule 3 should be referenced as additional service description for the DFAS?

Yes, we agree that these items should be referenced in the service description for the large-user direct fibre access service.

7

Do you think that the documents and standards incorporated by reference in the Draft Regulations sufficiently define the regulated services?

As stated above, we consider that achieving the purpose set out in s208(7) of the Telecommunications Act requires the quality dimensions of anchor services to be specified with some precision in regulations. This is reflected in s227(2) which provides, among other things, that regulations may prescribe the technical specifications of an anchor service and "any other circumstances" in which the anchor service must be supplied. The documents and standards that are incorporated in the draft regulations are sufficient to define the regulated services.

8

Do you agree that the period during which Chorus must provide the regulated services should be open-ended? Please justify your position.

Yes. We agree that the period of service provision must have a start date of 31 December 2021, aligned with relevant parts of the Telecommunications Act. However, there is no requirement for service provision to have an end date. We note that section 227(2) of the Telecommunications Act is permissive as to what regulations may prescribe, and where prescription is included in regulation there is discretion as to its form.

9

Do you do you have any concerns with the approach taken to setting the maximum price for the regulated services?

*The statutory purpose of setting prices set for anchor services is to ensure that these services are available to end-users at reasonable prices. Regulations must specify the **maximum** price that a regulated fibre service provider who is subject to price-quality regulation may charge for providing anchor services (s227(2)(d)). This maximum price must be **based on** the maximum price that may be charged for providing the service under a UFB contract (with an annual CPI adjustment). Importantly, there is no requirement for regulation to set a maximum price for anchor services that is **equal to** the maximum price under UFB contract: regulations could set a lower maximum price. The maximum price under UFB contract is a reference point that the Minister must have regard to when determining an appropriate price for anchor services, and he cannot exceed this maximum price. But the Minister could, having regard to other relevant factors, set a lower maximum price for anchor services. This would still be “based on” the reference point of UFB contract prices. Such relevant factors should be identified and considered with reference to the statutory purpose of setting anchor service prices: i.e. ensuing these are available to end-users at reasonable prices. These factors could include affordability and digital exclusion factors.*

Do you have any other comments on the Draft Regulations?

10

No