



# **Telecommunications Act Review: Post- 2020 Regulatory Framework for Fixed Line services**

**Further Comments to the Ministry of  
Business, Innovation & Employment**

3 March 2017

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# 1 Executive Summary

The comments in this response focus on the proposed copper and TSO changes, rather than the future fibre framework, however we note that many of the final decisions related to the fibre regulatory regime still overreach into matters that would normally be the responsibility of the Commerce Commission under Part 4 of the Commerce Act.

Decisions regarding exempting LFCs from price regulation and setting of anchor products have an impact on the revised proposals to deregulate copper in LFC areas and removal of the TSO in fibre areas.

2degrees would support proposals to deregulate copper in LFC areas and remove the TSO for Local Residential Telephone Service in fibre areas if anchor products were defined on a national basis, i.e. if anchor products must be provided by both Chorus and LFCs, rather than only by Chorus in Chorus UFB areas.

National anchor product availability would provide certainty to RSPs and Government that these products would continue to be provided on reasonable terms in all UFB areas, even if LFCs are not subject to a revenue cap and if there is no competition from copper in LFC areas.

2degrees does not agree that copper can be relied on in LFC areas to constrain fibre offering by LFCs in the period until 2023:

- 2degrees' view is that copper is not a viable substitute in UFB areas and already offers an inferior service in UFB areas in 2017: 2degrees already offers UFB fibre at the same price as copper to consumers where UFB is available.
- In any case, the proposed deregulation of copper in LFC areas allows decommissioning of the alternative copper service that is argued will provide pricing discipline to LFCs over that period (recognising it is "nearing the end of its useful life").

2degrees is also concerned that the anchor product speed is set at the appropriate level for the period 2020 to 2023. 2degrees' base fibre plan already increased to 100/20 Mbps in 2016 (the proposed anchor broadband product level) and 2degrees offers customers higher speed broadband fibre services on demand.

2degrees supports allowing the TCF to develop a regulated code to address copper withdrawal processes.

## 2 Government decisions on fibre regulation & the impact on copper and TSO proposals

While the final proposals adopt a number of provisions of Part 4 of the Commerce Act, many aspects still extend into matters that would be the responsibility of the Commerce Commission under that regulatory framework. For example, this includes directing the Commission on aspects of the RAB valuation, determining that a revenue and not price cap approach should apply, decisions on not to price regulate LFCs and not to include copper and the Minister approving changes to the settings in 2024.

Our previous submission has outlined such concerns.

We understand this may be a pragmatic solution in terms of addressing the older copper framework and we agree this will significantly reduce the cost and complexity of adopting the BBM framework (see section 3), however we have greater concerns with this approach in relation to the setting up of the new fibre regulatory framework, which is untested and will apply to the large majority of fixed lines post 2020.

We consider any “guidance” provided should be high-level and not prescriptive, to help mitigate risks of unintended consequences when the Commission considers issues in greater detail. As we have previously submitted, this guidance could take the form of a Government Policy Statement, an existing mechanism under the Act. For example the Government is proposing to provide the Commerce Commission “guidance” regarding the RAB valuation methodology, including regarding the setting of the opening value of the RAB.

We do not repeat the more detailed comments of our earlier submissions here, but note that key concerns with the revised framework to apply to fibre include:

- The Government decision to exempt LFCs from price regulation;
- The setting of anchor products in 2017 with a revenue cap and the decision not to require that these anchor products are provided on a national basis.

Both of these decisions tie into the revised proposals to deregulate copper in LFC areas and remove the TSO in fibre areas.

### **LFCs not subject to price regulation**

We are not clear that LFCs are likely to be more competitive in their pricing and service delivery than Chorus over the period 2020-2023.

In our view, LFCs will be monopoly fibre providers in their areas and copper cannot be relied upon to provide a sufficient constraint on LFC fibre pricing over this period. 2degrees relies on LFCs for fibre products for both its residential and business customers.

2degrees considers copper broadband services are of inferior service quality and are not a viable substitute in UFB areas. Notably, 2degrees already offers consumers fibre for the same price as copper, where UFB is available, and has done so since launching these fixed services in 2015.

Further, under the current proposals copper can be decommissioned in LFC areas removing any price discipline.

At a minimum, to address this, the anchor products should be national anchor products, not only in Chorus areas, even if only Chorus is subject to the revenue cap.

This would:

- Provide certainty to RSPs and Government that anchor products would be provided at reasonable prices in all UFB areas;
- Support Government proposals to deregulate copper in LFC areas;
- Support Government proposals to remove the TSO in fibre areas.

### **Anchor products and availability**

We remain concerned that anchor products that set speeds in 2017 may not be appropriate in the 2020-2023 period.

Our base fibre product has already increased from 30/10 Mbps in 2015 to 100/20Mbps from 2016 (we do not sell lower speed fibre). We already sell higher speed fibre services based off Chorus 200/20 Mbps and gigabit/500Mbps services.<sup>1</sup> We do not consider copper is a substitute in those areas and note only a very small proportion of those customers that can get VDSL can receive a 100/20 Mbps service.

We support the Commission looking at these closer to the time, particularly given the revenue cap approach does not provide Chorus with the same incentives to innovate and sell commercial variants as under a price cap approach.

As noted above, we consider anchor products should be provided by both Chorus and LFCs, which will provide greater certainty to both RSPs and Government and support deregulation of copper in LFC areas as well as the removal of the TSO.

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<sup>1</sup> Our base plans are up to 100Mbps download, 20Mbps upload. Customers can opt for a Speed Boost that provides higher speeds (including up to 200Mbps or 900Mbps download). The 900Mbps service is based off the Chorus gigabit service and is named to reflect Commission concerns that consumer speed test results differ depending on the point of measurement, for example from a browser rather than modem).

### 3 Proposed Copper Service Regulation

#### **Copper deregulation in areas where there is UFB/other fibre available**

Normally, we would expect the Commerce Commission to determine whether a service should be deregulated.

That said, in principle 2degrees does not object to copper deregulation where an alternative UFB service or an alternative open access or competitive fibre service is available on reasonable access, including price, terms.

Further we agree this approach is likely to significantly reduce the complexity and uncertainty of the pricing framework for UFB services, although care will need to be taken to ensure no double-recovery occurs.

2degrees would be concerned if there were areas where fibre, but not open access fibre such as UFB or competitive fibre, was available, such that not all RSPs could continue to offer national fibre services.

We would also be concerned if the Government was relying on competitive copper services<sup>2</sup> to constrain LFC fibre pricing and these are decommissioned. Notably deregulation is in part because the “copper network is nearing the end of its useful life” and to allow for decommissioning.

The proposed deregulation of copper in LFC areas represents coverage in a significant portion of NZ. Crown Fibre states that LFCs are responsible for 30.6% of coverage under the UFB.<sup>3</sup>

National fibre anchor products available from both Chorus and LFCs would provide certainty that all consumers had access to basic fibre broadband services. As such, we would support deregulation of copper in LFC areas if there are national anchor products requiring LFCs must provide the same anchor products as Chorus.

#### **Copper regulation outside areas where UFB and other fibre services are available**

2degrees supports continued regulation of copper where no UFB service is available. 2degrees relies on the regulated UBA service to deliver broadband services to customers outside fibre areas.

#### **Copper pricing in regulated areas**

While 2degrees notes that under Part 4 of the Commerce Act the Commerce Commission would decide whether to roll over the existing prices or undertake a price reset, we consider the Government’s proposal that Chorus’ 2019 copper prices be rolled over without inflation adjustment as a cap (outside areas where there is fibre) is likely to be a pragmatic solution that provides the industry some certainty and stability and avoids additional complexity to the setting of fibre prices. It also allows the Commission to focus on addressing the new regulatory fibre framework in time for implementation.

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<sup>2</sup> Per above, these are not offered by 2degrees, who as a base offers UFB if UFB is available.

<sup>3</sup> Crown Partners, Company Partnerships. See <http://www.crownfibre.govt.nz/crown-partners/>

## 4 TSO changes

2degrees supports the proposed changes to the Telecommunications Service Obligation (TSO) for Local Residential Telephone Service. As set out in 2degrees' previous submission<sup>4</sup>, the current telecommunications environment is vastly different from when the TSO/Kiwi Share obligations were established. The concerns regarding continued availability and affordability of basic telecommunications services following Telecom's privatisation are no longer relevant for the large majority of New Zealanders that now have numerous potential providers of telecommunications services over multiple technology platforms (including copper, fibre, cable, mobile and wireless). These ensure that the TSO policy objectives are met.

Our view is that the TSO in these areas has had a distortionary impact on market competition and investment (including through consumer perceptions of 'free' local calling (despite a large upfront fee). We do not consider retail price control continues to be justified where there are multiple competitive alternatives, such as mobile bundles and alternative providers of home phone lines.

We consider that the new anchor products (which include a voice-only product) further support the removal of the TSO, however as noted above, these should apply nationally, not only in Chorus areas, ensuring availability to consumers in both Chorus and LFC UFB areas.

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<sup>4</sup> Review of the Telecommunications Service Obligations (TSO) for Local Residential Telephone Service, A Submission to the Ministry of Business, Innovation and Employment, 20 August 2013.

## 5 Consumer Protection Requirements

### **Regulated Code for Copper Withdrawal**

2degrees supports the development of a regulated code that sets out minimum customer protection requirements to address the future withdrawal of copper services.

We further support the TCF submission<sup>5</sup> that provides that the Act should allow for this code to be developed as an industry code, with allowance for Commission input where the industry is unable to reach agreement.

We consider the TCF is well-placed and informed to develop such a code, and could develop this well in advance of 2020.

### **Impacts on Consumers (Q7)**

As noted in responses above, in our view, consumers would be protected if anchor products were available on a national basis, rather than in only Chorus areas.

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<sup>5</sup> NZ Telecommunications Carriers Forum, Submission to MBIE on: Telecommunications Act Review: Post-2020 Regulatory Framework for Fixed Lines Services, 2017.