

The Chair
Cabinet Economic Growth and Infrastructure Committee

Review of the Telecommunications Act 2001: Final Decisions on Fixed Line Services,
Mobile Regulation and Consumer Protection

Proposal

- 1 This paper proposes:
 - refinements to the regulatory settings that will apply to fibre and copper fixed line services from 2020;
 - changes to streamline the regulatory processes for mobile markets;
 - improved consumer information and new retail service quality codes to improve the consumer experience of telecommunications service; and
 - repealing some redundant provisions in the Telecommunications Act 2001 (the Act) and updating various statutory references.

Executive Summary

- 2 As part of the Review of the Telecommunications Act, consultation has been undertaken on the regulation of fixed line services, mobile markets and consumer matters. I followed up with targeted consultation on the treatment of legacy copper services under the proposed new utility regulation regime from 2020.

Fixed Line Services

- 3 On fixed line services, I am proposing the following refinements to the overall regulatory scheme:
 - regulated copper prices will be inflation-adjusted every year;
 - the regulated fibre broadband anchor product should be an entry-level product, not the most popular product;
 - a small change to the valuation method for pre-2011 assets to simplify the calculations;
 - the Commerce Commission (the Commission) should not be required to assess the efficiency of pre-2020 investments; and
 - price-regulation of a fibre product used by Retail Service Providers (RSPs) for backhaul and to supply large commercial customers and by mobile network operators to provide fixed wireless services that compete against copper.

- 4 The changes do not have a significant effect on the overall regulatory outcomes. They will reduce compliance costs for Chorus and the Local Fibre Companies (LFCs) and encourage investment without a significant impact on the prices paid by consumers. They will also improve the predictability of the regulatory regime, avoid perverse outcomes, and promote competition.

Mobile Matters

- 5 I have assessed the overall level of competition in mobile markets. While the retail market is performing reasonably well in some areas, there are challenges in the wholesale market. To address these concerns, I am proposing streamlining the process for Commission investigations into regulating new telecommunications services, or upgrading certain services to price regulation (the Schedule 3 investigation process). I will also be writing to the Commission requesting that they undertake a study of the wholesale mobile market.
- 6 I consider that streamlining the existing Schedule 3 investigation process would be a proportionate first step for further improving the operation of the mobile market. The specific changes include:
- imposing a 'hard' deadline for the Commission to deliver its final Schedule 3 report to the Minister within 240 working days (120 working days for investigations into upgrading an existing regulated service to include price regulation);
 - making the requirement to hold conferences and public hearings optional (at the Commission's discretion);
 - making the undertakings a 'one shot' process (i.e. only allowing a single undertaking to be tabled, rather than successive, incrementally improved undertakings); and
 - providing the Commission with the power to recommend either a one or two-stage pricing process in its final report to the Minister.
- 7 These changes would strengthen the threat of regulation and allow for more timely intervention by the Commission when issues are identified.

Consumer Matters

- 8 The telecommunications sector generates more consumer complaints than any other sector in New Zealand. In my view, the current regulatory settings:
- have delivered insufficient information to support effective consumer choice in a rapidly changing environment;
 - are over-reliant on industry self-regulation;
 - leave room for improved consumer responsiveness by retailers; and
 - are modest in their attempts to safeguard consumer interests, compared to other similar overseas jurisdictions (for example the UK and Australia).

9 I propose additional interventions to augment the work underway by industry and the Commission to incentivise improved retail service quality for consumers. These interventions include:

- specifying sector monitoring responsibilities for the Commission, and reporting of information in a way that is more accessible to consumers;
- creation of powers to establish regulatory codes to improve retail service quality, if industry self-regulation is inadequate; and
- periodic review of the existing consumer Telecommunications Disputes Resolution Scheme (TDRS) by the Commission, to impose a credible threat of regulation if industry self-regulation is inadequate.

Other Residual Matters

10 I am also proposing some housekeeping of the Act. I propose repealing unused or expired provisions and updating references to current organisational names. I am also proposing to repeal a criminal offence in the Act: a prohibition on indecent telephone calls for pecuniary gain. It has been superseded by other changes to the criminal law over the last 30 years.

Background

The Telecommunications Act review

11 The Act provides the underlying economic regulatory settings for communications markets in New Zealand. Under section 157AA of the Act, the Minister for Communications must complete a review of the regulatory framework by 31 March 2019.

12 Following consultation, in April 2016, Cabinet agreed to high level policy decisions, to inform the next steps of policy development for the Review (EGI-16-MIN-0040 refers):

- a utility-style regulatory framework with ‘building blocks model’ (BBM) pricing for fixed line services (both copper and Ultra-Fast Broadband (UFB)) will be implemented from 2020; based on Part 4 of the Commerce Act (Part 4) which applies to electricity distribution businesses, gas pipeline companies, airports and Transpower;
- this regulatory framework will be established in the Act (rather than the Commerce Act 1986 (the Commerce Act)) alongside the existing regime for communications services; it will be administered by the Commission; and
- the current obligation to unbundle the point-to-multipoint parts of the UFB network from 1 January 2020 will be retained.

13 Cabinet supported consultation on the following options for promoting competition in mobile markets (EGI-16-MIN-0040 refers):

- streamlining the Commission’s process to recommend price regulation; and
- directly intervening to make roaming or co-location a price regulated service.

- 14 In July 2016, Cabinet sought feedback on detailed aspects of a reform package (EGI-16-MIN-0164 refers). A large number and variety of submissions were received, supported in some cases by expert reports (See Appendices 2 and 3).
- 15 In December 2016, Cabinet agreed to the detailed policy proposals for fixed line services (copper and UFB). The proposals focused primarily on the UFB networks operated by Chorus and LFCs (Chorus and the LFCs are collectively referred to as the UFB providers) and on parts of Chorus' copper network. Services delivered on these networks are referred to as fixed line services.
- 16 Cabinet agreed that fibre networks should be regulated under the new BBM regime, but copper should be treated differently. In areas where no fibre was available:
- copper would be subject to wholesale price caps, based on regulated prices in 2019; and
 - Chorus and Spark would still be subject to the current Telecommunications Service Obligation (TSO), which imposes minimum standards for the supply and coverage of basic copper-based services such as voice, dial-up and fax.
- In fibred areas, copper would no longer be subject to regulated price caps or the TSO.
- 17 Cabinet also noted the intention to separately bring proposals to Cabinet in early 2017 regarding mobile markets and consumer matters.
- 18 Public submissions were sought early this year on the proposal not to regulate the copper network under BBM, with a consultation document laying out all the key features of the proposed regulatory regime. Twenty submissions were received from industry, investors, consumer groups and other organisations.
- 19 This paper proposes refinements to Cabinet's previous decisions on the regulatory settings for copper and fibre, based on stakeholder feedback. This paper also provides proposals regarding mobile and consumer matters.

Comment on Fixed Line Services

- 20 The majority of submitters supported the proposal for utility-style regulation of fibre and the deregulation of copper in fibre areas. I have considered all the submissions and outline below the areas where I wish to refine the previously agreed regulatory settings. I have included as Appendix 1 an outline of the policy package, as previously agreed by Cabinet. I have shown the refinements proposed below as tracked changes. Stakeholder views from the most recent consultation process are outlined in Appendix 4.

Further de-regulation of copper

- 21 There was broad support for the proposal to deregulate copper in areas where an open-access fibre network is available. As fibre is rolled out further, the boundaries of the deregulated area will need to be regularly updated to match the boundaries of the fibre network. Two submitters challenged the need for the Minister to approve the change of boundaries, noting that this is largely a factual assessment. I agree that deregulation of copper (where there is newly deployed fibre) is a factual question which the Commission is well-equipped to assess

without Ministerial oversight. I propose that the Commission be responsible for ongoing deregulation of copper as fibre expands.

- 22 I also propose clarifying that where copper is deregulated, Chorus will no longer be bound by obligations contained in Subpart 4 of Part 2A of the Act. This part of the Act requires non-discrimination and equivalence of inputs for the copper network.
- 23 The regulatory design includes a requirement for the Commission to review the regulatory regime for copper, no later than 2023, to ensure it remains fit for purpose. The review could, for example, result in all copper being deregulated, or the copper services inside UFB areas being re-regulated on the same basis as copper outside UFB areas. I think the Commission should have more flexibility in timing to assess how the regulatory regime is unfolding. The Commission should be able to let the initial approach to copper go for longer (and gather more data) before a review, if it appears that things are going well. The Commission can always bring the review forward if it detects substantial mischief. I propose that the Commission must undertake the review before the end of 2025.
- 24 Outside areas where UFB or other fibre is available, Chorus was to be required to continue supplying regulated copper services at prices that will be capped at 2019 levels, without ongoing adjustment for inflation. Chorus suggested that the price for rural copper should be CPI-adjusted to support rural investment. Chorus is likely to face some inflation in the costs of maintaining the rural network. I recommend allowing CPI adjustments to the regulated copper prices from 2020. Spark already receives a CPI adjustment for the TSO retail voice service, so there should not be any impact on end users of voice services.

Specification of anchor products

- 25 Under the proposed model, suppliers subject to price-quality regulation will be prevented from earning monopoly profits through the imposition of a cap on revenue. They will also be required to offer a limited number of price-capped 'anchor' products within their networks. The purpose of anchor products is to ensure that basic voice and broadband services are available at reasonable prices, and to provide a discipline on the price and quality of other services provided by the regulated supplier. Two anchor products are specified for the initial regulatory period:
- a 100/20Mbps UFB broadband product; and
 - a voice-only UFB product.
- 26 Anchor products will be priced at 2019 levels for equivalent products (based on the contracted UFB prices at 31 December 2019), and will be adjusted annually at the rate of inflation.
- 27 RSPs were unanimous in their view that a 100/20Mbps product would not be an appropriate anchor product as most users would have higher expectations by 2020. Some suggested specifying a better (higher speed) product. Others suggested giving the task of specification to the Commission, including for the initial regulatory period, so that an appropriate decision could be made closer to the time. Chorus was comfortable with the anchor product set proposed above.

- 28 My officials have analysed the interaction between the revenue cap, and a popular anchor product set with the 2019 price. In some situations, the combination of these settings can produce perverse pricing outcomes for some end user-groups, with a cross-subsidy between residential and commercial users. This occurs if the actual costs of providing anchor products differ significantly from the initial regulated price.
- 29 In light of this analysis, I consider that it is important to clarify the policy intent behind anchor products. Broadband anchor products should be clearly designed to ensure that an entry-level broadband service is available at a reasonable price, rather than to directly control the price of the most popular product. An entry-level service will still function as a price and quality 'anchor' for a more popular mid-market product. I think it likely that, by 2020, a 100/20Mbps product will be an entry-level product. Fixing its price at 2019 levels (with inflation adjustments) will protect vulnerable users from sharp increases in prices in a time of regulatory transition. I also propose to specify clear criteria for entry-level anchor products and enable the Commission to modify the specification if the proposed 100/20Mbps product does not meet those criteria in 2020.
- 30 The Act currently protects regulated prices under Schedule 1 from being subject to Commerce Act review to avoid conflicts between the two regulatory regimes. I recommend that anchor product prices should also be exempt from Part 2 of the Commerce Act to avoid conflict between the two regulatory systems.

Valuing regulatory assets

- 31 To implement both information disclosure and price-quality regulation, the Commission will set methodologies for a valuation of assets used to supply fibre services. The valuation determines the opening value of regulated assets, which influences future prices charged by suppliers subject to price-quality regulation.
- 32 High level direction will be provided to the Commission in legislation confirming the approach to the initial valuation of these assets. This will require the regulated supplier to value assets by reference to costs actually incurred in constructing or acquiring those assets, which have not yet been recovered.
- 33 Valuation outcomes should be reasonably predictable given that the costs of the assets have already been collected during the UFB rollout from 2011 and disclosed to the Commission. LFCs have entirely new fibre networks and have recently incurred those costs. However, Chorus shares some assets built prior to 2011 (such as the underground ducts used to carry cables) between its copper and fibre networks. Some of these assets have been in use for decades (because they were originally used for copper services), and there is a question over how to value them.
- 34 Chorus contends that it is impossible to calculate the unrecovered costs for some pre-2011 shared assets with any accuracy. Even if it could be done, Chorus argue that it would be inappropriate to do so because a calculation that goes back through pre-2011 revenues and costs would result in asset values that either claw back past profits or protect the firm from the adverse consequences of past risks in an arbitrary way. Chorus suggests that a valuation based on the cost of replacing the assets should be used instead. The existing pre-2020 regulatory regime values copper at replacement cost, which has produced considerable uncertainty.

- 35 Spark has argued that shared assets should be valued based on the actual costs Chorus incurred in the past, which have not already been recovered. Spark does not support replacement cost valuations for shared assets. In their view, it may be appropriate to clarify that the Commission can estimate unrecovered costs if evidence is unavailable.
- 36 Having assessed the feasibility and impact of different valuation methodologies, my view is that:
- the rule for post-2011 assets should stand. These assets should be valued on the basis of the actual costs incurred by the supplier in constructing or acquiring those assets, which have not yet been recovered at 2020 (termed 'depreciated actual costs');
 - pre-2011 assets should also be valued on the basis of the actual costs incurred by the supplier in constructing or acquiring those assets. However, due to the difficulties in obtaining reliable information about the amount and recovery of those costs, the depreciated values recorded by Chorus in its accounting statements should be adopted (termed 'depreciated historic cost'); and
 - in either case a replacement cost valuation will not be acceptable because it is not an estimate of the historic costs incurred by the supplier.
- 37 This simplifies the calculations for pre-2011 assets by adopting generally accepted accounting practice as an estimate of unrecovered costs, and means that Chorus does not face arbitrary gains or losses for pre-2011 regulatory decisions or market conditions. The Commission will then be able to set methodologies to allocate the costs of shared assets between the copper and fibre networks based on end-user uptake (or other suitable indicators) over time.
- 38 I have also re-considered the requirement that costs of regulatory assets must have been 'efficiently incurred'. Chorus and the LFCs have argued that there is no justification for a backward-looking efficiency test to be applied to the opening value of regulated assets at 2020. They contend that the contract with Crown Fibre Holdings (CFH) required them to roll out in specific ways (such as passing schools and hospitals first) to meet policy objectives. In hindsight, the Commission may not consider this to be the most efficient way of building the network. The contracts were competitively tendered and CFH subjected them to intense scrutiny throughout the deployment process.
- 39 I agree that a backward-looking efficiency test is an unorthodox element in a BBM regulatory approach, which is concerned with ongoing incentives to innovate, invest and improve efficiency. Assessing the efficiency of past investment has no direct effect on future incentives and arguably simply results in a transfer of value from suppliers to consumers with no efficiency impact.
- 40 I therefore propose to omit a specific 'backward-looking' test, which reviews the efficiency of past investments. This will align the proposal with Part 4 of the Commerce Act where the Commission did not consider the efficiency of historic investment.
- 41 The Commission will have a role in pre-approving future expenditure and investment, if it is considered to be prudent and efficient, consistent with the framework applying to Transpower under Part 4 of the Commerce Act.

Direct Fibre Access Service (DFAS)

- 42 DFAS is a commercial fibre product that connects large commercial users to the network. It is used by RSPs for backhaul and to supply large commercial customers, and by mobile network operators to provide fixed wireless services that compete against copper. The shift to 5G mobile technology is expected to significantly increase demand for backhaul, as 5G is likely to require more densely deployed cell sites (four to five times the number of cell sites we have today). 5G is likely to be widely deployed in urban centres between 2020 and 2025.
- 43 As a non-anchor service DFAS pricing would be constrained only by the overall revenue cap. As revenue from DFAS is only a small proportion of Chorus' overall revenues, Chorus could raise DFAS prices significantly without much constraint from the revenue cap. If DFAS were an ordinary product, this would not be problematic. However, as fixed wireless (internet services provided over mobile networks) competes with the services offered by Chorus' copper networks, Chorus controls the price of one of the inputs to its competitors.
- 44 Chorus could increase DFAS prices to increase its competitors' costs and reduce competition.
- 45 Some users have argued that DFAS should be an anchor product. Anchor products are designed to provide some price stability to consumers. I am proposing instead that DFAS should be price-regulated. The price will be the 2019 contract price, adjusted for inflation. I also propose that this price will not be subject to Part 2 of the Commerce Act.
- 46 The regulatory framework will include a mechanism that, after 2023, enables the Commission to commence an investigation into:
- whether the unbundled fibre services should become (or in the case of DFAS, remain) price-capped products;
 - whether anchor product prices should become purely cost-based; and
 - whether the 'form of control' should change from a revenue cap to 'price caps' (where all services provided by a supplier are subject to price caps set by the Commission).
- 47 Certain conditions will need to be met before such an investigation could commence. I propose removing the condition that a particular threshold of fibre uptake is required before the investigation can commence. Specifying a threshold in legislation could create incentives for Chorus to influence fibre uptake levels to minimise the risk of triggering the threshold.

Effects on stakeholders

- 48 I have considered the overall impacts of the proposed changes on stakeholders. I believe the changes will have minimal short-term effects on consumers, as the changes are relatively small in scale. Where I have accepted Chorus' submissions, modest short-term losses for consumers (slightly higher prices) will be offset by better investment incentives that deliver long term gains.
- 49 Consumers will gain from the pro-competitive price regulation of DFAS.

- 50 CPI-adjustment of regulated copper prices will help Chorus in maintaining services in rural areas. Chorus will also gain greater regulatory stability from the decision to have an entry-level broadband anchor product. Changes to the valuation methodology for pre-2011 assets and the removal of a backwards-looking efficiency test will provide more certainty about its likely revenue after 2020. These factors will assist in encouraging Chorus to maintain its investment.
- 51 There is also an efficiency gain through simplifying the process for establishing the value of regulated assets and reducing the scope for long term regulatory uncertainty. The LFCs will also benefit from this simplification.

Comment on Mobile Matters

Current level of competition in the New Zealand mobile market

- 52 Competition in the New Zealand mobile market has delivered reasonable outcomes to consumers in recent years, both in terms of infrastructure investment and improvements in quality and pricing. Prices for bundles of mobile services have either fallen or remained steady. This has largely been the result of competition between the three vertically integrated mobile network operators (MNOs) (2degrees entered the market in 2009, joining Vodafone and Spark).
- 53 Vodafone, Spark and 2degrees operate competing mobile networks covering most of New Zealand. Vodafone and Spark also offer fixed wireless services (home internet delivered by mobile technologies). These networks are subject to various forms of control including regulatory and open access obligations under the Act, and requirements imposed through contract and spectrum auctions.
- 54 While the retail market is performing reasonably well in some areas, there are challenges in the wholesale market.
- 55 2degrees has a less extensive network than Vodafone and Spark, relying on a national roaming agreement with Vodafone to achieve national coverage. The roaming agreement allows 2degrees' customers to use Vodafone's network when they are outside 2degrees' coverage area. The Commission is currently reviewing the terms of the commercial national roaming agreement and Commissioners will decide if any further action is required in early May.
- 56 Mobile virtual network operators (MVNOs) (such as Warehouse Mobile) currently have minimal presence in the New Zealand market. This is in contrast to some other overseas jurisdictions. MVNOs purchase services in bulk from network operators on the wholesale market and on-sell them to retail consumers. The lack of MVNO entry in New Zealand may signal a poorly performing wholesale market for mobile services.

Current regulatory system for mobile markets

- 57 The Government encourages and supports a competitive mobile market through exercising a range of interventions, including regulation under the Act, Crown programmes such as the Rural Broadband Initiative (RBI), and radio spectrum allocation rules.
- 58 Regulation under the Act currently focuses on promoting competition. Schedule 3 of the Act enables the Commission (following an investigation) to recommend to the Minister for Communications that services be amended, regulated or deregulated.

- 59 In undertaking a Schedule 3 investigation, the Commission considers whether it should recommend changes to the regulatory status of a telecommunications service. In doing so, it must consider what regulatory status best gives effect to the promotion of competition for the long-term benefit of end-users of telecommunications services within New Zealand.
- 60 The three main categories of regulatory status for a telecommunications service are:
- *unregulated*;
 - *specified* (meaning the non-price terms of provision can be set by the Commission); and
 - *designated* (meaning both the price and non-price terms of provision can be set by the Commission).
- 61 The existing Schedule 3 process for regulating, amending, or deregulating a service is as follows:
- 1) *The Commission commences an investigation.* An investigation may be started by the Commission if it is satisfied that there are reasonable grounds for an investigation into the matter, either on its own initiative, or if requested by the Minister.
 - 2) *Access provider can submit voluntary undertakings* within 40 working days of the investigation commencing. This is an alternative to the normal processes. If the Commission accepts the undertaking it jumps to step 5 below.
 - 3) *Commission releases a draft report*, and invites submissions (which are due no later than 15 or 20 working days after the public notice).
 - 4) *Commission holds a conference or public hearing* within 10 working days after the closing date for submissions. If moving from specified to a designated service, the Commission has discretion to avoid this step (it must decide if the conference or hearing is in the public interest).
 - 5) *Final report released.* The Commission must make reasonable efforts to deliver its final report to the Minister no later than 120 working days after the initial public notice of the investigation (or 60 working days if the investigation is in relation to moving from a specified to a designated service).
 - 6) *Minister may request clarification from the Commission.*
 - 7) *Minister makes decision*, based on the Commission's recommendation.

Streamlining the existing regulatory processes

- 62 I propose to make the Schedule 3 process more effective by removing potential delays and giving the Commission greater flexibility in how it undertakes its work. I do not consider that the set of proposals would reduce the Commission's overall ability to deliver a robust investigation.
- 63 I note that the Commission already has tools to intervene in mobile markets and is beginning to address many of these issues through its existing powers. The main criticism of the existing powers is timeliness and I consider that the most efficient intervention would therefore be to streamline the Commission's processes.

64 The following table summarises my proposals relating to the Schedule 3 processes and the rationale for the changes.

Proposal	Rationale
<p>Set a 'hard' deadline for the Commission to deliver its final Schedule 3 report to the Minister within 240 working days (or a 120 day limit for investigations into changing a 'specified' service to a 'designated' service). This involves:</p> <ul style="list-style-type: none"> • removing the current requirement for the Commission to make reasonable efforts; and • doubling the current timelines in the Act, to help ensure the Commission has sufficient time to complete Schedule 3 investigations (under the new 'hard' deadline). 	<p>Provides parties with a strong incentive not to 'game' the process or proceed slowly for strategic reasons.</p>
<p>Making conferences and public hearings optional (at the Commission's discretion).</p>	<p>Reduces the time required when other means are available such as written or oral submissions, or holding smaller-scale or informal workshops or meetings.</p>
<p>Making the undertakings a 'one shot' process i.e. only allowing a single undertaking to be tabled, rather than successive, incrementally improved undertakings.</p>	<p>Reduces incentives to delay the process by proposing and then counter-proposing undertakings, and giving the access provider a strong incentive to put its best offer forward in the first attempt.</p>
<p>Providing the Commission with the power to recommend a one or two-stage pricing process.</p>	<p>Currently the Act requires both an initial pricing principle (IPP) and a final pricing principle (FPP). In some cases, such as copper pricing, this has led to extensive delays and uncertainty. The change provides the Commission with flexibility depending on the circumstances.</p>

65 It was proposed in the Options Paper that a hard deadline of 120 working days would be set. As noted above, I am now proposing a hard deadline of 240 working days, to ensure the Commission has sufficient time to complete an investigation. This hard deadline will still be shorter than many Schedule 3 investigations have taken in the past.

66 The Options Paper also proposed that the Commission would have the power to set an interim price during a Schedule 3 investigation. I am no longer proposing this on the basis that setting an interim price would pose significant practical difficulties, and could risk delaying the overall process considerably.

67 See Appendix 3 for a summary of stakeholder views, which generally support the changes to the previous proposals described above.

Comment on Consumer Matters

Problems exhibited in the telecommunications retail sector

- 68 The telecommunications sector generates more consumer complaints than any other sector in New Zealand. These complaints include issues of poor customer service, issues with network coverage and speed, difficulties with installations, misleading information, and billing disputes. There have been some high profile and successful prosecutions of telecommunications providers under the Fair Trading Act. The level of consumer dissatisfaction suggests that market outcomes have been mixed at best.
- 69 Wholesale quality standards are regulated in New Zealand. The Commerce Commission currently specifies wholesale quality standards. Under the proposed price-quality regulation for fixed line access services, the Commission will have greater ability to specify wholesale service quality across a number of quality dimensions.
- 70 In contrast, there are limited regulatory 'levers' to address consumer issues at the retail level. The Telecommunications Carriers' Forum (TCF) addresses issues affecting customers through industry developed codes and associated schemes such as the Telecommunications Disputes Resolution Scheme (TDRS). The TDRS has not been entirely effective as most consumers are unaware of it, governance of the scheme is not fully independent and membership does not cover the entire industry.
- 71 Relying on competition has not been as effective as hoped for in delivering high quality retail service. However, under threat of regulation, the industry has taken some steps to improve the TDRS by publicising it on their bills, introducing more frequent reporting, and formally including Chorus and the LFCs as part of the scheme. Chorus and the LFCs have also taken a number of steps to improve the timeliness and quality of their fibre installations.
- 72 While RSPs deliver good service for many of their customers, the systemic nature of the issues and their persistence indicates that more interventions are necessary at the retail level. Despite the improvements made by industry, the measures to address retail service quality have not gone far enough. Concerns about retail service quality are only covered by the Fair Trading Act if they involve misleading and deceptive conduct, so there is a gap to be filled.
- 73 I propose additional interventions to complement the work already underway by industry and the Commission. These will incentivise improved retail service quality for consumers.
- 74 Appendix 3 provides a summary of stakeholder views and likely reactions to this proposal. Consumer and user groups are likely to be in favour of the proposals but industry may be concerned about increased costs and scrutiny.

Consumer Policy Objectives

- 75 I propose three broad policy objectives for consumers in the telecommunications sector:
- i that consumers should be able to make informed choices about retail telecommunications services;
 - ii that consumers should be able to expect service quality at competitive standards, as well as competitive prices; and

- iii that if problems arise, there should be efficient and responsive complaint and dispute resolution procedures.

76 To achieve these objectives, I propose three new initiatives.

Strengthening section 9A of the Act to facilitate informed consumer choice

77 Section 9A of the Act requires the Commission to monitor competition in, and the performance and development of telecommunications markets. The Commission may also conduct studies into any matter relating to the industry or the long term benefit of consumers. When the Commission does this, the reports and summaries must be made publicly available.

78 I propose to require the Commission to specifically report on retail service quality. This will signal to industry that it is a high priority. This would not have any impact on other planned work under section 9A.

79 This proposal would provide more useful, regular information for consumers when considering which RSP to sign up with. It would expand the type of information already reported on (it could, for example, include customer satisfaction surveys, or complaints per 100,000 for given issue) and would provide evidence to identify systemic issues at the retail level. Particular areas of focus could be:

- fault service levels;
- installation time and quality;
- installation problem resolution;
- contract terms and product disclosure; and
- other metrics relevant to the consumer experience, such as service value and quality.

80 There are privately-run comparison websites like 'Glimp' and 'Broadband Compare' which primarily focus on price comparisons. They do not report on retail service quality to the degree needed to support informed consumer choice.

81 Enhanced consumer information would ensure that there is a more effective means for consumers to make informed choices about retail telecommunications services (and deliver on the first policy objective outlined above).

82 The initiative will require an amendment to existing monitoring functions under section 9A of the Act.

Code-making power to facilitate improved retail service quality

83 Currently, the Commission cannot create a code to require industry to improve aspects of retail service quality. I propose enabling the Commission to establish regulated codes. This new power will be available if the industry fails to establish codes of a sufficient standard. The codes:

- will have wide industry coverage (beyond just TCF members);
- can apply to services not regulated under other parts of the Act;
- will focus on improving customer service quality at the retail level; and

- may create obligations between a retail supplier and a retail customer.

- 84 If a consumer believes that their retailer has breached the code, they can complain to the TDRS. The TDRS will be able to impose penalties on suppliers for breaches of the Code. If the Commission detects patterns of behaviour, or serious or systemic issues, such as a specific supplier repeatedly billing incorrectly for the same service, the Commission will be able to apply to the Courts for a remedy. This is similar to existing remedies under the Fair Trading Act 1986.
- 85 This code-making power will contribute to achieving the second consumer policy objective: consumers should be able to expect service quality at competitive standards, as well as competitive prices.

Monitoring and review of the Telecommunications Disputes Resolution Scheme

- 86 The TDRS is currently the only industry-regulated disputes resolution scheme for telecommunications providers.
- 87 Part 4B of the Telecommunications Amendment Act (No. 2) 2006 provides for the establishment of a new dispute resolution scheme through an Order in Council by the Minister for Communications. A new consumer dispute resolution scheme can be established:
- where the industry-based scheme has failed to achieve the purpose of facilitating the resolution of complaints by consumers against service providers; and
 - where the industry-based scheme failed to achieve the objectives of a consumer complaints system under Part 4B (including such things as ensuring that complaints are investigated in a timely manner, and that all reasonable steps are taken to investigate complaints).
- 88 I propose to introduce independent monitoring of the TDRS. The Commission will monitor improvements to the TDRS and periodically review the adequacy and functioning of the scheme. The Commission would recommend to the Minister for Communications any further improvements that the TDRS should make, whether an alternative scheme should be implemented, and/or whether its current performance triggers the threshold for implementing Part 4B of the Act.
- 89 This regular review of the TDRS would ensure there are efficient and responsive complaint and dispute resolution procedures (the third consumer policy objective).

Comment on Other Residual Matters

- 90 I am proposing to tidy up the Act by repealing unused, unnecessary or expired provisions and updating organisation references. I propose repealing the following sections or parts:
- the information disclosure provisions still remaining in Part 2B that have never been used;
 - residual terms determinations provisions in subpart 1 of Part 2 that have never been used;
 - line of business restrictions on Chorus that do not add significantly to the fundamental prohibition on participating in retail (section 69R and section 69S); and
 - sections within Part 2A relating to the structural separation of Telecom have served their purpose and are no longer needed.
- 91 I am also proposing repealing a criminal offence within the Act. This offence dates from 1987, is not technology neutral and has been made redundant by subsequent legislation.
- 92 Section 113 prohibits commercial phone sex lines. Since the decriminalisation of prostitution, it is anomalous to still specifically criminalise this form of sex work. The prohibition has also been rendered technologically obsolete as 'phone sex' can now be bought through online platforms that circumvent the need for a 'telephone device'. This section is also unenforced as 0900 phone sex numbers are advertised in New Zealand and no prosecutions have been taken under this section in recent years. This change is supported by the Ministry of Justice and Police.
- 93 I am also proposing to update some of the organisational references in the Act. 'Telecom' is defined in section 5, and is used as the name of the relevant access provider in Schedule 1 for a number of services and is also used in some other parts of the Act. Some of these references refer to Telecom, the historic entity but others should be updated to 'Spark'. The 'Ministry of Economic Development' is used in section 5 in the definition of 'chief executive'. This will be updated to 'Ministry of Business, Innovation and Employment'.
- 94 I propose repealing section 157AA requiring the Minister to review the regulatory framework as this review is now complete. I also propose repealing any other expired provisions in the Act.

Consultation

- 95 MBIE has consulted the following agencies on this Cabinet Paper: The Treasury, the Commerce Commission and, Te Puni Kōkiri. Police and Ministry of Justice were consulted on the repeal of the criminal offence. The Ministry of Culture and Heritage and Department of Prime Minister and Cabinet have been informed.
- 96 The Commerce Commission supports most elements of the streamlining proposition for Schedule 3. The Commission would prefer to retain flexibility in relation to the deadline.

97 Treasury notes the following on the consumer matters aspects of this paper:

MBIE has made a strong case that consumers presently face information asymmetries with respect to the quality of telecommunications services. This presents a strong intervention logic for the proposal to modify the Commerce Commission's reporting powers on retail service quality so that service quality information is made more readily available to consumers.

If greater information provision leads to more competition between providers, then this proposal alone may adequately address the issues that a regulated code or monitoring the Telecommunications Dispute Resolution Service (TDRS) would look to address. Our concern is that additional regulatory requirements could lead to increased compliance costs for the Commerce Commission. This could be felt by consumers if it led to an increase in the Telecommunications Regulation Levy. However we note that the TRL is fiscally neutral for the Crown.

We also acknowledge that enabling the Commerce Commission to institute a regulated code would help ensure providers are responsive to consumer demands. We also acknowledge that presently there may be no market incentive to improve or monitor the TDRS.

Financial Implications

98 The implementation of the proposed refinements to fixed line access services and Schedule 3 will not have any significant financial implications.

99 The implementation of the consumer policies will place additional obligations upon the Commission and require additional resources. The Commission has provided a rough estimate of s9(2)(f)(iv) for the additional resourcing. These additional resource costs may be partially offset through reprioritisation of the Commission's existing regulatory resource.

100 There is already a need for increased resourcing for the Commission to implement the new pricing framework for fibre. Contingent on Ministerial consultation, which I intend to undertake later this year, the Commission will be consulting with stakeholders on an open book basis to confirm the level of resourcing required for fibre regulation and the new consumer functions. I will then bring a paper to Cabinet to recommend changes to appropriations and changes to the Telecommunications Regulation Levy to recover those costs.

101 The financial implications are fiscally neutral for the Crown.

Human Rights

102 The proposals in this paper do not raise any inconsistencies with the New Zealand Bill of Rights Act 1990 or the Human Rights Act 1993.

Legislative Implications

103 These proposals have legislative implications in the form of amendments to the Telecommunications Act 2001.

104 The Telecommunications (New Regulatory Framework) Amendment Bill has s9(2)(f)(iv). PCO have already commenced drafting the Bill on the basis of the previous Cabinet decisions.

Regulatory Impact Analysis

- 105 The Regulatory Impact Analysis (RIA) requirements apply to the previously agreed proposal on the regulation of fibre and copper. A Regulatory Impact Statement (RIS) was prepared for those proposals. The changes proposed here are refinements that are within the scope of the high-level choices outlined in that RIS.
- 106 The significance of the changes to Schedule 3 processes do not warrant a Regulatory Impact Statement being conducted as they do not create any additional regulatory costs, but simply support greater timeliness in decision making.
- 107 The RIA requirements apply to the consumer proposals in this paper and a further RIS has been prepared and is attached.
- 108 The Regulatory Impact Analysis Team (RIAT) and MBIE's Regulatory Impact Analysis Review Panel (the QA reviewers) have jointly reviewed the RIS prepared by MBIE on consumer matters and associated supporting material, and consider that the information and analysis summarised in the RIS meets the quality assurance criteria.
- 109 The QA reviewers note this assessment reflects the availability of evidence of consumer problems and the quality of engagement with stakeholders to develop the package of preferred options to improve consumer outcomes. They see the active monitoring and reporting by the Commerce Commission of outcomes for consumers as a critical component of this package.

Publicity

- 110 The communications approach around this paper and associated issues will be managed by my office, in consultation with other offices as appropriate. I intend to publicly release a copy of this paper and associated decisions. The RIS will be published. I expect a moderate level of business and media attention on the outcomes of the review.

Recommendations

The Minister for Communications recommends that the Committee:

1. **note** that in September 2015, the Minister for Communications consulted on the regulatory settings for communications markets after 2020;
2. **note** that Ultra-Fast Broadband (**UFB**) pricing is currently controlled by contracts, which expire at the end of 2019, and there is widespread support for the Government to set in place a building blocks (**BBM**) pricing regime after that date;
3. **note** that in April 2016, Cabinet made high level decisions in relation to the new pricing framework (EGI-16-MIN-0040 refers):
 - 3.1. to move to a utility-style regulatory regime with a BBM pricing methodology for UFB services from 1 January 2020;
 - 3.2. if BBM price control is implemented for Chorus' UFB services, that it also be implemented for its copper services;

- 3.3. that these regulatory settings be established in the Telecommunications Act 2001 (the **Act**) (rather than the Commerce Act 1986 (the **Commerce Act**));
- 3.4. that the current obligation to unbundle the point-to-multipoint parts of the UFB network from 1 January 2020 be retained; and
- 3.5. that the Government support a policy of maintaining price stability in the transition to a new regime;
4. **note** that in April 2016, Cabinet authorised consultation on the following options for promoting competition in mobile markets (EGI-16-MIN-0040 refers):
 - 4.1. streamlining the Commerce Commission's process to recommend price regulation (the Schedule 3 process); and
 - 4.2. directly intervene to make roaming or co-location a price regulated service.
5. **note** that in August 2016, Cabinet agreed to the release of an Options Paper seeking input on ways to help promote competition in mobile markets;
6. **note** that in December 2016, Cabinet noted that the Ministry for Communications intended to separately bring proposals to EGI relating to mobile markets, and dealing with non-price issues such as dispute resolution, fault rectification and installation service levels (EGI-16-MIN-0361 refers);

Fixed line services

7. **note** that in December 2016, Cabinet agreed the detailed elements of the new pricing framework for fixed line services (EGI-16-MIN-0361 refers), including that:
 - 7.1. outside areas where UFB or other (non-UFB) fibre services are available, Chorus will be required to continue providing the 'unbundled bitstream access' (**UBA**) wholesale copper broadband product as well as the 'unbundled copper low frequency service' (**UCLFS**) wholesale copper voice product (which supports the Telecommunications Service Obligation) on the same terms as it is required to do so on 31 December 2019;
 - 7.2. the 2019 regulated prices for UBA and UCLFS, which have been set by the Commission, will be 'rolled over' annually in nominal terms and continue to apply to those copper services that remain regulated from 1 January 2020;
 - 7.3. on 1 January 2020, copper services will be deregulated inside areas where UFB and other (non-UFB) fibre services are available; and
 - 7.4. the Telecommunications Service Obligation for Local Residential Telephone Service (**TSO**) will be removed from Chorus and Spark inside areas with UFB or other (non-UFB) fibre from 1 January 2020;
8. **note** that following analysis of submissions and advice from my officials, I have decided on refinements to the detailed policy package implementing the pricing framework;

Further de-regulation of copper

9. **note** that:

- 9.1. on 14 December 2016, EGI agreed that after 1 January 2020, there will be a regular review mechanism whereby further deregulation of copper can take place as fibre is rolled out. Deregulation of a particular area will be subject to the Minister for Communications being satisfied that fibre is sufficiently widely available in that area [EGI-16-MIN-0361, paragraph 65];
- 9.2. following further submissions and analysis, the Minister for Communications now recommends a revised approach on the basis that it will streamline the administrative process;
10. **agree** to rescind the decision referred to in paragraph 9.1 above; and instead
11. **agree** that there will be a regular review mechanism whereby further deregulation of copper can take place as fibre is rolled out. The Commission will decide whether a particular area can be deregulated based on it being satisfied that fibre is sufficiently available in that area;
12. **agree** that in areas where copper is deregulated, it will no longer be subject to Subpart 4 of Part 2A of the Act, which requires non-discrimination and equivalence of inputs for the copper network;
13. **note** that:
- 13.1. on 14 December 2016, EGI agreed that the pricing framework for copper services be reviewed by the Commission no later than 2023 to ensure it remains fit for purpose, with the Commission making recommendations whether to continue with the arrangements or modify them (for example, by re-regulating copper services if necessary). [EGI-16-MIN-0361, paragraph 66.1];
- 13.2. following further analysis, the Minister for Communications now recommends a revised approach on the basis that it will streamline the administrative process;
14. **agree** to rescind the decision referred to in paragraph 13.1 above; and instead
15. **agree** that the pricing framework for copper services be reviewed by the Commission no later than 2025 to ensure it remains fit for purpose, with the Commission making recommendations whether to continue with the arrangements or modify them (for example, by re-regulating copper services);
16. **note** that:
- 16.1. on 14 December 2016, EGI agreed that the 2019 regulated prices for UBA and UCLFS, which have been set by the Commission, will be 'rolled over' annually in nominal terms and continue to apply to those copper services that remain regulated from 1 January 2020. [EGI-16-MIN-0361, paragraph 63];
- 16.2. following further submissions and analysis, the Minister for Communications now recommends a revised approach on the basis that it will produce better outcomes for consumers, investors and suppliers;
17. **agree** to rescind the decision referred to in paragraph 16.1 above; and instead

18. **agree** that the 2019 regulated prices for UBA and UCLFS, which have been set by the Commission, will be 'rolled over' annually (with a CPI adjustment) and continue to apply to those copper services that remain regulated from 1 January 2020;

Specification of anchor products

19. **note** that:
- 19.1. on 14 December 2016, EGI agreed [EGI-16-MIN-0361, paragraph 42] that the Commission will thereafter be responsible for updating the specifications of the anchor product set, prior to each regulatory period, to ensure that it:
- 19.1.1. provides an upper limit on pricing for a product that is attractive to a large number of customers; and
- 19.1.2. provides a price and quality 'anchor' for the other 'non-anchor' products provided by regulated suppliers;
- 19.2. following further submissions and analysis, the Minister for Communications now recommends a revised approach on the basis that it will produce better outcomes for consumers, investors and suppliers;
20. **agree** to rescind the decision referred to in paragraph 19.1 above; and instead
21. **agree** that the Commission will be responsible for updating the specifications of the anchor product set, prior to each regulatory period, to ensure that it:
- 21.1. provides an upper limit on pricing for an entry-level product; and
- 21.2. provides a price and quality 'anchor' for the other 'non-anchor' products provided by regulated suppliers;
22. **agree** that the anchor product prices will be exempt from Part 2 of the Commerce Act 1986 until such time as they become cost-based;

Valuing regulatory assets

23. **note** that:
- 23.1. on 14 December 2016, EGI agreed that the opening value of each regulated supplier's RAB will be determined by the Commission on the basis of the unrecovered historic costs incurred by the regulated supplier, but only to the extent that those costs were efficiently incurred. [EGI-16-MIN-0361, paragraph 24];
- 23.2. following further submissions and analysis, the Minister for Communications now recommends a revised approach on the basis that it will streamline regulatory processes;
24. **agree** to rescind the decision referred to in paragraph 23.1 above; and instead
25. **agree** that the opening value of each regulated supplier's asset base at 2020 will be determined by the Commission as follows:

- 25.1. Post-2011 assets should be valued on the basis of the actual costs incurred by the supplier in constructing or acquiring those assets, which have not yet been recovered at 2020 (termed 'depreciated actual costs');
- 25.2. pre-2011 assets should also be valued on the basis of the actual costs incurred by the supplier in constructing or acquiring those assets. However, due to the difficulties in obtaining reliable information about the amount and recovery of those costs, the depreciated values recorded by Chorus in its accounting statements should be adopted (termed 'depreciated historic cost');
26. **agree** that in either case a replacement cost valuation will not be acceptable because it is not an estimate of historic costs incurred by the supplier;
27. **note** that:
- 27.1. on 14 December 2016, EGI agreed that [EGI-16-MIN-0361, paragraph 25] in determining costs incurred for the RAB, the Commission must have regard to the Government's objectives of accelerating the widespread deployment of fibre-to-the-premise and encouraging end-user uptake, including by ensuring that:
- 27.1.1. efficient costs incurred as a direct result of meeting specific requirements in UFB or UFB extension programme contracts are included;
- 27.1.2. efficient costs of 'standard' and 'non-standard' installations are included; and
- 27.1.3. the value of the opening RAB is increased by the financial losses efficiently incurred by suppliers prior to 2020 to the extent that those losses arose from meeting specific requirements under the UFB or UFB extension programme contracts (including the timeframes for rollout and the prices that can be charged);
- 27.2. following further submissions and analysis, the Minister for Communications now recommends a revised approach on the basis that it will streamline regulatory processes;
28. **agree** to rescind the decision referred to in paragraph 27.1 above; and instead
29. **agree** that in determining costs incurred for the RAB, the Commission must have regard to the Government's objectives of accelerating the widespread deployment of fibre-to-the-premise and encouraging end-user uptake, including by ensuring that:
- 29.1. costs incurred as a direct result of meeting specific requirements in UFB or UFB extension programme contracts are included;
- 29.2. costs of 'standard' and 'non-standard' installations are included; and
- 29.3. the value of the opening RAB is increased by the financial losses incurred by suppliers prior to 2020 to the extent that those losses arose from meeting specific requirements under the UFB or UFB extension

programme contracts (including the timeframes for rollout and the prices that can be charged);

Direct Fibre Access Services

30. **agree** that the Direct Fibre Access Service (DFAS) will be price-regulated;
31. **agree** that the price for DFAS (from 1 January 2020) will be set at the 2019 level, and be adjusted annually at the rate of inflation;
32. **agree** that the price for DFAS will be exempt from action under Part 2 of the Commerce Act;
33. **agree** that the Commission will determine the price, non-price and quality terms for DFAS prior to each regulatory period (except the first);
34. **note** that:
 - 34.1. on 14 December 2016, EGI agreed [EGI-16-MIN-0361, paragraph 51] to include a mechanism that, after 2023, enables the Commerce Commission to commence an investigation at any time after a certain overall threshold of fibre uptake has been achieved (for example, 65 percent) into:
 - 34.1.1. whether the unbundled fibre services should become price-capped anchor products;
 - 34.1.2. whether anchor products should become purely cost-based;
 - 34.1.3. whether the 'form of control' should change from a revenue cap to 'price caps' (where all services provided by a supplier are subject to price caps set by the Commerce Commission);
 - 34.2. following further submissions and analysis, the Minister for Communications now recommends a revised approach on the basis that it will produce better outcomes for consumers, investors and suppliers;
35. **agree** to rescind the decision referred to in paragraph 34.1 above; and instead
36. **agree** to include a mechanism that, after 2023, enables the Commerce Commission to commence an investigation at any time criteria are met into:
 - 36.1. whether the unbundled fibre services should become (or in the case of DFAS, remain) price-capped products;
 - 36.2. whether anchor products should become purely cost-based; and
 - 36.3. whether the 'form of control' should change from a revenue cap to 'price caps' (where all services provided by a supplier are subject to price caps set by the Commerce Commission);

Mobile markets

37. **note** that following analysis of submissions, I have finalised a policy package to provide the Commerce Commission with enhanced capability to address emerging issues with wholesale mobile markets;
38. **note** that I will be writing to the Commission outlining my interest in it conducting a study on the wholesale mobile market;
39. **agree** to streamline the Schedule 3 processes to deliver more timely regulatory outcomes;
40. **agree** to set a 'hard' deadline for the Commission to deliver its final Schedule 3 report to the Minister within 240 working days (or a 120 day limit for investigations into changing a 'specified' service to a 'designated' service);
41. **agree** to make conferences and public hearings during the Schedule 3 process optional (i.e. at the Commission's discretion);
42. **agree** to make undertakings submitted during a Schedule 3 investigation a 'one-shot' process, allowing only a single undertaking to be tabled (rather than successive, incrementally improved undertakings);
43. **agree** to provide the Commission with the power to recommend either a one-stage (final pricing principle only) or two-stage (both initial pricing principle and final pricing principle) pricing process, when undertaking a Schedule 3 investigation;

Consumer matters

44. **agree** to the following three broad policy objectives for consumers in the telecommunications sector:
 - 44.1. that consumers should be able to make informed choices about retail telecommunications services;
 - 44.2. that consumers should be able to expect service quality at competitive standards, as well as competitive prices; and
 - 44.3. that if problems arise, there should be efficient and responsive complaint and dispute resolution procedures.
45. **agree** to modify the Commerce Commission's monitoring powers to:
 - 45.1. require reporting on retail service quality for telecommunications consumers; and
 - 45.2. make such information readily accessible to consumers;
46. **agree** to enable the Commerce Commission to establish regulated codes:
 - 46.1. with wide industry coverage;
 - 46.2. for the purpose of protecting consumers (with a focus on improving retail service quality); and

- 46.3. if the industry fails to establish a code of sufficient standard;
47. **agree** to the Commerce Commission having a power to apply to the Courts for remedies to address serious or systemic consumer issues;
48. **agree** to require the Commerce Commission to:
- 48.1. review the TDRS periodically to provide advice to the Minister for Communications on whether:
- 48.1.1. Part 4B of the Telecommunications Amendment Act (No 2) 2006 should be implemented;
- 48.1.2. the existing scheme requires improvement; or
- 48.1.3. an alternative disputes resolution scheme should be developed.

Other Matters

49. **agree** to repeal the information disclosure provisions still remaining in Part 2B of the Act;
50. **agree** to repeal the residual terms determinations provisions in subpart 1 of Part 2 of the Act;
51. **agree** to repeal sections within Part 2A relating to the structural separation of Telecom that are no longer needed;
52. **agree** to repeal sections 69R and 69S relating to Chorus' line of business restrictions;
53. **agree** to repeal the offence for indecent telephone calls for pecuniary gain (section 113 of the Act);
54. **agree** to update references from 'Telecom' to 'Spark' in the Act, as appropriate;
55. **agree** to update references from 'Ministry of Economic Development' to 'Ministry of Business, Innovation and Employment';
56. **agree** to repeal the requirement for the Minister to review the regulatory framework (section 157AA of the Act);
57. **agree** to repeal any expired provisions in the Act;

Next Steps

58. **note** that I intend to release a copy of this Cabinet paper and minute, when I make public announcements about the outcomes of the review of regulatory settings;
59. **invite** the Minister for Communications to issue drafting instructions to Parliamentary Counsel to give effect to the policy decisions described in this paper;
60. **authorise** the Minister for Communications to make decisions on any minor or technical matters that may arise during the drafting process; and

61. **note** that the Minister for Communications intends to report to the Cabinet Legislation Committee **s9(2)(f)(iv)** seeking agreement to introduce a bill that incorporates the changes agreed above.

Authorised for lodgement

Hon Simon Bridges

Minister for Communications

Appendix 1: Policy package for fixed line communications services

The Government's vision for communications

- 1 In October 2015, the Government announced a bold new connectivity target for areas outside the UFB footprint. Under this target virtually all New Zealanders, regardless of where they live or work, will be able to access broadband at peak speeds of at least 50 Mbps.
- 2 To achieve these goals, it is important that the regulatory regime is predictable, stable, and that network owners have the right incentives to invest and expand their networks. A regulatory framework that supports efficient private sector investment should decrease dependence on government intervention to drive network upgrades and meet the growing needs of consumers.

Markets for telecommunications services

- 3 There are three relevant markets that the overall policy package will address:
 - the market for Ultra-Fast Broadband (**UFB**) fibre fixed line services, which is growing as the Government and its partners continue to roll out the UFB programme and its extension programme;
 - the market for copper fixed line services, which has matured and is now reducing in size as customers migrate to UFB services and other technologies where they are available; and
 - the market for mobile services, which is served by three operators and is continuing to grow, including into 'fixed wireless' services which provide broadband using the mobile network.
- 4 The UFB network is being built and operated by Enable Networks in Christchurch, Ultrafast Fibre in the central North Island, Northpower in Northland (Local Fibre Companies or **LFCs**) and Chorus. Chorus is a wholesale only fixed line network operator, managing both the existing copper fixed line network which serves most of New Zealand, and rolling out the bulk of the UFB network build. Chorus and the LFCs are collectively referred to in this paper as **UFB providers**.
- 5 Chorus' copper services are already subject to price regulation under the Telecommunications Act. UFB pricing is currently controlled by the build contracts, which expire at the end of 2019. UFB services will be regulated under the fibre pricing framework from 2020, and copper services will be partly deregulated (and partly remain regulated under a copper pricing framework) from 2020.
- 6 Vodafone also operates hybrid fibre-coaxial (**HFC**) networks in Wellington, Christchurch, and Kapiti, and there are some commercial operators providing fibre services (usually to business and enterprise clients) in competition with the UFB and copper networks. These networks do not have significant market power and have not been regulated under the current regime. The Commission is able to recommend regulation of these services if required, and I am not considering imposing additional regulation of these services through this process.
- 7 Vodafone, Spark and 2degrees operate competing mobile networks covering most of New Zealand. Vodafone and Spark also offer fixed wireless services. These networks are subject to various forms of control including regulatory and

open access requirements under the Telecommunications Act, contractual requirements and requirements imposed through spectrum auctions.

Proposals

Pricing framework for fibre

- 8 Following the development of LFCs and the structural separation of Telecom and creation of Chorus, wholesale-only fixed line providers are now increasingly regarded as utilities. There is a strong case for regulatory treatment consistent with traditional utilities, by moving fixed line communications services to a pricing framework like that in Part 4 of the Commerce Act (**Part 4**), which applies to electricity lines businesses, gas networks, some airports and Transpower.
- 9 This new pricing framework is based on Part 4, which is familiar to investors, and only differs where it is necessary to recognise the unique features of communications networks and markets.
- 10 The key aspects of the pricing framework I am proposing for fibre are:
 - price-quality regulation based on the ‘building blocks methodology’ (**BBM**). In utility-style regulation this tends to focus on the overall revenues of the regulated business, but can also set pricing for individual services;
 - information disclosure regulation; and
 - input methodologies for the regulatory regime (the methodologies for determining the various inputs into the calculation of regulated prices).
- 11 I propose that this pricing framework apply to Chorus’ UFB network, and the UFB networks operated by LFCs. Chorus’ copper services will be dealt with separately, as discussed from paragraph 62 below.

Input methodologies

- 12 A key feature of the fibre pricing framework is ‘input methodologies’, which are methodologies for the various inputs into the regulatory framework. I propose to require the Commission to set upfront input methodologies that bind it to the approach it will subsequently take in applying the regulatory framework.
- 13 Having input methodologies developed under the framework will provide regulated suppliers, RSPs, investors, end-users and others with a transparent and predictable guide to how regulated assets will be treated.
- 14 Input methodologies will be binding on the Commission and regulated suppliers. They must be developed prior to 2020, and reviewed no later than every seven years (mirroring the Part 4 approach). There will be a set of mandatory topics that input methodologies must cover, and the Commission will have discretion to create additional input methodologies on topics it believes are necessary.

Two forms of regulation

- 15 I am proposing two forms of regulation within the new framework:
- **price-quality regulation**, which involves the Commission developing and applying a 'revenue cap' to the regulated revenues of suppliers, and requiring the provision of certain regulated services ('anchor' products) at certain quality thresholds and within price caps set by the Commission; and
 - **information disclosure regulation**, which involves the Commission developing and implementing requirements for suppliers to disclose certain information on their regulated businesses both publicly and to the Commission.

Implementation

- 16 I am proposing that both price-quality and information disclosure regulation apply to Chorus from 1 January 2020. In my view, this is the appropriate approach because it most transparently protects the interests of end-users given the size and nature of Chorus' business.
- 17 The scale and nature of Chorus' fixed line business, and the limited competition it faces, warrants this approach. Chorus operates the entire nationwide copper network and by 2020 will operate around two thirds of the UFB network nationally.
- 18 The considerations around LFCs are slightly different, and I am proposing that LFCs are only subject to information disclosure regulation from 1 January 2020.
- 19 LFCs face a different competitive landscape, level of market power and corporate structure to Chorus. LFCs are more likely to have their pricing constrained by the market. They compete against Chorus' copper network (and in the case of Enable in Christchurch, Vodafone's HFC network as well). They also face some countervailing buyer power from the large national RSPs. Due to their ownership structures, LFCs have fewer incentives to derive excessive profits than Chorus. Both Northpower Fibre and Ultrafast Fibre are partnerships between Crown Fibre Holdings (**CFH**) and end-user-owned electricity distribution businesses, which are only subject to information-disclosure obligations under Part 4. Enable Services Limited (CFH's UFB partner for the Enable Networks LFC) is fully owned by Christchurch City Council.
- 20 Importantly, I am proposing any LFC could become subject to price-quality regulation at any time after 2020 if an 'intervention test' is met. This threat of regulation should add to the incentives considered above.
- 21 I am proposing to include a specific intervention test in legislation, which would take the form of a short-form investigation by the Commission that could be triggered by the Commission's assessment of competition, resulting in a recommendation to the Minister for Communications whether or not to introduce price-quality regulation for a particular LFC or LFCs. This will provide a safeguard should changes occur in the competitive landscape such that they need to be more heavily regulated.
- 22 I propose the fibre pricing framework include a Schedule listing regulated suppliers and the forms of regulation that apply to each, and a process for

introducing or removing suppliers from the Schedule (and for modifying the form of regulation applicable to a supplier as appropriate).

Establishing the 'regulated asset base'

- 23 To implement both information disclosure and price-quality regulation, the regulator needs to first carry out a valuation of the relevant assets of regulated suppliers. This valuation determines the opening value of the 'regulated asset base' (**RAB**) and has a significant impact on the level of prices for those suppliers subject to price-quality regulation.
- 24 I am proposing that the fibre assets of regulated suppliers are included in their RABs. Valuation of these assets will be a complex exercise but outcomes should be reasonably predictable given that the costs of the assets have already been collected during the UFB rollout and disclosed to the Commission.
- 25 However, in order to minimise any residual uncertainty, I propose to provide high level direction on the approach to initial valuation of RAB assets. This will take the form of requiring the Commission to value the assets included in the RAB on the basis of the unrecovered historic costs incurred by the regulated supplier for assets commissioned in or after 2011 (termed 'depreciated actual cost'). Assets commissioned by Chorus before 2011 will be valued on the basis of 'depreciated historic cost' obtained from its accounting statements at 2011.
- 26 In either case a replacement cost valuation will not be acceptable because it is not an estimate of historic cost incurred by the supplier. ~~supplier, but only where these were efficiently incurred.~~
- 27 I propose to include a statutory definition of 'fixed line access services' which will make clear the elements that make up this regulated service. I intend to base the structure of this definition on that for 'electricity lines services' in section 54C of the Commerce Act.

Information disclosure regulation

- 28 The purpose of information disclosure regulation is to ensure that sufficient cost, revenue and other information about the performance of the regulated supplier is readily available to the regulator and interested persons to assess whether the purpose of the new regime is being met. It is an approach focussed on transparency, but which allows suppliers to operate their regulated businesses relatively freely outside the disclosure obligations. For example, there is no revenue cap or requirement to provide certain regulated products, and suppliers are free to set prices for their services.
- 29 The disclosure of relevant information enables both a supplier's customers and the Commission to assess the performance and pricing of its services. It enables customers to negotiate arrangements for service delivery against a backdrop of detailed information about the supplier, and enables the Commission to assess whether information disclosure regulation is achieving its goals or whether there are grounds to commence an investigation into introducing price-quality regulation.

Price-quality regulation

- 30 The following paragraphs 34 to 55 relate only to suppliers subject to price-quality regulation, and this only applies to UFB services.
- 31 The purpose of price-quality regulation is to promote outcomes consistent with the outcomes of competitive markets in markets where there is little or no competition and little or no prospect of competition emerging. In these circumstances, price-quality regulation constrains the overall revenues and the price and quality of services provided by regulated suppliers.
- 32 Price-quality regulation limits the ability of suppliers to earn excessive profits, provides incentives for suppliers to innovate and invest in their infrastructure, and ensures suppliers deliver services efficiently and reliably at a quality that consumers expect.
- 33 Price-quality regulation is currently included as part of the regulatory framework in Part 4. The operation of the Commerce Act framework has been durable and resilient, and stakeholders are generally comfortable with its performance. Accordingly I intend to mirror or base many aspects of the new framework for fixed line services on the approach in Part 4.

Revenue cap

- 34 When a RAB has been valued, the Commission then calculates a 'revenue cap' for each supplier that is subject to price-quality regulation. The revenue cap is sufficient to cover all of the various network and financial costs ('building blocks') that are incurred in the delivery of regulated services, and a reasonable margin, but limits excess profits. This is a standard approach used within Part 4 and enables regulated entities to earn no more revenue than is needed to cover a fair return on their regulated asset base, the depreciation costs of their assets, their operating expenditures and their tax requirements.

'Roll-forward' of price-quality regulation

- 35 The 'regulatory period' is the time frame for which the revenue cap and regulated prices are set, and is followed by a 'reset' and 'roll-forward' into the next regulatory period, and so on. I propose that the initial regulatory period be three years (2020-2023) given the unique nature of the transition between regulatory frameworks, but that thereafter the Commission have discretion to determine the appropriate length of regulatory period (within a range of 3-5 years).
- 36 The revenue cap is calculated for each regulatory period, and is updated prior to each reset. If the calculations result in a material change in the revenue cap in any given regulatory period, the Commission will be required to 'smooth' any change. For example, a significant upward or downward shift in the revenue cap could be implemented gradually over one or more regulatory periods, to alleviate any revenue shock to the supplier or price shock for consumers (as the case may be).
- 37 As the regime rolls forward, suppliers must comply with their revenue caps, and if the cap is exceeded in a given year then there is a 'wash up' which commensurately decreases the next regulatory period's (or several periods') revenue cap by the exceeded amount. If revenues are not sufficient to reach the revenue cap, then the 'wash up' occurs in the opposite manner – the revenue cap

for the next regulatory period (or periods) is increased by the shortfall amount. I propose this wash up mechanism be applied by the Commission prior to each regulatory reset.

- 38 As regulated suppliers make investments, they can generally have confidence those investments will be added to their RAB, thereby increasing the value of the RAB (and enabling recovery of the investments via an increased revenue cap in the next regulatory period). This 'roll-forward' of capital expenditure into the RAB is a particularly attractive feature of applying BBM to telecommunications and should materially improve incentives on suppliers to continue investing in upgrading telecommunications infrastructure as compared to the status quo.

Efficiency, prudence and other financial issues

- 39 ~~Given the high certainty of recovery of investments under price-quality regulation, there is a need to mitigate the risks of over investment and inefficient spending. I propose that the Commission will have a role in considering both the prudence and efficiency of past investments when valuing the initial RAB, subject to ensuring that costs incurred as a result of specific requirements of the UFB or UFB extension contracts, including 'standard' and 'non-standard' UFB installations, are included and that the opening RAB value will recognise financial losses incurred by UFB providers prior to 2020. The Commission will also have a role in pre-approving future prudent and efficient expenditure and investments.~~
- 40 Consistent with the framework applying to Transpower under the Commerce Act, I am proposing that the Commission have a set of rules and a process for pre-approving capital expenditure that is significant (in terms of value or nature), contained in input methodologies, to ensure that it would be efficient and prudent, and to provide predictability for suppliers subject to price-quality regulation on the extent to which major investments are likely to be recovered.

Services offered by regulated suppliers

- 41 Regulated suppliers subject to price-quality regulation will have three broad categories of services¹:
- **'anchor' products**, which are price and quality-regulated services determined by the Commission;
 - **'non-anchor' products**, which includes all other fixed line services provided by the regulated supplier, except for:
 - an **'unbundled fibre' product**, which must be provided under the UFB providers' 'open access deeds for fibre services' (the **Deeds**) from 1 January 2020 but which is priced by the supplier at its discretion. The unbundled point-to-point fibre service (DFAS) will be price-regulated.
- 42 Prices for all of the above products will be required to be 'geographically averaged', meaning that there must be a single price for the product within a supplier's network (there cannot be different prices in different places on the network for the same product).

¹ In addition to continuing to provide the rural copper broadband and voice services (discussed further below from paragraph 64).

Anchor products

- 43 Suppliers subject to price-quality regulation will be required to offer certain 'anchor' products within their networks. The purpose of anchor products is to ensure that basic, entry-level voice and broadband services are available at reasonable prices, and to create a price and quality 'anchor' for the other services provided by the regulated supplier.
- 44 There will be two fibre anchor products. Suppliers should have flexibility to develop and update their products in response to market developments. I believe this flexibility is important in the fast-evolving market for broadband services, but must be balanced against the need for some basic protections for consumers.
- 45 The two anchor products for the initial regulatory period will be specified by the Government, and ~~thereafter~~ the Commission will be required to update the anchor products to reflect the current requirements of ~~the average~~ an entry-level end-user². The two initial period anchor products are:
- a 100/20Mbps UFB broadband product; and
 - a voice-only UFB product.
- 46 The Commission will determine the price, non-price and quality terms for anchor products prior to each regulatory reset period. Criteria will be included in legislation for these decisions. I propose the Commission use its standard practice of issuing draft determinations for comment prior to issuing its final decisions in a final determination.
- 47 In order to avoid the potential for sharp price changes for end-users, I propose that anchor products be priced at 2019 levels for equivalent products (based on the contracted UFB prices at 31 December 2019), and be adjusted annually at the rate of inflation. This will require that the 'equivalence' obligations in the Deeds and Part 2 of the Commerce Act 1986 do not apply to anchor products (until such time as they are priced on a pure cost-basis, if that occurs, as discussed from paragraph 50 below).
- 48 Anchor products must be provided by regulated suppliers subject to price-quality regulation on request from an RSP, as long as the UFB network is in place and able to be connected to the relevant requesting premise (i.e. where 'communal' infrastructure is in place). Suppliers will not be required to extend their UFB networks just to deliver an anchor product.

Non-anchor products

- 49 Regulated suppliers will be free to determine the number, specification and pricing of all non-anchor products (excluding unbundled fibre products), subject to the revenue cap, the requirement for geographic averaging and some minimum requirements:
- all services provided by suppliers must comply with minimum network quality and reliability requirements that will be set by the Commission;

² I propose including a set of criteria, or a formula, in legislation for the Commission's updating of anchor products, in order to provide predictability.

- suppliers must conduct industry consultation on price and non-price terms for non-anchor products, and commit to ongoing service development and RSP engagement. Such a requirement would require regulated suppliers to publish a 'road-map' of future product development and to monitor changing end user demands; and
- suppliers must give at least 6 months' notice for changes to price or material non-price terms or withdrawal of non-anchor products.

Unbundled fibre products

- 50 Regulated suppliers are already required under the Deeds to provide an unbundled fibre service on the point-to-multipoint (**GPON**) parts of their networks from 2020. This obligation will continue, and so the requirements will be:
- regulated suppliers must provide the GPON unbundled fibre service from 1 January 2020 in accordance with the Deeds; and
 - regulated suppliers must continue to provide the unbundled point-to-point fibre services. The unbundled point-to-point fibre service (**DFAS**) will be price-regulated with the price set at the 2019 contract price, adjusted for inflation. This price will not be subject to Part 2 of the Commerce Act.

Commission investigation into regulated unbundling and/or change in form of control

- 51 I believe the regulatory framework I am proposing will create strong incentives for UFB providers to offer reasonably priced and innovative services. However, good regulatory design requires a degree of flexibility within the system. In addition, a regulatory threat of moving to a more restrictive form of control will sharpen the incentives on suppliers.
- 52 Accordingly, I propose to include a mechanism within the framework that, after 2023, enables the Commission to commence an investigation into:
- whether the unbundled fibre services should become (or in the case of **DFAS**, remain) a price-capped product;
 - whether anchor product prices should become purely cost-based; and
 - whether the 'form of control' should change from a revenue cap to 'price caps' (where all services provided by a supplier are subject to price caps set by the Commission).
- 53 Certain conditions will need to be met before such an investigation could commence (~~for example, a certain overall threshold of fibre uptake has been achieved (for example 65%)~~) and there must be reasonable grounds for the Commission's view that the framework is not achieving, or likely to achieve, its purpose. The process and criteria for making any final recommendation will be set out in legislation. The Commission would make a recommendation on any or all of the above matters and the final decision would be made by the Minister for Communications.

Open access deeds of undertaking

- 54 I propose that, subject to the change to exempt anchor products from ‘equivalence’ requirements, the Deeds be retained in their current form, and that they continue to apply to all fixed line services (both UFB and copper) provided by regulated suppliers.
- 55 I propose that, where a regulated supplier has more than one Deed applying to its business, these Deeds be consolidated into a single Deed without removing any of the obligations.

Other matters

- 56 I propose including a new purpose statement for the regulatory framework which mirrors the one for Part 4 of the Commerce Act, as follows³:

The purpose of this Part is to promote the long-term benefit of consumers in markets referred to in section 52 by promoting outcomes that are consistent with outcomes produced in competitive markets such that suppliers of regulated goods or services—

- (a) have incentives to innovate and to invest, including in replacement, upgraded, and new assets; and*
- (b) have incentives to improve efficiency and provide services at a quality that reflects consumer demands; and*
- (c) share with consumers the benefits of efficiency gains in the supply of the regulated goods or services, including through lower prices; and*
- (d) are limited in their ability to extract excessive profits.*

- 57 I believe that a merits review process is appropriate for some of the Commission’s decisions, because of the increased accountability it would bring to the decisions and given the long-term nature of some of these decisions in the fibre pricing framework. I propose to mirror the approach taken to merits review in Part 4 of the Commerce Act, as follows:

Input methodology determinations	‘Pure appeal’ merits review with ‘materially better’ threshold, same as section 52Z of the Commerce Act
Final determinations on information disclosure	Question of law appeal only
Final determinations on price-quality paths	‘Re-hearing’ merits review, same as section 91(1) of the Commerce Act

- 58 Consistent with Part 4, I propose that input methodology determinations would be subject to merits review on the ‘pure appeal’⁴ basis (but adopting a ‘materially better’ threshold). In addition, consistent with Section 91(1A) of the Commerce Act, to avoid the issue of multiple reviews of the same subject matter, I propose that reviews of final determinations on price-quality paths would be limited to matters not already reviewed under an input methodology review (therefore this would be a ‘re-hearing’ approach for these determinations).

³ Note that I intend to use the phrase ‘end users’ instead of ‘consumers’ in the purpose statement for the fibre pricing framework, as ‘end users’ is more appropriate in the context of fixed line services.

⁴ ‘Pure appeal’ involves a rehearing of the case on the merits, with any new or amended input methodology substituted by the Court – or referred back to the Commission – required to be ‘materially better’. No new material can be introduced to the appeal process.

- 59 Also consistent with Part 4, I am proposing a limited 'claw-back' requirement that would apply following some successful merits appeals. Claw-back is where regulatory prices or revenues are adjusted going forward to account for an earlier loss or gain from an action that was overturned by a merits review decision. For fixed line services, the most likely situation in which claw-back would occur is if an input methodology was overturned in a merits review process.
- 60 Under Part 4, the Commission must apply claw-back when resetting price-quality paths if input methodologies change due to court-ordered changes in an appeal process, and the amended input methodology would have resulted in a materially different price path (section 53ZB). Section 52D of the Commerce Act specifies that when the Commission specifies a claw-back will occur, it must not place undue financial hardship on the supplier and any price shocks to end-users must be minimised. I propose to mirror this approach.
- 61 Finally, I note that the existing regulatory framework for communications services in the Act will continue in operation – it already applies to certain mobile services and continues to play an important role in healthy functioning communications markets. In order to ensure the new framework interfaces in a clear and efficient way with the existing framework (and any overlaps or uncertainty are avoided), I propose to include a section making clear the respective roles and functions of the frameworks in the amended Act.

'Grandfathering' approach for copper pricing framework

- 62 I note that Cabinet agreed in April to include copper services in the fibre pricing framework, but following further submissions and analysis I am now recommending a revised approach on the basis that it will produce better outcomes and greater certainty for consumers, investors and suppliers.
- 63 Chorus provides fixed line services using both its fibre network and its legacy copper network. I have decided that the fibre pricing framework should focus only on fibre, and not copper, because fibre is the technology of the future and is most likely to be the monopoly asset. Chorus has agreed under the UFB programme to ultimately replace its urban copper network with UFB, and I expect that in time it will seek to withdraw copper services where fibre is available. Copper is accordingly a transitional technology which is likely to be replaced by newer technologies in the short to medium term. I am proposing that Chorus' copper services be treated as follows.
- 64 Outside areas where UFB or other fibre is available, Chorus will be required to continue providing the Unbundled Bitstream Access (**UBA**) wholesale copper broadband product as well as the Unbundled Copper Low Frequency Service (**UCLFS**) wholesale copper voice product (which supports the Telecommunications Service Obligation for Local Residential Telephone Service (**TSO**)). In these areas, copper customers do not have the option of switching to fibre and many have no alternative to copper at all. I note that alternative wireless broadband technologies are increasingly being deployed in rural areas to compete with the copper network, but at this stage I believe price regulation remains necessary on the copper network.
- 65 I propose that the 2019 regulated prices for UBA and UCLFS, which have been set by the Commission, should be 'rolled over' annually ~~in nominal terms with a~~ CPI adjustment and continue to apply to those services from 1 January 2020. This will result in certainty that customers who cannot access fibre will ~~not~~ only face

~~inflation-based increases in any prices for basic copper services (in fact they will experience a decline in the wholesale price in real terms, with no inflation adjustment to the price).~~

66 Inside areas where UFB or other fibre is available, I propose that copper services be deregulated because they are either facing competition or constrained by fibre regulation:

- copper services in areas where UFB is being rolled out by LFCs are competing with fibre;
- copper services in areas where other third-party fibre exists (or is being rolled out) are competing with those fibre services; and
- copper services in areas where UFB is being rolled out by Chorus are likely to be constrained by the regulated fibre prices.

67 This deregulation includes the removal of the obligations on Chorus under Subpart 4 of Part 2A of the Act.

68 I propose that there will be a regular review mechanism whereby further deregulation of copper can take place as fibre is rolled out. Deregulation of a particular area will be subject to the ~~Minister for Communications~~ Commerce Commission being satisfied that fibre is sufficiently widely available in that area.

69 In addition, I propose this arrangement is reviewed ~~no later than 2023~~ by the end of 2025 by the Commission to ensure it remains fit for purpose. The review could, for example, result in all copper being deregulated, or the copper services inside UFB areas being re-regulated on the same basis as rural copper (i.e. rolled over 2019 price caps). This review should result in a report to the Minister for Communications containing the Commission's recommendations. The final decision will be made by the Minister for Communications.

Telecommunications Service Obligation

- 70 I propose that the TSO obligations be removed from Chorus and Spark inside areas with UFB or other fibre, consistent with my stance on deregulating copper in these areas. The TSO is aimed at ensuring a basic voice service is available at a capped price, however customers inside areas with UFB or other fibre will have the choice of UFB fibre, copper, in some cases Vodafone's HFC, and up to three mobile networks for their voice services so there is no need for the TSO to continue in these areas. The TSO will be retained on Chorus and Spark outside areas with UFB or other fibre (to the outside coverage footprint that it applies to today).

Copper withdrawal

- 71 Where UFB or other (non-UFB) fibre is available, copper services will be deregulated. Accordingly, Chorus will have the option of withdrawing service and removing the copper network. Chorus should be able to do this according to its own timeframes, however I am proposing some minimum customer protection requirements will apply.
- 72 I am proposing to implement these requirements in a regulated code that applies to RSPs as well as Chorus and LFCs. ~~†~~The Code will specify minimum requirements that must be met before Chorus is able to withdraw copper:
- the availability of UFB services and the ability to install a UFB connection (if necessary) at no cost (except where the connection falls outside the 'standard' and 'non-standard' installation categories) to all affected premises in a reasonable time frame, to ensure end-users do not face a 'gap' without service when copper is withdrawn and before UFB is connected;
 - notice to be provided by Chorus, followed by a reasonable period of time to enable end-users and RSPs to prepare before copper is withdrawn;
 - services currently able to be provided over copper must be available over UFB (except for legacy services such as facsimile);
 - information to be provided to end-users about the change and the availability of services after the change (including in relation to the need for battery back-up on UFB services in the event of a power failure); and
 - anchor products are available on the UFB network.

Deregulation

- 73 Another important regulatory design principle is to provide for active deregulation where appropriate. I propose that the Commission be required to review whether any geographic area, service, asset or market should be deregulated prior to each regulatory reset. This would include looking at whether any competition has emerged for rural copper services such that they could be deregulated.

Transitional measures

- 74 There is a need to prescribe transitional arrangements that will apply in the event the Commission determines it will be unable to complete and implement information disclosure and price-quality regulation for UFB services by 2020.

- 75 I propose including a mechanism for temporarily 'freezing' the price and non-price terms for certain UFB wholesale products as set in the UFB contracts in December 2019 (likely the equivalent of the initial anchor product set) – to be triggered upon the Minister accepting a written recommendation from the Commission that such an action is necessary. Such a 'freeze' would be limited to a maximum of 24 months with the prior consent of the Minister for Communications. The regulated copper service prices will be 'rolled over' as proposed earlier.

Appendix 2: Expert reports submitted on the review of the Telecommunications Act

1. The following reports were submitted in response to the September 2015 discussion document:
 - HoustonKemp. (2015). Regulatory Framework Options for Chorus Post-2020. *Prepared for Chorus.*
 - Incenta. (2015). Post 2020: TSLRIC vs the Building Block Approach. *Prepared for Chorus.*
 - Stephen Littlechild. (2015). Regulating communications for the future: some options for customer engagement within a building block approach. *Prepared for Chorus.*
 - Plum Consulting. (2015). New Zealand's telecommunications policy - a way forward. *Prepared for Chorus.*
 - John Fallon. (2015). Issues Paper on Post-2020 Telecommunications Act 2001 Review. *Prepared for Spark and Vodafone.*
2. The following reports were submitted in response to the July 2016 options paper:
 - Incenta. (2016). Regulatory asset valuation for the Chorus copper and fibre networks. *Prepared for Chorus.*
 - Castalia. (2016). Future Proofing Telecommunications Regulation: Lessons from the Electricity Sector. *Prepared for Trustpower.*
 - Network Strategies. (2016). Selection of broadband anchor products. *Prepared for Vodafone.*
3. The following reports were submitted in response to the February 2017 fixed line discussion document:
 - Camorra research. (2017). Spark Fibre BB Speeds 2020. *Prepared for Spark.*
 - UMR Research. (2017). Broadband use and future needs. *Prepared for Internet NZ.*
 - Brian Williamson. (2017). Ensuring that anchor product regulation is effective; or how to avoid a regulatory Chimera. *Prepared for Chorus.*
 -

Appendix 3: Summary of stakeholder views on the Schedule 3 process and consumer matters

Streamlining the Schedule 3 process

- 1 There was broad support for the proposal to streamline the Commission processes; however, Vodafone and Trustpower outlined concerns regarding both the proposed 120 day hard deadline and the interim price setting powers.
- 2 Vodafone is concerned that the proposed simplifications to the Schedule 3 process could risk undermining its effectiveness. In particular, Vodafone considers that setting a hard deadline and removing the requirement for the Commission to hold conferences or public hearings would make Schedule 3 processes less comprehensive.
- 3 Further, Vodafone believes that giving the Commission the power to set an interim price while an investigation is underway would risk jeopardising commercial outcomes that are potentially out of line with the eventual outcome of the investigation.
- 4 Trustpower does not believe creating a 'hard' deadline would assist in streamlining Schedule 3 processes, especially where the issue is contentious (or is not clear-cut) and requires significant investigation. Situations where additional time is required by the Commission should be allowed.
- 5 Trustpower believes that interim prices create unnecessary uncertainty and complexity for the industry. Trustpower considers that allowing the Commission to set interim prices goes against best regulatory practice, as it is effectively price-regulating a service prior to deciding that the service should be regulated. This undermines the concept that the regulator has an open mind by assuming a certain outcome.
- 6 2degrees considers that the current Schedule 3 process is inefficient and should be streamlined. However, 2degrees considers that imposing 'hard' deadlines' has the potential to work against all parties and result in ill-informed or 'wrong' decisions (particularly where the proposed timeframes are significantly shorter than the process has taken in the past).

Consumer Matters

- 7 Consumer matters and opportunities for enhancing informed choice have been consulted on publicly throughout the review of the Act (through a Discussion Document released in late 2015, and an Options Paper released in mid-2016).
- 8 Prior to receipt of submissions on the Options Paper, MBIE held a series of workshops with industry (with participation from user groups, wholesale providers and RSPs), indicating industry preferences for change and to identify consumer issues of concern. These included:
 - maintenance of the TDRS;
 - retaining Part 4B as a regulatory threat;
 - the accountability of participants under the TDRS; and

- seeking improvements to the TDRS (for example to enhance consumer awareness and to improve effectiveness and governance).
- 9 Submissions to the Options Paper from user groups also sought change to better support informed consumer choice and transparency (to help overcome information asymmetry between the industry and consumers).
 - 10 These views are reflected in the issues and option set developed for the purposes of this Cabinet paper.
 - 11 Some stakeholders may argue that third party commercial consumer monitoring provides a better alternative to supporting informed consumer choice. As discussed in paragraph 80 of the Cabinet Paper, while third party commercial scrutiny and advice is available, this is primarily in the form of price comparison tools (and what is proposed in this policy package is to complement these tools by providing non-price comparison information).
 - 12 Industry will be concerned about the compliance costs of scrutiny from the Commerce Commission and sceptical of the impact of these changes on the level of consumer complaints, with regards to all of these proposals. However, I am confident that the further means for independent review of monitoring and performance, outlined in my proposals, will ensure wider consumer responsiveness from industry participants.

Appendix 4: Summary of Stakeholder views on Fixed Line Access Services

SUMMARY OF STAKEHOLDER VIEWS ON FIXED LINE ACCESS SERVICES

	Chorus	Enable	Ultrafast and Northpower	Spark	Vodafone	Vocus	Two Degrees	Trustpower	Unison	Internet NZ
Overall view	Support with large reservations.	Support	Support	Support	Support		Support		Support	Support
Deregulating copper	Support	Support	Support	Support	Support	Support	Support	Support with conditions.	Support	Support
Regulating copper in non-UFB areas	Disagree as deters investment. Want CPI indexing.			Support. Deregulate wherever competition exists.	Support. Deregulate wherever competition exists. Support RBI investment.	Support	Support	Support	Support	Support and favour further RBI investment.
Removal of TSO	Support			Support and remove TSO wherever competition exists.	Support but TSO levy should be removed.		Support	Support with conditions.		Support
Copper withdrawal and consumer protection	Support regulated code.	Support regulated code.			Support regulated code.	Support regulated code.		Support regulated code.	Support regulated code.	Support regulated code.
Anchor products	Agree with 100/20.			Want 1Gbps/500Mbps, or set by Commission.	100/20 too low. Should be set by the Commission. LFCs should supply anchor products.	100/20 too low. Should be set by the Commission. LFCs should supply anchor products.	100/20 too low. Should be set by the Commission. LFCs should supply anchor products.	100/20 too low. Should be set by the Commission.	100/20 too low. Should be set by the Commission.	100/20 too low. Should be set by the Commission.
LFC regulation		Support Enable subject to Information Disclosure regulation only.	Support applying only Information Disclosure to the LFCs.		Subject LFCs to anchor products	Subject LFCs to anchor products	Subject LFCs to price-quality regulation.	Subject LFCs to price-quality regulation.		
Unbundling		Agree with current proposal.		Commission discretion to impose price-regulated unbundling sooner.	Should have unbundled anchor product from 2020.	Commission discretion to impose price-regulated unbundling sooner.				Agree with current proposal.
Anti-competitive issues, EOI and Commerce Act	Propose removal of EOI and a Commerce Act carve-out for all fibre services.			Concerned about potential for anti-competitive behaviour.	Anchor products should be offered on EOI terms.			Should retain non-discrimination and EOI on copper even where deregulated.		
Asset valuation	Do not support unrecovered historical cost.			Support unrecovered actual costs method. Clarify that the Commission can estimate unrecovered historic costs if evidence unavailable.	Legacy copper assets also used for the fibre build should be excluded from the RAB.	Support use of 'historic unrecovered costs if efficiently incurred'.				
Efficiency adjustments	Do not support backwards looking efficiency test.	Do not support backwards looking efficiency test.	Do not support backwards looking efficiency test.							
Backhaul				Recommend that Commission consider backhaul under existing legislative provisions.	Currently regulated backhaul services should be included in the RAB to ensure consistent treatment.					
DFAS				Should add a DFAS (Direct Fibre Access Service) anchor product.		Should add a DFAS (Direct Fibre Access Service) anchor product.				

	TUANZ	Federated Farmers	Wainuiomata Rural	Allan Gray	TCF	Auckland Council	Paul Robertshawe	Felix Lee	Howell-Potgieter	Hamish MacEwan
Overall view				Support				Support	Do not support	Support
Deregulating copper	Support						Support	Support	Support	
Regulating copper in non-UFB areas	Support	Support but quality standards are low.	Support but quality standards are low.	Concerned about pricing. Want CPI indexing.		Want further rural investment.	Concerned about pricing. Want CPI indexing. Support a subsidy for rural services.	Support but quality standards are low.	Support. Deregulate wherever competition exists.	
Removal of TSO	Support, see anchor products as replacement for TSO.		Do not support.						Support	
Copper withdrawal and consumer protection	Support regulated code with consumer/user input		Support regulated code.		Support regulated code, drafted by TCF.			Support regulated code.	Do not support copper withdrawal.	
Anchor products	100/20 too low. Should be set by the Commission.			Anchor products should be as the most basic data product.				100/20 too low. Should be set by the Commission.	No need for voice anchor product.	Just provide Layer 1 anchor product.
LFC regulation								Support price-quality controls on Chorus, but not LFCs.		Subject LFCs to price-quality regulation.
Unbundling										Should have unbundled anchor product from 2020.
Anti-competitive issues, EOI and Commerce Act										
Asset valuation				Do not undervalue shared and reused assets.			Do not use TSLRIC approach.			
Efficiency adjustments							Do not support backwards looking efficiency test.			
Backhaul										
DFAS										