

Submission on
MBIE Discussion
Document:
Enhancing
telecommunications
regulatory and
funding frameworks

19 June 2024

C H ● R U S

Executive Summary

1. Chorus welcomes the opportunity to provide feedback on changes to the telecommunications regulatory and funding framework proposed in the Ministry of Business, Innovation and Employment (MBIE) *Discussion document: Enhancing telecommunications regulatory and funding frameworks* (MBIE Discussion Document).¹
2. The telecommunications regulatory framework must keep pace with rapidly changing market dynamics, consumer preferences, and innovation. A significant part of this is removing or **redesigning outdated aspects of the framework to reflect the reality of yesterday's technologies** becoming obsolete, promoting certainty for consumers and industry and clearing the way for modern, better-performing technologies to take their place.
3. Copper services no longer meet New Zealanders' **connectivity needs** and the network will be retired within a decade. Remaining copper consumers are transitioning to modern services, including those provided by fibre, wireless, mobile and satellite technologies. The copper network is already being switched off in certain areas in accordance with Part 2AA of the Telecommunications Act 2001 (Act) and the consumer protection provisions contained in the Copper Withdrawal Code (CWC) (together, the Copper Withdrawal Framework).
4. The Copper Withdrawal Framework applies to consumers within "**specified fibre areas**" (SFA). This means consumers outside of (typically) urban areas do not formally receive the same transition process provided under the Copper Withdrawal Framework. While we endeavour to help transition consumers off copper as smoothly as possible regardless of their location, a better policy approach is to apply the same formal framework across all consumers as they make their transition on to more modern technologies – particularly, as it is not economically feasible to build fibre to 100% of the population.
5. This could be achieved by expanding the existing design of the Copper Withdrawal Framework such that it recognises the full range of modern alternative technologies all communities now have access to – i.e., by amending Part 2AA (and Schedule 2A) of the Act to reflect the availability of those modern alternatives.
6. We recommend MBIE amend and update the Copper Withdrawal Framework at the same time as developing a coordinated long-term plan for the country's rural connectivity infrastructure² and review of existing rural policy and regulatory settings, including review and modernisation of the Telecommunications Services Obligation framework.³ We encourage policy makers to progress work on these amendments now to ensure sufficient time for implementation, industry processes to be updated, and remaining consumers smoothly transitioned to modern technologies ahead of **Chorus' copper network retirement**.
7. Additionally, we recommend:
 - a) **Postponing the expiry date for the statutory rights for fibre installations:** Postponing the expiry date until policy processes relating to the development of a longer-term land access rights regime are concluded. This is a better approach that would avoid significant uncertainty for consumers who wish to have fibre installed and practical implications for fibre providers and retailers.

¹ MBIE "Discussion document: Enhancing telecommunications regulatory and funding frameworks" (May 2024).

² We know that a ~\$16.5 billion economic prize is available to New Zealand for boosting rural connectivity. We need clear rural policy objectives and coherent regulatory settings to help unlock this benefit. See Rural Connectivity: Economic benefits of closing the rural digital divide, NZIER report (4 November 2022), page i. The total benefit of \$16.5 billion represents a present value assuming a discount rate of 5 percent (page 16).

³ Australia is currently undertaking a broad review of its existing universal services framework to ensure it reflects modern telecommunications markets, advancements in technology, and consumer preference. See: <https://www.infrastructure.gov.au/departments/media/news/have-your-say-modernising-universal-services-framework>.

- b) **Progressing a longer-term solution to the statutory rights for fibre installations:** Once expiry of the existing statutory rights for fibre installations has been postponed, a future-proofed regime should be developed. This should include consideration of widening the scope of installation methods and removing the requirement for a consumer to place an order with a retail service provider, to modernise the regime.
 - c) **Levies should be paid by all who benefit from operating within the telecommunications market:** If MBIE is concerned that the costs of implementing this proposal may outweigh the benefits, MBIE should undertake further analysis to better understand any undesirable implications to inform final decisions.
 - d) **The TDL amount remains set under Schedule 3B of the Act:** There is no clear policy direction or proposed initiatives provided in the MBIE Discussion Document to explain or justify the need for a more flexible approach to TDL-setting.
8. Our views on other issues and policy options proposed in the MBIE Discussion Document are contained in the Appendix to this submission.

Our submission

9. This is the public version of Chorus' submission on the MBIE Discussion Document.

A modern solution to facilitating copper transition

10. We are encouraged by the proposal in Section 7 of the MBIE Discussion Document which would enable the Commerce Commission (Commission) to assess and declare areas with access to non-regulated fibre networks as SFAs. However, this change would represent only an incremental update to the Copper Withdrawal Framework and without consequential changes may create more problems than it solves.⁴
11. **We are disappointed in MBIE's unwillingness to seek feedback on modernising the Copper Withdrawal Framework⁵** and consider that position to be inconsistent with the objective for changes contained within the MBIE Discussion Document: *to ensure that the telecommunications regulatory regime remains fit for purpose.*⁶ It is also inconsistent with principles of good regulatory stewardship.⁷
12. The MBIE Discussion Document and proposed amendments present an opportunity to modernise and future-proof the Copper Withdrawal Framework, particularly when Chorus is retiring the copper network within a decade and better alternatives to copper are available to all consumers.
13. We have withdrawn ~42,000 copper services and decommissioned ~800 cabinets under the existing Copper Withdrawal Framework. The process provided by the Copper Withdrawal Framework has provided consumers with a smooth, clear transition process. To date, we have received ~10 complaints, and none in relation to fax services. We will work with remaining copper consumers to transition them to alternative services where that is needed, but an amended Copper Withdrawal Framework is desirable to formalise and provide a consistent

⁴ We comment further on this in the Appendix, in response to question 33 of the MBIE Discussion Document.

⁵ MBIE "Discussion document: Enhancing telecommunications regulatory and funding frameworks" (May 2024) at [124].

⁶ MBIE "Discussion document: Enhancing telecommunications regulatory and funding frameworks" (May 2024), at [19].

⁷ New Zealand Government "Government Expectations for Good Regulatory Practice" (April 2017), most notably the principles relating to review, removal and/or redesign.

process for the phase out of copper services, promoting certainty for those remaining copper consumers and for industry.

14. Broader amendment to **MBIE's proposal** would ensure the Copper Withdrawal Framework is fit for purpose, modernised to reflect technology options now available to consumers that better meet their needs, and future-proofed to assist remaining consumers of copper services.
15. We discuss our reasons for this view and recommendations in more detail below.

Background to facilitating copper transition

16. In September 2015, **MBIE's view was** that the retirement of the copper network (in UFB areas) was an example of a change that could be held back or distorted by our regulatory systems. **The Government's** view was that regulatory requirements should support the delivery of quality, affordable services to consumers without compelling Chorus to be inappropriately bound to a certain technology.⁸
17. Part 2AA was enacted in this context, with the underpinning policy that copper services in areas where fibre is available (i.e. an SFA) could be deregulated and withdrawn in accordance with the Copper Withdrawal Framework. A product of its time, the policy was implemented when:
 - a) UFB fibre was still being built to (at that time) 80% of the population;
 - b) Fibre was the only modern technology choice of comparable quality to copper technology; and
 - c) Fixed wireless and mobile network footprints were expanding, but some of the ~20% of the population without access to fibre still relied on copper as their best (and in some cases only) source of voice and broadband services.⁹
18. **MBIE's view was that** completely deregulating copper services could lead to price shocks for some consumers, or possibly the withdrawal of service without comparable alternatives available.¹⁰ In addition, MBIE considered Chorus may face no competitive constraint on prices for its wholesale copper services if its copper network was completely unregulated.¹¹
19. The resulting legislative provisions established the Copper Withdrawal Framework:
 - a) To deregulate and withdraw the UBA and UCLF services in SFAs;¹²
 - b) For the withdrawal of the UCLL and the UCLL Backhaul services that were also deregulated under the amending legislation;¹³
 - c) To deregulate TSO services in SFAs;¹⁴ and
 - d) To establish the copper withdrawal code.¹⁵

⁸ **MBIE "Regulating communications for the Future"** (September 2015) at page 18. MBIE sought views on how to achieve this balance through more technology neutral network regulation, and how best to ensure a smooth transition if Chorus sought to decommission its copper network.

⁹ **MBIE "Regulatory Impact Statement – Implementing a post-2020 fixed line communications regulatory framework"** (8 December 2016) at [114].

¹⁰ *Ibid.*

¹¹ *Ibid.*

¹² Section 69AC.

¹³ See section 69AD.

¹⁴ See section 69AE.

¹⁵ See section 69AF.

20. The explanatory note to the amending Bill set out a clear vision for copper deregulation:¹⁶

In the areas where fibre services are available, the copper network by Chorus will be deregulated and the [TSO] obligations will cease to apply. Chorus may continue to operate the copper fixed-line network in these areas, but it will not be required to do so by regulation. Withdrawal of the copper network by Chorus in a given area will, however, be regulated by a copper withdrawal code that sets out minimum conditions that must be met before a copper line can be withdrawn.

Telecommunications market today

21. In stark contrast to that ~2016 context:

- a) UFB fibre has now been built to 87% of the population;
- b) Rural communities are no longer reliant on copper for voice and broadband services. The ubiquity of Low Earth Orbit (LEO) and geostationary satellite coverage, the coverage of the three mobile network operators' (MNO) mobile and fixed wireless services, and the availability of wireless internet service provider (WISP) services highlights that there are multiple - and better - alternatives to copper services inside and outside of SFAs. In particular, satellite coverage means that there are alternative services in all areas where copper services are available;
- c) In the foreseeable future competition between alternative services will continue to increase. For example, the number of LEO satellite providers will likely increase with Amazon expected to enter the New Zealand market imminently.¹⁷ Fixed wireless services will improve with MNOs already announcing rapid expansions to 5G coverage.¹⁸ Additionally, mobile quality will improve with 5G and likely expanded coverage from mobile services provided via satellite.¹⁹ Also relevant is the recent geographic restrictions being removed from local fibre companies (LFCs), which means we could soon see more LFC fibre built, and the result of any additional **changes to LFCs' constitutional settings (as proposed in Section 6 of the MBIE Discussion Document)**;
- d) Chorus (and other fibre network providers) continue to expand fibre networks to ensure as many of the remaining ~13% of the population as possible outside of the UFB footprint have access to the benefits of fibre. This includes Chorus currently building fibre to 10,000 additional premises;²⁰
- e) **Chorus' copper connections have decreased** from 1.7m in 2015 (when the current copper price path was set) to 175k in March 2024. The decline in copper services is much more rapid than was expected in 2016, reflective of the pace of deployment and uptake of alternative services noted in (b) above and retail providers choosing not to sell new copper services;²¹

¹⁶ Telecommunications (New Regulatory Framework) Amendment Bill 2017 (293-1) (explanatory note) at p2.

¹⁷ See, for example: <https://www.farmersweekly.co.nz/technology/rural-nz-first-for-satellite-liftoff/>.

¹⁸ Spark H1 FY24 Results Summary: <https://investors.sparknz.co.nz/FormBuilder/Resource/module/gXbeer80tkel4nEaF-kwFA/H1FY24-Results-SummaryFINAL.pdf>.

¹⁹ Ericsson "Make your mobile network ready for 5G voice" (2024) <https://www.ericsson.com/en/5g-voice>; and as announced publicly by MNOs: <https://one.nz/why-choose-us/spacex/>; <https://www.2degrees.nz/media-releases/2degrees-announces-satellite-to-celltrial-with-lynk>; and <https://www.sparknz.co.nz/news/Spark-to-launch-satellite-to-mobile-service/>.

²⁰ NZX Market Update "Chorus announces plan to take fibre to 10,000 more premises" (5 February 2024) <https://www.nzx.com/announcements/425712>.

²¹ For example, One NZ announced its intention to decommission its copper telephone exchanges: NZ Herald article "Copper phone network slowly being phased out" (29 April 2024) <https://www.nzherald.co.nz/nz/time-running-out-for-nzs-copper-phone-network/WHFP34FACVDQ3O6ICNYM63A5YE/#>.

- f) The copper network is fast reaching the end of its life, and Chorus has announced plans to retire the copper network within a decade.²² The ability to maintain and operate a near-end of life network to serve an ever-decreasing user base is increasingly challenging as replacement equipment becomes difficult or impossible to source. Copper connections, already susceptible to bad weather events, will experience increased faults and outages due to aged asset conditions. On top of this, the industry faces an aging workforce to help maintain the legacy network, where recruitment and training is not a viable option; and
 - g) The cost to serve remaining consumers of copper services is increasing. In particular, once the copper withdrawal programme is complete, and a large portion of the copper network is retired, the economics - specifically, the cost to serve the remaining segments - will increase significantly. This is not far away.
22. The Commission is currently investigating the deregulation of copper services.²³ Our view is that the only feasible outcome of that investigation is a recommendation to the Minister that the relevant copper services are deregulated.
23. To help it inform its baseline view for the copper investigation, the Commission collected connection data from across the industry as part of its Rural Connectivity Study. While this study will provide a useful snapshot and help regulators understand **"rural connectivity"** at a point in time (i.e. at June 2023), the rural market will likely have developed further with more modern connectivity options available to consumers by the time the Commission is required to make a recommendation to the Minister.

Modernising and future-proofing the Copper Withdrawal Framework

24. The Copper Withdrawal Framework, as currently drafted, has served its purpose in areas with access to (Chorus and LFC) fibre. Although there are issues with the existing framework,²⁴ it has supported a smooth phase out of copper services, promoting certainty for affected consumers and for industry.
25. However, consumers are choosing alternatives to copper services both inside and outside of the SFA, and moving on to mobile, fixed wireless, satellite and fibre. It is time to reflect these dynamics and broaden the scope of the existing Copper Withdrawal Framework so that it works for all remaining consumers of copper services – not just those with access to fibre.
26. The pathway to modernising and future-proofing the Copper Withdrawal Framework is straight forward: build on the existing design of the framework such that it recognises the range of modern alternative technologies all communities now have access to. This could be achieved by amending Part 2AA (and Schedule 2A) of the Act to reflect the availability of those modern alternatives so that a CWC applies to all remaining consumers of copper services, ensuring a clear and certain process for transition from copper for those remaining consumers.
27. This would future-proof the Copper Withdrawal Framework and facilitate a smooth retirement of the copper network well ahead of 2033, providing a clear pathway for industry as well as consumers.

²² Chorus "Chorus signals copper retirement within the decade; focus on rural fibre extension" (18 May 2023) <https://company.chorus.co.nz/media/releases/chorus-signals-copper-retirement-within-decade-focus-rural-fibre-extension>; and RNZ "Chorus plans to retire its copper network within next decade" (18 May 2023) <https://www.rnz.co.nz/news/business/490151/chorus-plans-to-retire-its-copper-network-within-next-decade>.

²³ See Commerce Commission "Copper Services Investigation under section 69AH of the Telecommunications Act – Approach paper" (22 April 2024).

²⁴ For example, the CWC does not provide resolution in circumstances where fibre is unable to be installed due to third-party consenting issues which fall outside of the scope of the statutory rights of access regime.

28. A modernised Copper Withdrawal Framework is consistent with MBIE's stated objective for changes contained within the MBIE Discussion Document: *to ensure that the telecommunications regulatory regime remains fit for purpose*.²⁵ It is also consistent with principles of good regulatory stewardship.²⁶
29. In 2015, MBIE stressed the dynamic nature of the telecommunications market, and the need for regulation to be equally dynamic and flexible to remain fit for purpose:²⁷

*...Our regulatory systems should continue to meet our policy objectives of promoting competition, innovation and investment for the benefit of end-users, but in a way that is suitable for the changing digital environment. It is important to provide the regulatory system with the **maximum flexibility to respond to change**, while **allowing and incentivising deregulation if technological changes** or new business models create new opportunities for competition that we have not anticipated. In a rapidly changing market, regulation also needs to be technology neutral, more timely, less complex and able to respond to market changes.*

30. Alongside work to modernise and future-proof the Copper Withdrawal Framework, we recommend policy makers consider whether New Zealand requires a universal services framework to guarantee a baseline service to replace the legacy Telecommunications Services Obligation framework that focuses on voice, dial-up and fax services.²⁸
31. However, this is a separate issue to modernising the Copper Withdrawal Framework and we would not support delaying amendments to Part 2AA. The reality is that the framework is out of date.
32. Chorus is working with its industry partners to help transition consumers and provide them with the appropriate information to make an informed decision. We have provided guidance around our plans to retire the network so that all stakeholders can take the relevant steps to prepare.
33. We are not alone in this. Several other jurisdictions are progressing plans to achieve full copper switch-off within this decade,²⁹ with supporting regulatory frameworks either implemented or in design to support the transition. Our regulatory framework needs to do the same.
34. We recommend starting work to amend the Copper Withdrawal Framework now. This is a crucial part of a coordinated long-term plan for the country's rural connectivity infrastructure and review of existing rural policy and regulatory settings. Beginning now will help ensure there is sufficient time for implementation, industry processes to be updated, and remaining consumers smoothly transitioned to modern technologies before the copper network retires.

Accessing shared property for fibre installations

The statutory rights expiry date should be postponed

35. Chorus is concerned by MBIE's suggestion that there will be a 'legislative gap' between the expiry of the existing statutory rights to access shared property to install fibre (Access Rights) on 1 January 2025, and any reinstated or permanent regime being implemented. This proposed

²⁵ MBIE "Discussion document: Enhancing telecommunications regulatory and funding frameworks" (May 2024), at [19].

²⁶ New Zealand Government "Government Expectations for Good Regulatory Practice" (April 2017), most notably the principles relating to review, removal and/or redesign.

²⁷ MBIE "Regulating communications for the future" (September 2015) at page 14.

²⁸ Australia is currently undertaking a broad review of its existing universal services framework to ensure it reflects modern telecommunications markets, advancements in technology, and consumer preference. See: <https://www.infrastructure.gov.au/department/media/news/have-your-say-modernising-universal-services-framework>.

²⁹ See for example Analysys Mason, "Carrot-and-stick' approaches to nudging the last customers off copper" (September 2023), analysismason.com; EU White Paper, Link: White Paper - How to master Europe's digital infrastructure needs? | Shaping Europe's digital future (europa.eu), dated 21 February 2024; and Telefonica website: Shutting down legacy networks: one step closer to the Digital Compass - Telefónica (telefonica.com).

discontinuity in the availability of the Access Rights will create regulatory uncertainty, inconsistent with good regulatory practice.

36. We recommend that the expiry of the Access Rights regime is postponed until the policy processes related to the long-term (and potentially permanent) existence of a land access rights regime, as proposed in the MBIE Discussion Document, are concluded and any new regime implemented.
37. Postponing the expiry of the Access Rights would:
 - a) avoid the significant uncertainty for consumers ordering fibre and practical implications for fibre providers who currently rely on, and have designed processes around, **the regime that would occur if there was a 'legislative gap' between the current expiry date and reinstatement**, and
 - b) facilitate greater UFB fibre uptake and reduce installation delays by allowing the Access Rights regime to continue until a longer-term policy decision is made on the future scope of that regime.
38. The Access Rights remain **a core component of Chorus' fibre-roll out programme – and New Zealand's UFB programme**. The regime is well-understood, and provides our customers, end users and Chorus' contractors with **certainty that fibre can be installed and in a timely manner** in circumstances where access to shared property is required.
39. An uninterrupted Access Rights regime is essential in the context of:
 - a) UFB fibre being available to 87 percent of New Zealanders, with uptake at 75 percent. 450,000 homes and businesses that can have fibre installed have not yet ordered a fibre installation.
 - b) Chorus taking fibre further to approximately 10,000 additional premises in FY25.
 - c) Chorus continuing to withdraw copper services in accordance with the Copper Withdrawal Framework. Over CCI [] premises are forecast to have their copper services withdrawn over the next 12+ months. These households will need to move to fibre or an alternative service. The Access Rights are critical to the efficient operation of the Copper Withdrawal Framework as they promote timely installation of fibre connections by Chorus and the LFCs for the benefit of end users whose copper services are being withdrawn.
 - d) Our analysis of use of the Access Rights between 1 July 2022 and 30 June 2023 indicates that approximately CCI [] additional connections would have failed due to consenting issues absent the Access Rights.
 - e) Increased housing intensification means more people are wanting to connect to fibre which means, in turn, a need for uninterrupted Access Rights to ensure timely fibre installations can occur.
40. Removing the Access Rights for an undefined timeframe would place a significant practical and administrative burden on both Chorus (and other LFCs) and our field service partners. Significant changes could be required to our current systems and processes, as well as additional resource commitments that could cause unnecessary delay and disruption to new connections.
41. As the MBIE Discussion Document acknowledges, relying on alternative (non-Access Rights) measures such as procuring individual consent or negotiating easements is uncertain (for the end-user and fibre provider), resource intensive, lengthy, and often contentious. Not having the

Access Rights available would also place pressure on Chorus' current supplier arrangements, as the certainty provided by forecast scheduling of connections that utilise the Access Rights will be lost. In addition, CCI [].

42. We also anticipate a rise in complaints if we were forced to cancel or delay installations due to consenting issues.

A longer-term solution is needed

43. Once expiry of the existing Access Rights regime has been postponed, we support development of a longer-term solution to a land access rights regime building on the existing Access Rights.
44. This would future proof the Access Rights regime, ensuring the factors discussed above are addressed and providing necessary certainty for consumers and industry.
45. The current Access Rights regime has, and continues to, assist in maximising UFB and non-UFB fibre uptake, ensuring installations requiring the consent of multiple parties are efficient and more people have the option to access the benefits of fibre, while limiting the impact on property rights. Chorus estimates that land access rights will remain an important part of future build activity, including potential network expansion over time.
46. We note Australia has had a permanent telecommunications land access framework in place for a number of years, which is broader in scope than New Zealand. For instance, Schedule 3 of the Australian Telecommunications Act 1997 (Cth) provides installation rights as well as immunity from state and territory planning laws. This regime is national, permanent and remains a core part of the regulatory system designed to enable the efficient and affordable provision of telecommunications services for the long-term benefit of consumers.³⁰
47. Although the NBN roll-out was completed in 2020,³¹ the Australian regime remains available to telecommunications carriers, recognising its ongoing importance to both new and existing networks (particularly expansion and augmentation over time). There is no requirement in Australia for a retail order before an installation can occur, and access rights are not limited to 'shared land'.
48. We recommend consideration be given to current international approaches when confirming the future scope and duration of the New Zealand regime.

Expanding category 2 installation methods

49. The benefits to consumers and industry provided by the Access Rights must continue to be balanced against the potential impacts on property rights from fibre installations. We think there is scope to expand the current parameters of Category 2 (medium impact method) installations whilst appropriately maintaining this balance and support further consideration of this as part of any longer-term regime.
50. Extending the maximum length of reinstatement area from 3 to 5 metres (for example), whilst retaining the overriding limitation on total reinstatement area of 4 square metres, would help to ensure more consumers have access to fibre whilst ensuring there are no material impacts on property.
51. Likewise, in the case of shared driveways, extending the maximum width of the reinstatement area to the full width of the driveway where that width is less than (for example) 3 metres (and

³⁰ See Telecommunications Industry Ombudsman (TIO) "Guidelines on Land Access Jurisdiction" (April 2022).

³¹ Minister for Communications, Urban Infrastructure, Cities and the Arts "Media Release – NBN Declared Built and Fully Operational" (23 December 2020).

in all other cases must not exceed 30% of the width of the driveway), would ensure more consumers can be connected whilst ensuring there are no material impacts on property.

Invoking the statutory rights without a retail connection order from an internet service provider

52. Chorus supports the option to allow the Access Rights to be invoked without a retail connection order being placed.
53. This change will help to ensure property owners who do not want to order a retail fibre service can make their property **'fibre ready'**, enabling the option of an **'intact'** fibre connection for the person at the property who will hold the retail contract. Examples of this type of property ownership include landlords who may wish to make their property fibre ready in advance of renting the property, and those selling their property but who do not themselves want a retail fibre service. It may also reduce inefficiencies for retail service providers where, under the status quo, property owners may create a retail account to make a fibre order through the retailer (ensuring the Access Rights can be used), and then cancel their retail account after the fibre installation.
54. Amending the above aspects of the land access regime would not materially change the processes which apply under current settings. Importantly, all affected property owners would have the same procedural rights as they do now, including access to the associated disputes resolution scheme (operated by Utilities Disputes Limited). However, these changes are required to modernise the regime.

Telecommunications levy settings

Identifying liable persons

55. We agree it is important that all those who are benefiting from operating within the telecommunications market are contributing to the costs of regulating that market. It is also important that the costs of providing services that would not be commercially available, but are in the public good to deliver, are covered.
56. We also agree that the levy liability regime (and all other key aspects of the telecommunications regulatory framework) should be flexible enough to respond to market changes, such as the evolution of new technologies for delivering telecommunications services.
57. Weighing against this is ensuring the regulatory settings promote competition for the benefit of end-users of telecommunications services. The MBIE Discussion Document highlights two considerations in the event other providers are brought into scope of the levy liability framework:
 - a) Providers brought into scope may pass any levy costs onto consumers, increasing the costs of these products.
 - b) A small risk of disincentivising operators from entering or continuing to provide their services in New Zealand, noting that they would only contribute to the levy if they meet the \$10 million minimum revenue requirement.
58. We expect the design of the liability provisions of the levy framework (notably the revenue threshold and proportionate scale of liability) would mostly address these considerations. If MBIE is concerned that the costs of implementing this proposal may outweigh the benefits, we recommend MBIE undertakes further analysis of these considerations to better understand any implications associated with the proposal.

Regulatory process to set the total Telecommunications Development Levy amount

59. We support maintaining status quo – the TDL amount remains set under Schedule 3B of the Act.
60. This is because there is no clear policy direction or proposed initiative provided in the MBIE Discussion Document to explain or justify the need for a more flexible approach to TDL-setting. For example, there is no indication that this is part of a coordinated long-term plan for the **country's connectivity infrastructure** or any policy reform. We request policy makers clarify the direction sought with this proposal before making any amendments to current settings.
61. We acknowledge that rural policy initiatives and settings have been piecemeal and increasing the TDL may help to address this by allowing for a more coherent and forward-focusing policy package. However, this must be subject to consultation to ensure options and decisions are made transparently, in partnership with industry, and subject to parliamentary scrutiny. Once the policy direction has been set, the current settings provide sufficient flexibility to change or increase the TDL.
62. In the event a mechanism to change the TDL is provided for via regulation, we recommend appropriate checks and balances are implemented to ensure such decisions are made appropriately and transparently. For example, we would encourage **a maximum 'cap' on the amount the levy could be raised to**, appropriate consultation processes, and clear parameters for what the TDL could be used for.

Appendix

Responses to MBIE Discussion Document questions

Answers to specific questions and proposals applicable to Chorus, and which are not otherwise provided in the body of this submission, are set out below.

1

Do you have any feedback about the proposed criteria to assess the options in the next phase of this work? Are there other criteria that we should consider?

We recommend that MBIE includes the following additional criterion:

- Existing regulatory design remains fit-for-purpose and forward-looking: Components of the regulatory system should be efficiently removed or redesigned where they are no longer delivering net benefits.

This criterion reflects the principle and expectation that regulatory systems be an asset for New Zealanders, not a liability.³² This principle is critical in the telecommunications sector, where markets develop rapidly because of technology change, consumer preference, and service innovation. In this context, delay in removing redundant regulation or redesigning it so it remains fit-for-purpose risks stifling innovation, distorting markets, and undermining the benefits the regulation was designed to provide.

Section 1: Consumer access to dispute resolution

2

Do you consider that the lack of a mandatory requirement for telecommunications service providers to belong to an industry dispute resolution scheme is a problem that needs to be addressed?

Chorus works with all retail service providers, regardless of whether they are a member of the industry dispute resolution scheme or not, to efficiently resolve complaints from consumers when a complaint involves us.

If MBIE wishes to explore changes to the regime, we recommend it balance the impacts of costs and incentives for market entry and expansion.

We note the Commerce Commission has taken steps to raise consumer awareness of retail service provider non-membership of the industry dispute resolution scheme to better inform consumer choices.³³ We support consumers being able to make an informed choice about their retail provider, which includes knowing whether the retail provider is a member of the industry dispute resolution scheme.

The distinction between retail and wholesale service providers within the industry dispute resolution scheme is important to preserve because it reflects wholesalers' inability to retail telecommunications services directly to customers and the consequent limited interaction wholesalers can have with retail customers as part of service delivery. It also recognises

³² New Zealand Government "Government Expectations for Good Regulatory Practice" (April 2017).

³³ Commerce Commission "Increasing Consumer Awareness of TDRS Non-Membership" (18 July 2022).

the commercial and contractual arrangements between wholesalers and retail providers (which include obligations relating to minimum service levels).

Section 2: Accessing shared property for fibre installations

See paragraphs 35 to 54 in the body of our submission.

Section 3: Telecommunications levy settings

See paragraphs 55 to 62 in the body of our submission.

Section 4: Identifying participants in the market

19

Do you consider there is a need for a registration requirement for telecommunications providers operating in New Zealand (when entering the market, as well as updating contact and other business details over time)? Why or why not?

If there is need for a comprehensive list of industry participants, we recommend the framework is balanced against the implementation and compliance costs associated with establishing and maintaining the list. Any costs must be proportionate to the harm or issue it is designed to address.

Section 6: Governance settings in 'other' local fibre company constitutions

Issue 1: Governance of permitted business activities

27

Do you agree that it is appropriate to consider changes to the constitutional settings that govern the other LFCs? Why or why not?

Consistent with our response to question 1 above, and the points we make at paragraphs 10 to 34 in the body of our submission, we support examination of legacy restrictions on UFB providers to determine whether they remain necessary given market developments. Given the completion of the UFB build, and (in particular) the extent of competition in fibre and non-fibre areas, we consider now to be an appropriate time to review not only the governance settings applying to the other LFCs, but also the legacy UFB restrictions that apply to Chorus to ensure they are optimally calibrated to facilitate competition.

29

What impact would there be on competition in other markets if the other LFCs were able to operate in those markets? Do you consider that this needs to be mitigated in some way?

In general, it's likely to be in consumers' interest for fibre network operators to be able to compete in more markets. Competition delivers good outcomes for consumers when there is a level-playing field between competitors. Chorus is subject to more regulatory restrictions than the LFCs. For example, Chorus is required to have geographically

consistent pricing and offer anchor services. Chorus is disadvantaged when competing because of the additional restrictions.

We don't think there is a rational basis for maintaining this distinction in regulatory treatment, particularly when the UFB contracts are ending, ownership of LFCs has changed, wireless and satellite networks are proliferating, and the copper network is being withdrawn. If MBIE believes that consumers are adequately protected in the absence of these constraints, the constraints should be removed from Chorus.

Issue 2: Process to seek agreement to operate at layer 3 or 4

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Do you support any of the options described above? Why or why not? Are there any other options that we should consider?

The restrictions on LFCs and Chorus with respect to the OSI model layers at which they can operate offer no value or benefit to consumers. The restrictions should be removed from the LFC constitutions and the restriction on Chorus removed from the Act by repealing section 69R.

Section 7: Other matters

Issue 1: Considering non-regulated fibre networks in specified fibre areas

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What are your views on the options we have identified? Do you have a preference, if so, why? Are there any options we have not identified?

Refer to the body of our submission, paragraphs 10 to 34.

In the event MBIE disagrees with progressing work on modernising and future-proofing the Copper Withdrawal Framework, and instead progresses this option as currently proposed, consequential amendments will need to be made to the copper withdrawal provisions in the Act. In particular, changes would be needed to avoid any unintended consequences where Chorus may be prevented from withdrawing copper services in accordance with Part 2AA of the Act in circumstances where a non-regulated provider is unable to, or will not, meet **that provider's obligations** under the CWC.