



Telecommunications (New Regulatory Framework) Amendment Bill

A Submission from InternetNZ

2 February 2018

Introduction

- 1.1 InternetNZ welcomes this opportunity to submit to Parliament's Economic Development, Science and Innovation Committee on the Telecommunications (New Regulatory Framework) Amendment Bill (the Bill).
- 1.2 We would appreciate the opportunity to appear in person to speak to this submission. Please contact Ben Creet, Issues Manager (ben@internetnz.nz, 021 2463228).

InternetNZ's vision is "A better world through a better Internet"

- 1.3 Our mission is to promote the Internet's benefits and uses and protect its potential. We do that with a cause in mind, that being the Open Internet. In doing this, we act as part of the New Zealand Internet community.
- 1.4 This vision and mission is why we engage on policy matters, including the Bill. We approach this Bill from a perspective which values the Open Internet, and which reflects and represents the value an Open Internet has for all New Zealanders.

Our policy principles

- 1.5 InternetNZ's policy work is guided by principles.



- 1.6 Of particular relevance to this submission are the principles that:
 - a) Internet markets should be competitive
 - b) the Internet should be accessible by and inclusive of everyone
 - c) laws and policies should focus on activity rather than specific technologies
 - d) laws and policies should work with the architecture of the Internet, not against it
 - e) the Internet is a nationally important infrastructure, so it should be protected.

The Telecommunications Act is the critical legislation to support quality Internet in New Zealand

- 1.7 We are submitting on the Bill because Internet access is important to New Zealand and to all New Zealanders.
- 1.8 Telecommunications are no longer about phone calls. The Telecommunications Act not only regulates a market, it sets the levers and incentives that underpin the ways that New Zealanders access the Internet.
- 1.9 From a user's perspective this is less a Telecommunications Bill and more an Internet Access Bill. Our interest in the Bill is focused around ensuring a ubiquitous fibre network that is doing the heavy lifting of New Zealanders' Internet usage.

The Internet is important to New Zealanders

- 1.10 In 2017, InternetNZ commissioned UMR Research to ask a range of questions of ordinary New Zealanders about the Internet.
- 1.11 Overall, we could see that New Zealanders are using the Internet more and more, and are expecting their needs to continue to increase. Among those surveyed:
 - a) 65% said their household was using the Internet more than three years ago. This was mostly the 44% using the Internet "a lot more"
 - b) 75% thought it was "likely" or "very likely" they would want a faster connection in three years' time
 - c) Few agreed that "copper services are generally good enough for rural users".
- 1.12 Asked to choose between preferred statements, 61% said it was not fair that many rural users have to put up with slower and less reliable copper Internet connections.
- 1.13 New Zealanders tell us they are using the Internet more and that three-in-four kiwis will want faster connections than they have now. Copper networks are not seen as appropriate infrastructure to deliver Internet services either in rural or urban environments.
- 1.14 The full survey results are attached as Appendix A.

2. Summary of Submission

We want the Amendment Bill to become law

- 2.1 The *Telecommunications (New Regulatory Framework) Amendment Bill* is an opportunity to set the conditions for New Zealand to realise the full potential of fibre and high speed connectivity.
- 2.2 Our vision for New Zealand's Internet market is one where competition, investment, and innovation deliver better opportunities for New Zealand. Our fibre network will soon reach 85% of New Zealanders, and we want to see its potential delivered. Beyond fibre, we want to see efficient investment and innovation to deliver better connectivity to all New Zealanders. To deliver that vision, we want a regulatory framework which supports efficient

innovation across all modes, and public investment to support those who will never be well-served by commercial operators alone.

- 2.3 We support the overall framework of the Bill. We think this framework can deliver the potential of fast fibre networks, and allow innovation in networks to benefit all New Zealanders.

Our key recommendation: delivering better Internet as a purpose of the Bill

- 2.4 The vision for better Internet is missing from the current purpose statement. This is a missed opportunity.
- 2.5 Section 191 (proposed under clause 23 of the Bill) defines the purpose of price-quality regulation for fibre. As currently drafted, it is a tautology, which fails to set a broader purpose.
- 2.6 We recommend amending s 191, to make it clear that this framework will deliver the potential of fibre networks in New Zealand. As draft wording, we recommend that s 191 reads:

S 191 Purpose of price-quality regulation

The purpose of price-quality regulation of fibre fixed line access services provided by regulated fibre service providers is to:

- a) promote the long-term interests of consumers
- b) deliver the benefits of fibre connectivity to consumers.

Further recommendations

- 2.7 We support the framework for anchor products under price-quality regulation. In our view, attractive anchors are needed to balance incentives and deliver the potential of fibre access for New Zealand. We think the proposed framework, combined with our suggested purpose statement, can deliver this outcome.
- 2.8 Implement the proposed rules for unbundling. We support innovation in connectivity, which unbundling should enable. In the interests of a predictable framework, we are prepared to accept the present proposal of unbundling as a backstop measure for the first regulatory period.
- 2.9 Maintain line of business rules in s 69R and 69S until the first regulatory review, to support a clear and predictable role for Chorus.
- 2.10 We agree with the approach to copper deregulation and withdrawal, as long as the Copper Withdrawal code results in protecting consumer interests as end users are transitioned from copper.
- 2.11 We support moves to protect consumers, including the consumer code and copper withdrawal code.

3. We support the overall framework

- 3.1 Overall, we strongly support the framework established under this Bill presented. We see an opportunity to refine some elements of the Bill for better price-quality outcomes, to untap the promises of fibre for all users.
- 3.2 We have engaged with other stakeholders throughout this reform process. We want a framework which benefits all stakeholders. Table one sets out

what we think everyone should be able to expect from the new regulatory framework.

Table One: What should we expect from our regulatory framework?

Users	
In UFB areas (80%)	<u>Ambitious goals to unlock the potential of NZ's fibre network:</u> a baseline of gigabit symmetrical speeds by 2025.
Beyond UFB (19%)	<u>Better fixed and wireless services,</u> with innovation delivering better options, and competition between modes driving great service and prices.
The most remote (1%)	<u>Better services delivered efficiently,</u> with wise public investment programmes like the RBI to reach users who'd otherwise miss out.
Those stuck on copper	<u>Better alternatives to copper,</u> and no big price increases.
Network Providers	
<u>Regulatory stability</u> to support efficient investments.	
Retail ISPs	
<u>A predictable path for service quality and prices.</u>	
Everyone	
<u>An efficient, transparent, and fair telecommunications industry,</u> delivering good services and price stability.	

- 3.3 In this submission we want to reaffirm what we believe the ideal market environment looks like, and how to achieve this vision. As per the table above, we have framed our vision around the outcomes we want to see for the stakeholders in this process.

Delivering predictability to support continuing investment

- 3.4 In previous processes, the key desire from all stakeholders was predictability. Maintaining the clear role of Chorus as a regulated wholesaler provides predictability for its business, its shareholders, and for retail service providers (RSPs). Its role is to provide world class fixed-line connectivity, as a key access mode supporting a vibrant consumer facing RSP market.

Managing the transition from copper to protect user interests

- 3.5 We support the deregulation and withdrawal of the copper network on a geographic basis in areas where fibre is available.
- 3.6 The old copper network is now “just another mode”. Deregulating copper in areas where fibre is available:
 - a) recognises copper is a legacy asset whose installation costs have long since been repaid
 - b) avoids a risk of cross-subsidy from fibre users. Combining nationwide copper and geographically contained fibre in one asset base would have risked this opaque cross-subsidy
 - c) allows competition from fixed-wireless and other modes to better serve users.
- 3.7 We believe there should be a commitment to a high quality copper withdrawal experience for end users.

Regulating fibre price and quality to deliver UFB’s potential

- 3.8 The aim of this Bill is to introduce effective price-quality regulation. Its success hinges on finding the right price-quality settings.
- 3.9 Purpose of Subpart 5 The proposed Section 191 (set out in Clause 23) establishes the purpose of price-quality regulation. This is defined as “to regulate the price and quality of fibre fixed line services”.
- 3.10 Price-quality regulation is undertaken for a purpose, it is not a purpose in and of itself. This purpose statement should say what price-quality regulation is meant to achieve, to guide to people who will be applying and interpreting the legislation.
- 3.11 We think the goal is to deliver better connectivity in New Zealand. **Therefore we recommend that Section 191 is amended to state:**
 - S 191 Purpose of price-quality regulation**
 - The purpose of price-quality regulation of fibre fixed line access services provided by regulated fibre service providers is to:**
 - a) promote the long-term interests of consumers**
 - b) deliver the benefits of fibre connectivity to consumers.**

4. Set ambitious and improving anchor services

- 4.1 Anchor services are a key part of price-quality regulation. They set a maximum price, for services with a defined quality level. To achieve the price-quality balance, anchor services need to be the appropriate speed for the post-2020 Internet user.
- 4.2 Under Section 206(7), the purpose of anchor services is:
 - “(a) to ensure that baseband equivalent voice and basic broadband services are available to end-users at reasonable prices; and
 - (b) to provide a reference to act as an appropriate constraint on the price and quality of other fibre fixed line access services.”
- 4.3 The explanatory note refers to anchors as “entry-level broadband [...] at reasonable prices”, while the previous discussion document state that

anchors “provide an upper limit on pricing for a product that is attractive to a large number of end-users” (MBIE, February 2017).

- 4.4 While these two descriptions are consistent, they outline a situation where most New Zealanders will be attracted to the cheapest fibre product regardless of speed and quality. This outcome is at odds with the vision of a connected and able New Zealand.
- 4.5 InternetNZ has consistently advocated attractive, ambitious, and improving anchors which deliver the potential of fibre.
- 4.6 To deliver on purpose (b), we think this process must make anchors attractive to a large proportion of end-users. Slow anchors will not “bite” - they will fail to attract users and balance incentives for monopoly fibre operators.
- 4.7 As outlined in our previous submission (March 2017), we continue to call for ambitious entry- and mid-level anchor product speeds, that will meet the needs of users and deliver the potential of fibre post-2020.
- 4.8 We recognize the purpose of anchor services is to find the price-quality trade-off that generates the return on investment for Chorus on its fibre investment, while also achieving equity of access through regulated maximum prices on core products.
- 4.9 In 2018, it is hard to say what will be the appropriate anchor speeds for the post-2020 Internet user, which is why we believe there should be a commitment to formula-based anchor setting to create anchor services that are attractive to a large proportion of people.

We support a formula for anchors which improve over time

- 4.10 Clause 23 of the Bill outlines section 206 and 223, which respectively refer to the process of the Commerce Commission reviewing anchor services against whether they are working and how well they are meeting their purpose and making recommendations to the Minister, and the Governor-General making regulations prescribing a fibre fixed line anchor service.
- 4.11 There is no prescribed process for how the Commission shall determine how effectively the anchor service is meeting its purpose.
- 4.12 The Bill enables the Commerce Commission to outline a framework against which the anchor services will be assessed, using current UFB pricing as a reference point. In our previous submission (InternetNZ, March 2017) we identified two potential methods for setting anchors.
 - a) A conservative approach, where the Commission can review products in the market prior to the regulatory period, and specify a fibre broadband product “attractive to a large number of users” during the first regulatory period.
 - b) An ambitious approach the Commission to specify a formula for improving the speed and price of anchor services over time, which is public and allows for predictability and accountability.
- 4.13 We still believe that the ambitious approach is necessary for driving the fibre network and usage that fulfils the vision of modern fit for purpose connectivity and equity of access for all New Zealanders.
- 4.14 **We recommend that the Bill enables the Commission to specify, and publish, a formula for improving the speed and price of anchor services over time.**

New Zealanders want access to quality Internet connectivity

- 4.15 In our research in 2017, three quarters of New Zealanders confirmed that they are likely ('very likely' + 'somewhat likely') to want faster broadband in three years' time. Anchor services should meet the growing expectations of New Zealanders, and be aspirational regarding the overall quality of Internet for New Zealand households.
- 4.16 An entry level anchor will restrict the average New Zealander from opting for high quality fibre products which would elevate their ability to participate.
- 4.17 Ambitious anchor products will also lift the standard of products overall, and contribute to unlocking the potential of New Zealand's fibre network for all end-users. If we do not set the services correctly, it will be a lost opportunity and the whole distribution of internet speeds will not move up.

5. We support unbundling, particularly as a backstop in the event of regulatory failure

- 5.1 We support the approach to unbundled fibre set out at Clause 225.
- 5.2 Unbundling is an existing obligation on fibre network providers. By providing a framework for unbundling, the Bill:
 - a) supports predictability in the overall framework, by maintaining existing obligations to unbundle
 - b) offers a credible regulatory threat, to support pro-consumer and pro-competitive outcomes even if it is never triggered
 - c) allows price-quality regulation to be implemented and evaluated, without the potential uncertainty and complications which immediate unbundling would require.
- 5.3 A key goal in this review has been to deliver a predictable framework, to underpin continued investment in better services. If that model fails, unbundling may be needed. On the other hand, if unbundling seems likely, this will deter investment by current network operators.
- 5.4 We think the Bill takes a balanced and reasonable approach to these concerns.
- 5.5 We believe infrastructure should be as open as possible, with competition at the lowest layer (physical fibre), to enable an effective market environment. This Bill will allow the new regulatory regime to come in in 2020, and once this regime is in place, the Commerce Commission can introduce further unbundling obligations.

Maintain line of business rules until the first regulatory review

- 5.6 Stakeholders in this process have, so far, expressed a strong desire for predictability.
- 5.7 With the stability and assurance of Chorus as a benign wholesaler, Chorus can focus on a world class fibre product, be incentivised to invest in infrastructure, and be held accountable for that infrastructure.
- 5.8 The move to price-quality regulation under a building-blocks model is a substantial shift. As we move to a new regulatory framework, we should keep Chorus' role stable and predictable.

- 5.9 However, Cl 35 repeals s 69R and 69S, which are line of business restraints on Chorus.
- 5.10 To deliver predictability, we recommend retaining these line of business rules for the first regulatory period.
- 5.11 We would welcome reconsideration of the line of business rules as part of a Commerce Commission review from 2023.

6. The Bill needs strong consumer protection

- 6.1 We support the approach to copper withdrawal, but want to ensure a positive experience for New Zealanders.

Deregulation enables the best modes to compete for users

- 6.2 We welcome the deregulation of the copper network in geographic areas where fibre is available. Copper is now a legacy network. Newer and faster UFB fibre, delivered by Chorus, Northpower Fibre, UFF, and Enable Networks, will soon reach 85% of the places New Zealanders live and work.
- 6.3 We have strongly advocated deregulation of copper in our previous submissions.

Deregulating copper supports efficient access to competing modes

- 6.4 For those who do not or cannot get fibre, the old copper network is now just one mode among many. Fixed wireless and mobile networks offer other ways to get online, and should be able to compete on equal terms with copper, so users can choose what best suits them.

Deregulation avoids risks of geographic discrimination.

- 6.5 We saw substantial risks with proposals to include copper in the same regulated asset base as Chorus fibre. By pooling old and new networks, this risked a future where copper could be treated differently between areas with Chorus fibre and areas with LFC fibre. Discrimination under a revenue cap might stifle desirable and efficient investments in new competing modes.
- 6.6 The key challenge is to protect the interests of users during this transition.

The Copper Withdrawal Code should put consumer protections first

- 6.7 We welcome the Copper Withdrawal Code requirements as measures to protect consumers in regions where copper is withdrawn. The principles outlined in Schedule 3 of the Code, and the conditions that must be met before Chorus is permitted to stop supplying a copper service are sufficient to ensure there is no unexpected termination of service.
- 6.8 New Zealanders who are moved to fibre under the Copper Withdrawal Code ought to have access to comparable or higher quality fibre products for a comparable price.

7. Summary of Submission

- 7.1 Over all we support the Amendment Bill and want it to become law.
- 7.2 Our key recommendation is to define the purpose of the Bill as providing regulation that will promote the long-term interests of consumers and deliver the benefits of fibre connectivity to consumers.
- 7.3 Under this purpose, the vision for New Zealand's Internet market as one where competition, investment, and innovation deliver better opportunities for New Zealand, will be realised.
- 7.4 In line with this vision, Internet infrastructure markets should be competitive, and this Bill should enable both intra- and extra-modal competition.
- 7.5 We support ambitious anchors which deliver on the potential of fibre, and incentivise efficient services under Chorus' revenue cap.
- 7.6 We support unbundling as an enabler of competition and innovation, however we accept the current approach of maintaining line of business rules until the first regulatory review, in the interests of a predictable framework.
- 7.7 We agree with the approach to copper deregulation and withdrawal, as long as the Copper Withdrawal code results in protecting consumer interests as end users are transitioned from copper.
- 7.8 We support moves to protect consumers, including the consumer code and copper withdrawal code.

Want more detail? Get in touch!

- 7.9 We support this process and its intended outcomes. We would welcome the opportunity for further dialogue on how best to realise those outcomes.
- 7.10 Please contact Ben Creet, Issues Manager on 021 246 3228 or ben@internetnz.net.nz.



Jordan Carter
Chief Executive
InternetNZ

Appendix A. Internet NZ's Submission
on the Telecommunications (New
Regulatory Framework) Amendment
Bill



Broadband use and future needs

February 2017

Telephone Omnibus Survey

Methodology

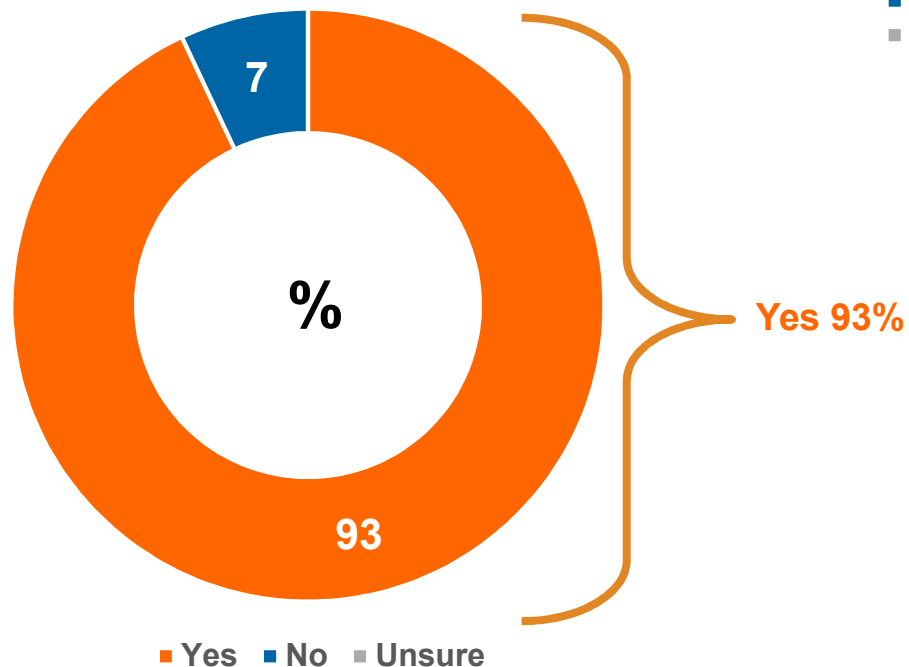
- Results in this report are based upon questions asked in the UMR Research nation-wide omnibus survey. This is a telephone survey of a nationally representative sample of 750 New Zealanders 18 years of age and over.
- Fieldwork was conducted from the 22nd of February to the 2nd of March 2017 at UMR Research's national interview facility in Auckland.
- The margin of error for a sample size of 750 for a 50% figure at the 95% confidence level is $\pm 3.6\%$.

Summary

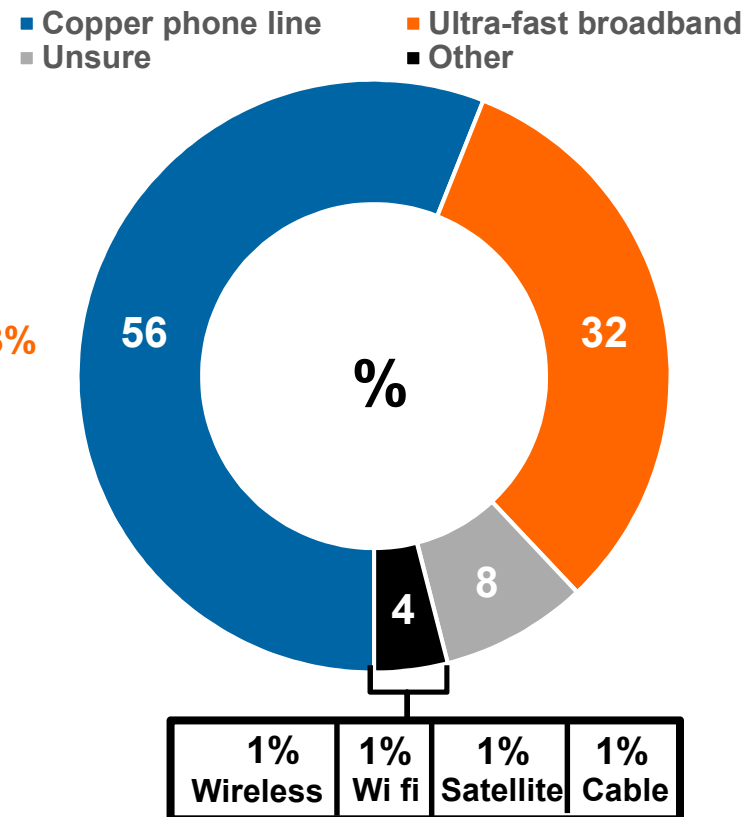
- Around 9 in 10 (93%) respondents declared that their home is connected to the internet.
 - From those who have an internet connection, over half (56%) declared that their home is connected to the internet via a normal copper phone line and just under a third (32%) declared that they have ultra fast broadband (fibre connection).
- Nearly two thirds (65%) of respondents claimed that they use the internet more ('a lot more' + 'a bit more') compared to three years ago with only 7% declaring they use it less ('a lot less' + 'a bit less') now than three years ago.
 - Over two fifths (44%) declared that they use the internet 'a lot more' now than three years ago.
 - Older respondents (60 plus) were significantly less likely to say that they use the internet more compared to three years ago (41%) than respondents who are younger (74%).
 - Respondents who said that they were likely to want faster broadband in the future were also much more inclined (74%) to say that they use the internet more now than three years ago compared to respondents who are unlikely to want faster broadband (42%).
- Three quarters of New Zealanders confirmed that they are likely ('very likely' + 'somewhat likely') to want faster broadband in three years' time and just over a fifth (22%) were unlikely ('very unlikely' + 'somewhat unlikely') to want faster broadband.
 - Nearly half (46%) confirmed that they are 'very likely' to want faster broadband in three years' time.
 - Rural respondents were more likely to want faster broadband in three years' time (80%).
 - Older respondents (60 plus) were considerably less likely to say they would want faster broadband in the future (55%) compared to respondents who are younger (82%).
- 6 in 10 (61%) New Zealanders felt it is unfair that rural residents do not have access to ultra-fast broadband. Around a quarter (26%) felt that copper-based connections are good enough for rural users, and 13% were unsure.
 - Female respondents and Christchurch residents were more inclined to feel it is unfair for rural residents not to have access to ultra-fast broadband (68% and 71% respectively).
 - Respondents who already have a fibre connection were slightly more likely to feel it is unfair for rural residents not to have access to ultra-fast broadband (66%).

Home connection/type of connection

- Is your home connected to the Internet?

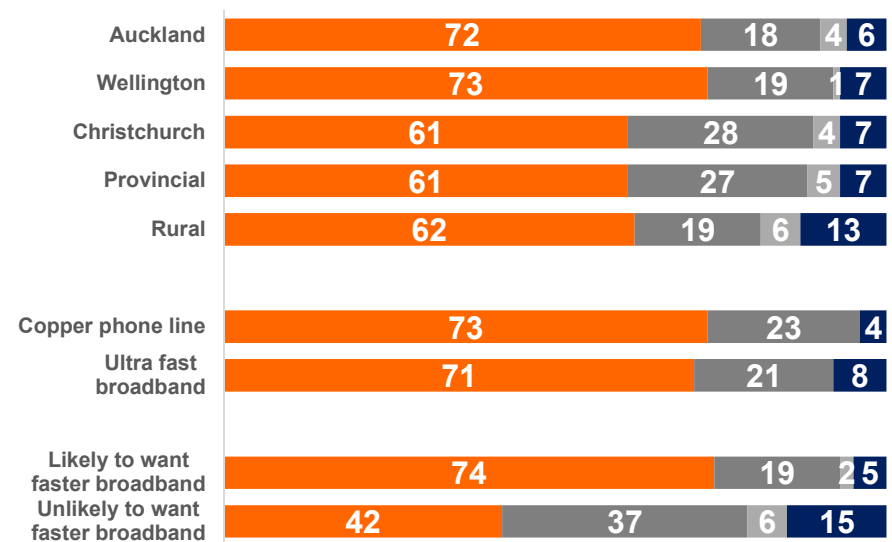
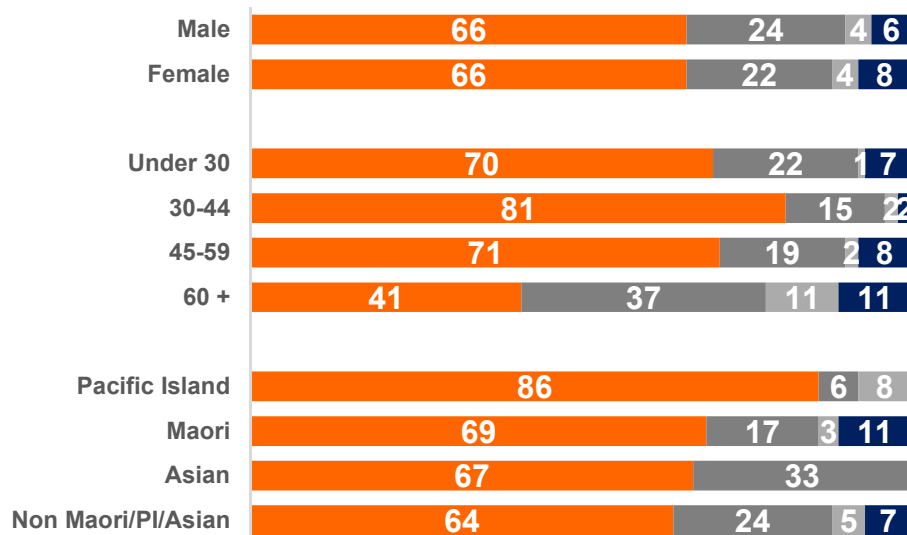
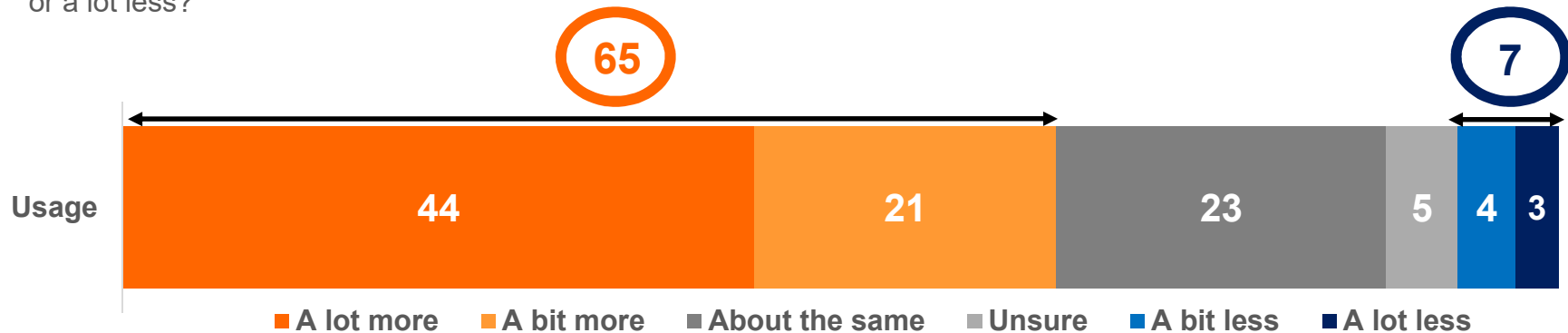


- To the best of your knowledge does your home internet connection plug into a normal copper phone line, for example ADSL or VDSL. Or is it ultra fast broadband sometimes called fibre?



Internet usage

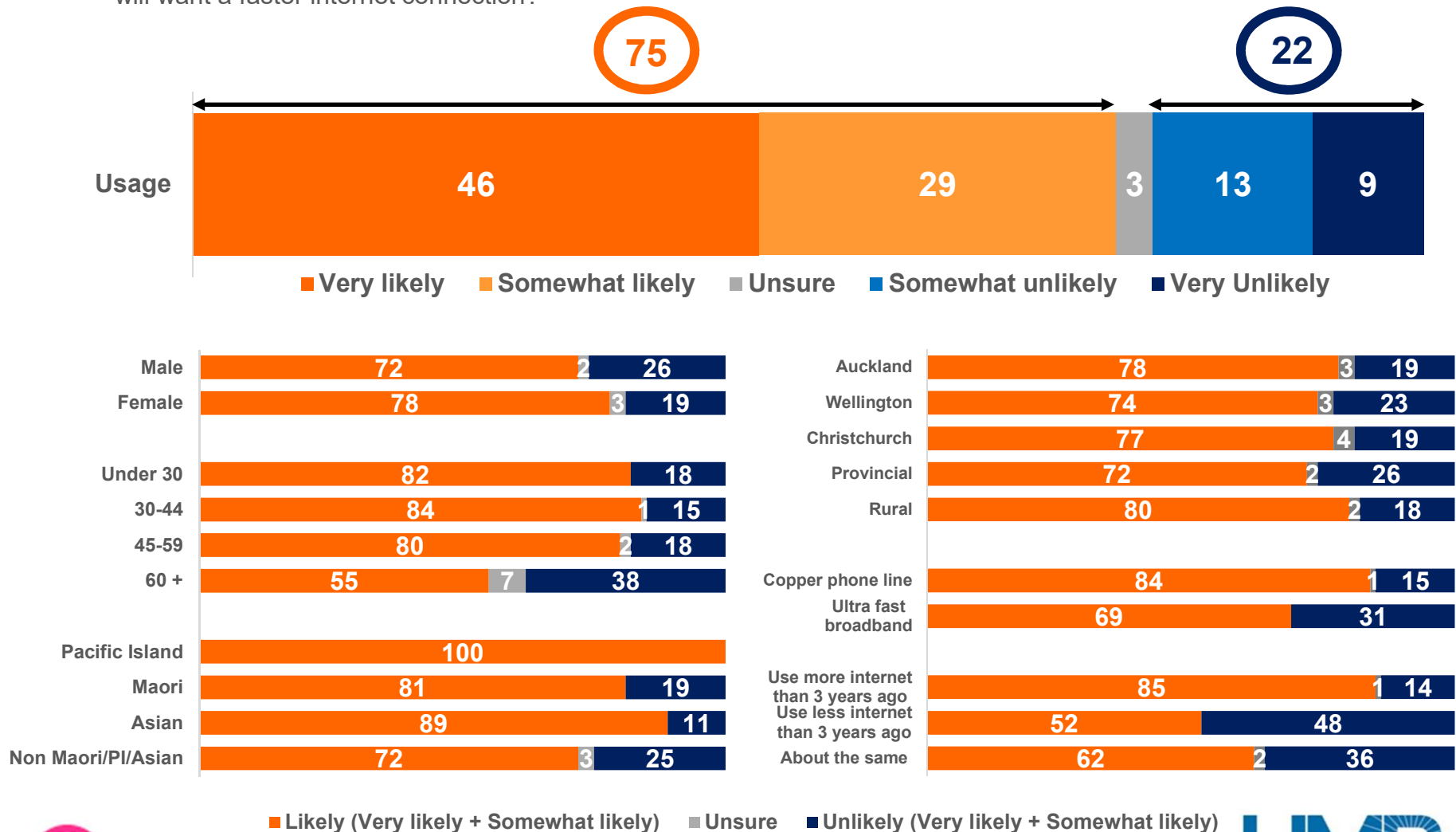
- Compared with three years ago, is your household using the internet a lot more, a bit more, about the same, a bit less or a lot less?



■ More (A lot more + a bit more)
 ■ About the same
 ■ Unsure
 ■ Less (A lot less + a bit less)

Need for ultra-fast broadband in the future

- Thinking about how your household might use the internet in the future, in about three years' time how likely is it that you will want a faster internet connection?



Do rural areas need fibre?

- Which of the following is closest to your view even if not exactly right?
- The fact that many rural users have to put up with often slower and less reliable copper based internet connections isn't fair when compared to the better connectivity options available for urban New Zealanders.
- While they might be slower and less reliable, copper services are generally good enough for rural users.

