



**FIBRE INPUT METHODOLOGIES: FURTHER CONSULTATION DRAFT (INITIAL
VALUE OF FINANCIAL LOSS ASSET) – REASONS PAPER**

Cross-submission to the Commerce Commission

PUBLIC VERSION

29 September 2020

INTRODUCTION

1. Vocus welcomes the opportunity to cross-submit in response to the *“Fibre Input Methodologies: Further consultation draft (initial value of financial loss asset) – reasons paper”*, 13 August 2020.
2. If you would like any further information or have any queries about our submissions, please contact:

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THE COMMISSION SHOULD BE EXPLICIT ABOUT THE DEFINITION OF “FINANCIAL LOSS”

3. Our submission that the Commerce Commission (the Commission) should be explicit about the definition of *“financial loss”*, and that the allocation methodology to determine financial losses needs to be consistent with the definition, is consistent with and supported by other Retail Service Provider (RSP) submissions.
4. Similarly, other RSP submissions support our view that an incremental or avoidable cost allocation methodology (ACAM) is consistent with orthodox definitions and measures of losses, and that an Accounting-Based Allocation Approach (ABAA) would overstate financial losses and result in wealth transfers (higher fibre prices) from end-consumers to Chorus.
5. While Chorus and the LFCs support an ABAA approach, there is nothing in their submissions which provides legitimate basis for adopting ABAA over an avoidable cost approach. We note, in the context of discussing the cost of debt, Chorus’ references its view on the approach to determining *“avoided cost”*.
6. If the Commission maintains the view ABAA is an option that is available to it, it should estimate the impact of adopting ABAA rather than an incremental approach on end-user prices to help determine whether ABAA would best satisfy the section 162 purpose.

END-USERS ARE INSULATING CHORUS’ FROM LOSSES DURING THE ESTABLISHMENT PERIOD

7. Chorus’ assertion that investors are *“in the position of being penalised after the fact for wearing the risk and managing the project efficiently on true basis that the network is now built”* has little or no merit and does not reflect the Commission’s proposals.
8. Chorus claims *“The Commission’s approach fails to compensate for investor risks”* and amounts to an *“unfair bet”* which *“exposes investors to a form of asymmetric regulation”*. These claims are difficult to reconcile with the compensation Chorus will receive from

end-users through the Financial Loss Asset for losses it incurs (as well as additional contribution to other costs under ABAA) during the implementation period.

9. Chorus also suggests *“Just because asset stranding was avoided, does not mean that a material risk did not exist”* but its Regulated Asset Base (RAB) valuation will be based on actual historic costs and will not optimise out any ‘stranded assets’. Again, if there are any stranded assets it will be end-users who are principally exposed to this risk not Chorus.
10. If Chorus’ claim that *“The approach currently does not deliver on the Commission’s key economic principles ...”* has any merit it is because end-users are exposed to investment risk the regulated supplier would be exposed to in a workably competitive market or under *“efficient risk allocation”*.

CHORUS HASN’T SUBMITTED ANY NEW INFORMATION ON DETERMINATION OF WACC

11. From a process perspective, and paraphrasing Chorus, it is very troubling that Chorus continues to re-litigate matters, in the absence of any new evidence, on points which have already received substantial amounts of submissions. Much of the Chorus submission simply traverses and repeats previous submission points we and others have already responded to e.g.:¹
 - (i) ***“The Commission should retain a one-year risk-free rate to calculate financial losses:*** *The approach taken of using a one-year risk-free rate to calculate the net cost of the Kiwi Share Obligation under the original version of the Telecommunications Act provides relevant precedent for determining the WACC for calculation of financial losses (if any).”*
 - (ii) ***“The Commission should set the WACC used to calculate financial losses at mid-point.*** *It is unambiguous that a retrospective application of a WACC uplift would result in higher prices with zero benefits for consumers. We were surprised Chorus (and Sapare) advocated use of 75th percentile, given this was criticised by the High Court in the Part 4 IMs Merit Appeal, and the Commission subsequently deemed it to be excessive. Chorus (and Sapare) appear to want the Commission to transpose errors previously made under the Part 4 Commerce Act setting to Part 6 Telecommunications Act.”*
 - (iii) ***“The Commission should re-confirm there is no reasonable basis or evidence to support an above mid-point WACC:*** *No evidence has been provided in support of an above mid-point WACC. Chorus and its consultant submissions have largely been based on rhetoric and assertions. The High Court IM Merit Appeal decision provided clear direction that absent actual evidence an uplift could not be justified.*

¹ Vocus, Draft Fibre Input Methodologies Determination Cross-submission to Commerce Commission, 17 February 2020.

“The reference by Chorus and others to Part 4 WACC precedent is selective and doesn’t provide a reasonable basis for an uplift. The Commission’s decision to provide a WACC uplift for electricity and gas did not and does not create a “reasonable expectation” that an uplift would be applied in telecommunications or for fibre services. The submitters referring to this precedent ignore that airports weren’t granted an uplift.”