



ENABLE NETWORKS LIMITED AND ULTRAFAST FIBRE LIMITED

**CROSS SUBMISSION ON NZCC FIBRE REGULATION INPUT
METHODOLOGIES
REGULATORY PROCESSES AND RULES**

17 JUNE 2020

1. Introduction

1.1 This cross submission is made by Enable Networks Limited (**Enable**) and Ultrafast Fibre Limited (**Ultrafast Fibre**) (collectively referred to in this submission as **LFCs**) in response to submissions on the Commerce Commission's (**Commission**) *Fibre input methodologies draft decision – reasons paper (regulatory processes and rules)* dated 2 April 2020 (**RPR**) and the *[Draft – regulatory processes and rules] Fibre input methodologies determination 2020 (Determination)*.

1.2 In this cross submission we respond to submissions on:

- (a) Regulatory balance dates
- (b) Pass-through costs
- (c) Processes for determining prices.

2. Regulatory balance dates

2.1 In their submissions Chorus, 2degrees and Vocus support the draft decision for 31 December regulatory balance dates for all regulated fibre service providers. 2degrees and Vocus note that *'interested parties will be able to assess performance more easily'*.¹ Chorus accepts the draft decision and notes that *'the Commission has accepted that there will be additional costs associated with this arrangement.'*²

2.2 We agree that there will be additional costs with this proposal. As we have previously submitted, and consistent with Chorus' submission, we anticipate that there will be substantial additional costs and increased complexity for our businesses in reporting at 31 December.

2.3 This will be much more significant for the LFCs than Chorus because regulatory reporting compliance costs are largely fixed, ie: they do not vary with the size of the regulated business. Chorus will be able to spread this additional cost across a much larger customer base than the LFCs. We therefore submit that because these will be disproportionate for LFCs, regulatory balance dates which align to corporate balance dates should be adopted for LFCs.

2.4 Aligning the regulatory balance date for Chorus with price-quality assessment periods may make the assessment of Chorus' performance easier for interested parties. However, this is not a factor that needs to be considered for LFCs as we are not subject to price-quality regulation.

2.5 Comparisons between FFLAS providers will be of limited use because each provider services quite different network areas, with networks of disparate scale. For this reason, we anticipate that performance assessments will largely focus on the performance of each provider individually, including over time, not comparative assessments between providers. We therefore submit that the costs of aligning the regulatory balance dates of LFCs with Chorus, are disproportionate to any perceived performance assessment benefits.

¹ 2degrees (page 1), Vocus (paragraph 21)

² Chorus, para 73

3. Pass-through costs

- 3.1 Submitters generally support pass through of telecommunications levies, although there are some concerns raised as to whether they should be passed through in full.³ Industry levies associated with the regulation of FFLAS services meet the criteria for pass through costs set out in the RPR. The ability to recover regulatory levies as pass through costs is also consistent with precedent under Part 4 regulation.
- 3.2 We support the submissions of Chorus, the ENA and Vector⁴ for local body rates and dispute resolution scheme levies to be recovered as pass through costs. This is consistent with our submission on this topic.⁵ Vector highlights the unilateral rights of local authorities to raise and levy rates, and the obligations of utilities under the Utilities Disputes scheme. The ENA also notes that rates are difficult to predict, and therefore are better suited to pass through cost recovery than opex cost recovery under price-quality regulation.
- 3.3 Chorus states, *'where costs are largely outside of the supplier's control (albeit somewhat controllable) and challenging to forecast at the outset of a regulatory period, the appropriate approach is to allow the supplier to pass those costs through to prices.'*⁶ We agree. The alternative is to expose the supplier to risk that it is not well placed to manage.
- 3.4 In addition, we support Chorus' view: *'Local authority decisions that govern rates are unpredictable and material in nature, and Chorus has no control over how these might change over time. It is therefore appropriate to treat rates as a pass-through cost.'*⁷ As we have previously submitted, it is commercial practice for rates to be passed through to tenants in commercial leases. Renting does not allow tenants to avoid rates.
- 3.5 Chorus proposes that audit and verification fees are included as pass through costs⁸. We support this submission. These costs are incurred as a direct result of the regulatory framework. They are compliance costs that would not otherwise be incurred. They are largely outside of our control as the regulatory audit and verification requirements are determined by the Commission. As noted in our earlier submission⁹ the draft decision for a December regulatory balance date will unnecessarily increase audit costs for our businesses. This is beyond our control and therefore we support Chorus in seeking to have them included as pass through costs.

Pricing process

- 3.6 Spark¹⁰ has submitted that the process and rules IM should include the Commission's process for considering and setting prices over time. As the Commission has no role in setting prices for LFCs and setting prices by the Commission is not anticipated under either the s174 purpose of input methodologies or the s176 matters covered by input methodologies, this proposal is not supported.

³ Refer submissions from Chorus, Spark (para 4), 2degrees (page 3) and Vocus (para 21 (iii))

⁴ Refer submissions from Chorus, Vector (paras 6 and 7), ENA (page 2)

⁵ Enable/UFF PRIM submission, para 3.3

⁶ Refer Chorus submission (para 20)

⁷ Refer Chorus submission (para 28)

⁸ Refer Chorus' submission (para 33)

⁹ Enable/UFF PRIM submission (para 2.5)

¹⁰ Refer Spark's submission, paragraph 13