

**Submission on  
Chorus' price-quality  
path for the second  
regulatory period  
(2025 – 2028) – draft  
decision**

**15 August 2024**

Public Version

**C H ● R U S**

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## Executive summary

### Overview

1. Chorus welcomes the opportunity to provide our views on the Commerce Commission's (**Commission**) consultation paper *Chorus' price-quality path for the second regulatory period (2025 – 2028, PQP2) – draft decision (draft decision)*.
2. Parts of our submission are confidential. We have provided a public and confidential version of our submission.
3. This submission also addresses the Commission's Draft Fibre Price-Quality Path Determination 2024 (**draft determination**) and should be read in conjunction with our submission in response to the consultation on proposed expenditure, revenue and quality-related amendments to the Fibre Input Methodologies (**IMs**) for Chorus' second regulatory period.
4. We appreciate the efforts of the Commission in developing this draft decision and seeking to improve how the price-quality path works, and address issues raised by stakeholders.
5. Overall, the draft decision's approach to Chorus' revenue path is sound and is likely to deliver positive outcomes for end-users. However, the tilt rate may need to be reviewed. There are some technical matters relating to the application of the revenue path and we discuss these below.
6. We have concerns with the draft decision on quality standards.
  - 6.1 The new provisioning standard is redundant, as the Commission's analysis (and RSP complaints) are based on a time period where performance was significantly degraded, due to well-known technician shortage issues that have now been resolved. This submission presents evidence demonstrating that provisioning performance has improved. Further, the way the draft provisioning standard has been written is not workable.
  - 6.2 We support the intent of the changes to the availability and performance standards, with the focus on targeting systemic issues. However, the way the standards have been drafted create practical challenges, including increasing the probability of breaches even where there is no degradation in service quality, and require amendment to be able to be implemented successfully.

### Revenue path

7. It is essential to set the revenue path at the right level – enough to provide Chorus with incentives to grow fibre revenues where we can, while avoiding the build up of an excessive wash-up balance. We appreciate the Commission's support of this objective.
8. We support the Commission's draft decision to allow a full drawdown of the forecast opening wash-up account balance across the four years of PQP2 – it is important to allow wash-up balances to be recovered reasonably quickly, otherwise there will be concern that the balance may never be recovered. However, the wash-up balance

should not be spread equally in nominal terms across each year of PQP2 – it should be smoothed to deliver an increasing, CPI-based, profile across PQP2 consistent with the approach for building blocks revenue.

9. We agree with the Commission’s decision not to consider inter-period smoothing necessary under s 197 of the Act.
10. We support the Commission’s decisions on the treatment of depreciation with respect to:
  - 10.1 applying tilted annuity depreciation to a subset of core fibre assets, in order to backload depreciation, deferring approximately \$267m of depreciation that would otherwise be recovered in PQP2;
  - 10.2 continuing to use straight-line depreciation for the remaining core fibre assets; and
  - 10.3 continuing to apply the alternative depreciation method adopted for PQP1 to the financial loss asset (**FLA**).
11. Applying tilted annuity depreciation for a portion of core fibre assets is a pragmatic solution that will enable the revenue path to be set at a reasonable level that incentivises growth while avoiding the build-up of an excessive wash-up balance over PQP2. We appreciate the draft decision uses the tilt rate Chorus applied in our demonstration model for the adjusted depreciation of the core fibre assets.
12. We support the Commission’s draft decision to allow a wash-up of CPI for the first year of the regulatory period, and for each subsequent year of the regulatory period. This is an important improvement to the regulatory settings that ensures a consistent allocation of inflation risk between Chorus and end-users over a regulatory period.
13. In terms of the implementation of the price path, we consider that:
  - 13.1 The use of lagged rather than forecast CPI for rolling forward the price path is a better approach given the use of lagged CPI for the anchor product – having different CPI growth rates for the MAR and the anchor product creates practical challenges and undermines the credibility of the regulatory settings.
  - 13.2 The proposed price compliance statement timeframes are not ideal. They are likely to be workable for PQP2 but should be reviewed for PQP3.

## Quality standards

14. We disagree with the need for a new provisioning standard given the falling number of new customer connections, our improving provisioning metrics and our high ratings in recent customer satisfaction surveys. The Commission, in its draft decision, has made a number of errors in describing our historic performance and current context and thus its proposal for change is based on misconceptions of Chorus’ provisioning service. The Commission has not followed regulatory best practice for introducing a new quality standard, particularly a standard that seems to be intended to improve performance rather than prevent the degradation of performance.

15. Chorus has a strong commercial incentive to ensure our provisioning process is timely and efficient. Competitive pressures and contractual service levels ensure we are focused on carrying out connection activities that reflect end user demands. The Commission should carefully analyse and consider these incentives before applying an additional regulatory mechanism.
16. We are particularly concerned that the Commission is proposing to introduce a new provisioning standard despite stating that “there is little stable historical data on which to base our draft decision.”<sup>1</sup> Given the scale of potential financial and criminal penalties, we would expect a prudent regulator to be cautious about introducing a standard where data is uncertain and unstable. We are concerned about the level of risk and uncertainty the Commission proposes to impose on Chorus without full analysis or understanding of the underlying processes or information. We have also noted several challenges to the implementation of the provisioning standard as drafted.
17. The inclusion of any new provisioning standard would need to be more carefully designed to ensure it can be practically implemented and to ensure it captures systemic issues that are within Chorus’ control. A transition to enhanced disclosure requirements would provide markedly better outcomes than a rushed quality standard.
18. Enhanced disclosure requirements would provide the Commission better data to determine a quality standard for future resets if required and give interested parties a clearer view of underlying performance. Information disclosure, in the context of performance, drives improved performance by increasing transparency and accountability. A workshop with the Commission would be the most appropriate forum for determining any new disclosure requirements for provisioning.
19. For the availability and performance standards, we support the Commission’s intent to move to quality standards that are focussed on identifying systemic quality issues and reducing the probability that random variations are caught by the mandatory standards. However, the way these standards have been crafted in the draft decision are not practical and this submission recommends improvements.
20. We support the Commission’s use of exceedances in two consecutive regulatory years as the new standard for establishing a breach of the availability quality standards. We also accept the proposed layer 1 threshold of 80 minutes. However, the proposed layer 2 threshold of 17 mins is too ambitious and is inappropriate based on our historic performance. We have concerns that the Commission’s binomial test does not produce a robust threshold for all availability POI areas.
21. We have serious concerns with the interaction of the proposed availability quality standards with the change to the definition of outage proposed in the IM amendments determination. The Commission’s proposed change to the definition would require a material change from how outages are currently reported. It would mean the proposed new standards of 80 minutes at Layer 1 and 17 (or slightly more) minutes at Layer 2 would not be consistent with the way downtime data would be reported under the new IMs. Incorporating a new definition of outage into

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<sup>1</sup> Commerce Commission, *Chorus’ price-quality path for the second regulatory period (2025 – 2028) – draft decision - reasons paper*, 18 July 2024, paragraph 4.227.

quality standards - without adequate consultation and time - puts Chorus at risk of breaching quality standards without changing the underlying quality of our service.

22. While we recognise and support the intent behind the decision to move to exceedances in three consecutive months as the standard for establishing a breach of the performance quality standard, the draft decision exposes Chorus to annual penalties of almost a third of a trillion dollars. This is because the removal of the percentage of ports threshold from PQP1 puts Chorus at risk of small variances on individual ports causing multiple breaches per year (up to 66,000 breaches a year based on the current number of ports). This cannot have been the Commission's intention. We recommend that the Commission uses the new three consecutive month standard in conjunction with the previous percentage of ports threshold of 0.12%.
23. We also disagree with the proposal to require annual quality compliance statements two months after the end of the regulatory year. It is simply not achievable to prepare the compliance statement, including assessing any breaches and Chorus' response, and obtain audit and certification by end February for a year that has concluded on 31 December. Two months is inconsistent with the timings applied in Part 4, for Chorus in PQP1 and for our own breach reports. We support retaining the 6-month timeframe for quality compliance statements as applies in PQP1.

## Process and framework

### Further consultation would add value

24. As discussed in this submission, setting a robust provisioning standard is a challenge given the data available and the operational practices being discussed. We disagree with the introduction of a provisioning standard at this time. If the Commission decides to proceed with the proposed provisioning standard, a technical consultation on the design of the standard would be required so we can ensure it is workable and would not have unintended consequences.
25. We also recommend the Commission carry out a technical drafting consultation, or similar process, on the PQ determination (which could, if necessary, be merged with a technical consultation on the provisioning standard).<sup>2</sup> This is best practice, providing an opportunity to ensure the drafting of the determination achieves the intended purpose(s), and is applied by the Commission in other sectors – the Commission routinely conducts a technical consultation round for Transpower’s IPP determination. That consultation has helped to identify or clarify technical issues. It also mitigates the risk of uncertainty, error or need for amendments, as well as more complex discussions if it later becomes apparent the drafting is not workable.
26. This is particularly critical given the substantive changes the Commission is proposing to quality standards for PQP2. It is unduly risky to make a final decision on such materially different standards with only one round of consultation, as this precludes a review of the new rules, including to assess that those rules are in fact workable and would be able to be complied with.
27. It would be unfortunate if a failure to undertake a technical drafting review led to Chorus having no option but to challenge a final determination because it was not practically possible for us to comply.

### Consultation on draft wash-up notice

28. As part of its PQP1 final decision, the Commission published a section 221 notice requiring Chorus to supply wash-up information to the Commission. We expect the Commission will publish a similar notice as part of the PQP2 decision.
29. We recommend the Commission consult, or otherwise provide an opportunity to comment, on the terms of this notice before it is finalised, so we can confirm it will be workable before it is published. This is important given some of the impractical reporting changes suggested in the draft determination,<sup>3</sup> as there is a risk that any changes to the wash-up notice could also be impractical.

<sup>2</sup> Chorus, *PQP2 Process and Approach submission*, 28 September 2023, paragraphs 17-19.

<sup>3</sup> In particular, the requirement for annual compliance statements to be published two months after the end of a regulatory year.

## Forecast allowable revenue

### Forecast allowable revenue

30. The draft decision is for a forecast allowable revenue of \$3,856m (nominal) across PQP2, with allowable revenue for CY25 of \$908m. This includes a full draw-down of the wash-up from PQP1, estimated at \$170m in the draft decision.
31. The draft decision includes a tilted annuity depreciation to defer recovery of depreciation of a subset of core fibre assets until PQP3. This is necessary to manage the impact of what would otherwise be a large step-up in allowable revenue during PQP2.
32. The approach to the revenue path in the draft decision is sound and is likely to deliver positive outcomes for end-users. The aim is to provide sufficient revenues to incentivise growth and connections, while avoiding the build up of a large wash-up balance that would call the credibility of the regulatory settings into question. However, the tilt rate may need to be reviewed. We also note that an update to the base year may drive a change to the level of MAR. There are some technical issues with the revenue path to address and we raise these below.

### Application of the regulatory framework

33. The Commission has not attempted to use the revenue path and wash-up mechanism to manage theoretical risks associated with competition between fibre and fixed wireless broadband.<sup>4</sup> We support this approach.
34. Chorus has no realistic opportunity to artificially lower short-term prices, with a view of recovering increased revenues later through the wash-up mechanism. We are surprised this continues to be raised as a possibility, and are not aware of any evidence supporting this proposition.
35. As NERA has noted in relation to incentives,<sup>5</sup> “Predating rival networks would require a prospect of recoupment to be rational”. The Mobile Network Operators (**MNOs**) operate and build mobile networks for their mobile businesses. These mobile networks will continue to exist even if fixed wireless services were not provided, therefore these networks could be used to ‘re-enter’ the broadband market with their fixed wireless access (**FWA**) product in future. Thus, there is no basis to assume the wash-up creates a risk to competition.
36. As the Commission is aware, increasing levels of competition from alternative technologies pose a risk to Chorus’ ability to recover investments over time. While it is efficient, and beneficial to consumers, for Chorus to tailor pricing to ensure our services remain attractive, it would not be rational to forego revenues and increase the risk associated with the future recovery of such revenues.

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<sup>4</sup> Commerce Commission, *Chorus’ price-quality path for the second regulatory period (2025 – 2028) – draft decision: Reasons Paper*, 18 July 2024, paragraph 3.8.

<sup>5</sup> NERA, *Customer incentive payments and the long-term benefit of end-users*, 7 July 2021, p. 3.



## Components of allowable revenue

### Application of tax IMs

37. The Commission suggested there was 'a potential error in the application of the fibre IMs for calculating taxable profit and loss in Chorus' PQP2 model'<sup>6</sup> that – if corrected – would 'reduce the allowable revenue for PQP2 by approximately \$60m'.<sup>7</sup>
38. As confirmed by the Commission by email,<sup>8</sup> our application of the fibre IMs is correct. We note – given the draft decision was not adjusted to account for the perceived error – the draft decision will not be affected by this clarification.

### Wash-up amount

39. The Commission's draft decision is to allow an equal drawdown amount in nominal terms of the forecast opening wash-up account balance across the four years of PQP2.
40. For the purpose of the draft decision, the Commission has used a forecast real value of the opening wash-up balance of \$170m. The actual wash-up drawdown amount will differ from this forecast amount and will be updated for the final decision.
41. We support the full draw-down of the PQP1 wash-up balance in PQP2. However, we recommend the draft decision smooths the wash-up drawdown amount across PQP2 in the same manner as the rest of the price path (i.e., so the amount of the wash-up to be recovered in each year grows at the rate of forecast inflation). This is a better approach than drawing down the same amount in each year of PQP2. Smoothing the wash-up drawdown provides a more consistent approach to setting the price path. It reduces the size of the apparent step up in revenues in CY25 from CY24, and helps to address any concerns that the revenue 'headroom' below the MAR will be insufficient later in PQP2, when we forecast the amount of headroom to decline.
42. We agree with the Commission's decision not to consider inter-period smoothing necessary under s 197 of the Act.

### Base year

43. In principle, Chorus supports the Commission's draft decision to determine disclosure year 2022 as the base year for the purpose of calculating relevant values under the IMs that require use of a base year. We support the related decision to update the base year to 2023 for the final PQ decision. However, we request the opportunity to discuss the modelling implications with the Commission to ensure this can be implemented in practice.

### Depreciation

44. We support the following draft decisions on the treatment of depreciation:

<sup>6</sup> Commerce Commission, *Chorus' price-quality path for the second regulatory period (2025 – 2028) – draft decision: Reasons Paper*, 18 July 2024, p. 8.

<sup>7</sup> Commerce Commission, *Chorus' price-quality path for the second regulatory period (2025 – 2028) – draft decision: Reasons Paper*, 18 July 2024, p. 8.

<sup>8</sup> Email from CCI [ ] (Commerce Commission) to CCI [ ] (Chorus), 25 July 2024.

- 44.1 To apply tilted depreciation to a subset of core fibre assets, in order to backload depreciation, deferring approximately \$267m of depreciation that would otherwise be recovered in PQP2.
- 44.2 To continue using straight-line depreciation under GAAP – with GAAP-based asset lives – for the remaining core fibre assets (consistent with the default method in clause 3.3.2 (3) of the fibre IMs (and the same approach as PQP1).
- 44.3 To continue to apply the alternative depreciation method adopted for PQP1 to the financial loss asset (FLA).
45. We particularly welcome the Commission’s draft decision to change the depreciation method for a subset of core fibre assets to tilted annuity depreciation and asset lives consistent with GAAP.
46. We agree with the Commission that:
- Capping revenues that are otherwise available and that would have been below the level of an unadjusted PQP2 MAR would not meet the requirement to best give or be likely to best give effect to s 166(2) - the promotion of workable competition in telecommunications markets for the long-term benefit of end-users of telecommunications services. This is because it will artificially constrain the current recovery of Chorus’ investment to below that which is available from existing customers. This in turn would be likely to artificially lower current market prices, while raising them in the future.<sup>9</sup>*
47. We appreciate the draft decision applies the tilt rate Chorus applied in our demonstration model, however, we consider this may need to be reviewed.
48. We welcome the Commission’s agreement that Chorus has incentives to provide the best forecasts possible of our achievable revenue in PQP2.<sup>10</sup> We have no reason to under-forecast our revenues and thus constrain prices, given the large wash-up balance and the increasing competition we face from alternative technologies.
49. The Commission’s draft decision lists granular asset categories in Schedule 5 of the draft determination, as per Chorus’ in-principle proposal. While we agree with the list, its inclusion in the final determination wouldn’t allow for the introduction of new BBM asset categories in future (as those categories would then have different asset lives for the same types of asset), and would over-complicate regulatory modelling. We recommend the list is simplified in the final determination to allow for such changes. This should be done by changing it to this higher-level list of asset categories:
- 49.1 L1 Cabinets
- 49.2 L1 Duct
- 49.3 L1 Fibre Cable

<sup>9</sup> Commerce Commission, *Chorus’ price-quality path for the second regulatory period (2025 – 2028) – draft decision: Reasons Paper*, 18 July 2024, paragraph A28.

<sup>10</sup> Commerce Commission, *Chorus’ price-quality path for the second regulatory period (2025 – 2028) – draft decision: Reasons Paper*, 18 July 2024, paragraph A39.

- 49.4 L1 Fibre Service Leads
- 49.5 L1 Manholes
- 49.6 L1 OFDF
- 49.7 L1 Poles
- 49.8 L1 Splitter

**Additional controls on revenue**

- 50. We agree with the Commission’s draft decision not to apply or introduce any additional controls on Chorus’ revenue beyond the conventional revenue path approach for PQP2. Additional controls add complexity and cost, and the existing regulatory framework sufficiently mitigates risks to incentives and competition.

**Treatment of CPI inflation**

- 51. We agree with the Commission’s draft decision to determine the revenue path based on RBNZ forecasts of CPI inflation, in the absence of more accurate forecasts.

**Use of lagged or forecast CPI to roll-forward the price path**

- 52. Chorus has recommended the use of lagged CPI for the purpose of rolling forward the price path, primarily due to the current mismatch between the anchor service price cap, which increases annually based on lagged CPI, and the MAR, which for PQP1 has increased annually based on updated forecast CPI.
- 53. The Commission rejects this approach, noting there are benefits for real FCM in having consistency between the present value of the building blocks model and the present value of smoothed revenues across the regulatory period, and that prior year inflation is not a good predictor of current year inflation. The Commission states that Chorus previously supported using a forecast of CPI and had not explained why we now prefer a lagged approach.
- 54. To clarify, Chorus agrees with the points we made previously, and the points the Commission makes in the draft reasons paper, about the theoretical benefits of using a forecast of CPI for adjusting prices for regulatory years (except for the Commission’s point regarding accuracy of CPI forecasts, which we discuss below). If there was no anchor product regulation applying to Chorus, we would be comfortable with the current approach continuing for PQP2.
- 55. Despite this, we are suggesting a change to the approach because of our experience during PQP1 of the practical impacts of the mismatch between the inflation rate that applies to the anchor product and the inflation rate that applies to the MAR overall.  
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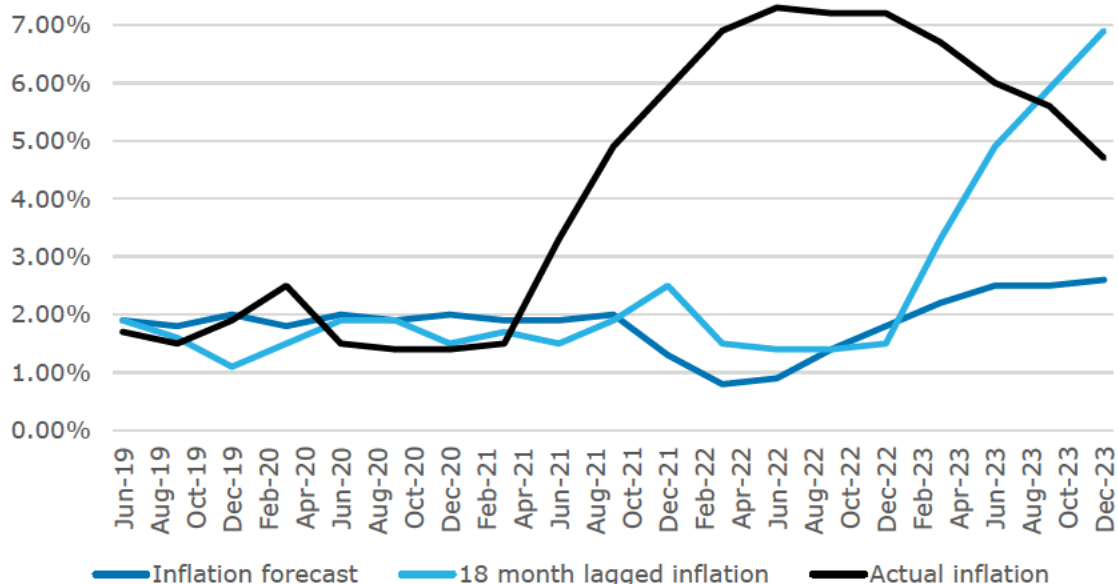
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- 56. In an environment where we are under-recovering our MAR but are constrained by the anchor product from updating prices in a particular year, this causes a lack of

confidence in the regime and ultimately undermines incentives to invest. We recommend the lagged CPI approach to avoid a similar event in future years.

- 57. We encourage the Commission to prioritise a more pragmatic approach to setting regulatory rules, rather than a theoretical approach that creates practical challenges and has been shown to lead to perverse outcomes.
- 58. We agree with the statements in paragraphs 3.190 and 3.191 of the draft reasons paper that the problem experienced in PQP1 is less likely to reoccur in PQP2 due to the expected MAR that will apply in PQP2. However, there is value in implementing the right settings so it is well established for future regulatory periods.
- 59. We therefore continue to recommend the use of lagged CPI for rolling forward the price path for PQP2.
- 60. The Commission also stated that the previous year’s inflation is not a good indication of the current year’s inflation.<sup>11</sup> This does not appear to be correct. Central banks including the RBNZ typically forecast CPI using quantitative models which are less accurate than using a one-year lag.<sup>12</sup> Forecasting inflation is incredibly difficult to do with any accuracy. Forecasts are revised regularly and have a heavy bias towards the midpoint of the RBNZ’s inflation target. The following graph shows actual inflation, lagged inflation from 18 months earlier, and the forecast inflation from 18 months earlier. While there is volatility in all measures, from June 2019 to December 2023, the 18-month lagged inflation was on average *closer* to actual inflation than the forecast.

Figure 1: Actual inflation vs lagged inflation



<sup>11</sup> Commerce Commission, *Chorus’ price-quality path for the second regulatory period (2025 – 2028) – draft decision: Reasons Paper*, 18 July 2024, paragraph 3.187.

<sup>12</sup> John McDermott (Motu), Memo to Vector New Zealand on Performance of and prospects for inflation forecasts, 9 November 2020. Stock, JH and MW Watson (2010), “Modelling Inflation after the Crisis,” National Bureau of Economic Research Working Paper 16488.

*Source: Chorus analysis of RBNZ data.*

61. Our recommended approach - to use lagged CPI - does not change the long-run level of allowable revenue, because revenues would still be washed up with respect to actual CPI for the regulatory year. The only impacts are on the size of the wash-up (and not necessarily to increase it, as noted) and to simplify the pricing arrangements for Chorus by ensuring the MAR and the anchor product price can increase at the same rate. We do not see any downside from applying lagged CPI as we have recommended and encourage the Commission to make this change.

#### **Forecast CPI estimate to use**

62. Clause (4) of Schedule 1 of the draft PQ requires the use of the RBNZ forecast of CPI that is available before 30 June of the prior regulatory year. We support this approach (if the Commission decides to use forecast rather than lagged CPI for updating the revenue path which, as noted above, is not our preference). For a 1 January pricing year, Chorus would generally start consulting with RSPs in July and there is therefore no realistic scope to update a forecast CPI value used for pricing after 30 June.

### **Compliance**

#### **Compliance with the revenue path**

63. We agree with the Commission's draft decision to allow a wash-up of CPI for the first year of the regulatory period, and for each subsequent year of the regulatory period. This is an important improvement to the regulatory settings that ensures a consistent allocation of inflation risk between Chorus and end-users over a regulatory period. The lack of a CPI wash-up for PQP1, and the Commission's unwillingness to adjust for this when the oversight was identified, is a material shortfall in the PQP1 settings. It is important this is not repeated in future.

#### **Dates when annual pricing compliance statements are due**

64. The Commission proposes that pricing compliance statements are due on 31 May 2025 for the 2025 pricing year and on the prior 22 November for all other years of PQP2. These dates are manageable for PQP2 but neither of them are the optimal arrangements and, if not fixed now, should be reconsidered for PQP3.

#### **Compliance statement for 2025**

65. The 31 May 2025 date is likely to be workable in practice for PQP2 but is not ideal, for the reasons set out below. It is workable in practice because we expect that allowable revenues for 2025 are likely to be higher than the prices we will decide to apply from 1 January 2025 in any event. In this scenario, there is little risk associated with the date of the price compliance statement.
66. However, for future regulatory periods, if we were expecting the PQ decision to require a reduction in prices and to be published in (potentially) December of the prior year, a 31 May compliance deadline would be very challenging. We are required to give RSPs 60 business days' notice of a price change, which means we would need to notify the new prices by the end of February. Given the Christmas and New Year holiday period, a decision in mid-December would mean we would have

less than eight weeks to develop a pricing proposal that could comply with the decision, consult on that proposal, then formally decide to implement it, before giving notice before 1 March. This is an extremely difficult timeline to work to and a date for the PQ compliance statement of 30 June would better allow a price setting and consultation process to be carried out.

### **Compliance statement for other years of PQP2**

67. We had suggested a compliance statement due date of 31 December as the date before the start of the regulatory and pricing year. This is consistent with the approach for EDBs, where price compliance statements are required “before the start of each assessment period”.<sup>13</sup>
68. The draft decision rejects this on the grounds that there are minimal resources to prepare and consider a compliance statement at that time of year. We do not believe this is a relevant consideration.
69. In reality, Chorus would prepare and provide the compliance statement to the Commission in mid-December, and the statement will reflect pricing decisions taken several months earlier. Any instance of non-compliance would take time to respond to, so there is no reason to believe that an immediate response to a compliance statement is necessary or would deliver a rapid benefit for end-users.
70. Also, requiring a price compliance statement on or around 22 November would reduce the amount of time Chorus has to produce a compliance statement and go through the necessary assurance steps after pricing is confirmed to RSPs.

### **Mid-year pricing compliance statements**

71. We welcome the draft decision to no longer require the submission of a mid-year price compliance statement (PCS). This is a sensible improvement to the regime that will reduce the compliance burden on Chorus with no adverse impact on end-users.
72. Chorus’ move to a 1 January cycle for customer pricing purposes, together with the restriction in our customer contracts on increasing prices more than once in any 12-month period, means that annual price increases for PQP2 will be captured in the annual PCS.
73. Experience during PQP1 has shown:
  - 73.1 material price changes for any product have not occurred outside Chorus’ annual pricing cycle, and any changes that have occurred have been de minimis and not included any core FFLAS products;
  - 73.2 disclosure of prices for all products occurs in advance of prices taking effect so will be transparent to interested persons; and
  - 73.3 the preparation of a new PCS involves considerable administrative effort and costs, including the re-forecasting of affected product quantities and director certification by Chorus.

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<sup>13</sup> [Clause 11.1\(a\) of: 5BDraft5D-Electricity-Distribution-Services-Default-Price-Quality-Path-Determination-2025-29-May-2024.pdf \(comcom.govt.nz\)](#)

### Compliance with geographically consistent pricing

74. We welcome the draft decision to only require annual (rather than six monthly) reporting of compliance with section 201 of the Act. This is an improvement which will reduce reporting costs without reducing the Commission’s ability to monitor compliance with the geographically consistent pricing requirement.

### Forecast total FFLAS revenue

75. Clause (2) of Schedule 3 of the draft PQ determination requires Chorus to use a demonstrably reasonable forecast of the quantities and other FFLAS income for the regulatory year to which prices will apply. We recommend a clarification is added to make it clear that the forecast of quantities and other FFLAS income that must be used is the forecast used for the pricing decision.
76. For example, where Chorus publishes a price-compliance statement on 22 November, this will reflect a pricing decision made in late September and consulted on around July. The forecast of quantities and other FFLAS income used in the PCS should be the same as the one used for the pricing decision, otherwise Chorus risks breaching its price path due to changes in the quantity forecast since prices were set.

### Other matters

77. We note the formula depicted at paragraph (1) of Schedule 1 of the draft determination contains the following description of smoothed 2025 building blocks revenue:<sup>14</sup>

**SBBR<sub>0</sub>** is \$818,900,00, being nominal smoothed building blocks revenue at the start of **regulatory year 2025**;

78. This calculation contains an error, and should read:

SBBR<sub>0</sub> is \$818,900,000, being nominal smoothed building blocks revenue at the start of **regulatory year 2025**;

79. In the draft determination, the definition of ‘forecast building blocks revenue’ – should read ‘means the amount specified in paragraph (1) of Schedule 1’.

### Term Credit Spread Differential allowance

80. We note the requirement for the Commission to calculate a base year – defined as ‘a disclosure year determined by the Commission’<sup>15</sup> – for the purpose of calculating the Term Credit Spread Differential allowance. We request that this be published prior to the release of the Commission’s final decision.

### Regulatory taxable income (before tax losses utilised)

81. In the Commission’s demonstration model (*Commission-Demonstration-building-blocks-model-Chorus-PQP2-draft-determination-18-July-2024.xlsx*) *Other Temporary*

<sup>14</sup> Commerce Commission, *Draft Fibre Price-Quality Path Determination 2024*, Schedule 1., p. 17.

<sup>15</sup> Commerce Commission, *Fibre Input Methodologies Determination 2020*, 6 March 2024, clause 3.5.7 (3), pp. 99 – 100.

*Differences (opex)* are depicted as negative numbers (instead of positive numbers) (see: Cells E50:H50 in the worksheet: *Inputs*).

However, in the worksheet *Calc*, *Other Temporary Differences (opex)* are incorrectly included in the calculation of *Regulatory taxable income, before tax losses utilised*. Subtraction operators should be added to the cells E69:H69 in the worksheet: *Calc* to properly exclude the impact of *Other Temporary Differences (opex)* in line with the description for that row in cell A69 (i.e., *Less: other temporary differences (opex)*). This is consistent with the treatment of the other components of regulatory taxable income. The net effect of these two corrections on the results is zero.



## Quality standards

### Availability quality standards

82. The Commission's draft decision is to set an availability standard for the layer 1 and layer 2 aspects of Chorus' fibre network across each availability POI area.
83. The standard for layer 1 has been set as 80 mins per year for total average net unplanned downtime in each availability POI area. The standard for layer 2 has been set as 17 mins per year for total average net unplanned downtime in each availability POI area. These proposed standards reflect a significant tightening of the standards applied in PQP1.
84. The Commission has also proposed a clarification to the definition of outage that informs the availability quality standard.<sup>16</sup> In its draft decision on Fibre IM amendments the Commission proposed amending the definition of outage to:

*a cessation in the supply of-*

*(a) ID FFLAS (for the purpose of Part 2); or*

*(b) PQ FFLAS (for the purpose of Part 3),*

*that is identified by the regulated provider or in respect of which the regulated provider has received an outage notification (see also clause 1.1.4(3))<sup>17</sup>*

### Summary of Chorus' position

85. Chorus:
  - 85.1 accepts the 80-minute threshold for layer 1 downtime based on a reported downtime methodology, however we have concerns with the Commission's binomial test methodology;
  - 85.2 supports a 'two consecutive years' standard for availability, as a means of ensuring only systemic breaches are captured;
  - 85.3 does not support the 17-minute threshold for layer 2 downtime and recommends this should be at least 20 minutes based on a reported downtime definition;
  - 85.4 does not support the use of the proposed amended definition of outage as part of the quality standard and instead recommends the Commission collects data through ID to establish a baseline for performance under an amended definition developed through a separate technical consultation; and
  - 85.5 continues to support the use of customer service areas (**CSAs**) rather than availability POI areas to disaggregate the standard across regions of New

<sup>16</sup> It also impacts the disclosure of faults.

<sup>17</sup> Commerce Commission, *Fibre Input Methodologies (expenditure, revenue and quality) Amendment Determination*, 17 July 2024, clause 5.1.

Zealand, as this better aligns to the way Chorus manages its network and is more efficient.

**Impact of the change in definition of outage on the availability quality standard**

- 86. In the Fibre IM amendment draft decision, the Commission included a proposed change to the definition of outage in the IMs.
- 87. The Commission noted that its proposal to change the definition of outage was based on practical issues for regulated providers as:
  - 87.1 they do not always know when the cessation in supply occurs;
  - 87.2 current technology used within their monitoring systems does not always allow for instantaneous reporting of impactful outages; and
  - 87.3 their systems sometimes notify providers multiple times of non-impactful outages that could constitute an outage under the current definition.

- 88. The Commission suggests its proposed amendment:

*should enhance the workability of the Fibre IMs and ID regulation for those regulated providers who use technology that does not currently notify them of an outage in real time. By providing that an outage is a cessation in the supply that is recognised at the earlier of when a regulated provider identifies the outage, or when they are notified, this also ensures the definition will remain fit-for-purpose with changes in technology and it should help improve quality reporting.*

- 89. We do not support the Commission’s proposed amendment to the definition of outage. While we understand that the Commission considers its amendment to be a clarification, we consider it to be a material change from the current requirements. The use of the term ‘outages identified by the regulated provider’ is too vague as it is not clear that LFCs have common systems and processes for identifying outages, The revised definition could, ultimately, promote poor supplier behaviour.
- 90. The proposed change to the definition of outage has a material effect on the calculation of outages on the Chorus network. If the proposed amendment were implemented as currently drafted, Chorus would be held to a new standard of performance through the availability quality standard. This would put Chorus at risk of breaching compliance and quality standards in PQP2 without changing the underlying quality of our service.
- 91. In our submission on the fibre IM amendments, we recommended:
  - 91.1 the amendment is put on hold while the Commission and industry works through implementation details; and
  - 91.2 a process is put in place to develop a workable and consistent definition of outage that can apply across all regulated providers. The aim would be to develop two separate outage measures that will be reported through information disclosure; one for reported outages (which would continue to be used for quality standard purposes in the near term at least) and the other for combined outages including self-identified outages. This would

deliver a data set that could potentially support a changed quality standard metric in future.

**More work is required to determine a definition of outage that is practical and verifiable for all LFCs**

92. The Commission’s proposed amendment is based on its experience with Enable and the exemptions Enable has sought to meet its disclosure obligations. The Commission appears to have assumed that a solution that works for Enable will be applicable to all LFCs. This has led to a vague definition: “identified by the regulated provider”, inferring that all LFCs have the same systems and processes for determining a system generated outage, which is not the case.
93. The term “identified” does not have a precise, verifiable meaning. The measurement of the proposed definition of outage will likely differ between LFCs depending on their technology and systems. It will also differ over time (including potentially within a regulatory period) if LFCs change or upgrade their systems.
94. The definition may also create a perverse incentive for LFCs to simply not operate systems that “identify” outages. The proposed definition would punish LFCs for investing in better, or more accurate, fault monitoring as that will shift the numerator for compliance purposes.
95. Making the IM amendment to come into effect on 1 January 2025 would not give enough time to confirm consistent practices across LFCs and will not promote greater consistency between LFC disclosures or improve transparency for interested stakeholders.

**The proposed amendment represents a material change to the definition of outage**

96. To date we have reported and assessed compliance with availability quality standards using customer reported downtime only (i.e., where downtime is the time between the fault being reported by the RSP and the fault being notified to the RSP as restored). This is because the standards were set using historical downtime figures reported to CIP under the UFB contract which included reported downtime only. When we made our expenditure proposal for PQP1 we said:<sup>18</sup>

*Our current arrangements only record downtime that has been reported to us by RSPs. These are events that have been noticed by a customer or consumer and identified by the RSP as being likely to have their origin within our network. This only includes unplanned downtime, and generally only a subset of access lines impacted by an event.*

...

*We do not currently capture unreported downtime. Our systems can record equipment outages, but to translate this into downtime we would need systems that translate equipment outages to downtime impact to produce a view of ‘modelled’ downtime.*

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<sup>18</sup> Chorus, *PQP1 Expenditure Proposal*, page 46

97. The historical downtime data provided with Chorus' PQP1 proposal and in response to subsequent RFIs by the Commission was based on reported outages and this was made explicit in the notes provided to the Commission accompanying this data. This data was subsequently used by the Commission to set the PQP1 availability quality standards and the Commission expressed no intention to change the measurement of downtime from that used for historic measurements. During the PQP2 proposal process Chorus provided updated downtime to the Commission which used only reported faults.<sup>19</sup>
98. In fact, changing the measure of downtime for PQP1 would have been at odds with the Commission's intent. The Commission said in the PQP1 reasons paper:<sup>20</sup>
- We have set quality standards that seek to prevent, and give us visibility of, FFLAS quality degradation, as well as provide Chorus with incentives to supply FFLAS of a quality that reflects end-user demands.*
99. The objective of avoiding degradation, rather than targeting a particular level of quality that varied from historical performance, is why the Commission set quality standards with reference to the UFB contract service levels for PQP1. Because the Commission's objective was to avoid degradation, compliance with the Quality Standards has been assessed on the same basis as the historical dataset that was used to determine the Quality Standards. If not, there would be a discontinuity between historical performance and the compliance standard which might result in false positives and prevents the Commissions from understand how quality performance is changing over time. This was explicitly not the Commission's intent.<sup>21</sup>
100. Accordingly, we have continued to use reported downtime only in recording downtime for both PQ and ID purposes.
101. The information required to produce reports on customer reported downtime is primarily derived from Chorus' fault management system. It requires no data other than that associated with individual reported fault transactions.
102. The Commission's proposed amendment significantly changes the definition of outage from what was previously disclosed, as would also include outages identified by Chorus' systems, materially changing the measurement of downtime and potentially leading to a much higher estimate.
103. The Commission's revised definition is also much more complex to calculate. The new definition represents a significant change in the information required to report against this quality standard and will require technical changes to data gathering and reporting systems and processes that will take time to define, develop, validate, and implement. These changes are summarised in our submission on the Fibre IM amendments.<sup>22</sup>

<sup>19</sup> See RFI 37

<sup>20</sup> Commerce Commission, *Chorus' price-quality path from 1 January 2022 – Final decision - reasons paper*, 16 December 2021, paragraph 7.14

<sup>21</sup> See, for example, Commerce Commission, *Chorus' price-quality path from 1 January 2022 – Final decision - reasons paper*, 16 December 2021, paragraph 7.163.2

<sup>22</sup> Chorus, *Submission on amendments to the fibre input methodologies*, 13 August 2024, paragraph 11.

**It is not feasible to use a new definition of outage as the basis for measuring the quality standard that applies to Chorus**

104. Using the proposed standards of 80mins for layer 1 and 17 mins for layer 2 would not be appropriate if the amended definition of outage were to be implemented for PQP2, as the standards are based on the performance data reflecting only reported downtime, while performance against the quality standard in PQP2 would be assessed and disclosed based on the new, broader definition.
105. There is not sufficient time for either adequate consultation or preparation of Chorus' systems to allow this material change to the definition to come into effect on 1 January 2025. The cost of any required changes to our systems has not been factored into our expenditure allowance for PQP2.
106. We recommend that for PQP2, the availability quality standard should be measured against reported downtime. This will still meet the purpose of the standard, (i.e., if availability performance deteriorates, we would expect reported downtime to increase). The use of reported downtime for the PQP2 availability standard would be consistent with the data used to establish the historic baseline.

**We consider that an additional requirement in ID to disclose provider identified outages is a better solution**

107. We acknowledge that provider identified downtime is important and it makes sense to capture and incorporate this information into measures of downtime. Therefore, we recommend including provider identified downtime in a new measure under ID so a baseline can be established. An availability quality standard using the amended definition of outage could be considered in future once a reliable baseline has been established.
108. We will need to report separate measures for reported downtime and provider identified downtime. We cannot, at this stage, reliably reconcile reported downtime and provider-identified downtime to provide a single measure of downtime. This would make the 1 January 2025 date for implementation of the new measure unfeasible.
109. Defining the detailed requirements of the reporting required to meet the revised definition will itself require clarification of exactly what is and is not included in the source information, and how it should be treated in assessing downtime. Given a significant aspect of this reporting is to identify trends in performance, developing an accurate, repeatable, and consistent reporting mechanism is important. An approximate method that is refined over time could result in changes that represent only changes in methodology or business logic, rather than real-world changes in performance.
110. Given the challenges of both defining and implementing the proposed outage requirements that is practical for all LFCs, we recommend a technical consultation including a workshop with the Commission and LFCs to establish a provider-identified downtime measure and a transition period for any new ID measure.

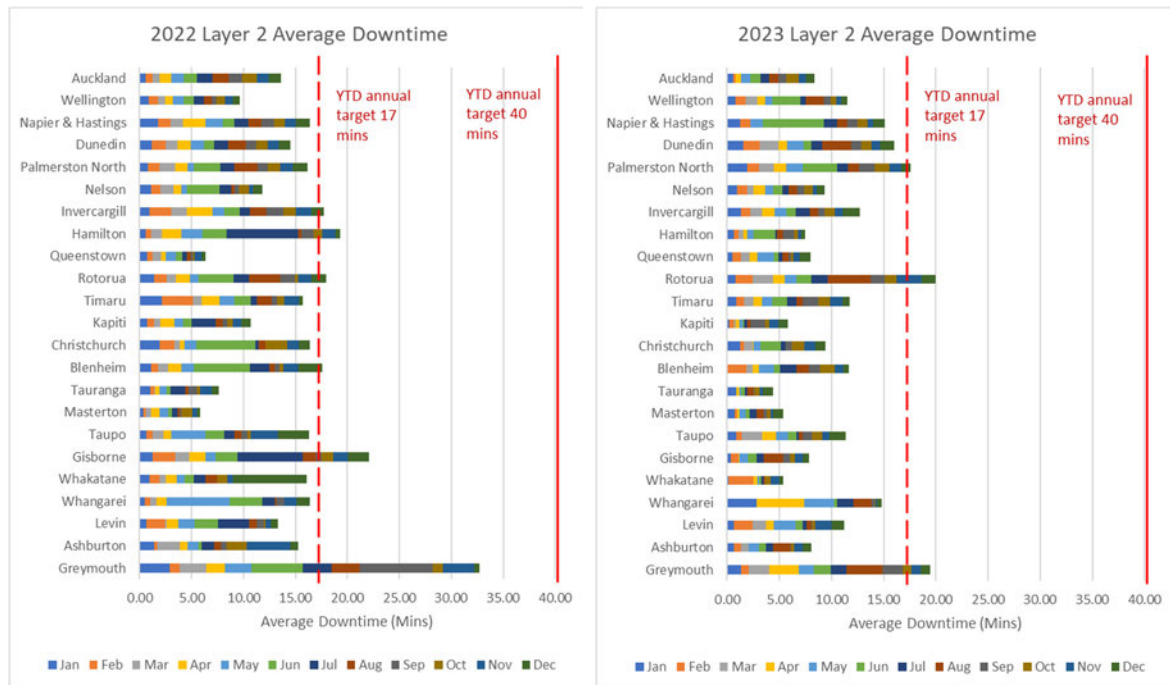
**Draft availability quality standard for layer 1 and layer 2**

111. Subject to the definition of outage for the purposes of the quality standard and the PQ determination remaining unchanged, we accept the Commission's draft availability standard for layer 1.
112. However, the draft availability standard of 17 minutes per year per availability POI area is too ambitious and would require an immediate step change improvement in fault response (since a change to network reliability has a much longer-lead time). This is not realistic. This standard would not be achievable even without the proposed change to the outage definition.
113. Figures from 2022 and 2023 below show we would have breached the proposed standard in two availability POI areas (after the 'two consecutive years' rule is applied). This would indicate the Commission believes our layer 2 availability performance in PQP1 was unacceptable and sustaining this level of performance into PQP2 should be subject to penalty. This is at odds with our expenditure proposal and funding was not provided for any step change in performance in the draft expenditure decision.
114. The Commission intention when establishing the limits using a binomial test was to target a probability of breaching the standard of 0.5%. Establishing a single standard infers that this probability is averaged across the network. This might be appropriate if the quality standard was measured in a similar way (i.e., across the entire network). However, the availability quality standard is assessed at each availability POI.
115. Using a single standard based on achieving an average probability across the network is inappropriate as not all POIs have the same probability of exceeding the threshold. For example, based on the historic data some availability POIs would have a 20 – 30% chance of exceeding the 17-minute threshold for layer 2 each year resulting in a 4 – 9% chance of breaching the threshold in two consecutive years.<sup>23</sup>

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<sup>23</sup> Further analysis of the risk of exceeding the standard for individual availability POIs is provided in Appendix 1.

Figure 2: Average downtime for layer 2 2022 - 2023



- 116. If the Commission’s purpose is to ensure no deterioration in performance (as opposed to improvement) then the threshold for layer 2 should be increased. There is greater risk that where there is an equipment failure on layer 2, it will impact multiple customers at a time, which increases the total downtime exponentially.
- 117. The continued use of availability POI areas (discussed in more detail below) means that rare but expected network events like equipment failures would result in an assessment failure for the year in some small availability POIs. For example, Greymouth only has one Passive Optical Line Terminator (**POLT**) so an outage here would likely result in an immediate failure of the quality standard assessment. However, a similar failure affecting the same number of customers would not even register in a larger POI area.
- 118. We recommend the layer 2 availability standard be set to at least 20 minutes if availability POI areas are used based on our historic layer 2 performance. This still represents a 50% tightening of the standard used in PQP1 consistent with the proposed change to the layer 1 availability standard.

**Use of availability POIs**

- 119. The Commission proposes more challenging downtime thresholds for PQP2. However, it has declined Chorus a key tool in managing performance against the measure – alignment of measurement to areas of management.
- 120. We have previously recommended the availability standard is set against CSAs, rather than availability POIs, as CSAs are the areas for which we contract field service work, and we use performance management metrics to benchmark and optimise performance of each area against other areas.

121. This approach was supported by the Independent Verifier who noted that CSAs would better support Chorus' network expenditure and capacity planning (due to alignment with service areas), and that it would help avoid unnecessary breaches of the availability quality standards.
122. Despite this, the Commission has suggested that our "CSA proposal appears to primarily aim to simplify its reporting burden by aligning the regulatory reporting areas for the PQP2 availability standards to its patch management areas".
123. The Commission has stated:

*By aggregating the other non-Auckland availability POI areas, availability performance will be subject to an increased degree of averaging. We consider this will mask issues that would otherwise be observed at an availability POI area level to the potential long-term detriment of end-users. For example, by combining the Greymouth availability POI area into the Lower South Island CSA Chorus would have less of an incentive to maintain or improve availability on the west coast of the South Island and therefore supply to them fibre fixed line access services of a quality that reflects end-user demands in line with s 162(b) of the Act.*

124. The Commission also notes:

*the variance of the number of connections across all other availability POI areas is less than the variation across the CSAs proposed by Chorus. As such, we also consider that Chorus' CSA proposal would not address this point.*

125. Despite the Commission's suggestion that the CSAs have similar issues as the POI, the CSAs have been expressly created to mitigate the challenges of geographical variation across smaller availability POIs. While the number of connections by CSA does vary, other considerations, such as the mix of urban and rural areas were considered in their design to ensure that each area is large enough to be effectively managed under our field service contracts (i.e., can support an effective number of technicians).
126. We dispute the assertion that our desire for using CSA's is primarily for the purpose of simplifying our reporting burden,<sup>24</sup> or that performance would be masked by their use.<sup>25</sup> Our recommendation of using the CSAs is intended to facilitate our ability to manage actual performance against the standard more efficiently.
127. We are only recommending CSAs are used for assessing performance against the availability quality standard and are not suggesting moving away from the use of POIs for reporting under ID. Full transparency of the performance of smaller POIs would still be provided through the information disclosure regime and any deterioration in performance would be transparent.
128. Our aim is to help facilitate efficient management of performance against the quality standard, not about reducing overhead. We encourage the Commission to support our efforts to align regulatory requirements to an efficient operating structure. Ensuring incentives to improve efficiency is a purpose of Part 6 as set out in s162(b)

<sup>24</sup> Commerce Commission, *Chorus' price-quality path for the second regulatory period (2025 – 2028) – draft decision - reasons paper*, 18 July 2024, paragraph 4.90.

<sup>25</sup> Commerce Commission, *Chorus' price-quality path for the second regulatory period (2025 – 2028) – draft decision - reasons paper*, 18 July 2024, paragraph 4.97.



and setting quality measures that facilitate efficient management of performance is consistent with that purpose.

129. We also object to the suggestion in the draft decision paper that Chorus could change geographic boundaries in subsequent negotiations with its service companies.<sup>26</sup> As the Commission should be aware, the volume of field service work for Chorus is declining now the UFB build has ended, and copper is being withdrawn. In that context, we have renegotiated field service contracts to seek the most efficient outcomes.
130. We question what analysis the Commission has undertaken to support the view that we should rearrange our field service arrangements. We do not think it is appropriate to move to what we consider to be a less efficient operating model in order to support regulatory compliance. The Commission should have a very high degree of evidence-based confidence before it makes recommendations that would force changes to Chorus's operations.

### Use of a new breach standard of two consecutive years

131. The Commission has proposed to introduce a new breach standard compared to PQP1.
132. Chorus will now fail an availability standard for a regulatory year if it fails to comply with the annual assessment in that regulatory year, and it has also failed to comply with the annual assessment in the preceding regulatory year. If there is a further exceedance of the annual assessment in regulatory year 3 for the same availability POI area, Chorus will breach the standard for year 3 as well as year 2.
133. The Commission considers that the new breach standard provides an improved incentive for Chorus to meet the quality standard and user expectations by:
- increasing the probability that systemic failures are detected and reducing the probability random variations are caught by the mandatory availability standard. As such, we consider the draft availability standards will overall better promote the part 6 purpose s 162(b) and therefore propose this change for PQP.*
134. We support the Commission's move to standards which are based on identifying systemic quality failures rather than random variations. We consider the 'two consecutive years' approach to be reasonable.

### Exclusions to the standard

135. The draft decision applies similar exclusions from the quality standards as in PQP1. These are:
- 135.1 force majeure events;
  - 135.2 port utilisation equal to or above 95%; and
  - 135.3 unplanned downtime caused by faults to non-diverse transport services.

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<sup>26</sup> Commerce Commission, *Chorus' price-quality path for the second regulatory period (2025 – 2028) – draft decision - reasons paper*, 18 July 2024, paragraph 4.94.

136. We support the Commission's decision to exclude these factors from the availability quality standards.

#### **Additional reporting requirements**

137. The Commission's draft decision includes a requirement to report annually on its performance against downtime levels. In PQP2, Chorus would be required to include the following information annually:
- 137.1 a statement confirming any exceedances of the annual downtime targets in each availability POI area;
  - 137.2 an explanation of any exceedances (including the cause) and any remedial action taken in response;
  - 137.3 any planned action Chorus intends to take to avoid a consecutive exceedance in the following year with respect to that availability POI area; and
  - 137.4 whether it has applied any the exclusions to downtime calculations (e.g., force majeure events). If it has, Chorus must separately set out the nature of the exclusions and the values excluded from downtime calculations for availability standard purposes.
138. The draft decision is to require this reporting no later than two months after the end of each regulatory year. These reports would also need to be audited and certified.
139. The requirement to provide an audited report annually on performance against the quality standard within a two-month period from the end of the regulatory year is not feasible. Two months (especially when they include the New Year holiday period) is too short a timeframe to generate reports, verify, get externally audited and director certified.
140. There is also a great deal of overlap between the requirements of a breach report and quality standard compliance report. Chorus would be required to provide a breach report (where a breach has been identified to have occurred). The breach report requires Chorus to provide similar information but is provided five months after the occurrence of the breach.
141. It is not clear why the annual assessment report should be expected to be provided within two months when the Commissions has previously recognised that compiling similar information would take five months in a breach report.
142. Six months after the end of the regulatory year is the standard that applies to Chorus in PQP1, and firms regulated under Part 4 of the Commerce Act have five months in which to provide their annual compliance assessment report. The draft decision does not present any rationale as to why Chorus should be treated differently in PQP2.
143. We recommend that the timeframe for the annual assessment report stays at six months after the end of the regulatory year in order to provide sufficient time for compilation, audit and certification. We also recommend the Commission rationalise the annual assessment report and breach report, recognising that if a breach occurs in a regulatory year and has been reported on in a breach report, the assessment report would not need to contain information about Chorus' response to the breach.

## Performance quality standard

144. The Commission's draft decision is to set a port utilisation standard where Chorus must not exceed 90% port utilisation upstream or downstream in any five-minute interval in a calendar month. The standard excludes force majeure events.

### Summary of Chorus' response

145. Chorus:

- 145.1 accepts the use of the 90% threshold for PQP2, but it should be reviewed for future regulatory periods;
- 145.2 supports the approach of a breach applying where the threshold is exceeded in three consecutive months;
- 145.3 does not support the application of the standard to every port as this creates a disproportionate financial penalty, and is unmanageable as not every issue experienced at each port will be able to be resolved in the timeframes proposed in the draft determination; and
- 145.4 instead, supports the retention of the 0.12% of ports threshold as applied in PQP1.

### Use of 90% port utilisation

146. We have previously argued for the use of a 95% threshold as this is the maximum utilisation threshold for our contractual service levels and was based on the UFB contracts. However, we can accept the Commission's continued use of the 90% port utilisation standard for PQP2 if:

- 146.1 the three consecutive month breach standard is applied; and
- 146.2 the Commission responds to our concerns, noted in more detail below, regarding the removal of the percentage of ports threshold.

147. The 90% threshold would not be reasonable absent these other changes to the standard.

148. We recommend that as technological standards change, the Commission should reconsider the port utilisation threshold in future regulatory periods. Where a network's average capacity on its aggregation links increases, the threshold should be increased. This is because the probability that end users will experience performance deterioration where a 100Gbps aggregation link is at 90% utilisation is lower than where a 1Gbps link is at 90% utilisation.

### Use of new breach standard of three consecutive months

149. The Commission's draft decision has changed the way that a breach of the quality standard would be established.

150. In PQP1, the Commission used a percentage of ports measure of 0.12% to determine a breach (i.e., an exceedance of 90% port utilisation had to occur on over 0.12% of ports in any month in a regulatory year before a breach occurred). Under the proposed standard for PQP2, a breach would occur if Chorus exceeded that

threshold on a single port if it has also exceeded that threshold on the same port in the previous two months.

151. Chorus has previously raised concerns about large unforeseen spikes in demand and the impact that these events have on its compliance with the performance standard.
152. The Commission considers the revised breach requirement mitigates these concerns as Chorus would need to breach in three consecutive months before a breach occurs. The Commission has stated that it considers this appropriate as it would be “indicative of systemic planning failure and more likely to indicate consumer harm.”<sup>27</sup> It also suggests that its proposed approach means that “Chorus will be required to focus on issues that would drive consistent systemic poor performance rather than random events.”<sup>28</sup>
153. We appreciate the Commission’s efforts to mitigate the challenges of large irregular spikes in demand. The three consecutive months approach is a pragmatic way to mitigate the major concern around volatility of demand arising from one-off events. However, by removing the percentage of ports qualification and applying the standard to each port, the Commission has created circumstances where:
  - 153.1 it is possible for Chorus to breach multiple times a year – in theory many thousands of times (with each breach potentially subject to a \$5m fine)
  - 153.2 Chorus could potentially have as little as 30 days from the first exceedance on a port to implement additional capacity before it breached the standard.

### Scope for multiple breaches

154. Chorus has almost 5,500 ports on our network that are currently subject to price-quality regulation and ~1.1m connections. This implies an average of around 200 customers per port.<sup>29</sup> The effect of the draft decision would be that where ~200 customers experienced port utilisation greater than 90% for 6 minutes a month in three months, this would be a breach with a potential \$5m fine. Then if there was a further 6 minutes above the threshold the following month there would be a further potential \$5m fine, and so on in future months. These consequences are massively disproportionate to any consumer harm on a per-port basis.
155. At its most extreme, there could be up to 66,000 potential quality standard breaches a year (based on 5500 ports x 12 months of breaches)<sup>30</sup> resulting in almost a third of a trillion dollars in potential penalties per year. This compares to a maximum \$5m penalty per year in PQP1 for the performance standard. The outcome is objectively absurd and is also at odds with Parliament’s intention in setting maximum penalties for quality standard breaches.

<sup>27</sup> Commerce Commission, *Chorus’ price-quality path for the second regulatory period (2025 – 2028) – draft decision - reasons paper*, 18 July 2024, paragraph 4.155.

<sup>28</sup> Commerce Commission, *Chorus’ price-quality path for the second regulatory period (2025 – 2028) – draft decision - reasons paper*, 18 July 2024, paragraph 4.152.

<sup>29</sup> In reality, ports are not dedicated to specific users and the number of connections per port is not uniform. However, the general point remains that the draft decision would penalise Chorus heavily for incidents that affect only a small number of connections.

<sup>30</sup> In the first year of PQP2, there could only be breaches in 10 months of that year, but in theory there could be breaches in 12 months of any subsequent year if the ports had also exceeded 90% utilisation in the last two months of the prior year.

156. The Commission’s aim should be to ensure Chorus manages its network such that systemic degradation in service does not occur. Moving to a three-month limit is a step in that direction. However, the approach of effectively regulating every single port and placing Chorus at risk of multiple breaches per year is inconsistent with a focus on systematic issues. In any large, complex network, there will be unusual circumstances that occur in particular ports. It is unreasonable to apply the standard at a per-port level.
157. We do not consider there to be any additional risk in limiting Chorus to one breach per year. This is because we have no ability or incentive to artificially reduce the capacity on the network if a breach were to occur early in the regulatory year. This can be evidenced by our experience with the 2022 breach of the performance quality standard where a breach in March did not result in any degradation in performance for the remainder of 2022 (e.g., increased loss or latency performance on the Chorus network). It also did not drive any customer assure tickets or complaints.
158. However, even if the Commission limited the exposure to one penalty per year, a standard that is set at the level of individual ports means the probability of breaching in any given year is very high, even if Chorus continues to operate efficiently.

**Inadequate time to remedy emerging issues**

159. While the new breach standard of three consecutive months initially sounds like a manageable standard, in practice it is possible that the elapsed time between the first and third exceedance could be as little as 30 days. If Chorus exceeds the 90% threshold on the last day of the first month, it may not have a second exceedance until the last day of the second month. This would provide Chorus no time to respond before potentially breaching the standard in the first day of the third month.
160. We have previously indicated that we consider that lag time for implementing additional capacity is three months on average but could be as high as two years in extreme cases. The Commission has stated that it considers that:

*two months is adequate to implement an emergency remedial upgrade. In the context of the capacity management scheme that Chorus has described these events should be very rare.*

161. While it is not clear what evidence the Commission has used to support its statement that two months is adequate to respond to capacity constraints, the standard as proposed in the draft decision does not provide even the minimum period to rectify concerns that the Commission has suggested is reasonable.

**Our proposed solution**

162. We recommend that the Commission reintroduce the percentage of ports qualification of 0.12%, as applied in PQP1, in tandem with the three consecutive months standard. The benefit of this approach is that it would mitigate our concerns regarding the 30-day elapsed time between exceedances and return the standard to a single breach per regulatory year which is more consistent with other quality standards. It would significantly reduce the risk of false positive breaches.
163. Alternatively, the Commission could consider whether to also include a minimum elapsed time between exceedances before a breach occurs. However, this approach

would not mitigate the concern of multiple potential breaches in a regulatory period or our concerns about systemic quality concerns being assessed via the performance of a single port.

### Specific port issue

164. We note that the Commission raised a concern in the draft decision about a single port that exceeded 90% utilisation in 15 separate months and 95% in 12 months.<sup>31</sup> The port the Commission is referring to was built at the request of a single customer, with the understanding that we did not have the full infrastructure in place to support the connection to the typical UFB standard. At the time it was built this port was out of scope of our UFB contractual coverage and was not considered an issue under our arrangements with Crown Infrastructure Partners (**CIP**).
165. While the Commission suggests that the port's performance is a concern, the customer received the performance that they expected and paid for.
166. Subsequently, the infrastructure has been built to fully support this port, although we note this took some time and the construction of a new Dense wavelength-division multiplexer (**DWDM**). Having regard to our obligations under Part 6, we no longer build ports to alternative standards. Therefore, we do not expect any other ports to have a similar long-term utilisation concerns.

### Exclusions to the standard

167. We continue to believe that an exclusion for congestion caused by equipment failure would be appropriate since the absence of such an exclusion means the standard includes a measure of reliability rather than performance.
168. However, we support the Commission's decision to exclude force majeure events from the performance standard and accept that is likely to address most of the practical concerns with including utilisation resulting from equipment failure in the standard. The inclusion of force majeure in conjunction with the three consecutive months improves Chorus' incentive to invest prudently and efficiently rather than investment in additional levels of redundancy and resilience to protect against events that are low probability and would not be cost effective.

### Other availability standards considered

169. The Commission notes that it also considered including a second performance standard to the draft decision. The additional standard the Commission considered was no more than 1% of ports shall experience port utilisation equal to or exceeding 90% in any five-minute interval in any single calendar month.
170. The Commission opted not to include this standard on the basis that it:
- 170.1 was unnecessary as the new PQP2 standard is likely to addresses issues with unforeseen random variations in demand and potential systemic issues in Chorus network planning more effectively than the PQP1 standard; and

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<sup>31</sup> Commerce Commission, *Chorus' price-quality path for the second regulatory period (2025 – 2028) – draft decision - reasons paper*, 18 July 2024, paragraph 4.155.

- 170.2 could still suffer from issues where one-off unforeseen spikes drive non-compliance and potentially perverse investment incentives.
- 171. The Commission also considered the option of considering all exceedances within the month as is done by NBN. However, the Commission did not consider this option feasible as a single external event could trigger a cluster of exceedances simply by lasting more than five minutes. Furthermore, it considered there is no need to allow for a margin of error whereby a small number of port breaches are acceptable in each month.
- 172. While we support the Commission’s decision not to include a separate and independent standard, as noted earlier, we do recommend that the Commission include a percentage of ports threshold in its proposed utilisation standard.

### Provisioning quality standard

- 173. The Commission’s draft decision is to set a quality standard for meeting the agreed connection date for the time to provision metric under a new provisioning quality dimension.
- 174. The Commission is concerned that the service levels in the UFB Agreements and the NZ Telecommunications Forum (TCF) Installation code are not providing sufficient incentives for Chorus to improve its provisioning performance. The Commission considers its analysis indicates issues with Chorus’ provisioning performance where a ‘truck roll’ (i.e. a connection that requires the physical attendance of a person on Chorus behalf) is required.
- 175. The new provisioning quality standard requires Chorus to achieve for an availability POI in a regulatory year:
  - 175.1 85% for connection requests in respect of which the agreed date is rescheduled is or more; and
  - 175.2 80% for all other connection requests is 80% or more.

### Summary of Chorus’ position

- 176. Chorus does not agree with the draft decision to introduce a provisioning standard. The standard is unnecessary as Chorus already has strong commercial incentives to deliver good provisioning outcomes, especially in the face of increased competition from 5G fixed wireless. The short-term issue of technician shortages has been resolved and our performance is now in-line with other LFCs. We consider the data relied on by the Commission to justify the new standard has been misinterpreted.
- 177. If the Commission remains concerned about provisioning performance after considering the new information presented in this submission, a more proportionate approach would be to create enhanced reporting requirements where more detailed information on provisioning processes, times and outcomes is disclosed annually.
- 178. However, if a provisioning standard is introduced it should:
  - 178.1 be a national standard, not based on availability POI areas as the number of connections in many areas is so low that we would be likely to breach due to small volumes and face potential fines many times in excess of the impact to end-users;

- 178.2 reflect only the aspects of provisioning performance that are within Chorus' control;
- 178.3 include a 'two consecutive years' rule, consistent with the availability standard, as the aim should be to address systemic issues rather than one-off events;
- 178.4 be set following a workshop with Chorus to ensure the details are practicable; and
- 178.5 have a suitable transition period (which would best be defined at the workshop, but absent that we suggest at least 12 months).

**The Commission has not followed best regulatory practice in establishing the proposed provisioning quality standard**

179. The Commission has not followed regulatory best practice for introducing a new quality standard, particularly a standard intended to improve performance rather than prevent the degradation of performance. We would expect the logic of introducing a new quality standard to be based on answers to the following key questions.

- 179.1 What is the level of performance that consumers demand?
- 179.2 Does Chorus already have commercial incentives to deliver that level of performance?
- 179.3 What are the expenditure consequences of targeting that level of performance?
- 179.4 Is there evidence that consumers support that level of expenditure?
- 179.5 Over what timeframe is that level of improvement achievable?

180. It does not appear that the Commission has engaged with these core questions in proposing the provisioning quality standard in any rigorous way. As explained in more detail below, we have the following concerns.

- 180.1 The draft decision appears to be influenced by incorrect analysis of Chorus' existing contractual settings and provisioning performance data. We encourage the Commission to re-examine the relevant information as it does not support a view that there is a need for regulatory intervention.
- 180.2 The Commission has acknowledged that "there is little stable historical data on which to base our draft decision on the level of the provisioning standard."<sup>32</sup> While the current ID requirements do provide insight as to Chorus's provision and customer service performance, the proposed standard has been set such that it cannot be calculated from the information currently provided through the information disclosure regime.
- 180.3 The draft decision has not considered the impact of its target for provisioning performance on Chorus' expenditure and therefore cannot establish if the consumers would be willing to pay to achieve the proposed

<sup>32</sup> Commerce Commission, *Chorus' price-quality path for the second regulatory period (2025 – 2028) – draft decision - reasons paper*, 18 July 2024, paragraph 4.227



standards or whether it is reasonably achievable within the expenditure allowances the Commission propose to set. We are also concerned the new standard could disincentive investment in new fibre areas.

- 180.4 The draft decision does not engage with the level of improvement in performance that is expected from the new quality standard and what an achievable timeframe for this is. The Commission is proposing a draft standard in August 2024, with a final decision likely to be published in November or December 2024 and taking effect from 1 January 2025. This leaves Chorus with no time to realistically prepare or respond to the new provisioning standard.

**We disagree with the Commission’s positioning of our past performance and current incentives with regards to the proposed provisioning standard**

181. It is difficult to understand why the Commission has decided to implement such a standard now when the number of new connections is reducing, and Chorus has increasing incentives to provide a high-quality experience in the face of increased competition from 5G fixed wireless.
182. We already have strong incentives to connect end-users and restore faults in a timely manner. Our provisioning performance in 2022 and early 2023 was adversely impacted by the service company reset (minor impact) and technician shortage (major impact), which was largely a result of pandemic border controls and immigration policy. These issues were both short-term and related to factors largely beyond our control and we provided briefings to the Commission at the time on these events, their impact and how we were managing them. The analysis in the draft decision is skewed as it focuses primarily on data from that unrepresentative time period.
183. The Commission notes in para 4.226.2 that it is in Chorus’ commercial interests to offer and promote good quality services. As such, we question what benefit in terms of consumer outcomes the Commission expects the new standard would deliver.
184. The draft decision appears to be influenced by incorrect analysis of Chorus’ existing contractual settings and provisioning performance data. We encourage the Commission to re-examine the relevant information as it does not support a view that there is a need for regulatory intervention.

**The Commission’s description of our treatment of rebates is incorrect**

185. The draft decision states in para 4.221 that:

*We consider that our draft decision will enhance existing service levels rather than replace them and note that there is no rebate for missing an agreed date and the TCF target focuses on the percentage of installations completed within the agreed appointment.*

186. This is factually incorrect. All our Layer 2 services (i.e. the vast majority of connections) use the Bitstream Service Level Terms which include an obligation to

pay rebates where we don't meet an agreed date.<sup>33</sup> Specifically, Chorus is required to complete:

- 186.1 each fibre scoping visit (where a Chorus technician visits a site and assesses and agrees how fibre will be installed) within the morning or afternoon window accepted by the RSP or end-user via our booking system; and
  - 186.2 installation of a fibre connection on the date accepted by the RSP or end-user via our booking systems.
187. If we fail to meet either of those commitments, we are required to pay a service rebate equal to one month's rental fee for the fibre service ordered.<sup>34</sup>
188. The Layer 1 Service Level Terms also require a rebate payment for Chorus reschedules and missed commitments.
189. As we noted in our submission on the Process and Approach paper, this means missed provisioning appointments already have proportionate financial consequences for Chorus. Prompt payment of service credits for missed appointments is a superior mechanism to a provisioning standard for the following reasons.
- 189.1 It establishes strong incentives to improve and maintain provisioning performance - The swift, certain and proportionate consequence resulting from a single missed appointment provides an incentive to get every instance of provisioning right, and the overall financial consequence of the sum of all credits paid drives improvements to provisioning systems and processes.
  - 189.2 It is the best remedy to the consumer harm cause by poor provisioning performance - Where a provisioning appointment is missed a service credit payment is made to the affected customer.<sup>35</sup> The person who suffers the harm receives the compensation. Quality standards do not achieve this.
190. Contrast this with the proposed provisioning standard that is complex, annual, based on proportions and divided into unequal and arbitrary geographic areas.<sup>36</sup> It is difficult for us to understand how we would track performance against this measure, and it would not create any incentive to improve performance or enhance any existing incentive. It is also unlikely to be comforting to any consumer who experiences a missed appointment.
191. Overlaying further serious consequences would not have any positive effect. Instead, it would risk driving inefficient overprovisioning of technician resource and excessive prioritisation of provisioning over other aspects of quality.<sup>37</sup>
192. If the Commission wanted to improve outcomes for end users, the most effective way to do this would be to ensure that RSPs are required to pass on the rebates paid

<sup>33</sup> See clause 1.2 of Appendix 1: Core Service Levels of Chorus UFB Services Agreement, Bitstream Services: Service Level Terms for Bitstream Services, supported by the obligation to pay one month's rental fee as a rebate each time an agreed date is not met.

<sup>34</sup> Ibid at Appendix 2, see table of Core Service Rebates.

<sup>35</sup> Chorus does not know whether our RSP customers pass through service credit payments to consumers.

<sup>36</sup> We note an 'availability POI area' has absolutely no relationship to provisioning or how it is managed.

<sup>37</sup> [Chorus-submission-on-the-Process-and-approach-paper-for-the-2025-2028-regulatory-period.pdf \(comcom.govt.nz\)](#), paragraph 107a

directly to the customers impacted through its RSQ workstream. This would ensure end-users receive direct compensation for missed appointments. We note that in the UK Ofcom has established a Voluntary Code of Practice for an Automatic Compensation Scheme where consumers are automatically compensated in certain circumstances including for a missed technician appointment.<sup>38</sup>

### **The Commission's method for assessing our historical provisioning performance is inappropriate and inaccurate**

193. The Commission has suggested that our provisioning performance, with regards to customer appointments met, is below that of other LFCs. Table 4.1 of the draft decision suggested Chorus' percentage of appointments met was only 57 – 59% for the period October 2022 – December 2022 with other LFCs achieving performance in the range of 85% – 90%.
194. The Commission's analysis is incorrect. By using data from October 2022 and December 2022, the Commission is assessing our performance during a period which does not provide a reasonable reflection of our longer-term performance. As noted above, between 2022 and early 2023 we suffered an unanticipated technician shortage because of the removal of covid travel and visa restrictions compounded by extreme weather events such as Cyclone Gabrielle. The number of technicians and levels of service during this period do not reflect our typical performance either before or after this the period.
195. The Commission has also inappropriately used a mix of data from Schedule 19(i) – provisioning and Schedule 19(v) - customer service in creating table 4.1. The analysis is based on taking the missed appointment disclosure from Schedule 19(v) but has not compared this to the total number of appointments from the same schedule. Instead, the Commission has used a proxy for the total number of appointments by using the total number of layer 1 and layer 2 connections (excluding intacts and transport services).
196. It is not clear why the Commission has not used the data from within the same schedule in its analysis. Schedule 19(v) includes data for both number of missed appointments and total appointments from which the Commission could have assessed the percentage of missed appointments.
197. If the Commission wished to use the more granular provisioning data from Schedule 19(i) (allowing the Commission to remove the impact of intacts and transport services), the schedule includes data on the number of connections which met the agreed date for provisioning, which could have been compared to the total number of connections.
198. However, mixing the data from different parts of the schedule creates analysis that does not show what the Commission hopes to demonstrate. There are legitimate reasons why the total number of connections from Schedule 19(i) would be lower than number of appointments made, as shown in Schedule 19(v). For example, appointments made include both scoping and installation appointment so some connections would require multiple appointments. Using the lower number of total connections as opposed to the total number of appointments artificially deflates

<sup>38</sup> Ofcom: "[Communications Providers' Voluntary Code of Practice for an Automatic Compensation Scheme for service issues relating to residential fixed-line telephony and broadband services](#)", see "Service Issue 3" which entitles the consumer to a £25 payment for a missed appointment.

Chorus’ performance for appointments met and is inconsistent with the use of missed appointments (which would include both scoping and installation appointments).

- 199. Based on the data disclosed in Schedule 19(v) alone, which outline total appointments and missed appointments nationally, Chorus’s appointments met percentage for the period between October 2022 and December 2022 is 85% - 87%. This performance has improved in the latter half of 2023 and has been above 90% for the period from August 2023 to December 2023.
- 200. Using disclosure data from schedule 19(i) alone, the percentage of connections made by the agreed date would have been on average 65% - 71% for the period October 2022 to December 2022. Again, this performance has improved in the latter half of 2023 and has been above 80% for the period from August 2023 to December 2023.

**Customer satisfaction is improving, and complaints have been declining**

- 201. Our customer satisfaction scores for installations also demonstrate that customer experience is not as problematic as the Commission has suggested. The graph below shows that customer satisfaction for installations with a truck roll have improved from **CCI [ ]**.

*Figure 3: Customer satisfaction for installations with a truck roll*

**CCI [ ]**

**]**

- 202. Over a similar period, complaints about Chorus to the Telecommunications Disputes Resolution Scheme (**TDRL**) have declined.

Figure 4: Chorus Telecommunications Disputes Resolution volumes and drivers

CCI [

]

203. The graph above shows that overall complaints against Chorus to the TDRL (formerly the TDR) have been declining. CCI [

].

204. In the year 22/23, Chorus were included within CCI [ ] of customer complaints to the TDRL (which includes complaints about all RSPs and LFCs). We consider the 2022/23 year to be an aberration due to factors outside of Chorus' control (i.e., the technician shortage and adverse weather events).

205. Historically, Chorus has been included in CCI [ ] of all TDRL complaints. In the six-month period from 1 July 2023 to 31 Dec 2023, Chorus complaints had dropped to CCI [ ] of all TDR complaints, CCI [ ]. This is despite the scope of complaints widening when the TDR scheme became the TDRL in July 2023.

**The introduction of the proposed provisioning standard creates costs and unanticipated outcomes for future fibre investment**

206. The Commission acknowledges that:

*its draft decision likely involves implementation costs. Although the exact costs are unknown, as Chorus is already required to monitor the percentage of connections that meet the agreed date under ID and report on these monthly, we do not anticipate that implementation costs would be large.*

207. This is a surprisingly narrow view and must be expanded in the final decision for it to be defensible. The Commission appears to only be taking into account the administrative costs of reporting against a new compliance standard. It appears to assume there will be no practical costs incurred in achieving the new service levels (80% or 85% of agreed connection dates being met) or that those costs are not relevant to its assessment.

208. In the final PQ determination reasons paper for PQP1 the Commission noted it interprets “quality that reflects end-user demands” (s162(b)) as “the quality that end-users are willing to pay for.”<sup>39</sup>
209. By suggesting that current provisioning performance does not meet end-user demands and needs to be improved the Commission is accepting that consumers would be willing to pay for such quality improvements. We do not know on what basis the Commission has reached this conclusion; however, the Commission has not provided for any such investment to improve provisioning performance in its draft expenditure allowance decision. We ask the Commission to provide the evidence supporting its (apparent) view that the only costs involved in relation to the new standard are administrative ones.
210. Our assessment is that meeting the new standard would likely create additional costs, especially where it is applied on an availability POI area basis. In some small areas the number of provisioning appointments per month can be very low so in order to make sure we have sufficient technicians to meet the standard we would need to increase technician resources above efficient levels (i.e., the technicians would generally not have enough work to do but would be available to deliver the provisioning requirements).
211. The proposed provisioning standard may also have the unanticipated consequence of disincentivising future fibre expansion. Chorus is still considering options for extending the fibre network. New fibre areas will now be in more rural or low-density areas which are further for technicians to travel. They are therefore likely to be at increased risk of rescheduling and breaching the provisioning standard, which may need to be factored into future investment decisions.

**Enhanced disclosure requirements would be a better solution if the Commission continues to have concerns about provisioning outcomes**

212. The proposed provisioning standard in the draft decision is a unique measure that is not currently disclosed under ID as part of either the customer services metrics or provisioning data. The proposed standard is also different from the Commission’s analytical approach that formed the basis for assessing the need for a provisioning standard (e.g., the Commission’s analysis in Table 4.1).
213. The proposed standard cannot be calculated from the information currently provided through the information disclosure regime. Therefore, it is clear that the standard has not been established based on Chorus’ historical performance.
214. Given the lack of data demonstrating Chorus’s performance against the Commission’s preferred measure of provisioning performance, we would recommend enhanced disclosure is implemented before any mandatory quality standard is introduced. This would provide greater transparency with regards to Chorus’ provisioning performance for customers.
215. Enhanced disclosure requirements would also allow the Commission to establish a baseline of performance under their preferred provisioning measure to better understand the extent of the gap between Chorus’ current performance and any

<sup>39</sup> See Commerce Commission, *Chorus’ price-quality path from 1 January 2022 – Final decision reasons paper*, 16 December 2021, paragraph 7.23.

proposed quality standard. This in turn would allow a greater understanding of the potential cost to Chorus of meeting a new quality standard.

216. Given ID amendments can be implemented at any time during the regulatory period, enhanced disclosure requirements allow the Commission additional time to workshop and consult to ensure any additional requirements are practically implementable.

### **There are several challenges with the implementation of the proposed provisioning standard**

217. The approach in the draft decision of putting forward a fixed quality standard with financial and criminal penalties attached based on “little stable historical data”<sup>40</sup> is extremely risky. We are surprised a regulator would take such an approach and recommend the Commission consider carefully whether it is appropriate to put a regulated business at risk of significant compliance breaches based on such uncertain information. As discussed above, there are errors and incorrect assumptions in the Commission’s analysis of provisioning data, and we do not believe this is a sufficiently robust evidence base to support a new quality standard.
218. If the Commission continues to consider that a provisioning standard is required, there are a number of challenges with the standard proposed in the draft determination that would need to be resolved prior to implementation.

### **Geographic disaggregation to availability POI areas**

219. The Commission has stated that:

*the use of use of availability POI areas to geographically differentiate between end-users gives a sufficient level of geographic disaggregation that incentivises to Chorus to provide service to end-users that reflects their demands while avoiding so much aggregation that some communities might not receive a level of service that reflect their demands in line with s 162(b) of the Act.*

220. We disagree with the Commission’s approach to using availability POIs as the level of geographic disaggregation. If a provisioning standard is introduced, we recommend it is applied as a national standard, to avoid substantial risk of small volumes of connections in some areas making breaches very likely.
221. In areas with smaller volumes, targets measured as percentages are harder to achieve. This is because in some availability POI areas, there may only be 1 – 2 connections per month so a single missed appointment would have a disproportionate effect. This is especially true given the standard has been expressed as a breach in a single availability POI area in a single year and is not based on consecutive failures like the availability and performance standards.<sup>41</sup> This is a feature of the Commission seeking to introduce the provisioning standard after most end-users have already been connected to fibre and provisioning volumes are low and falling.

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<sup>40</sup> Commerce Commission, Chorus’ price-quality path for the second regulatory period (2025 – 2028) – draft decision - reasons paper, 18 July 2024, paragraph 4.227

<sup>41</sup> Data from schedule 19(i) shows that total connections provisioned (excluding intacts) within the Wanganui availability POI area has been between 0 – 5 connections per month for the 9-month period April 2023 – December 2023. Total connections provisioned in Wanganui over the 9-month period was 14 (excluding intacts). The Gisborne POI area also showed a low of 2 connections provisioned in the month of April 2023.

222. As we described in relation to the proposed performance standard, the effect could be that Chorus is at risk of \$5m fines for failing to meet a target for a very small number of end-users. The penalty is disproportionate to the impact.
223. As we exit copper, these challenges will only become more pronounced, given the practicalities of physically resourcing small populations over a potentially large geographic spread (e.g., increased travel time). As the total volume of work for technicians in smaller areas reduces with the removal of copper, it will be a challenge to secure sufficient work to support even a multi-skilled team that can work on both fibre and copper.
224. If the Commission does not accept that any provisioning standard should be set at a national level, it should be set based on CSAs rather than availability POI areas. Where the Commission is targeting an increase in end-user performance, it should do so in a way that makes it relatively efficient for Chorus to deliver such a change (leaving aside the issue that the expenditure allowance does not provide funding for any improvement). As we have explained to the Commission previously, we divide work up among field service providers using CSAs which balances work volume for field force availability, sustainability and efficiency. Any requirement to deliver an improved service would be more likely to be achieved if it is based on how we operate the network.

**Applying the provisioning quality standard of 80% connections met and 85% of rescheduled connections met**

225. The proposed use of a provisioning standard of 85% of rescheduled connections and 80% connections met could create perverse incentives for Chorus with respect to connecting customers first time.
226. The Commission has indicated that the standard supports encouraging Chorus to provide a level of service that end-users expect by having the service provisioned on the date agreed with Chorus.<sup>42</sup>
227. In ideal circumstances, Chorus would connect all customers on the first date agreed and would not need to reschedule. The Commission's approach defines what a reschedule is and of those customers rescheduled, 85% must be connected on or before their first rescheduled appointment. For all other connections, 80% must be made on or before their first agreed connection date.
228. The Commission's proposed approach puts more focus on those customers being rescheduled, rather than those being connected on their first appointment. If Chorus were to exceed its provisioning standard for connections on first appointment (the optimal performance outcome), this would not mitigate the risk that we could fail the standard for those reschedules and could in fact exacerbate our risk.
229. With new provisioning requests declining, Chorus could connect the vast majority of these on the first appointment while increasing the likelihood of failing the standard for rescheduled appointments, if the volume of rescheduled appointments in an availability POI area was so low as to increase volatility for those rescheduled appointments.

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<sup>42</sup> Commerce Commission, *Chorus' price-quality path for the second regulatory period (2025 – 2028) – draft decision - reasons paper*, 18 July 2024, paragraph 4.218



230. As noted above, with some availability POIs requiring only a few connections per month, this could result in fewer than 100 connections per year in some areas. If Chorus were to outperform the quality standard and connect 90% of those connections on the first appointment, and only ~10 connections were required to be rescheduled, it might only take 1- 2 missed rescheduled appointments over a year to breach the standard.
231. This might disincentivise Chorus from meeting as many appointments first time as possible, if it were to increase the risk of failing the rescheduled appointments standard. This could encourage poorer outcomes for consumers.
232. If a provisioning standard is set, the standards should apply cumulatively to all provisioning requests (where reschedules are in Chorus' control). That is, performance that exceeds the standard for connections on the first appointment would offset the rescheduled connection standard. For example, the connection on first appointment standard could be set to 80% (excluding those where reschedules were caused by factors outside of Chorus' control), and the standard for connection by the second appointment (including first appointments) could be set to 90%.
233. This would mean Chorus would retain the incentive to connect as many customers as possible on the first appointment without increasing the risk of breaching the standard for rescheduled appointments.

**Inclusion and exclusions from the definition of connection request and rescheduled connection**

234. The Commission defines 'connection request' as requests for a new connection of a layer 1 service or layer 2 service that requires a connection that requires the physical attendance of a person on Chorus behalf or a disconnection from one type of FFLAS service and a connection to another type of FFLAS service that requires a connection that requires the physical attendance of a person on Chorus behalf.
235. A rescheduled connection is described as meaning rescheduled by Chorus by the agreed date but does not include rescheduled by Chorus:
- 235.1 at the end-user's request; or
  - 235.2 because the end-user or a person on the end-user's behalf was not present when an installer attended on Chorus's behalf to carry out work for the connection request at a prearranged date and time.
236. If a connection request is rescheduled after the initial agreed date, then it is counted as missing the agreed date. The draft provisioning standard states that if a connection request is rescheduled after the agreed date, then any future agreed date (or reschedule) for that request is excluded from the calculation method. This is intended to prevent a connection being counted twice in the calculation.
237. The Commission has stated for the other quality standards that its focus has been on identifying systemic issues that are within Chorus' control.<sup>43</sup> While the proposed provisioning quality standard identifies some exclusions on the basis of being outside of Chorus control (e.g. excluding reschedules driven by customer requests or

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<sup>43</sup> See: Commerce Commission, *Chorus' price-quality path for the second regulatory period (2025 – 2028) – draft decision - reasons paper*, 18 July 2024, paragraphs 4.164.1 and 4.236

because the customer isn't home), there are a number of other reasons why connection dates are missed or reschedules are required.

238. If a provisioning standard is set, we recommend the Commission expand the identified exceptions from the provisioning standard to include:
- 238.1 the existence of a serious health and safety issue;
  - 238.2 any delay in the provision of materials or information to be supplied by the RSP, required to complete the service;
  - 238.3 any acts or omissions of RSPs, end users and in case of MDU First Order of MDU owner(s) or their agents, that prevent Chorus from meeting a Service Level;
239. The definition of end-user also requires further consideration. We note that Chorus does undertake installations that are not requested by an RSP. In these cases, there is still an end customer who has an appointment for a Chorus representative to attend on a certain day to complete the installation. Even though it is only creating an intact connection as opposed to a working service, the impact on the customer of met or missed appointment is similar to the impact when installing a working service.
240. We consider layer 1 products should be excluded from any provisioning standard. Layer 1 products are typically network extensions, and don't generate a "connection request" that requires a Chorus technician to attend and meet with an end-user customer to complete the "connection". The ID requirement for "Met agreed date" for layer 1 refers to a "Ready for Service" date rather than an "appointment". This would be consistent with the draft decision's references to NBN's standards, which "are focused on appointments."
241. We note that one layer 1 product (PONFAS) does involve an appointment with an end-user/premises occupant. However, we consider these orders can also reasonably be excluded from provisioning standard because:
- 241.1 they are highly reliant on the requesting RSP to undertake on-site work; and
  - 241.2 we receive on average only one PONFAS request every two months, so the outcomes would be insignificant in the context of total Chorus connections.

### **Multiple years rule**

242. If the Commission decides to introduce a provisioning standard, we recommend it applies a 'two consecutive years' rule, as is proposed for the availability standard. The Commission's logic for the availability standard – that the intent of the standard is to address systemic issues rather than one-off events, applies equally to provisioning, and is arguably even more important due to uncertainty regarding the underlying data.

### **Implementation date**

243. If the Commission decides to introduce a provisioning standard, there are significant issues still be considered before it can be implemented. We recommend a workshop

with Commission and LFCs on defining the new standard, given the complexities of practically of implementing such a standard without creating perverse incentives.

244. We recommend that, if a new provisioning standard is introduced, the Commission apply a transition period before the quality standard comes into effect. The length of the transition should be determined at the workshop but at the very least should be 12 months to allow Chorus sufficient time to update its systems and manage the standard at the proposed availability POI level.

### Quality incentive scheme

245. The Commission's draft decision is not to introduce a pilot quality incentive scheme or a compensation scheme for PQP2, and continue to consider the need for, approach and design of any such schemes for future PQP resets. The draft decision recognised that consultation on such a scheme, through the process and approach paper, did not indicate a problem that warrants its implementation:

*A quality incentive scheme would potentially impose costs and administrative burden on both Chorus and others in the sector. We would therefore not seek to impose regulation without further analysis of the benefits from an incentive scheme.*

246. The Commission also recognises the limited data available to support the design of such a scheme.
247. We agree with the Commission's draft decision. Given uncertainty regarding willingness to pay and a need to avoid further complexity in an already highly complex regime, we support avoiding such incentive mechanisms unless they are clearly justified and would deliver net benefits.

## Appendix 1: Further analysis of availability POI standard

248. In relation to the Layer 2 availability standard, we have investigated how the difference in the variation of performance at each availability POI affects whether the Commission's target is consistent with its intention for a 7.1% chance of the target being exceeded in any one year (implying a 0.5% chance of the target being exceeded in two consecutive years).

249. Our method is as follows.

249.1 First, we have calculated the standard deviation in annual performance at each availability POI using the same 3 years of performance the Commission applied in its setting of the performance targets. We have also calculated the standard deviation using the same three years and the three years prior to that as a cross check.

249.2 Secondly, we have assumed that the expected performance at each availability POI is the national average observed over the three years the Commission analysed, which was 6.65 minutes.

249.3 Thirdly, we then calculated the likelihood that the Commission's proposed performance target of 17 minutes would be observed in any given availability POI, using the two estimates of the standard deviation, and assuming that performance is normally distributed around the expected value.

250. We find that the probability of exceeding the Commission's proposed performance standard of 17 minutes is greater than the intended 7.1% in 9 (5) of the 23 availability POIs, depending on whether the short term or longer term estimate of the standard deviation is applied.

251. We further find that if the performance standard is raised to 20 minutes, then the number of availability POIs where the probability of exceedance is greater than 7.1% falls to 3 (2).<sup>44</sup>

252. This is shown in the table below.

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<sup>44</sup> Layer 1 doesn't have the same variability issues as Layer 2. We note that using the 20-minute threshold for Layer 2 results in a similar profile to Layer 1 in terms of the number of availability POIs exceeding the targeted probability (i.e., 3 (3) availability POIs exceeding the 7.1% probability at the 80-minute threshold for layer 1).

Table 1: Probability of exceeding layer 2 availability threshold by availability POI

POI	Standard deviation (last 3 years)	Standard deviation (FY18 to FY23)	National average performance (last 3 years)	ComCom proposed performance standard for POI	Probability of exceeding performance standard - SD in last 3 years	Probability of exceeding performance standard - SD FY18 to FY23	Alternative performance standard for POI	Probability of exceeding performance standard - SD in last 3 years	Probability of exceeding performance standard - SD FY18 to FY23
Ashburton	6.29	4.96	6.65	17.00	5.0%	1.8%	20.00	1.7%	0.4%
Auckland (incl. Pukekohe, Waiheke, Waiuku)	5.29	4.17	6.65	17.00	2.5%	0.7%	20.00	0.6%	0.1%
Blenheim	6.13	5.15	6.65	17.00	4.6%	2.2%	20.00	1.5%	0.5%
Christchurch	1.56	1.86	6.65	17.00	0.0%	0.0%	20.00	0.0%	0.0%
Dunedin	7.25	5.82	6.65	17.00	7.7%	3.8%	20.00	3.3%	1.1%
Gisborne	7.72	6.31	6.65	17.00	9.0%	5.0%	20.00	4.2%	1.7%
Greymouth	13.25	11.28	6.65	17.00	21.7%	17.9%	20.00	15.7%	11.8%
Hamilton and New Plymouth	6.57	5.34	6.65	17.00	5.7%	2.6%	20.00	2.1%	0.6%
Invercargill	6.94	6.11	6.65	17.00	6.8%	4.5%	20.00	2.7%	1.4%
Kapiti (incl. Paraparaumu)	2.85	2.28	6.65	17.00	0.0%	0.0%	20.00	0.0%	0.0%
Levin	8.27	7.52	6.65	17.00	10.5%	8.4%	20.00	5.3%	3.8%
Masterton	2.35	1.97	6.65	17.00	0.0%	0.0%	20.00	0.0%	0.0%
Napier & Hastings	20.63	18.13	6.65	17.00	30.8%	28.4%	20.00	25.9%	23.1%
Nelson	3.40	3.81	6.65	17.00	0.1%	0.3%	20.00	0.0%	0.0%
Palmerston North (incl. Feilding) and Whanganui	10.33	8.39	6.65	17.00	15.8%	10.9%	20.00	9.8%	5.6%
Queenstown	2.66	2.94	6.65	17.00	0.0%	0.0%	20.00	0.0%	0.0%
Rotorua	8.30	6.85	6.65	17.00	10.6%	6.5%	20.00	5.4%	2.6%
Taupo	7.39	6.28	6.65	17.00	8.1%	5.0%	20.00	3.5%	1.7%
Tauranga	1.91	2.14	6.65	17.00	0.0%	0.0%	20.00	0.0%	0.0%
Timaru and Oamaru	4.98	5.04	6.65	17.00	1.9%	2.0%	20.00	0.4%	0.4%
Wellington	5.40	4.13	6.65	17.00	2.8%	0.6%	20.00	0.7%	0.1%
Whakatane	7.07	5.63	6.65	17.00	7.1%	3.3%	20.00	2.9%	0.9%
Whangarei	6.84	7.29	6.65	17.00	6.5%	7.8%	20.00	2.5%	3.4%
Number of POIs where probability of breach exceeds the target of 7.1%					9	5		3	2