ENABLE NETWORKS LIMITED AND ULTRAFAST FIBRE LIMITED

SUBMISSION ON NZCC FIBRE REGULATION EMERGING VIEWS: TECHNICAL PAPER

16 JULY 2019

1. Introduction

1.1 This submission is made by Enable Networks Limited (**Enable**) and Ultrafast Fibre Limited (**Ultrafast Fibre**) (collectively referred to in this submission as **LFC**s) in response to the Commerce Commission's *Fibre regulation emerging views: Technical Paper* dated 21 May 2019 (**EVP**).

1.2 In Part 1 of this submission we focus on eight key issues. The fact that we have not commented on other aspects of the EVP in Part I does not mean we necessarily agree with those views; we propose to deal with other relevant issues in the cross-submission process.

1.3 In Part II we respond to questions asked by the Commission in the EVP.

1.4 Part 1 of this submission addresses the following issues:

(a) the relationship between s162 and s166;

(b) the relevance of the UFB GPS to the exercise of the Commission's discretion under Part 6;

(c) the case for firm-specific asset betas;

(d) dealing with stranded assets;

(e) WACC comparators;

(f) ID WACC;

(g) IM flexibility, durability and certainty; and

(h) Quality IMs for ID regulation.

1.5 Attached with this submission is a Report from WIK-Consult GmbH dated 10 July 2019 commissioned by the LFCs in relation to service-wide vs asymmetrical cost of capital and asset stranding (**WIK Report**).

PART I

2. **Interaction between s 162 and s 166 of the Telecommunications Act 2001**

2.1 In paragraphs 60 to 73 of the EVP the Commission discusses the interaction between s 166(2)(a) and s 166(2)(b), and concludes "*there is no basis to give s 166(2)(a) primacy over s 166(2)(b) if we are required to make trade-offs between the two objectives*".[1]

2.2 In our view, it is the interaction between s 162 and s 166(b) that is relevant, rather than between subsections of s 166.

2.3 As s 162 applies to all of Part 6 (including s 166(b)), it follows that if the Commission is required to make a trade-off between the s 162 purpose, and the s 166 objective, s 162 must have primacy.

3. **The relevance of the UFB GPS to the exercise of the Commission's discretion under Part 6**

3.1 The Commission in making determinations under Part 6 is required[2] to have regard to "*any economic policies of the Government that are transmitted … to the Commission by the Minister*". As a result, the legislation requires that the Commission have regard to the 2011 Government Policy Statement that "*the Government's economic policy objective is that businesses have incentives to innovate and invest in new or upgraded ultra-fast broadband infrastructure for the long term benefit of end users.*"[3]

3.2 This in our view requires that the Commission, in making decisions under Part 6, gives primacy to "*the incentives to innovate that exist for, and the risks faced by, investors in new telecommunications services that involve significant capital investment and that offer capabilities not available to established services*". While this wording is taken from s 18(2A) of the Telecommunications Act 2001 (**Act**) (which applies only to Part 1 and Schedules 1 to 3 of the Act), these principles apply to Part 6 as a consequence of s 21 of the Telecommunications (New Regulatory Framework) Amendment Act 2018 (**Amendment Act**), as the drafting reflects the intent of the 2011 GPS.

3.3 The Commission has in the EVP indicated that it does not consider the 2011 GPS "*is relevant to our decisions under Part 6*".[4] The Commission's reasoning appears to be

(a) the GPS applied "*at the time of investment in ultra-fast broadband*";

(b) it "*predates and does not address regulation under Part 6"*;

(c) "*since then the UFB network has been substantially constructed*"; and

(d) "*Parliament has now established a new regulatory framework for fibre in Part 6, which represents the current Government's response to the concerns addressed in the 2011 GPS and contains its own purpose statements*".[5]

3.4 There are a number of shortcomings with the Commission's reasoning:

(a) the 2011 GPS was specifically intended to ensure "*businesses have the confidence and incentives to make investments in new or upgraded ultra-fast broadband infrastructure*";[6]

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[1] EVP [72]

[2] Section 21, Telecommunications (New Regulatory Framework) Amendment Act 2018

[3] *Statement to the Commerce Commission Concerning Incentives for Businesses to Invest in Ultra-fast Broadband Infrastructure*, New Zealand Gazette No 155, 13 October 2011, 4440 (2011 GPS)

[4] EVP [93]

[5] EVP [91]

(b) it recognised that "*the way in which the prices, revenues and/or quality of goods and services produced by these businesses is regulated or controlled can affect the incentives to invest in new or upgraded ultra-fast broadband infrastructure*";[7]

(c) the Government considered that this objective would be achieved by "*regulatory stability, transparency and predictability giving businesses the confidence to make long-life investments*";[8]

(d) a finding that the 2011 GPS is no longer relevant after 8 years because the network has been substantially completed is the antithesis of giving businesses the confidence to make long-life investments – to the contrary, it amounts to changing the rules after the investment has been made;

(e) Part 6 does not replace the 2011 GPS, because

(i) s 21 of the Amendment Act amended s 19A(1) of the principal Act to extend to Part 6 the requirement that the Commission have regard to any economic policies of the Government transmitted to the Commission by the Minister; previously this obligation applied only to the exercise of the Commission's powers under Schedule 3 of the Act; and

(ii) Part 6 confers broad decision-making powers on the Commission; s 19A as amended applies to the exercise by the Commission of those powers. The 2011 GPS would only not be relevant to Part 6 if the Commission has no discretion in the exercise of its Part 6 powers.

3.5 It therefore follows that the 2011 GPS continues to apply to decisions of the Commission under Part 6, and that it was Parliament's intention that it do so.

4. The case for firm-specific asset betas

4.1 The case against the Commission estimating a service-wide cost of capital, including a service-wide asset beta that will apply to all providers of FFLAS, is overwhelming.

4.2 The systematic risks facing LFCs are higher than that facing Chorus because LFCs face intense competition from the Chorus upgraded VDSL2 vectored copper network in their UFB areas that is not available in Chorus UFB areas, and from Chorus fibre in greenfield sites. The upgraded copper service provides download speeds up to 130Mbps, and increases download speeds for customers already on VDSL by more than 40%.[9]

4.3 Chorus has invested $20 million in LFC areas only to upgrade the performance of its copper network with the sole objective of slowing migration from Chorus copper to LFC fibre. This strategy has been successful. According to Chorus CEO Kate Mackenzie, the upgrade "*helped drive a strong increase in …VDSL uptake while also significantly slowing connection losses to other networks significantly*"; the connection losses being "*largely to other local fibre companies*".[10]

4.4 In addition, Chorus is an active participant in building fibre networks in greenfield developments in LFC UFB areas, while under their Crown contracts LFCs are not permitted to build fibre networks in Chorus UFB areas.

[6] 2011 GPS

[7] 2011 GPS

[8] 2011 GPS

[9] Computer World, *Chorus boosts broadband bandwidth with VDSL2 vectoring*, 15 October 2018

[10] Reseller News, *Chorus reports half year*, 26 February 2018

4.5 For these reasons, Cambridge Economic Policy Associates Pty Limited (**CEPA**) in its report for the Commission[11] concluded that "*there may be reasons to think that the systematic risk exposure of the LFCs could be above that of Chorus*". However, CEPA decided to disregard these differences because it had "*not identified a robust basis to estimate a different asset beta for the LFCs*".[12]

4.6 In WIK's opinion "*CEPA's recommendation to the Commission to ignore differences in systematic risk between Chorus and the LFCs is methodologically incorrect, relies on a poor assessment of identified risk factors and ignores major risk factors that make a difference*".[13]

4.7 According to WIK, CEPA's recommendation is "*an unacceptable conclusion from a decision logic point of view. A regulatory decision maker always has to make judgments on a variety of subject matters to come to an equitable regulatory decision, even though they cannot be based on 'robust estimations'*".[14] WIK refers to the Commission's 67th percentile decision in the electricity sector as an example where the Commission concluded there were a number of key relationships influencing the WACC percentile that were "*subject to fundamental uncertainty*", and that "*judgement is still required when deciding the appropriate WACC percentile*".[15]

4.8 WIK evaluates the risk assessment analysis in the CEPA Report, and concludes CEPA underestimated the risks it identified, and failed to assess major risk factors relating to business models and competition. WIK's reasoning is set out in its Report; we do not repeat their analysis in this submission.

4.9 WIK's risk assessment relative to that CEPA undertook is illustrated in Table 2-1 of the WIK report as follows:

Table 2-1: Systematic risk of LFCs relative to Chorus according to WIK and CEPA

	CEPA	**WIK**
Demand	▲	▲
Growth opportunities	✓	▲
Operating leverage	✓ or ▲	▲
Asset stranding	✓	▲
Company size	✓	✓
Business model	-	▲
Competition	-	▲
Other risk factors	✓	✓

▼= lower risk; ▲= higher risk; ✓= similar risk

[11] CEPA, *Cost of capital for regulated fibre telecommunications services in New Zealand: Asset beta, leverage, and credit rating*, 20 May 2019 (CEPA)

[12] CEPA p 43

[13] WIK-Consult, *Report in response to the Commerce Commission's 'Fibre regulation emerging views: Technical Paper' of 21 May 2019*, 10 July 2019, [5] (WIK)

[14] WIK [20]

[15] NZ Commerce Commission: *Amendment to the WACC percentile for price-quality regulation for electricity lines services and gas pipeline services, Reasons Paper*, 30 October 2014, [X14] and [X15].

4.10 WIK concludes that "*CEPA has failed to quantify the higher risk for the LFCs. Had it done so, it should have proposed an asset beta value for the LFCs that lies at least in the 0.46 – 0.55 range for the integrated service providers. Also, this should, for the reasons outlined, be higher than the 50th percentile of that range*".[16]

4.11 In that regard, WIK concludes that "*given the higher risk that the LFCs are facing relative to that of Chorus, an uplift of the value of the asset beta for the LFCs of up to 10 percentage points relative to that of Chorus would be reasonable*".[17]

5. Dealing with stranded assets

5.1 The WIK Report observes that because the Crown contracts required LFCs to deploy the fibre network for 100% of each fibre provider's coverage area in a specified timeframe, they had no flexibility to adjust their network investment according to demand and uptake. Their investment is sunk and irreversible.

5.2 In the LFC network areas, the success of fixed wireless access (**FWA**) and competition from Chorus' upgraded VDSL2 vectored copper service which is not available in Chorus' UFB areas, and Chorus fibre in greenfield sites, is likely to result in asset stranding, as the invested asset will generate lower revenues than in the initial LFC business case.

5.3 In WIK's opinion compensation for stranding must be compensated on an *ex-ante* basis; to try to compensate for stranding after the event is not feasible, due to the 'death spiral' problem.[18]

5.4 WIK agrees in principle with the Commission's conclusion[19] that providing *ex-ante* compensation by way of a WACC uplift would be the most appropriate solution.

5.5 WIK also suggests as an alternative solution not to revalue the RAB annually as the Commission proposes, as "*this would reduce the risk to the operator as it is able to earn a larger share of its revenues earlier in time than under the approach with revaluation"*.[20]

5.6 This approach has previously been adopted by the Commission.[21] LFCs submit that a combination of WACC uplift and an unindexed RAB is the most appropriate way to compensate them for the clear stranding risks they face.

6. WACC comparators

6.1 In calculating the asset beta applicable for the structurally separated wholesale only providers of fixed fibre services, all of whom are subject to statutory or Crown contractual restrictions on their business activities, the Commission has relied on the CEPA Report which estimates the asset beta for FFLAS providers by reference to the asset beta of companies that CEPA identifies as likely to have similar systematic risk.

6.2 As CEPA was unable to identify any other wholesale only fibre network other than Chorus, it selected, by elimination, companies in the telecommunications sector that it considered would be appropriate comparators (that is, have similar systematic risk exposure) relative to the FFLAS providers.

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[16] WIK [51]

[17] WIK [8]

[18] EVP [602]

[19] EVP [645ff]

[20] WIK [67]

[21] NZCC, *Input methodologies review draft decisions - Topic paper 3: The future impact of emerging technologies in the energy sector*, 16 June 2016, p 36.

6.3 The outcome of this exercise was a comparator set comprising Chorus, 5 wholesale only telecommunications tower companies, 2 wholesale satellite operators, and 51 vertically integrated operators of legacy telecommunications networks.

6.4 We disagree with CEPA's approach to selecting comparator firms, and the weight given by CEPA to those firms, in determining the asset beta for the Chorus fibre business.

6.5 CEPA's wholesale sample contains only one useful observation—the observable asset beta for Chorus (as a whole business, rather than just as a fibre provider). This observation is mainly useful as a reference point—clearly, the asset beta for Chorus as a firm will be lower than the appropriate beta for just the fibre services provided by Chorus, which in turn will also be lower than the appropriate beta for LFC-provided fibre services.

6.6 The rest of the CEPA "wholesale" sample comprises:

(a) **Tower Companies**—firms that are in the business of owning real estate with basic tower structures that provide fittings to which communications equipment can be attached. These firms do not own any telecommunications network equipment, and derive almost all of their revenue from leasing space on their towers to actual communications companies.[22]

(b) **Satellite Companies**—firms that, as stated in CEPA's report,[23] derive approximately two thirds of their revenue from satellite television services, not communications services.

6.7 In LFCs' view, betas for tower and satellite companies are entirely irrelevant to establishing the asset beta for fibre services provided by either Chorus or LFCs.

6.8 In addition, CEPA gives equal weight to the two sets of beta estimates—one derived from a sample of "wholesale" providers, and another from a sample of "integrated" service providers. However the "wholesale" sample is much smaller than the "integrated" sample, and giving the two groups equal weighting is not appropriate.

6.9 The systematic risk exposure faced by new fibre networks is a magnitude greater than the risks faced by CEPA's comparators. In addition, CEPA's heavy reliance on legacy telecommunications companies in the comparator set is surprising, in light of the findings of the 2016 Brattle Report for the European Commission,[24] (referred to in the CEPA Report[25]) that there were several reasons why new fibre networks have a higher systemic risk than legacy networks, and accordingly require a "WACC premium" relative to legacy networks.[26]

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[22] American Tower Corporation describes its own business as follows (emphasis added) "We are one of the largest global **real estate investment** trusts and a leading independent owner, operator and developer of multitenant communications **real estate**. **Our primary business is the leasing of space** on communications sites to wireless service providers, radio and television broadcast companies, wireless data providers, government agencies and municipalities and tenants in a number of other industries. We refer to this business as **our property operations, which accounted for 98% of our total revenues** for the year ended December 31, 2018. We also offer tower-related services in the United States, which we refer to as our services operations. These **services include site acquisition, zoning and permitting and structural analysis, which primarily support our site leasing business, including the addition of new tenants and equipment on our sites**" Source: ATC 2018 annual report accessed at: http://www.annualreports.com/HostedData/AnnualReports/PDF/NYSE_AMT_2018.pdf

[23] CEPA, Appendix A, p 50.

[24] The Brattle Group, Review of approaches to estimate a reasonable rate of return for investments in telecoms networks in regulatory proceedings and options for EU harmonization, 2016 (Brattle)

[25] CEPA, p 24

[26] Brattle p12, 95ff

6.10 In Table 3 of the Brattle Report, the WACC premia adopted by National Regulatory Authorities for fibre to the premises networks relative to legacy networks are listed, ranging from 2.2% in the UK to 4.81% in Spain.[27]

6.11 The Commission must therefore undertake further work to identify an appropriate comparator set, and if legacy networks are included, apply a 'WACC premium' in line with the Brattle Report recommendations.

7. ID WACC

7.1 As explained in the WIK report, the systematic risk facing LFCs is greater than that facing Chorus. This is acknowledged by CEPA, who state that "*there may be reasons to think that the systematic risk exposure of the LFCs could be above that of Chorus*".[28]

7.2 As a consequence, LFCs have a higher asset beta (and therefore WACC) than that applicable to Chorus. The WACC range for ID would need to be based on the higher WACC determined for LFCs, not the WACC determined for Chorus for PQR purposes.

7.3 CEPA argues that because it is difficult to quantify the WACC uplift for LFCs, and it is not important because LFCs are only subject to ID and not PQR, (so the WACC applied to LFCs is used only to monitor LFCs' profitability) there is no need to do so. In coming to this view, CEPA ignores the important function that the regulated WACC serves in forming investor expectations.

7.4 The Commission's view on an efficient WACC for LFCs provides an important market signal. It will influence the valuations of the LFCs, and therefore their actual cost of capital. Investors providing equity or debt to LFCs do so on the basis of expected future cash-flows. Given a credible threat of future PQR, the WACC that the Commission might apply to LFCs in future regulation is an important factor investors will take into account in forecasting future LFC revenues.

7.5 Therefore the Commission cannot take the approach recommended by CEPA of not estimating a different asset beta for LFCs. As WIK observes, the Commission must use its judgement in this situation, as it has in the past. If, as the Commission proposes in the EVP, it uses the Chorus WACC to monitor LFCs for ID purposes, investors may infer that, should the Commission subject LFCs to PQR in future, it may apply the same WACC to LFCs as to Chorus. Such an expectation would lead to inefficiently low valuations and a higher cost of capital for LFCs now, even though LFCs will not at this stage, and may never, be subject to PQR.

7.6 The EVP discusses a WACC estimate for ID, and suggests that the cost of capital estimate for PQR could be used for ID purposes. The main reason for this proposal appears to be that the annual cost of capital estimates have not been relied on under Part 4, and this approach would reduce the Commission's administrative tasks.

7.7 An absolute WACC estimate is not appropriate for ID regulation. A single point estimate of WACC is less relevant for ID regulation than PQ regulation because it is used in an ex-post context. Actual annual returns may diverge from target returns due to unforeseen circumstances such as demand or cost variances.

7.8 In addition, LFCs may choose to derive revenue targets using input assumptions which differ to those used for PQ purposes. Under ID, LFCs do not have the protection of revenue cap wash-ups available to Chorus, to ensure they don't under recover due to forecasting error.

7.9 The term of the regulatory period is not relevant for LFCs subject to ID regulation, and LFCs will not have the same incentives as Chorus to set prices and manage debt with reference to the regulatory period.

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[27] Brattle, pp 101 - 102

[28] CEPA p 7

7.10 When estimating the risk-free rate and the debt risk premium, the Commission needs to make an assumption about the time period over which the firm is funded (for debt or equity). The Commission's usual practice is to assume that, despite efficient funding horizons generally matching the useful life of the underlying assets, the funding horizon for regulated business should be matched to that of the regulatory periods over which tariffs or revenues are set. We do not agree with this practice and believe the better approach, adopted by many regulators globally including in Australia, is to match the assumed funding horizon to the useful lives of the underlying assets and firms' actual debt structuring behaviour.

7.11 The longer term approach is clearly more appropriate for ID WACC purposes since no regulatory periods exist in the ID regime. For long-lived infrastructure assets, like fibre, the investment time horizon is usually well in excess of 10 years.

7.12 10-year bond rates are often used by overseas regulators (including the Australian Competition and Consumer Commission and the Australian Energy Regulator) because government and corporate bond terms rarely exceed 10 years. We consider that, given the circumstances of the LFCs, the Commission should adopt a 10-year time horizon for setting the risk-free rate and the debt risk premium for the LFCs.

7.13 Under Part 4 regulation, the profits of EDBs and GPBs have been monitored with reference to a LFC WACC range reflecting the 25^{th} to 75^{th} percentiles. A WACC range in this order is consistent with the s 186 purpose of ID regulation to provide information to monitor whether the s 162 purpose is being met and the s 187(2)(b) requirement for the Commission to undertake summary and analysis of ID information is satisfied.

7.14 The ID WACC IM must clearly define the WACC parameters and the methodology for establishing them, including how the asset stranding risk will be addressed.

8. **IM flexibility, durability and certainty**

8.1 The s 174 purpose of IMs is to promote certainty in relation to the rules, requirements and processes applying to the regulations or proposed regulation of FFLAS services. Certainty will support the objectives of the s 162 Purpose Statement, including incentives to innovate and invest, improve efficiency and meet end user demands for services. This will be achieved by stable and durable regulatory methods which are able to apply across regulatory periods. As demonstrated under the Part 4 regime, certainty is not absolute, and increased certainty is likely to develop over time.

8.2 It is therefore important to consider where on the spectrum of 'increased certainty' to 'complete certainty' these initial IMs should be determined. The answer to this may differ between IMs; for example those aspects of the IMs which address past investments could be more prescriptive than those which look to the future. Those which address regulatory decision making processes should also be certain.

8.3 There is considerable uncertainty about the future of FFLAS markets. The EVP highlights emerging competition and de-regulation as features of FFLAS markets which contribute to this uncertainty. These are features which largely did not exist when the Part 4 IMs were determined for electricity, gas and specified airports services.

8.4 This additional uncertainty about the regulated service and associated markets suggests that more flexibility is appropriate for the Part 6 IMs. This can be achieved by using principle based methodologies rather than prescriptive rule books. If rules based regulation is not durable, regulatory certainty is compromised.

8.5 Principle based approaches have proven to be durable to changes in market circumstances under Part 4. For example the cost allocation and asset valuation IMs have provided sufficient flexibility for regulated providers to invest in emerging technologies and substitute capex for opex in supplying regulated services.

8.6 Additional prescription can be included where appropriate in PQ and ID determinations, to provide more transparency over current and expected future regulatory performance.

8.7 Finally, LFCs agree that the IMs must meet the requirements of s 176(2) to ensure the material effects of each IM are understood, describe how the IM is to be applied, and that the IMs are consistent with each other.

9. **Quality IMs for ID regulation**

9.1 The Act requires the Commission to develop an input methodology "*to the extent applicable to the type of regulation under consideration*"[29] for "*measures of the quality of fibre fixed line access services, and may include (without limitation) responsiveness to access seekers and end users*".[30]

9.2 While a s 170 price-quality determination must specify "*the quality standards that must be met by a regulated fibre service provider*"[31], there is no such requirement for ID regulation; the Commission has discretion whether information relating to quality performance, measures and statistics is required to be disclosed.[32] There is accordingly a threshold issue which must be addressed, and that is whether a quality IM for ID is required at all.

9.3 The EVP explains that "*the quality IM seeks to address the following economic problem: Where there is little or no competition and prices/revenues are capped, there is a risk that a regulated firm's incentives to provide the quality that consumers demand may be weakened".*[33]

9.4 This economic problem has no relevance to the LFCs, for a number of reasons:

(a) Firstly, it is not the case that LFCs face "*little or no competition*". In addition to competition from fixed wireless access networks, they also face intense competition from the Chorus upgraded VDSL2 vectored copper network in their UFB areas that is not available in Chorus UFB areas, which provides download speeds up to 130Mbps, and increases download speeds for customers already on VDSL by more than 40%[34], and from Chorus fibre in greenfield sites. Enable in addition faces intense competition in the Christchurch area from Vodafone's HFC network, which can provide fibre-like speeds. LFCs do not therefore need regulation to incentivise them to provide a service that reflect end-user demands; they must meet end-user demands to survive in the market;

(b) Secondly, LFCs have built fibre networks with 100% coverage, with uptake around 50%. They cannot achieve their targeted return on and of capital without a significant increase in uptake. They can only achieve this by offering quality services to gain customers from competing networks. There is therefore no risk of LFCs lowering their network expenditure and allowing quality to degrade below end-user demands, as end-users will simply choose a different network;

(c) Thirdly, because of the competition from competing technologies, LFCs have to continue to meet end-user quality demands in order to retain existing customers. The statistics on churn from fibre to other technologies is evidence that competitive pressure continues after a customer has been connected to fibre;

(d) Fourthly, the same incentives on LFCs to meet the requirements of end-users apply equally to responsiveness to access seekers, given LFCs are wholesale only providers

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[29] s 176(1) Telecommunications Act 2001

[30] s 176(1)(b)

[31] s 194(2)(c)

[32] s 188(2)

[33] EVP [665]

[34] Computer World, *Chorus boosts broadband bandwidth with VDSL2 vectoring,* 15 October 2018

and their two major customers, representing close to 70% of the retail market[35], offer fixed wireless access services in competition with the LFCs;

(e) Fifthly, as LFCs are not subject to price/revenue caps, their incentives to provide services of the quality consumers demand are not weakened;

(f) Sixthly, LFCs have detailed SLAs in their WSAs which will continue in force post 2021. To change an SLA post 2021 the LFCs must:

(i) propose the change to the RSPs;

(ii) consult on the proposed change to the SLA with industry via the TCF Product Forum; and

(iii) reasonably consider any responses from the RSPs.

SLAs include L1 and L2 time to connect, L1 and L2 service availability (maximum downtime), L2 disconnection and Performance via Frame Delays, Delay Variance and Loss. LFCs are subject to penalties for breaching the core SLAs. There are also reporting only requirements for ancillary services;

(g) Seventhly, LFCs are signatories to key Telecommunications Forum (**TCF**) codes including the TCF Customer Transfer Code for fibre services, and will soon be signatories to the TCF Fibre Installation Code. TCF Codes are self-regulatory instruments developed through industry working groups with MBIE participation. LFCs are required to certify compliance with the codes on an annual basis, and face possible sanctions for breaching the codes; and

(h) Finally, the LFCs are also subject to non-discrimination and equivalence obligations that continue post 2021.

9.5 The TCF Fibre Installation Code was developed by a TCF working group comprising the four providers of FFLAS and retail service providers (**RSPs**), subject to Crown oversight in the form of CIP approval. The working group has evaluated and identified nationally consistent standards that set clear expectations on delivering a good customer service when communicating, installing and connecting a new residential FFLAS to a customer. The Code includes key quality measures for new fibre installs covering ordering and provisioning, while availability, performance, and fault management are covered by SLAs in LFC WSAs.

9.6 The Chorus and LFC Reference Offers will be amended to capture the relevant service quality metrics in the Code so that there will be a consistent standard across the four fibre network operators in relation to completing and connecting fibre customer orders, provisioning, and including switching, faults, performance and availability. As noted above, these Reference Offer updates require CIP approval following the completion of industry consultation.

9.7 In addition, Chorus has recently released new fibre SLAs in a revised Reference Offer. LFCs are in the process of bringing their equivalent SLAs into alignment, to provide RSPs and end-users with nationally consistent SLA metrics.

9.8 The TCF Customer Transfer Code is a regulated code that specifies the transfer process and supporting behaviour that service providers must adhere to when facilitating a transfer of a customer's regulated telecommunications services.

9.9 Quality dimensions are best delivered using the current self-regulatory TCF processes of codes negotiated with and signed by LFCs, Chorus and RSPs. This process is better designed to address the dynamic and flexible changing needs of industry and end-users in offering new

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[35] NZCC, *Annual Telecommunications Monitoring Report*, 18 December 2018, p 18

products, innovation and supporting broadband communication industry than regulation by the Commission, and has been proven to work effectively and speedily. In addition, because the end to end service involves both LFCs and RSPs, quality cannot be dealt with in isolation; the TCF Code imposes quality obligations on RSPs as well as LFCs.

9.10 Regulatory intervention to introduce additional quality measures is unnecessary, and could well undermine the important self-regulatory role of the TCF. The industry has already invested significant time and effort to develop appropriate service levels and quality measures (which also have associated rebates) to meet end-user (consumer) needs and provide RSPs with a nationally consistent set of metrics. To replace them, or introduce additional metrics, would disproportionately burden LFCs for no obvious benefit to the end-user.

9.11 In addition, the imposition of an additional layer of compliance requirements will raise the risk of inconsistency between the new and existing TCF and WSA reporting obligations, and increase compliance and resource costs disproportionately. The existing requirements are sufficient for the purposes of ID which is to monitor performance against the s 162 purpose statement.

9.12 LFCs accordingly submit that a quality IM is not applicable to ID regulation. Any quality IM developed by the Commission should apply only to PQR, should be at CEPA level 2, and should only include service performance and availability quality dimensions that are not covered in TCF Codes or WSA SLAs.

PART II Response to IM Emerging Views (Questions)

Question	
1	*What are your views on our interpretation of end-users of FFLAS and (a) whether or not persons can only be end-users when they are direct recipients of a telecommunications service rather than the recipients of a non-telecommunications service, and (b) when a retail service is "dependent" on a FFLAS?* LFCs remain of the view that the term "*end-users in markets for fibre fixed line access services*" should be limited to end-users of fibre services, not end-users of other telecommunications services whose service provider uses fibre somewhere in its network. As we have previously submitted, the Commission's proposed interpretation is unworkable, as it has no way of distinguishing between FWA end-users whose service provider is obtaining fibre backhaul from a regulated FFLAS provider, and an end-user whose service provider is obtaining fibre backhaul from an unregulated competitive supplier of backhaul services. There is no policy reason to include FWA end-users as FFLAS end-users. Section 166 provides the mechanism for the Commission to consider the benefits flowing to that group of end-users if it considers it relevant to do so.
2	*Is the 2011 GPS on the incentives for businesses to invest in UFB infrastructure irrelevant to our decisions under Part 6?* No, it is binding on the Commission – see section 3 of Part I of this submission
3	*Can we can set IMs to support the matters in subparts 7 to 10 of Part 6, and not only IMs directly related to PQR and ID?* The purpose of input methodologies is to promote certainty in relation to the rules, requirements and processes applying to regulations under Part 6 (s 174). Section 178(2) makes it clear the Commission can determine input methodologies other than those specified in s 176, but the additional input methodologies must relate to rules, regulations and processes applying to regulations under Part 6, and, in accordance with s 176(1), must be applicable to the type of regulation under consideration. It would therefore follow that IMs must be directly related to PQR and/or ID. The Commission can set IMs to support matters in subpart 7 (reviews), but it is doubtful whether subparts 8 (enforcement), 9 (appeals) or 10 (orders and regulations) fall within the s 174 purpose.
4	*Are there any other key issues that you consider should form part of our legal framework?* Yes – see section 2 of Part I of this submission on the interaction between ss 162 and 166(b) of the Act
5	*Are there challenges involved in applying the FCM principle to FFLAS markets that mean we should not adopt this principle into the Part 6 regime? If so, please elaborate*

Question	
	on your concerns with specific references to FFLAS market characteristics/dynamics that would make the application of the FCM principle impractical. We support adoption of the FCM principle, which is consistent with maintaining incentives to invest by allowing for normal returns over the lifetime of an investment, as specified in the s 162 purpose statement.
6	*Do you consider there is an economic principle related to competition that would increase regulatory certainty and would inform our decision-making process over and above the purposes described in s 166(2)? If so, please elaborate on how such a principle would fit with our decision-making framework.* No, because the competition principle is the fundamental principle reflected in the s 162 purpose statement. This statement is the overarching framework which guides the development of the IMs, as stated in the s 174 purpose of IMs. We therefore agree with the analysis in the EVP at paragraphs 131 – 132.
7	*What are your views on the advisory panel's recommendation that there does not appear to be a strong case for an additional pricing principle beyond the pricing rules the Act imposes on Chorus? Please explain any areas where you disagree with the panel's advice and elaborate on how any pricing principle you propose would fit with our decision-making framework.* We agree with the Panel's recommendation for the reasons set out in section 6 of our cross-submission in response to the Issues Paper, 31 January 2019 (**Issues Paper**).
	Do you have any other views on our economics principles? These principles have emerged under Part 4 regulation, and have proven to be helpful in developing the regulatory framework, providing guidance where there is regulatory discretion, and promoting regulatory certainty. As stated above, additional principles for competition and pricing are not required; if introduced they could compromise the outcomes defined in the s 162 purpose statement.
8	*What are your views on our approach to establishing the initial RAB values?* We support a principle based rather than a rules based approach. This will be more durable and avoids unnecessary complexity and therefore compliance costs. It is important that GAAP based asset information is able to be used. We support a regulated fibre provider led process for establishing the initial RAB, supported by appropriate audit and certification. We understand this worked well under Part 4, and is consistent with the proportionate based approach to regulation which is a critical outcome for LFCs.
9	*What are your views on our approach to the composition of the RAB?* We support the Emerging View:

- for a principle based approach to ring fencing assets to be included in the regulated service;
- to recognise assets once commissioned for the purpose of providing regulated services; and
- for a similar ID asset valuation IM for Chorus and LFCs, subject to adopting a principle based approach to the IM.

We acknowledge that it may be appropriate to include additional requirements for asset valuation information in the ID Determination. However these must be proportionate for LFCs, and retain as much alignment with GAAP as possible in order to minimise complexity and promote regulatory certainty.

We support the Emerging View that asset granularity will not be highly prescriptive in the IM. Asset information is currently recorded in a logical manner which reflects physical asset types and depreciation categories based on expected life. This is sufficient for the RAB asset register.

Additional allocations of assets (e.g. by service, customer type or geography etc.) should not be prescribed in the IM. Allocations are likely to change over time, as the demand for and scope of the regulated services change. These changes can be revealed through ID reporting requirements, which is sufficient and will ensure the IM is durable. This is also consistent with the Emerging View on the cost allocation IM which is principle based, not prescriptive.

We expect to comment further on this topic once the draft determinations are available.

In relation to Attachment C, the relevant disaggregation categories for the RAB for LFCs (who are not subject to PQR) should be limited to

- **service type**: layer 1, layer 2, and CO/POI colocation;
- **asset types**: reflect LFC current physical asset descriptions as recorded for GAAP reporting requirements; and
- **geography**: UFB candidate area or network architecture.

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10 *Are any issues likely to arise from adjusting asset costs to take account of capital contributions or supplier revaluations?*

While this will require departures from GAAP asset registers, the adjustments are able to be made.

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11 *What types of assets may require Chorus and the other LFCs to depart from GAAP? Please provide reasons for your view.*

We propose to respond to this question, if necessary, in the draft IM Determination consultation process.

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12 *What are your views on the process for setting asset lives, and whether any limits on shortening asset lives are required?*

In principle, we support using GAAP asset lives as a starting point for the RAB.

We note that any changes to asset lives for GAAP purposes can only be made after consultation with and review by auditors, and must be consistent with the financial

	reporting standards. This is appropriate and sufficient. Any changes to asset lives could be disclosed for ID, along with supporting rationale. Alternative asset lives are one regulatory mechanism available to manage stranding risk. Accordingly there may be reasons to depart from GAAP lives, and straight line depreciation, to address this in a regulatory context.
13	*What are your views on our approach to the amortisation of the loss asset and the period over which it should be amortised?* We support amortising the loss asset over the weighted average remaining economic life of the physical assets. This will allow recovery of losses to align with the recovery of the investment in the assets. Amortisation is consistent with the legislation which requires the losses to be recognised in the RAB (refer s 177(2)), and is also consistent with the FCM principle.
14	*What are your views on our approach to the indexation of the RAB, including whether there should be a different indexation approach for the loss portion of the RAB?* As explained in the WIK Report, specifying a RAB IM without annual revaluations is one method available to address potential stranding risk, as revaluations result in deferred investment recovery. We believe this is one appropriate option to address stranding risk. If revaluations are to be adopted, we support using actual CPI, for simplicity, and increases in asset value being treated as income, to preserve FCM.
15	*What are your views on removing assets from the RAB due to deregulation, and the process for determining the asset value that is removed?* Given the potential for stranding risk, we caution against specifying any adjustments to be made to the RAB for deregulation, at this stage. We note that the cost allocation IM limits the RAB to those assets used to provide regulated services; these two IMs therefore need to be aligned on this issue.
16	*What are your views on how costs should be allocated between FFLAS and other services?* We support a principle based approach to cost allocation between FFLAS and other services. We also support using an ABAA approach, using causal and proxy allocators for shared costs and assets. This approach has been proven to be practical, transparent and durable under Part 4 regulation. It also avoids potential double counting of costs or assets for the provision of regulated services.
17, 18 and 19	*What are your views on how costs should be allocated between FFLAS, and the potential conditions we have identified?* *What is your view on whether some decisions relating to allocating costs between FFLAS could be addressed via cost allocation IMs to be set at a future date?* *What level of granularity in terms of product specificity and/or geography is appropriate to support cost allocation in the identified conditions?* For the reasons set out in our submission on the Issues Paper (refer response to Q22), we do not support including rules in the IMs for allocating costs between services at this

stage. We agree with the Emerging View that consideration of whether additional rules are required for cost allocation between FFLAS services can be deferred until there is clear evidence that this is necessary.

Information about allocations of costs between FFLAS services can be disclosed through ID in the future if it is required.

We also note that Chorus is subject to certain pricing constraints, and is to be subject to a revenue cap which is not derived from service based costs. A service based cost allocation IM therefore has the potential to add significant regulatory complexity.

20

What is your view on whether fibre suppliers must apply ABAA to assets that are shared at the FFLAS vs other non-FFLAS services level when establishing the initial RAB?

We support the Emerging View that, where there are assets shared between FFLAS and other non-regulated services, cost allocation rules be applied to the initial RAB, using an ABAA approach.

This approach is appropriate as it recognises that the scope and scale of non-FFLAS services differs between providers, and is likely to evolve over time. It is also consistent with FCM.

21, 22, 23

What are your views on the allocation of costs that could be included in the past losses for the initial RAB?

What are your views on the choice of allocators for UFB initiative network investment which was used for non-UFB purposes?

What are your views on the use of proxy allocators and other approaches to simplify the past losses calculations?

We support the Emerging View for:

- full allocation of directly attributable opex, impairment and depreciation;
- allocation of shared costs and assets using ABAA; and
- ABAA to be applied using consistent, objective, measurable and timely cost allocators (which may be causal or proxy allocators) when calculating past losses.

This approach will ensure that the cost allocation IM is applied consistently on a backward and forward looking basis, with sufficient flexibility to accommodate changes in cost structures and changes in the scope and scale of non-FFLAS services over time.

We support a principle based approach, avoiding prescription of allocators or cost buckets, in order to provide flexibility to accommodate the circumstances of all FFLAS providers. The method must address the needs of the LFCs, as well as Chorus. This is consistent with the proportionate approach, which we have previously advocated for, and which is supported in the Emerging Views.

24

What are your views on our approach to estimating a service-wide cost of capital, including a service-wide asset beta that will apply to all providers of FFLAS?

We disagree, for the reasons set out in the WIK Report, and discussed in section 4 of Part I. A service-wide asset beta is inappropriate because of the greater systematic

	risks faced by LFCs relative to Chorus.
25	*What are your views on CEPA's approach to estimating asset beta, particularly on the comparator firms selected and the data period which is used to estimate the asset beta?* In our view, as discussed in section 6 of Part I, there are serious deficiencies in the CEPA Report in the selection of comparator firms, some of which are referred to in the WIK Report. We will address this issue in more detail in cross-submissions. CEPA calculates betas for each firm using a two-year and a five-year observation period to inform their recommendation. CEPA also notes that the UK telecommunications regulator focuses on two-year and five-year betas. We generally agree with this approach. The telecommunications market is experiencing rapid change. This is evidenced by the fact that, for a number of comparator firms selected by CEPA, there is only sufficient trading history to calculate two-year, but not five-year betas. Two-year betas will more accurately reflect the current business risk faced by comparator firms, but the estimate will be subject to more volatility due to a lower number of observations. Five-year betas will be less reflective of current risk (more reflective of longer-term historical risk), but more stable due to a higher number of observations. Given the complementary strengths and weaknesses of the two approaches, we believe it is appropriate to consider both when arriving at a point estimate for the asset beta of each comparator firm.
26	*Should we adopt a specific value for the TAMRP in the cost of capital IM for the Part 6 regime?* We support estimating a TAMRP for the Part 6 cost of capital IM. We do not however support relying on the Part 4 estimate. It is important that all of the cost of capital parameters are internally consistent, and relevant for the services regulated under Part 6, the regulatory frameworks for FFLAS.
27, 28, 29, 30	*What are your views on our methodology for setting the risk-free rate?* *What are your views on our methodology for setting the debt premium?* *What are your views on using a TCSD?* *What are your views on a long-term credit rating of BBB+?* We support adopting a similar approach to estimating the above parameters as that currently applied under Part 4, subject to ensuring that the estimates for each parameter are relevant for the regulated fibre providers. Therefore we do not support carrying over a debt premium estimate from Part 4. The term of the regulatory period is not relevant for LFCs subject to ID regulation, and LFCs will not have the same incentives as Chorus to set prices and manage debt with reference to the regulatory period. As previously suggested, an ID WACC range is one

means of addressing this issue.

When estimating the risk-free rate and the debt risk premium, the Commission needs to make an assumption about the time period over which the firm is funded (for debt or equity). The Commission's usual practice is to assume that, despite efficient funding horizons generally matching the useful life of the underlying assets, the funding horizon for regulated business should be matched to that of the regulatory periods over which tariffs or revenues are set. We do not agree with this practice and believe the better approach, adopted by many regulators globally including in Australia, anchor their approach to the useful lives of the underlying assets being funded and firms' actual debt structuring behaviour.

As no regulatory periods exist in the case of setting WACC for ID purposes, the appropriate time horizon to consider is the horizon for investing in the underlying asset. For long-lived infrastructure assets, like fibre, that time horizon is usually well in excess of 10 years.

As government and corporate bond terms rarely exceed 10 years, 10-year bond rates are often used by overseas regulators, including the Australian Competition and Consumer Commission and the Australian Energy Regulator. We consider that, given the circumstances of the LFCs, the Commission should adopt a 10-year time horizon for setting the risk-free rate and the debt risk premium for the LFCs.

31

What are you views on our approach to WACC for the losses calculation?

We support retaining consistency between the cost of capital approach for past losses and future allowances, where possible, as suggested in the Emerging Views.

We acknowledge that when estimating past losses, allowances for the cost of Crown funding can be reflected in the opex component of the building blocks. Regulated providers should have the opportunity to quantify these costs when the initial RAB is established.

32

What are your views on our approach to WACC uplift and potential asymmetric risks?

We disagree with the Commission's approach to WACC uplift and potential asymmetric risks, as explained in sections 4 and 5 of Part I of this response, and the WIK Report.

33, 34

Should a separate WACC for ID be specified and, if so, what should be the frequency and period be for ID WACC determinations?

How should the WACC be specified in the IMs for information disclosure (ID) and should a separate WACC should be specified for Information disclosure?

As explained in the WIK report, and acknowledged by CEPA, the systematic risk facing LFCs is greater than that facing Chorus. As a consequence, LFCs have a higher asset beta (and therefore WACC) than that applicable to Chorus. The WACC range for ID would need to be based on the higher WACC determined for LFCs, not the WACC determined for Chorus for PQR purposes.

An ID WACC range (rather than a point estimate) should be specified for each regulatory period, rather than an annual estimate. This range would need to be appropriate for LFCs, and, for reasons outlined in section 4 of Part I and the WIK Report, will not be the same as the WACC determined for Chorus for PQR purposes.

A point estimate of WACC is less relevant for ID than PQR, as it is an ex-post measure.

Actual annual returns may diverge from target returns due to unforeseen circumstances such as demand or cost variances. Under Part 4 regulation, the profits for EDBs and GPBs have been monitored with reference to a WACC range determined with reference to the 25th – 75th percentile. This is appropriate for ID.

35	*What are your views on the role of the quality IM within the wider regulatory framework for fibre? Please explain any additional contextual factors we should consider.* As discussed in section 9 of Part I, the economic problem which quality measures are intended to address do not apply to LFCs. We have listed the relevant contextual factors the Commission should consider in paragraph 9.4 (a) – (h). Imposing an additional layer of disclosure requirements on LFCs will deliver no additional competitive benefits to end-users, while raising the risk of inconsistency between the new and existing reporting obligations, and increasing compliance and resource costs. It could also undermine the important self-regulatory role of the TCF. A quality IM is therefore not applicable to ID. Any quality IM developed by the Commission should apply only to PQR, and be limited to dimensions not already covered by TCF Codes or WSA SLAs.
36	*How detailed should the quality IM be to help regulated fibre providers estimate their expenditure requirements in order to meet the quality standards?* N/A for ID regulation
37	*With reference to the provisions of the WSA and NIPA referred to below in Table 3 and Attachment D, what level of detail do you think is appropriate to include in the quality IM? Which aspects of these agreements do you think have or have not worked well?* For the reasons outlined above, no quality IM is required for ID regulation.
38	*What are your views on the role and function of the quality IM within the commercial environment for fibre? Please explain any additional contextual factors we should be considering.* As discussed, a quality IM has no role or function within the commercial environment for fibre. Because of the competitive nature of the broadband access markets, with the LFCs facing competition from Chorus copper VDSL2 vectoring in their UFB areas that is not available in Chorus' UFB areas, Chorus fibre in greenfield sites, FWA, and in Enable's case Vodafone HCF, there is no case for the regulation of quality for ID purposes. The relevant contextual factors are listed in paragraph 9 (a) – (h) of Part I.
39	*How should the quality IM ensure regulated fibre providers supply the quality end-users and access seekers demand, considering the relatively rapidly changing demands and expectations?* For the reasons outlined above, no quality IM is required for ID regulation.
40	*How do the incentives to provide a level of quality that access seekers and end-users demand differ among Chorus and the other LFCs?*

The LFCs have greater incentives than Chorus in relation to quality as they face competition from Chorus' VDSL vectored service in their UFB areas which is not available in Chorus' UFB areas, and from Chorus fibre in greenfield sites in the LFC UFB areas.

As outlined below, both LFCs are ultimately community owned, creating greater incentives to meet the quality demands of their local community than a listed company such as Chorus.

This is evidenced by the fact that LFCs introduced the GPON Max product offerings (i.e. 1 Gig access services) for residential and business users ahead of Chorus and at a cost that was well below the pricing building blocks proposed by CIP.

Enable

Enable also faces intense competition from Vodafone's HFC network, which increases the incentives to ensure end-users have the best possible quality of service experience.

Enable is also owned by its community and this provides additional incentives from its ultimate shareholder, the Christchurch City Council, to provide the optimal customer experience. In fact, Enable makes an annual commitment to its shareholder every year in its Statement of Intent to operate and manage all aspects of the UFB network to a high level ensuring the delivery of an excellent customer experience in all of its interactions with the members of its community and an "always on" fibre broadband.

Ultrafast Fibre

Ultrafast Fibre is also ultimately community owned, and returns profits back to the local community through grants. It aims to lead and where possible set benchmarks in New Zealand's fibre industry. It works very closely with local communities and businesses to promote fibre services and identify end-users requirements.

Ultrafast Fibre has proactively led and contributed in multiple industry working parties (within TCF) in developing industry best practices as is evident with its roles in the development of the TCF Fibre Customer Transfer and Fibre Installation Codes.

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41 *How should the quality IM account for the possibility of increased competition and the resulting changes to incentives faced by fibre providers?*

For the reasons outlined above, no quality IM is required for ID regulation.

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42 *To what extent do you consider the following quality dimensions can be controlled by wholesale fibre providers: ordering, provisioning, switching, faults, availability, performance, customer service?*

None of these quality dimension is wholly controlled by the LFC, as explained below:

Ordering: As all orders are placed with RSPs, LFCs have no control over ordering.

Provisioning: Time to provision can be variable, and beyond the LFC's control due to consent requirements and end-user availability.

Switching: Switching relates to fibre disconnections, transfers between RSPs, and product changes which are is controlled by the RSP.

Faults: The restoration of some faults is reliant on the end-user (or the relevant premises owner or representative) being available at the fault location and giving access to allow the fault to be restored.

Availability: Availability can be affected by the wilful or negligent actions of a third party outside of the reasonable control of the wholesale fibre providers.

Performance: End to end service performance as experienced by the customer relies on the performance of multiple networks in addition to the wholesale fibre provider's network, as well as in-house wiring.

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43 *What other quality dimensions can be controlled, in whole or in part, by wholesale fibre providers?*

None.

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44 *How detailed should the quality IM be? What are your views on which of CEPA's levels of detail is appropriate to use in setting the IM?*

For the reasons outlined above, no quality IM is required for ID regulation. For PQR, level 2 is appropriate.

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45 *Should quality measures be included in the IM? Which quality dimensions should be linked to measures? How should these quality measures be specified?*

For the reasons outlined above, no quality IM is required for ID regulation.

The only quality measures needed for PQR are measures not currently covered by TCF codes or WSA SLAs.

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46 *Should some exceptions, such as when an end-user fails to attend a connection appointment, be included in the PQR quality standards or ID quality measures? In other circumstances would exceptions be more appropriate in the quality IM? Please provide any examples.*

No. If exceptions are appropriate they should be dealt with in the s 170 Determination process.

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47 *How should quality regulation reflect the different factors that affect service quality? What are your views on whether reporting requirements should be broken down by geographic areas, or types of end-users, access seekers or services?*

For the reasons outlined above, no quality IM is required for ID regulation.

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48 *Which quality dimensions are most important to end-users and access seekers?*

There are two quality dimensions that are most important to end-users and access seekers, Availability and Performance. Both of these dimensions are covered in LFC WSAs, and are driven by competition, not regulation.

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49 *What are your views on the quality dimensions suggested by CEPA: ordering, provisioning, switching, faults, availability, performance, and customer service? Should any dimensions on this list be added, changed or removed? What are your views on how these terms should be defined?*

	For the reasons outlined above, no quality IM is required for ID regulation. For PQR, these quality metrics are already covered by TCF Codes and WSA SLAs.
50	*What are your views on CEPA's concept of the fibre service lifecycle and its applicability to all aspects of fibre quality? Should other aspects of quality such as network operations or network specifications be covered by the quality IM? If so, how?* For the reasons outlined above, no quality IM is required for ID regulation.
51	*How should the quality IM reflect "access to" and "interconnection with" fibre networks?* For the reasons outlined above, no quality IM is required for ID regulation.
52	*Should fibre providers' consultation with stakeholders be a quality dimension? If not, should the extent of consultation be addressed in a different way?* For the reasons outlined above, no quality IM is required for ID regulation. A consultation dimension is not necessary for PQR, as the TCF already provides appropriate consultation processes for fibre providers and retail service providers, and as noted at 9.4(f), no change to an SLA in the WSA can be made without prior consultation through the Product Forum.
53	*What are your views on how we have identified the risk associated with expenditure, and the role of the capex IM in managing those risks?* We will address this issue in our cross-submission
54	*What are your views on the three areas of focus for the content of the capex IM (Information requirements, evaluation criteria and timeframes & processes)?* If LFCs were to become subject to PQR, and therefore the capex IM, the process for determining capex allowances should be reduced proportionately, to avoid a significant regulatory burden for these much smaller businesses.
55	*What are your views on the three issues unique to fibre regulation that we have identified? Are there any others we should be considering?* We will address this issue in our cross-submission
56	*What are your views on the need to vary our approach depending on the type of capex that we are assessing?* With the conclusion of the allocated area network builds, future capex is likely to be incremental and focused on maintaining service capability. The capex IM should reflect this focus.
57	*What are your views on not pursuing a total expenditure (totex) forecasting approach for the fibre regime at this stage?* We will address this issue in our cross-submission
58	*What are your views on the options for additional expenditure efficiency incentives we have set out?*

	We will address this issue in our cross-submission
59	*What are your views on our proposed approach for setting transitional arrangements for PQR in the first regulatory period?* We will address this issue in our cross-submission
60	*Is presenting tax as a building block in its own right is the most transparent approach to presenting tax costs? Please provide the reasons for your view.* We support the Emerging View to present tax as a discrete building block, similar to Part 4. This ensures that tax costs are transparent, and it helps to achieve consistency with the FCM principle. This approach is required because the regulated service of itself is not a tax paying entity, and therefore a notional tax allowance must be derived.
61	*What are your views on adopting the tax payable approach?* We support the tax payable approach which is relatively straight forward and consistent with FCM. This contributes to regulatory certainty.
62	*What are your views on estimating debt costs using an assumed level of leverage?* We support maintaining consistency between the notional interest costs for regulatory tax purposes and the debt assumptions in the WACC. This is common regulatory practice, consistent with FCM.
63	*Should prices be set for Chorus using a post-tax WACC? Please provide the reasons for your view.* We will address this issue in our cross-submission
64	*Should the returns under ID be disclosed using a post-tax WACC? Please provide the reasons for your view.* We support disclosure of post-tax returns for ID, because this is a common return measure which is readily understood by stakeholders. It is preferable to the vanilla return measure used in Part 4 for this reason.
65	*What are your views on establishing the initial regulatory asset value using the lesser of the assets' actual tax book value established using IRD rules and the RAB?* We support determining the opening tax book value using the corporate tax book value (established under the Tax Act) for the FFLAS assets included in the RAB. This is low cost, and avoids unnecessary complexity. It also provides a tax allowance consistent with the principle that tax rules are applied to the regulated service.
66	*Have tax losses from the fibre rollout been utilised by Chorus and the other LFCs to offset profits in other parts of the business or group, meaning that tax losses should not be carried forward or included in the calculation of initial losses? Please provide the reasons for your views.*

We support applying the regulatory tax method retrospectively for the calculation of past losses. This is consistent with the building block approach to be applied.

We expect this will include a regulatory tax loss roll forward through the historical period, and any unused tax losses at implementation date will be included as an opening tax loss balance.

While it is likely that the LFC tax losses will have been used by implementation date, if they have not then they should be available to the regulated service. This is consistent with the building block approach. It is not appropriate to assume it away, as suggested in the Emerging Views.

Supplementary question from workshop	*A question posed for participants in the workshop is whether depreciation should be permitted as a building block component during the loss period with respect to the value of assets which are funded by Crown financing. A related question also arises in respect of the calculation of regulatory depreciation for the period after implementation date, i.e., whether depreciation should be permitted in respect of the value of assets which are funded by Crown financing.* *In both cases we are interested in views on the appropriateness of the treatment given the purpose of Part 6.* The costs of providing regulated FFLAS services are best reflected by the full cost of the assets, irrespective of funding. The UFB Initiative was established on the basis that Crown funding would be repaid, and full ownership of the assets would transfer to the fibre partners. We support a straight forward approach, consistent with the Emerging Views to recognise the actual total investment value in the RAB, including through the historical loss period. The depreciation building block is derived from this value, including through the historical loss period. This avoids potential complexity concerning buy back arrangements, timing and depreciation. It is also consistent with FCM which provides for the recovery of investment over time, capped at the actual costs incurred in building the FFLAS networks.