

15 August 2024

Keston Ruxton

Manager, Fibre PQ Regulation
Commerce Commission
Wellington 6140

By email: infrastructure.regulation@comcom.govt.nz

Vector Communications Ltd
110 Carlton Gore Road
PO Box 99882
Newmarket
Auckland 1149
+64 9 978 7788
vectorcomms.co.nz

Submission on the draft determination and reasons paper for Chorus' price-quality path for the second regulatory period (2025-2028) (Draft Decision)

1. Vector Fibre appreciates the opportunity to provide its views on the Draft Decision.
2. Our focus is on the quality standards proposed by the Commission for PQP2, specifically the proposed new provisioning quality standard.
3. We welcome the Commission's proposal to set a provisioning standard.
4. In September 2023, Vector Fibre submitted that a new quality standard for provisioning of fixed fibre line access services by Chorus was needed to address concerns around how Chorus' approach to provisioning layer 1 unfairly advantaged Chorus' layer 2 business to the detriment of access seekers and end users. Vector appreciates that its views in relation to the setting of a new provisioning quality standard were considered by the Commission in its Draft Decision.
5. A common theme of views provided by other access seekers (One NZ and Spark) is that Chorus' provisioning times are variable and have increased significantly over time.
6. It is clearly the case that provisioning service levels under the UFB agreements are ineffective. A key issue is that the service level terms only require Chorus to use "reasonable efforts" to meet median cycle times (30 days for simple and 65 days for complex orders) that it has determined itself.¹ A mandatory regulated provisioning standard is required to address this problem.
7. However, Vector Fibre submits that the proposed provisioning quality standard will not sufficiently address Vector Fibre's and other access seekers' concerns because:
 - (a) it does not require Chorus to meet objectively set regulated timeframes for provisioning PONFAS and other FFLAS;
 - (b) it will maintain Chorus' ability under the service level terms for layer 1 services to have a much longer cycle time for access seekers compared to provisioning

¹ See Draft Decision, para. 4.212.

times to itself for layer 2 services. As noted in the Draft Decision, all requests for layer 1 services are treated as complex orders and are combined with the Bitstream Service complex orders for the purpose of measuring cycle times.² Vector Fibre has previously explained that this is the key mechanism used by Chorus to limit competition for layer 1 services.

- (c) In that context, the key issue with Chorus' provisioning performance is not primarily related to where a "truck roll" is required, as suggested by the Draft Decision.³ It is Chorus' ability to set and implement provisioning times that materially favour its layer 2 business at the expense of layer 1 access seekers.
- (d) Chorus' commercial incentives to provision services in a timely manner does not assist in relation to layer 1 service problems. The core issue is that Chorus has incentives to make it more difficult to access layer 1 services compared to layer 2 services.

- 8. The Draft Decision noted that although Vector Fibre and other submitters had called for a new provisioning quality standard, they did not provide sufficient detail on how such a standard should or could be implemented. Vector Fibre respectfully disagrees, as we provided suggestions on how a new standard could be implemented. In any event, it is the Commission's role to implement suitable solutions to meet the purposes of the Act where a clear problem has been identified – as it has done for the provisioning standard it has proposed and other quality standards.

The provisioning quality standard should mandate timeframes for provisioning PONFAS

- 9. The Draft Decision provides that that Chorus will meet the provisioning quality standard if, broadly speaking, it meets connection requests within the agreed date more than 80% of the time, or 85% of the time for rescheduled requests. The agreed date is the date agreed with Chorus and the end-user.
- 10. Vector Fibre's view is that the proposed provisioning quality standard does not adequately address Vector's concerns as it does not require Chorus to adjust its timeframes for the provisioning of PONFAS. Rather, as Vector understands it, the proposed standard only regulates Chorus' compliance with timeframes agreed upon by Chorus itself.
- 11. We urge the Commission to reconsider the alternative provisioning standard approach outlined in the Draft Decision, in the interests of promoting competition and innovation for the benefit of consumers.⁴ It is critical for the provisioning standard to specify, in some form, a number of days by which different categories of connection must be delivered. These could either be a set number of days or, as previously suggested by Vector, a principled approach that ensures the timeframes are the same for the same

² Draft Decision, at paragraph 4.213.

³ Draft Decision, at paragraph 4.218.

⁴ Draft Decision, at paragraphs 4.228 to 4.234.

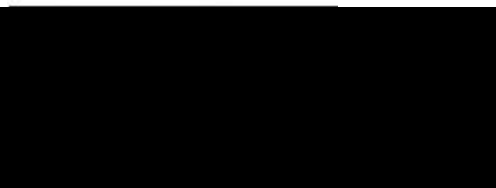
type of connection (eg the provision of layer 1 to Chorus for bitstream services must be the same as for providing layer 1 PONFAS to access seekers).

12. However, the standard 80 business day requirement proposed (but then rejected) by the Commission would be ineffective. Chorus would continue to be free to provision layer 1 to itself on a 30 working-day timeframe (for complex orders) and PONFAS to access seekers on a 80 working-day timeframe. As submitted in September 2023, a material discrepancy such as this materially advantages Chorus and prevents access seekers such as Vector Fibre from competing effectively.

PONFAS and DFAS should have proportionate provisioning times

13. Vector Fibre submits that, if the Commission remains concerned about whether it can set a time to provision at the appropriate level,⁵ then (as per our previous submission) it should focus on the relativity between services rather than the absolute provisioning time for each service.
14. For example, Vector Fibre's view is that PONFAS and DFAS are sufficiently similar services that they should have the same mandated provisioning times.
15. However, we do acknowledge that it could be considered that there are some small differences between these two services. PONFAS has a feeder fibre built to a splitter (FFP) with subsequent distribution fibre from it through to individual users, whereas DFAS follows the same path as the feeder fibre but rather than an FFP it is jointed at a fibre connector or Fibre Access Terminal through to the individual user. Both feeder fibre and distribution fibre follow the same path.
16. In that case, assuming that the DFAS service levels are appropriate, a provisioning overhead could be allowed for in recognition of the service difference, provided it is kept tightly coupled due to the layer 1 nature. For example, if DFAS is 30 working-days, then PONFAS would be 30 working-days plus say a 20% allowance. This would be a material improvement on the current 60 working-days difference which is completely out of proportion to the similar nature of the layer 1 services.
17. The result would be that if DFAS provisioning times were to shift under the service levels (which could also be the regulated service provision timeframe), then the PONFAS regulated provisioning time would shift accordingly. This would avoid the requirement for a detailed review of the relevant processes required to undertake the work itself.

Yours sincerely



GM Economic Regulation and Pricing

⁵ Draft Decision, at para 4.234.2.