

Fibre PQP2 Change to definition of net reported downtime

Consultation Paper

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Associated documents

Publication date	Reference	Title
31 August 2023	ISBN 978-1-991085-31-3	Fibre price quality regulation – Proposed process and approach for the 2025-2028 regulatory period
16 November 2023	ISBN 978-1-991085-55-9	Chorus' price quality path for 2025-2028 regulatory period – Consultation on Chorus' proposed expenditure for PQP2
17 July 2024	ISBN 978-1-991287-50-2	Draft fibre IM amendments to implement our PQ decisions or correct technical errors
18 July 2024	ISBN 978-1-991287-20-5	Chorus' price quality path for the second regulatory period (2025-2028) draft decision – reasons paper and determination

Commerce Commission
Wellington, New Zealand

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Chapter 1 Introduction

Purpose of this paper

1. On 17 July 2024 we published a draft decision on Fibre Input Methodologies (fibre IM) amendments to implement certain aspects of our PQ decisions for Chorus' second regulatory period 2025 - 2028 (PQP2).¹
2. Our draft fibre IM decision included a proposed change to the definition of 'outage' in the fibre IM because of an issue identified by Tuatahi, a Local Fibre Company (LFC), in its Information Disclosure (ID) reporting.² Multiple LFCs have since submitted that the current definition is unworkable and have been granted exemptions based on this concern.³
3. Chorus submitted on our draft fibre IM decision that the proposed definition had substantial implementation issues, and that wider consultation was required given the complexity of the topic.⁴
4. Following consideration of the submissions received, we are now consulting on an alternative approach to dealing with the issues raised by submitters, which involves amending the definition of 'net reported downtime' in the price quality (PQ) determination (rather than amending the fibre IM) for PQP2.
5. This paper seeks further stakeholder views on this draft decision to change our draft PQP2 determination. This paper is focused solely on the PQ implications of this decision, and ID reporting is out of scope.

Structure of this paper

6. The remainder of this Consultation Paper has the following sections:
 - 6.1 This chapter is an introduction to the scope and approach for this work and describes the submission and confidentiality processes and an overview of next steps; and
 - 6.2 Chapter 2 sets out the draft decision to amend the net unplanned downtime definition.

¹ Commerce Commission "Proposed expenditure, revenue and quality-related amendments to the Fibre input methodologies ahead of the price-quality path for Chorus' second regulatory period (2025-2028)" (17 July 2024).

² Commerce Commission "Proposed expenditure, revenue and quality-related amendments to the Fibre input methodologies ahead of the price-quality path for Chorus' second regulatory period (2025-2028)" (17 July 2024).

³ Commerce Commission "Notice of conditional exception applying to ID-only regulated fibre providers in relation to reporting on quality (availability) under the Fibre Information Disclosure Determination 2021" (2 August 2024).

⁴ Chorus "Chorus submission on amendments to the fibre input methodologies" (13 August 2024), at 3.

Submissions process

7. We are seeking submissions on our draft decision outlined in this paper by 5pm on **Thursday, 31 October 2024**. We request stakeholders limit their submissions to areas contained in this paper. Submissions outside the scope of this consultation will not be considered in our final PQ decisions.
8. You should address your responses to:
 - 8.1 Keston Ruxton (Manager, Fibre PQ Regulation)
 - 8.2 c/o infrastructure.regulation@comcom.govt.nz
9. Please include “Definition of net reported downtime consultation” in the subject line.

Confidentiality

10. Please note that we intend to publish all submissions on this Consultation Paper.
11. The protection of confidential information is something the Commission takes seriously. The process requires you to provide (if necessary) both a confidential and non-confidential/public version of your submission and to clearly identify the confidential and non-confidential/public versions.
12. When including commercially sensitive or confidential information in your submission:
 - 12.1 Please provide clearly labelled confidential and public versions. We intend to publish all public versions on our website.
 - 12.2 The responsibility for ensuring that confidential information is not included in a public version of a submission rests entirely with the party making the submission.
 - 12.3 Please note that all submissions we receive, including any parts that we do not publish, can be requested under the Official Information Act 1982. This means we would be required to release material that we do not publish unless good reason existed under the Official Information Act 1982 to withhold it. We would normally consult with the party that provided the information before any disclosure is made.

Overview of next steps

13. Consistent with the frameworks detailed in our fibre IM and PQ reasons papers, our next steps are to:⁵
- 13.1 seek stakeholder submissions on the draft decision set out in this paper;
 - 13.2 make our final decision on this issue; and
 - 13.3 publish our final decision as part of our overall final decisions for PQP2.
14. Table 1.1 below provides the timeline we intend to follow for publications related to our proposal to amend the draft PQ determination.

Table 1.1 **Timeline of process**

Key step	Date
Consultation Paper published	17 October 2024
Submissions due on Consultation Paper	31 October 2024
Final decision	Q4 2024 (as part of the final PQ determination)

⁵ Commerce Commission "Chorus' price-quality path for the second regulatory period (2025 – 2028) – draft decision – Reasons paper" (18 July 2024), at [4.2] to [4.5]; Commerce Commission "Proposed expenditure, revenue and quality-related amendments to the Fibre input methodologies ahead of the price-quality path for Chorus' second regulatory period (2025-2028)" (17 July 2024), at [2.1] to [2.18]

Chapter 2 Draft decision to amend the net unplanned downtime definition

Summary of position

15. In framing our approach to ‘outages’, our policy intent for PQP1 was to largely flow through the Ultrafast Broadband (UFB) definition of ‘downtime’,⁶ which captured the length of time that an end-user is without a UFB Service, measured from the time that a fault is detected, either by an end-user report or by a network surveillance system.
16. We gave effect to this intention through an interlinked series of definitions of ‘fault’, ‘outage’ and ‘unplanned downtime’ in the fibre IMs as well as the definition of ‘net unplanned downtime’ in the PQ determination.
17. However, during PQP1, it became clear that there were a number of issues with the current definitions from LFCs including that:
 - 17.1 the definition of outage was overly broad and could capture any outage regardless of scale; and
 - 17.2 current network surveillance technology could not provide real time reporting of valid outages.⁷
18. We initially proposed to address these issues by amending the current definition of ‘outage’ for reporting purposes in the fibre IM, as set out in our draft IM reasons paper,⁸ so that reporting captures both end-user and self-identified outages, consistent with our original intention.
19. In its submission on our draft IM reasons paper, Chorus noted that including self-reported outages (from a network surveillance system) would require industry consultation and significant changes to systems and processes, and a flow on amendment to availability standard levels that would not be possible for PQP2.⁹
20. Having regard to these submissions, we propose to preserve the status quo for PQ reporting by Chorus and ID reporting by LFCs for PQP2, with a move towards a revised approach that fully reflects our original policy intention for PQP3.

⁶ Commerce Commission, “Chorus’ price-quality path from 1 January 2022 – Final decision – Reasons paper” (16 December 2021), at [7.61].

⁷ Commerce Commission “Notice of conditional exception applying to ID-only regulated fibre providers in relation to reporting on quality (availability) under the Fibre Information Disclosure Determination 2021” (2 August 2024).

⁸ Commerce Commission “Proposed expenditure, revenue and quality-related amendments to the Fibre input methodologies ahead of the price-quality path for Chorus’ second regulatory period (2025-2028)” (17 July 2024).

⁹ Chorus “Chorus submission on amendments to the fibre input methodologies” (13 August 2024).

21. We need to consider whether to amend either the PQ path or the IMs to give effect to this approach.
22. In this paper we seek views on a revised proposal to amend the scope of net unplanned downtime in the PQ path (as opposed to the original proposal to amend the definition of outage in the fibre IM). We consider this approach preferable but note that both options would exclude (for now) the time of any outage before the regulated provider receives an outage notification.¹⁰

Current definitions

PQ definition of net unplanned downtime¹¹

net unplanned downtime	means unplanned downtime minus the length of time an access seeker or end-user experiences a fault to their PQ FFLAS attributable to any of the following: <ul style="list-style-type: none"> (a) a force majeure event; (b) non-diverse transport services; and (c) port utilisation equal to or greater than 95%;
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IM definitions of fault, unplanned downtime and outage¹²

fault	means: <ul style="list-style-type: none"> (a) for the purposes of Part 2: <ul style="list-style-type: none"> (i) an unplanned outage in ID FFLAS; or (ii) a reduction in the performance of ID FFLAS below any levels specified in an ID determination; and (b) for the purpose of Part 3: <ul style="list-style-type: none"> (i) an unplanned outage in PQ FFLAS; or (ii) a reduction in the performance of PQ FFLAS below any levels specified in a PQ determination;
outage	means: <ul style="list-style-type: none"> (a) for the purpose of Part 2, a cessation in the supply of ID FFLAS; and (b) for the purpose of Part 3, a cessation in the supply of PQ FFLAS;
unplanned downtime	means: <ul style="list-style-type: none"> (a) for the purpose of Part 2, the length of time a connection has a fault to ID FFLAS for that connection; and (b) for the purpose of Part 3, the length of time a connection has a fault to PQ FFLAS for that connection;

¹⁰ Commerce Commission “Proposed expenditure, revenue and quality-related amendments to the Fibre input methodologies ahead of the price-quality path for Chorus’ second regulatory period (2025-2028)” (17 July 2024).

¹¹ [Draft] Fibre Price-Quality Path Determination 2024, at 9.

¹² Fibre Input Methodologies Determination 2020 [2020] NZCC 21.

Stakeholder views

23. In its submission on the draft fibre IM decision, Chorus submitted that it is not measuring the duration of an outage before it is reported to it for regulatory purposes,¹³ and that there is no industry consistent approach on how self-identified outages are included in unplanned downtime.¹⁴
24. Whilst Tuatahi supported the fibre IM amendment, it submitted that there are system limitations for self-identifying outages and sought for the Commission to provide a threshold on when an outage becomes reportable.¹⁵ We note that Tuatahi is not subject to PQ regulation, only ID.
25. Chorus also submitted that, for PQP1 and ID, it has been reporting using end-user reported faults. Chorus considers that self-identified outages should not be included in the measure, as it would require time to consult with the industry and for industry-wide reporting to be then developed for regulatory purposes.¹⁶

Updated draft decision

26. Our draft decision excludes the time before notification from the measure by amending the PQ determination instead of making changes to the fibre IMs, as set out in our draft IMs decision.¹⁷
27. Our draft changes to the PQ determination for PQP2 are as follows:
 - 27.1 Amend the definition of net unplanned downtime to:
 - 27.1.1 replace fault (defined as an unplanned outage plus performance degradation) with outage, to simplify the definition. The specific exclusion of performance degradation is no longer needed;
 - 27.1.2 narrow the definition to reported unplanned downtime to exclude self-identified outages and the time of an outage before it is reported.
 - 27.2 Introduce a new definition for reported unplanned downtime to clarify that the time to be measured begins from when an outage is reported.

¹³ Chorus “Chorus submission on amendments to the fibre input methodologies” (13 August 2024), at [14].

¹⁴ Chorus “Chorus submission on amendments to the fibre input methodologies” (13 August 2024), at [6.1.2] to [6.1.3].

¹⁵ Tuatahi “Tuatahi submission on proposed Fibre IM amendments” (13 August 2024), at 1.

¹⁶ Chorus “Chorus submission on amendments to the fibre input methodologies” (13 August 2024), at [11].

¹⁷ Commerce Commission “Proposed expenditure, revenue and quality-related amendments to the Fibre input methodologies ahead of the price-quality path for Chorus’ second regulatory period (2025-2028)” (17 July 2024).

- 27.3 Introduce a new definition for outage notification that describes the requirements for an outage notification.¹⁸
- 27.4 Delete the definition of unplanned downtime because this is no longer in use following the interactions of the above drafting changes with the existing and amended definitions.

Proposed definitions for the PQP2 determination

net unplanned downtime	means reported unplanned downtime minus the length of time an access seeker or end-user experiences an outage to their PQ FFLAS attributable to: (a) a force majeure event ; or (b) non-diverse transport services ;
reported unplanned downtime	means the length of time that a connection has an outage , but excluding any time before Chorus receives an outage notification in respect of that connection ;
outage notification	is a notification of an outage to a connection that gives Chorus sufficient information to identify the connection ;
unplanned downtime	[delete this definition as it is no longer required, following the other drafting changes]

Reasons for our draft decision

28. Section 162 provides the purpose of the regulatory scheme for fibre fixed line access services (FFLAS). That is to promote the long-term benefit of end-users in markets for FFLAS, by promoting outcomes that are consistent with those produced in workably competitive markets. Under section 162(b), one of the purposes of our regulation is to provide for incentives for providers to improve efficiency and supply FFLAS of a quality that reflects the demands of end-users.
29. We consider that for the purposes of s 162(b) of the Act it is sufficient to capture the duration of downtime from when it is first reported to the regulated provider, as this will still encourage Chorus to invest to deliver the quality that end-users expect for PQP2. We also consider that reporting of self-identified outages does not need to be included for measuring compliance to the availability standards for PQP2. We consider that the absence of self-identified outages does not undermine the incentive to invest for Chorus – in fact, our proposed standard for PQP2 will better encourage investment compared to PQP1.¹⁹
30. The updated draft decision achieves a similar outcome to that sought from our draft IM amendment approach but does so in a way that avoids any unintended regulatory

¹⁸ This may include information such as the name and contact details of the person reporting the cessation in supply; the name and contact details of the end-user; the cause of the cessation of supply; and the site of the cessation of supply.

¹⁹ Commerce Commission "Chorus' price-quality path for the second regulatory period (2025 – 2028) – draft decision – Reasons paper" (18 July 2024), at [4.51] to [4.52].

consequences from changing the definition of outage in the fibre IMs. Chorus would continue reporting as it has been doing for PQP1 for the availability quality standard in PQP2.

31. Given Chorus' submission on the workability of our draft fibre IM decision,²⁰ we consider that it is more appropriate to make this change in the definition of net unplanned downtime in the PQ. This is because we consider that:
 - 31.1 an outage should remain the full extent of a cessation in service at the fibre IM level to retain flexibility for the future and avoid unintended consequences; and therefore
 - 31.2 it is preferable to define the scope of relevant outages for PQP2 standards in the PQ determination.
32. Including self-identified outages and the time before an outage is reported to the RSP would provide a more accurate measure of unplanned downtime. We agree with Chorus that this would require industry consultation and significant changes to systems and processes, and a flow on amendment to availability standard levels that would not be possible for PQP2.²¹
33. Our draft thresholds for the Layer 1 and Layer 2 availability standard has been set using historical information on the quality end-users currently receive.²²
34. We may separately consider for ID and PQP3 whether it is appropriate to include outages identified by regulated providers' network surveillance systems.
35. Our updated draft decision, set out in this paper, changes the definition for net unplanned downtime. This would mean that, for PQP2, Chorus continues to report average net unplanned downtime using only end-user reported outages. This is consistent with Chorus' approach in PQP1, ensuring continuity of the data set for PQ purposes, and still ensures that Chorus has incentives to deliver quality services for the long-term benefit of consumers.²³

Future IM review

36. We do not currently intend to make changes to the definition of an outage after considering submissions on our consultation. In our full fibre IM review, we may reconsider whether changes to the definition of outage and related terms is required.

²⁰ Chorus "Chorus submission on amendments to the fibre input methodologies" (13 August 2024).

²¹ Chorus "Chorus submission on amendments to the fibre input methodologies" (13 August 2024), at [11] to [12].

²² Commerce Commission "Chorus' price-quality path for the second regulatory period (2025 – 2028) – draft decision – Reasons paper" (18 July 2024), at [4.51] to [4.58].

²³ Chorus "Submission on Chorus' price-quality path for the second regulatory period (2025 - 2028) - draft decision" (15 August 2024).