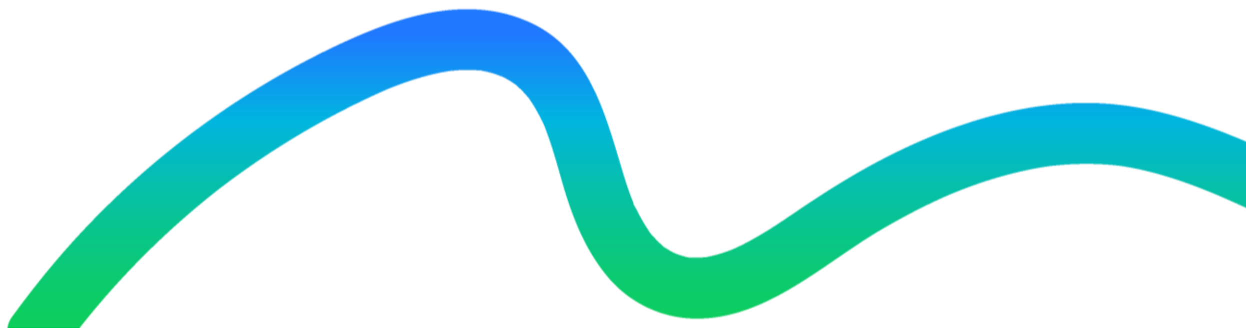
# Vector Communications Submission to the Commerce Commission Fibre Input Methodologies Project

Due 28 January 2020



# Introduction

1. The Commerce Commission (the Commission) requirement to determine Input Methodologies (IMs) under Part 6 of the Telecommunications Act (the Act) is a significant undertaking warranting productive engagement from stakeholders.
2. The challenge for the Commission is to determine IMs that support both Price-Quality and Information Disclosure Determinations that are enduring, fit for purpose and deliver long-term value for telecommunications users.
3. The IMs for Chorus and Local Fibre Companies (LFCs) cover a significant volume of information which all have a material effect on the price, output and service quality of fixed fibre-line access services (FFLAS). In this submission we highlight key aspects of the Draft Decision that warrant further consideration, namely the:
   a. Quantification of losses for the loss-making period asset;
   b. Methodology for setting the weighted average cost of capital (WACC) for Price-Quality and Information Disclosure regulation;
   c. Proposal for managing asset stranding risk; and
   d. Quality dimensions for FFLAS.
4. We encourage the Commission to consider stakeholder feedback on these important topics. An enduring framework for FFLAS is dependent on economically sound policies informing the IM Determination.
5. We also make comment on aspects of the Draft Decision which could equally be considered for improvements to IMs determined under Part 4 of the Commerce Act.

# Part 6 of the Telecommunications Act – purpose statements

## *Sections 162 and 166*

6. The purpose statements in sections 162 and 166 provide a clear direction for the Commission to make decisions for the long-term benefit of end-users. The regulatory framework is like the framework under Part 4 of the Commerce Act in that it relies on incentive regulation for Chorus and LFCs to deliver outcomes like that are produced in workably competitive markets.

7. This contrasts with other more direct forms of utility regulation such as rate-of-return regulation where the annual reconciliation of costs and revenues provides limited incentive on the service provider to organically realise efficiencies over time. Incentive regulation requires less of an information burden on the part of the regulator and more consistent politically neutral decision-making for ensuring outcomes trend towards those produced by workably competitive markets.

8. The purpose statements in section 162 ensure the FFLAS providers have the right incentive to continue to efficiently invest in their FFLAS services and are limited in their ability to extract monopoly rents from the provision of FFLAS.

9. The express inclusion of section 166 by Parliament requires all decisions under Part 6 whether by Minister or Commission, where relevant, to promote workable competition. To this end, any decision under Part 6 cannot frustrate outcomes anticipated in a workably competitive market. Therefore, matters such as appropriate service terms including service descriptions, opportunity for access, availability of facilities and, of course, price terms should be reflective of conditions of the firm operating in a workably competitive market.

## *Applying section 162 and 166 for Part 6 decision-making*

10. At a practical level, the requirement for Chorus and LFCs to provide unbundled network access services from 1 January 2020 is an example of decisions where the section 162 and 166 requirements are relevant. Unbundled FFLAS services should only require access seekers to acquire the monopoly inputs necessary to provide a compelling service offering rather than forcing access seekers to consume additional inputs on inappropriate service terms. For example, the Commission's decision to defer the handover points for Layer 1 FFLAS services to be defined by Chorus and LFCs has

the real risk of undermining workably competitive outcomes. This is because the new Layer 1 PONFAS (point-to-multi-point) service is being defined in a way where access seekers are required to purchase unnecessary inputs as part of the regulated service. We consider the Commission's decision to defer the specification of layer 1 handover points to Chorus and LFCs is in fact contrary to section 166.

11. The Chorus and LFC initial PONFAS service descriptions bundle two service elements in a single service offering. This violates the key principle of unbundling which is for access seekers to acquire the necessary inputs for their own telecommunications service.

12. The ability to acquire unbundled service elements was a feature of previous unbundling services for both unbundled copper local loop (UCLL) and sub-loop unbundled services (SLU) where the separable elements of the service such as last mile copper unbundled pairs, roadside cabinet space and Fibre-based transport services from the cabinet were all separated for access seekers to choose the elements needed to complete their offering.

13. We encourage the Commission to ensure all its decisions for Part 6 including both price and non-price decisions are made with the section 166 lens. Otherwise the Commission is derogating from its statutory duty. The PONFAS examples highlights the considerable scope for non-price decisions to result in outcomes inconsistent with workable competition.

# Chorus and LFC recovery of financial losses – as part of the initial value of fibre assets

### *Losses are an unexpected benefit*

14. A significant element of the Part 6 regime applying to Chorus and LFCs is the entitlement to recover financial losses as an asset in their regulated asset base (RAB). The original terms of the Ultra-Fast Broadband (UFB) tender process did not provide a guarantee of future recovery of losses as part of participation in the project. Therefore, the inclusion of the current section 177 in Part 6 of the Act in November 2018 is providing an unexpected benefit to the selected UFB partners which was not anticipated at the time of agreeing to participate in the UFB rollout. Given loss recovery is an unexpected benefit for Chorus and LFCs, the Commission should be reluctant to

determine losses in a way that it provides for generous amounts to be claimed by Chorus and LFCs.

### *Controlling the magnitude of losses*

15. The inclusion of section 177 in 2018 – at least four years in advance of the Part 6 framework taking effect – creates several challenges. At a minimum it creates two periods within which to consider the losses for Chorus and LFCs – the period before a guarantee was codified and the period where they operated without any assurance of loss recovery.

16. In the years following section 177 Chorus and LFCs have much less discipline to control the quantum of losses for the delivery of FFLAS in accordance with the Crown Infrastructure Partners agreement. Accordingly, for the years following the introduction of the new legislative framework there is a need to ascertain whether the losses claimed by Chorus and LFCs reflect efficiently incurred losses or are in fact being exacerbated by inefficient operation.

### *Determining the value of the financial loss asset – should shared/common costs be included in the cost calculation*

17. Vector considers the method of calculating the financial loss asset on an incremental cost is most consistent with the requirements of section 177. The retrospective nature of the task of establishing losses significantly differentiates the task from the obligation of setting forward-looking access prices.

18. As a principle Vector supports forward-looking access prices being determined with an allowance for shared assets and common costs used to deliver regulated services. In the circumstance of a standalone firm the exclusion of shared assets and common costs undermines the long-run financial viability of the firm. This is also the case for a multi-product firm producing both regulated and non-regulated inputs – the contribution of shared assets and common costs from non-regulated services is not assured. Therefore, a contribution for shared assets and common costs for the regulated service is fundamental to ensure investor certainty for legitimate cost recovery.

19. Telecommunications access regulation has long recognised the importance of common/shared asset recovery for the multi-product telecommunications firm when setting prices in accordance with the total service long-run incremental cost (TSLRIC) prices. Hence the inclusion of “total service” in the pricing methodology.

20. However, the exercise for determining losses for Chorus and LFCs from their FFLAS differs markedly from setting forward-looking access prices. The retrospective nature of the exercise means the risk of common/shared cost recovery has largely been borne out for the period. Indeed, the fact that Chorus and LFCs were able to survive and turn a profit over the period indicates they were able to recover their shared asset and common costs from their multi-product service suite over the loss period in question.

21. Accordingly, we consider there is merit to the suggestion of determining losses from the incremental costs incurred by Chorus and LFCs. This approach will allow assets/costs directly incurred in meeting FFLAS obligations or assets invested in to meet FFLAS and non-FFLAS objectives to be considered as part of the equation of determining losses. However, this does not extend the scope for re-purposed assets or re-purposed shared assets to be accounted for as part of a loss estimation exercise. This is consistent with section 177(5) which uses the terminology of *direct result* of meeting specific requirements of the UFB initiative.

22. The construction of Part 6 also expressly contemplates common overhead opex to be excluded from the calculation of losses. The absence of any requirement akin to section 176(1)(a)(iii) for the allocation of common costs in section 177 meant Parliament implicitly prohibited shared overhead costs from being recognised in any loss quantification as part of the financial loss asset.

## *Calculating the accumulated financial losses over the loss-making period – the avoided financing building block*

23. We have several concerns with the method specified by the IMs which the Commission will use to ascertain the avoided financing cost. The method proposed in clause 2.2.3(25) is vague as to how it will ascertain the financing benefit to Chorus and LFCs.

24. The Commission has indicated that where the regulated provider was given concessionary debt then it will recognise the actual credit rating of the provider for determining avoided interest payments on Crown financing. However, there is no insight as to how other aspects of the actual financing of the firm will be considered. For example, the benchmark regulatory WACC not only presumes the credit rating of the regulated provider but also assumes a gearing for the firm. There is no insight as to how the Commission will adjust the assumptions used for gearing to reflect the actual benefit of concessionary debt financing relative to the benchmark regulatory WACC.

25. The Commission is even less clear about how it would recognise the concessionary benefit of the Crown's equity interest with regulated providers. The Crown provided both equity and debt to Chorus and LFCs on a non-arm's length basis. The Crown did not provide either of these on the terms that would have been set in a competitive market i.e. debt and equity were subsidised.

26. The Commission has correctly determined that it will consider the benefits to Chorus/LFCs of subsidised debt. However, it is not obvious how the Commission intends to capture and remove the benefits to Chorus/LFCs of subsidised equity.

27. Vector notes that, just because an LFC must make equity payments to the Crown that does not imply that the equity was not provided on a subsidised basis. So long as the Crown provided equity in the expectation of not receiving a risk adjusted market return on the investment then that investment is, in part, a subsidy. That is no different to the Crown providing debt based on an expected return that was below the risk adjusted market rate.

28. It appears that the Commission has no plan on treating Crown equity investments any differently to market rate equity investments.

29. If this is the case, then it is exacerbated by the change to the equity market premium which has increased for the last few years of the loss incurring period. Given the Commission's recognition that shareholders are requiring a higher return from 2019 onwards, there is even more cause for a clear method for identifying the benefit Crown shareholding has provided to UFB providers.

# The building-block model for determining FFLAS prices

30. Sections 175-176 of the Act require the Commission to determine IMs which will be used to develop Price-Quality Paths and Information Disclosure for FFLAS services for Chorus and LFCs.

31. The drafting of section 176 is premised on the assumption that regulated revenue will be determined by applying the building block model (BBM) for ascertaining supplier costs. A key feature of the BBM is the "lock in" of the value for the suite of assets used to supply regulated FFLAS. The lock in of the RAB forms a significant element of the capital building block comprising the return of and on capital.

32. The revenue stream derived by the BBM is inextricably linked to the RAB. This is because revenues are set to ensure the service provider has cashflows equivalent to a net-present value of zero (NPV=0) for its RAB investment.

### *Determining the right weighted average cost of capital (WACC)*

33. Fundamental to the exercise of delivering an NPV=0 return is ensuring the WACC for the regulated service provider is set at an appropriate level. This level is necessary to ensure the regulated service provider has the incentive to make efficient investment in its regulated infrastructure to support the service being delivered to stakeholder expectations.

## *Giving effect to the asymmetric consequences for over/under investment – providing an upward adjustment to the estimate of WACC*

34. Vector supports the Commission's core economic framework for its decision-making process for Part 6. This includes explicit recognition of the asymmetric social cost from underinvestment in the regulated infrastructure used for delivering FFLAS.

35. To this end, the decision not to allow an upward adjustment to the WACC estimate used for setting Price-Quality Paths and Information Disclosure regulation appears to violate both the purpose of section 162(a) and the third principle of the Commission's own economic framework – the recognition of the asymmetric consequences of over and under investment.

36. In a BBM for determining allowable revenue the most critical tool for safeguarding against the risk of under-investment is the benchmark WACC. Accordingly, it is fundamentally important that the WACC is not set at a level where the incentive for investment is discouraged.

37. For this to be the case, the Commission's WACC methodology must be sufficiently robust to determine a WACC that is consistently at a level for the regulated service provider to continue to make efficient investments in its regulated infrastructure. We do not believe the Commission's WACC methodology is sufficiently robust to confidently deliver such outcomes for all market circumstances. In this submission we outline some of the matters in the current methodology which derogate from such an outcome. Accordingly, we consider the correct application of the Commission's principles warrants an uplift to the WACC to prevent the risk of underinvestment.

38. We support the Commission's endeavor to examine the social cost for underinvestment in regulated FFLAS and as part of this inquiry considering the social consequences for under-investment in other regulated infrastructure under Part 4 of the Commerce Act. We agree with the assessment that the social consequences for underinvestment in critical infrastructure such as electricity networks does have greater social cost than FFLAS. However, we consider the primary means for ensuring Chorus and LFCs have the right incentive to invest in their FFLAS infrastructure is to ensure their regulatory WACC is not set below the level which discourages efficient investment. This is better safeguarded by an upward adjustment to the Commission's WACC estimate.

## *Are there other levers for the Commission to ensure the incentive to invest is not discouraged?*

39. In the BBM, the benchmark WACC is the primary means for incentivising efficient investment. Therefore, the Commission's decision not to allow an uplift on its estimate of WACC creates more onus on the Commission to demonstrate its best estimate of the components of the WACC are at a level not to discourage investment in regulated infrastructure. We do not have confidence the current parameters defined by the Commission for the regulated WACC are robust enough to discharge this burden and to comply with its economic framework.

40. The only other lever for the Commission to ensure adequate investment if it sets a WACC at a suboptimal level is to deviate from incentive regulation and use command and control mechanisms. The Commission has already suggested it is able to continue to influence investment through quality standards. We strongly caution against this approach of forcing investment on regulated suppliers given the risks involved. Relying on penalties for inefficiently low investment rather than rewarding efficient investment will ultimately raise the long run risk profile of an industry to the long run detriment of consumers. Similarly, mis-specified quality standards create the risk of enforcing supplier investment in assets that are not in the long-term benefit of consumers.

## *WACC – estimating the cost of debt*

41. The Commission's approach to estimating the cost of debt for Chorus and LFCs adopts a very similar method to that adopted in the IMs for regulated suppliers under Part 4 of the Commerce Act. Vector has serious reservations about this approach as it relies on a very specific debt hedging strategy which is artificial and specifically linked to the regulatory control period. The approach is at odds with international regulators which

recognise efficient debt management strategies will involve debt being raised using different products and maturity periods. Instead Vector recommends the regular updating of the cost of debt based on a portfolio throughout the regulatory control period. The regular updating of the cost of debt portfolio to create a trailing average ensures stability with prices over time. This is the approach adopted by Ofgem, the Australian Energy Regulator, and almost all US public utility commissions.

### *WACC – cost of equity estimating the tax adjusted market risk premium (TAMRP)*

42. Vector finds the Commission's reasoning for setting the TAMRP at 7.5% from 2019 onwards to be logically inconsistent. This "jump" to the TAMRP in the models used by the Commission shows the sensitivity of the premium demanded by equity investors relative to risk-free assets. Accordingly, the specification of the TAMRP in the IMs as a fixed parameter is at odds with the method used to derive the TAMRP.

43. We see the "jump" to the TAMRP as specific evidence of the return on equity being undercompensated for EDBs in the recently set DPP which had revenues calibrated using inputs for the WACC determined during the 2019 calendar year. During the 2019-year risk-free rates for New Zealand five-year bonds traded at levels below 1% which have not been observed since IMs were introduced for Part 4 regulated suppliers over a decade ago. The hardcoding of the TAMRP in the IMs as a fixed parameter will result in an equity premium that will move in unison with changes to the risk-free rate. However, as discussed above, the Commission's own models for estimating the TAMRP assume an inverse relationship between the TAMRP and risk-free rates.

44. For Chorus and LFCs the Commission can establish a framework where estimating the TAMRP at the same time as it makes its observation for the risk-free rate eliminates the risk of volatility with the return on equity. Otherwise fibre utility shareholders will be in a similar circumstance as Part 4 suppliers where they must endure periods (such as that set for EDBs in DPP3) of the return on equity being set lower due to the decline in risk-free rates. However, this is not consistent with the expectations of commercial investors.

45. Should the Commission continue to specify a fixed TAMRP in the IMs as per the Draft Decision, it should specify the circumstances where its TAMRP estimate becomes out-of-step with the market environment. For example, the change to risk-free assets in 2019 was a significant and unexpected change to the value of risk-free assets that

invalidated the assumptions behind the TAMRP settled in 2016 as part of the Part 4 IMs.

### *Managing asset stranding risk*

46. The Commission's solution for addressing demand or technology stranding risk for Chorus and LFC assets is to provide a discretionary ex-ante allowance on their WACC. This is the third solution provided by the Commission for managing the risk of demand or technology enabled asset stranding risk. The different methods adopted by the Commission to address stranding risk in different sectors highlights an uncoordinated and unpredictable response for managing a key concern for regulated service providers.

47. At the national electricity grid level (transmission at high voltages), the Commission has applied an unindexed RAB for Transpower to manage the risk of stranding. This mechanism has the effect of ensuring Transpower can recover its invested capital sooner more consistent with the straight-line depreciation profile for its assets which are not subject to continuous inflation revaluation. We consider this approach of recovering capital faster, transparently and with certainty the most consistent with the "lock-in" principle of the BBM.

48. For electricity distribution networks the Commission has applied a limited discretionary one-off adjustment to depreciation based on application by an EDB.

49. In contrast, for FFLAS the Commission is now proposing ex-ante compensation of between 5-40 basis points on top of its WACC estimate to manage the risk of technology/demand stranding risk for Chorus and LFCs.

50. We consider the discretionary and ad-hoc decisions around stranding risk are unhelpful for stakeholders and undermine the certainty IMs are intended to deliver. Principally, Vector considers the method applied to Transpower for managing technology stranding risk provides:

    a. certainty;

    b. consistency with the "lock in" principle of BBM;

    c. alignment with GAAP; and

    d. the least amount of discretionary judgement.

51. Importantly, the approach applied to Transpower is NPV neutral absent stranding. By contrast, the approach applied to Chorus is equivalent to more than 10% uplift on the WACC or roughly a 25% uplift on the equity return component.

### *Managing Inflation Risk*

52. The unindexed RAB adopted for Transpower to manage stranding risk also has the benefit of limiting the impact of inflation forecasting risk to allowable revenue or achieving the forecast return on investment (ROI) at any point in time.

53. The Commission's method for forecasting inflation has performed quite poorly. It has consistently overestimated actual inflation for determining notional revaluation income and for deducting allowable revenue for Part 4 suppliers subject to Price-Quality regulation. This consistent over-forecasting of inflation is a key reason why suppliers have been unable to achieve their regulatory WACC.

54. At a minimum Vector considers it important for the Commission to address the shortcomings to the current approach to forecasting inflation which relies extensively on the assumption that inflation linearly approaches 2% within five years. Instead, we see far greater benefit to the Commission utilising market-based inflation forecasts. This is aligned with the updated practice of the New Zealand Treasury[1] for asset valuation.

### *Asset valuation - depreciation*

55. The Commission has refrained from adopting standard asset lives for large assets classes used to deliver FFLAS. This contrasts with the approach to IMs under Part 4 of the Commerce Act where standard asset lives are specified for major asset classes. Vector supports the extension of GAAP depreciation to suppliers regulated under Part 4 of the Commerce Act. We consider the proposed approach for FFLAS provides more flexibility which is absent from Part 4. For example, in schedule A of the EDB IMs the standard asset life for a wooden pole is set at 45 years which contrasts with the updated electrical engineer's association (EEA) guideline which suggests the onset of unreliability for a hardwood pole asset is expected to occur after 40 years. The requirement for setting standard asset lives for asset classes also comes with the responsibility of ensuring they continue to reflect the expected operational life for the

[1] New Zealand Treasury, *Risk-Free Discount Rates and CPI Inflation – Assumptions for Accounting Valuations*, 29 May 2019 pp27-28.

asset class. Therefore, we consider the approach being proposed for FFLAS for depreciation has merit to be applied in the Part 4 IMs.

## *CAPEX IM*

56. Part 6 of the Act also prescribes the requires the Commission to establish criteria for examining the efficiency of Chorus and LFC capex proposals. The chief reason for undertaking such an inquiry is to limit the opportunity for any Averch-Johnson (AJ) effect to develop, which is commonly referred to as “gold-plating”. Therefore, rules like the capex IM are intended to ensure Chorus and LFCs do not undertake capital investment and network capacity at more than the efficient level necessary for FFLAS.

57. Accordingly, Vector considers the IM criteria for assessing capex must also consider the efficiency of unbundling and access for limiting unnecessary capital investment. Therefore, any assessment of congestion alleviating capex should have as part of its assessment framework whether unbundled access could have limited the need for more Chorus/LFC investment. This analysis will illuminate if better opportunities for network access are needed to avoid FFLAS providers from unnecessarily expanding capacity. Similar requirements are placed on Transpower in the supply of electricity transmission.

58. Therefore, we consider a key part of the capex IM framework is an assessment of whether unbundling terms need to be enhanced and can provide an alternative to Chorus or LFC capex investment. This is a chief part of Transpower’s Major Capex IM to ascertain non-network alternatives for its major capex projects.

## *Quality IM*

59. The Quality IM is a very important aspect of the overall regulatory framework for regulated fibre providers. The recent history of the telecommunications industry in New Zealand contains many examples of non-price terms frustrating workably competitive outcomes.

60. Importantly, the IMs must establish a quality framework for Price-Quality and Information Disclosure regulation that considers FFLAS quality for each regulated FFLAS service as opposed to the collective suite of regulated FFLAS or Anchor Services only.

61. We would like to address several broad areas in this submission:

- The role of the Deed for equivalence and non-discrimination;

- The role of the industry in quality;
- Appropriate incentives and the CEPA model;
- Role of transparency; and
- The importance of unbundling on quality.

### *Equivalence*

62. There is an important interaction between equivalence and non-discrimination and the service quality and service terms on which FFLAS services are provided. We encourage the Commission to ensure the quality IM and the Price-Quality and Information Disclosure Determination establish a quality framework for measuring services which are provided in a manner where equivalence and non-discrimination can be established and measured transparently.

### *Industry involvement*

63. The industry has a key role to play going forward in formulating, overseeing and, if necessary, enforcing the quality standards and rules. Historically, industry has always had a key role in establishing regulated telecommunications service quality through bodies such as the Telecommunications Carrier Forum (TCF). The TCF played a critical role in the development of service definitions, non-price terms and operational manuals for Standard Terms Determinations (STDs) under the Act. Accordingly, Vector recommends the Commission consider using industry workshops to help settle on the right framework for the Quality IM.

64. As noted, the telecommunications industry is littered with examples of non-price and operational issues being used to stifle competition. Long ordering times, differing levels of service and restriction of space in key exchanges are just some common examples. The STDs were a key part of eliminating anti-competitive opportunities for regulated services for Chorus' copper network.

65. It is essential that we avoid the mistakes of the past, and ensure the broader industry has a close role in jointly defining and overseeing quality. We suggest industry workshops would be highly beneficial in helping guide the discussion around quality metrics initially. In fact, the lack of specificity in the quality metrics proposed in the IM

necessitates extensive and broad industry involvement to ensure that they are not in effect imposed by Chorus and LFCs.

66. We agree with the Commission's view that the current UFB documents should form the basis of industry consultation for the quality standards for the initial regulatory period, as they reflect years of industry negotiation, experience and input.

67. However, new regulated FFLAS services required to be provided by Chorus and LFCs do not have the benefit of this history or the flexibility offered within the CIP compact with regulated service providers.

68. Accordingly, new layer 1 unbundled service PONFAS will be offered under the new regulatory framework with the initial service offering clearly showing a lack of industry involvement in the service terms. The current terms for PONFAS will not produce workably competitive outcomes.

69. On an ongoing basis the TCF's UFB Product Forum would be an obvious vehicle for industry engagement on quality matters. However, an important caveat is that the Forum requires teeth to ensure Chorus and LFCs have the correct incentives to take RSPs' concerns seriously and modify service attributes based on stakeholder feedback. Appropriate regulatory remedies should form the backdrop of these discussions.

### *Appropriate incentives and the CEPA model*

70. In our earlier submission, Vector Communications recommended that the Commission consider adopting level 4 of the CEPA model. We are concerned that a higher level of oversight is required to ensure Chorus and LFCs comply with the agreed metrics, while still allowing enough scope to Chorus and LFCs to adapt to change in the industry.

71. While a "level 3" level of prescription seems a reasonable level to adopt for the well-established layer 2 Wholesale Ethernet Access Services (Bitstreams 2*, 3* & 3A*). A higher level of prescription is needed for new services such as the layer 1 PONFAS given industry negotiation has not yet occurred. This is especially the case for the initial period of operation where service provision and industry consumption of the service remains relatively new which can illuminate requirements for efficient service delivery.

72. The initial layer 2 Wholesale Ethernet Access Services (Bitstreams 2, 3 & 3A) "Reference Offers", when released around 2013, were not fit for purpose with respect to the performance quality dimensions. The input/output buffers for Committed Burst Size and Excess Burst Size were far too small to permit quality TCP/IP performance

levels. Service Providers failed to acknowledge this for a period but subsequently released their Right-Performing "Accelerate Offers" (Bitstreams 2*, 3* & 3A*), which vastly improved the performance quality dimension for everybody.

73. Had there been at the time a higher level of prescription, say "level 4", then the regulator and the industry could have mandated the necessary changes be introduced faster. However, the delay of some two years between the release of the "Reference Offers" and the right-performing "Accelerate Offers" has caused unnecessary confusion for industry.

74. Accordingly, a Level 4 level of prescription is necessary for new FFLAS Layer 1 PONFAS so that service quality can be monitored, corrected and enforced should history repeat itself.

75. We consider a comprehensive reporting regime will provide strong incentives on Chorus and LFCs to comply with and improve on quality metrics. This reporting should be developed by the industry and should include, at a minimum, sufficient detail so that Chorus and LFCs consumption of layer 1 PONFAS services to deliver its layer 2 services and those that apply to RSPs can be clearly identified. We elaborate on this further below.

### *Role of transparency – Information Disclosure*

76. We recommend the IMs for Information Disclosure (ID) must ensure transparency on the performance of FFLAS service provider. The ID regime not only provides an opportunity to review the financial performance, network characteristics and performance of the FFLAS service provider but is an effective tool for ensuring each regulated service is delivering workably competitive outcomes. This is especially relevant for the tension between FFLAS layer 2 and layer 1 services where there is a risk of service providers frustrating the development of layer 1 service markets.