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Submission on UCLL and UBA FPP further draft determination

Aspiring Asset Management is a New Zealand owned manager of the Aspiring Fund, a boutique investment fund that invests in a range of New Zealand companies, including Spark and Chorus. We have followed the regulatory proceedings in the Telecommunications sector for a number of years and have taken this opportunity to make our first submission to the Commission due to our concerns with the current process.

The Government recently released a review paper, 'Regulating communications for the future', that notes "the status quo does not provide the certainty needed to encourage investment and support innovation, and promote the long-term benefits of end-users." We agree. Our review of the July 2nd draft determination found that there are significant issues with the valuation approach and broader inequity which discourage ongoing infrastructure investment.

Primary among these is the Commission's reliance upon high-level third party reviews of deployment costs. We question how this can be considered as the best input for a decision of this magnitude when Chorus and other local fibre companies have actual cost data from building fibre networks over a number of years. It is difficult for investors to assess the data when we do not have full access to information but we note Downer, one of the companies building the fibre network, has independently questioned the Commission's views on costs. Chorus's submission notes that they believe their actual trenching costs are double what the Commission's consultants are modelling. Given the large variance, the Commission's decision not to adopt observable cost evidence is a major deterrent when considering further investment in the sector.

When we assess the fibre network, and what other companies have indicated as their costs, it seems clear to us that the valuation suggested by the draft determination is below what it would in fact cost. As a reference point, we view Chorus's fibre network build on the terms issued to date (including significant Government subsidy) as an uneconomic (negative NPV) investment. We are aware that this view is held by a number of broker analysts and supported by the comments of Dr Patterson, the previous Telecommunications Commissioner, in a report prepared for Chorus; "The contracts Crown Fibre Holdings (CFH) negotiated with the Local Fibre Companies included a loss leader entry-level product at a wholesale price of \$37.50". As such, the low urban UCLL price indicated in the draft decision, adds weight to our conclusion that adequate investment incentives are not being recognised.

While we are concerned by methodology determining price, the decision not to backdate is perplexing. In our view it was a mistake to impose benchmarked derived pricing from such a small sample size. As the decision currently stands, this over-sight and the time delay of the process will see material one-sided costs borne by the infrastructure investor. We agree with Commissioner Duignan's view that the financial strength of ISPs will limit the investment impacts of future backdating. Accordingly we would like to see backdating implemented, and believe it is consistent with fairness mechanisms, such as period over-earning wash-ups used in other regulated industries.

We thank the Commission for the opportunity to make this submission and look forward to further engagement.

Yours sincerely



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