# One NZ submission on fibre price-quality regulation: proposed process and approach for the 2025-2028 regulatory period

28 September 2023

## Introduction

1. We welcome the opportunity to comment on the Commerce Commission's (**the Commission**) proposed process and approach for the 2025-2028 fibre price-quality (**PQ**) regulatory period. One NZ is a key customer of Chorus' wholesale services, and the price and quality path that Chorus is subject to have a direct impact on the price and quality of fibre services that New Zealand's consumers and businesses experience. We look forward to engaging with the Commission through the process of determining the settings for the second fibre price-quality regulatory period (**PQP2**).

## Summary of key points

2. Summary of One NZ's key points
    a. There is currently no basis for deregulation of any fibre service or PQ regulation being removed because Chorus continues to exercise substantial market power.
    b. The Commission's determination of the PQ path for PQP2 must more effectively incentivise layer 1 fibre unbundling on fair and reasonable terms and require Chorus to disclose key information on unbundling through this process.
    c. The Commission needs to undertake careful forecasting of costs that will be passed through to end users when determining revenue and price path for Chorus.
    d. The Commission needs to carefully assess Chorus' expenditure proposals and publish sufficient detail of the proposals to enable stakeholders to evaluate them. The

Commission's PQP2 determination needs to give greater weight to competition and not accept any proposals that risk distorting the market.

e. Fibre has a role to play in improving rural connectivity, alongside other access technologies. Clear criteria should be set to define where expenditure on rural fibre expansion can qualify under the PQ regime, based on the number of households per sq km, to avoid incentivising fibre expansion in areas where connectivity can be provided more efficiently by other technologies.
f. We support further industry investment in resilience. There is currently a lot of policy work underway on enhancing resilience across Government agencies. The Commission should not attempt to determine Chorus' expenditure for resilience outcomes until the Government's work on critical infrastructure standards has concluded.
g. We agree with the Commission's view that the current mandatory standards should be maintained. In addition, new standards should be implemented, including on provisioning and customer service.
h. Any new quality incentive scheme must avoid rewarding Chorus for simply meeting the standard, be symmetrical (with Chorus losing money for failing to meet the standard) and be proportionate.
i. The Commission should consider making the 300/100 product the new anchor product, replacing the 100/20 product. Alternatively, the Commission should require Chorus to commit to continuing to align the price of the 300/100 product to the anchor service for PQP2.

## Proposed process

3. The Commission has proposed very short timeframes for consultation on some of the key documents as part of this process, namely the draft determination of Chorus' PQ path for PQP2. Providing 4 weeks for submissions and 2 weeks for cross-submissions is extremely short. We would welcome clarification from the Commission on the following questions:
    a. What factors have determined this timeframe given flexibility available to the Commission in determining when to commence this process;
    b. Does the Commission intend to engage end users who are ultimately affected by changes in wholesale prices that flow from this process; and
    c. Has the Commission considered ability of end users to engage effectively under these timeframes?
4. It is critical that stakeholders are provided with sufficient time to engage with and submit on all relevant documents under this process. The regulatory settings that will apply to Chorus

in PQP2 will have an impact on the wider telecommunications market and end users of fibre services, particularly as regards the prices paid and quality of service experienced by end users of fibre services, and it is important that the proposals are sufficiently scrutinised before the regulatory settings post 2025 are determined by the Commission.

## Deregulation review

5. Under s 210 of the Telecommunications Act (**the Act**), the Commission can undertake a deregulation review. The Commission will consider whether to commence a review in a separate paper to be published in due course. We understand this paper will also set out the Commission's emerging views on this matter.
6. While One NZ will make submissions if any deregulation review is commenced, our present view is that there is no basis for deregulation of any fibre service or PQ regulation being removed. One NZ would oppose any amendment to the existing scope of regulation that Chorus is subject to. Without limiting the submissions One NZ would make in any deregulation review, the following relevant factors should be considered by the Commission when forming an emerging view on deregulation of Chorus' fibre assets.
7. As part of any deregulation review, the Act guides the Commission to consider whether the regulated provider continues to exercise substantial market power (**SMP**).[1] There is no credible prospect of Chorus relinquishing SMP in the foreseeable future. It remains an inevitable trading partner for retailers in those areas where it operates.
8. Chorus retains a monopoly in the provision of fibre services in many parts of New Zealand. While MNOs have ambitions to continue to attract end-users to alternative access technologies such as fixed wireless access (**FWA**), Chorus and Local Fibre Companies (**LFCs**) have conditioned consumers to think of fibre as an inherently superior technology. Chorus has suggested that fibre is the optimal 'medium of delivery' for consumers that value higher

1 Section 210(4)(b).

speed in their broadband services.[2] It has also used direct to end user marketing and incentives to encourage switching to fibre.[3] Through this positioning and encouraging the migration of fibre consumers to higher specification plans, Chorus has in effect reduced the size of the addressable market for alternative access technologies and worked to maintain its SMP. It follows that alternative access technologies such as FWA are not seen by all customers as substitutes for fibre. Support for deregulation based on competition from alternative access technologies wouldn't be in line with Chorus' own prior arguments and campaigns claiming superiority of fibre compared to these alternatives.[4]

9. For the same reasons, we also wouldn't support any relaxation of the line of business restrictions that Chorus are subject to. The Ministry of Business, Innovation and Employment's (**MBIE**) advice to the Minister titled 'Supplementary Analysis on Options to Address Digital Exclusion' (4 July 2022) highlights the importance of existent regulatory settings for telecommunications market competition. In particular, MBIE notes that:

   '*non-discrimination, equivalence, and business line restrictions have been crucial to ensuring the delivery of high quality and competitive telecommunications services and prices to majority of New Zealanders. These obligations are necessary to ensure the effectiveness of our regulatory regime by limiting the market power of local fibre companies (LFCs, including Chorus) and ensuring RSPs are all being offered the same price and terms for a wholesale product. These obligations provide a competitive and level playing field by:*

[2] What is the Big Fibre Boost? | Chorus
[3] See for example Chorus Prezzy Card offer | Chorus
[4] For example, in July 2021 Chorus ran an advertising campaign which implied that a customer will experience buffering and glitches with broadband if they are not using fibre technology. This was misleading and defamatory to other access options, such as FWA and HFC which are sufficient for activities such as streaming video and TV. Refer to our past submission for more detail (Annex 1): https://comcom.govt.nz/__data/assets/pdf_file/0023/267512/Vodafone-NZ-Submission-on-Marketing-telecommunications-services-letter-27-August-2021.pdf

a. *prohibiting a network operator from treating access seekers (usually RSPs) differently, or if the network operator supplies itself with a service, from treating itself differently from other access seekers by discriminating or favouring themselves (i.e., requiring "non-discrimination" by LFCs)*
b. *preventing LFCs from distorting competition in downstream markets by requiring operators to compete with access seekers (usually RSPs) on an equal footing when they access key upstream inputs (i.e., requiring "equivalence" of inputs)*
c. *restricting LFCs to operating at the network level (OSI layers 1 and 2) to prevent them from being able to leverage their market power into layers 3 and above that are competitively supplied by RSPs (i.e., imposing "business line restrictions").'*

10. MBIE's briefing goes on to say that relaxation of existing non-discrimination, equivalence and business line restriction provisions were considered by officials in the context of assessing specific digital inclusion proposals from several LFCs. MBIE decided against removing the restriction for LFCs to participate in the retail market:

> *'Officials have also reconsidered the removal of business line restrictions for digital inclusion purposes. We looked at both the restrictions on LFCs of offering layer 3 and 4 services and the restriction on LFCs providing a retail service. Any change to either business line restrictions would present a significant change to the regulatory regime and market structures and would reintroduce the incentive for an upstream player with market power to favour their own service offerings over those of downstream competitors. As such, it would return New Zealand to the time where vertically integrated fixed line operators leveraged their market power into downstream markets, which had significant negative impacts on competition. It is not clear to us how this would be in the interests of consumers, or how it would result in more affordable broadband products being delivered to the market on a sustainable long-term basis ... Allowing vertical re-integration of monopoly providers risks significant negative impacts on competition, potentially leading to New Zealanders' paying higher prices and/or receiving lower quality services.'*

11. While MBIE considered this issue in specific circumstances, its reasons have general application to any consideration of relaxing the regulatory provisions that LFCs are subject to. Moreover, it would be inappropriate for the Commission to commence any process that enables deregulation in circumstances where officials responsible for existing policy settings

have taken the view that these settings remain appropriate and necessary to deliver competition and end-user benefits.

12. Line of business restrictions continue to play an important role in functional separation of wholesale and retail markets, ensuring that LFCs cannot leverage SMP in the provision of fibre services to distort outcomes on competitive downstream retail markets. Even with existing provisions, there have been several cases of Chorus and other LFCs tinkering in the retail market. Examples include:
    a. Several examples of direct-to-consumer marketing – refer to our past submissions to the Commission.[5]
    b. LFCs entering into commercial arrangements with broadband comparison tool providers like Broadband Compare and Younicorn to promote fibre services directly to consumers on behalf of LFCs, through door-to-door campaigns and targeted activities in retirement villages.
13. Such activities already challenge existing line with the business restrictions and merit further attention from the Commission. These activities emphasise the importance of these restrictions remaining in place.

## Fibre unbundling

14. We note that the Commission is unable to undertake a review on unbundling services under s209 of the Act until after 1 January 2025. We are not proposing any changes to specifications of these services at this stage. However, the Commission's determination of the PQ path for PQP2 must more effectively incentivise layer 1 fibre unbundling on fair and reasonable terms.

[5] Vodafone Aotearoa response to the Commerce Commission's open letter on marketing of alternative services, 27 August 2021, Annex 1, https://comcom.govt.nz/__data/assets/pdf_file/0023/267512/Vodafone-NZ-Submission-on-Marketing-telecommunications-services-letter-27-August-2021.pdf

15. Chorus is required to offer passive optical network fibre access service (**PONFAS**) consistent with the equivalence of inputs and non-discrimination principles in the Deed of Open Access Undertakings for Fibre Services. To date, it has not done so. The PONFAS offer published by Chorus does not permit access to layer 1 services on a basis that would enable access seekers to replicate Chorus' layer 2 services on an economic basis, and this undermines scope for competition, service differentiation and the opportunity for better meeting the needs of consumers that formed the rationale for requiring layer 1 unbundling as a fundamental feature of fibre regulation under the Act.
16. One NZ has raised its concerns about the inconsistency of Chorus' PONFAS offer and explained why this offer is inconsistent with the objectives and scheme of the Act. The Commission has accepted that to satisfy equivalence of price, 'the margin between the network operator's upstream and downstream prices has to cover the costs of providing the downstream service including normal return on capital.'[6] This means that the price of PONFAS must be sufficiently below the price of the average GPON bitstream service to allow a reasonably efficient access seeker to cover their costs of providing a layer 2 service. However, the price set by Chorus for a reasonable sized access seeker is *more than* the price offered for a bitstream service that bundles layer 1 and layer 2 capability.
17. In short, both the price and non-price PONFAS terms set by Chorus deny the possibility of access seekers replicating Chorus' layer 2 services on an economic and efficient basis, therefore to date failing to achieve the policy goal of promoting competition in telecommunications markets for the long-term benefit of telecommunications end users (under s 156AC(a) of the Act).
18. As the Commission notes, the core aim of PQ regulation is to create incentives for regulated providers to behave consistently with the purposes in s162 of the Act.[7] These purposes include

[6] Commerce Commission, *Equivalence and non-discrimination – guidance on the Commission's approach for telecommunications regulation,* 30 September 2020, para 3.32
[7] Commerce Commission, *Fibre price-quality regulation: Proposed process and approach for the 2025-2028 regulatory period,* 31 August 2023, para 3.53

incentives to include efficiency and supply of regulated FFLAS, including through lower prices. This purpose must be interpreted in light of a statutory scheme that requires equivalence in relation to the supply of unbundled layer 1 services to be achieved after 1 January 2020 (i.e. access seekers should be treated in the same way as an LFC's own business operations, including in relation to pricing, procedures, operational support, supply of information, and other relevant matters). The Commission has previously appeared to agree that unbundling is critical to the fibre PQ regime: '*We consider that the declaration of a point-to-multipoint layer 1 services supplied to end-users' premises or building as an unbundled fibre service may also be a tool to enhance quality.*'[8]

19. Through the PQP2 process, the Commission has the opportunity to ensure appropriate allocation of costs between layer 1 and layer 2 services, a step which is necessary to ensure equivalence.
20. The Commission should also set specific requirements for the LFCs to disclose key information on unbundling and should impose this requirement on Chorus through the PQP2 process. This will provide the information base needed by the Commission to support any further action that is necessary to enable unbundling.

## Revenue and price path compliance

21. The Commission needs to undertake careful forecasting of costs that will be passed through to end users.
22. It is unclear why the Commission considers financial hardship is a risk that's unlikely to eventuate. Chorus' fibre wholesale charges are the greatest determinant of the cost of retail fibre products. Any increase in wholesale charges is likely to be passed through to end users, consistent with recent practice of individual retailers.[9] For some groups of end users, an increase in the cost of fibre services may well constitute financial hardship – and could

[8] Commerce Commission, 19 November 2019, 'Fibre Input Methodologies: Draft decision – reasons paper, para 3.1208.1.
[9] https://www.stuff.co.nz/business/128986321/spark-increases-the-price-of-most-broadband-plans-by-up-to-5-a-month; https://one.nz/broadbandpricechange/

operate as a barrier to accessing digital services. The Commission should therefore have regard to whether its decisions in the context of PQP2 will result in hardship for any group of end users, consistent with the purposes in s162(b) and (c) in particular.

23. Avoiding price shock is also relevant for business end users. HNSN Premium product withdrawal is a good example where Chorus has used its market power to make service changes that resulted in a price shock for end users. In November 2022, Chorus notified the industry that they were withdrawing HNSN Premium and NGA Business Premium from market on 31 July 2024 and 30 November 2023 respectively. For our customers to continue to receive the services, an access migration would be required. At the same time, Chorus announced the launch of new Business Premium plans at 1, 4 and 10 Gbps with no plans between 100Mbps and 1Gbps. Price points for Business Premium start at [], and the removal of sub 1Gbps plans at lower price points meant access seekers will face a substantial increase in price if we migrate them to the Business Premium access. We fed back to Chorus that we believed the 100Mbps – 1Gbps plans were still required during the consultation phase of the withdrawal to address the price point disparities but no changes were made. Chorus have subsequently (after the withdrawal notice) announced and now launched a new product that addresses the price point issue between 100Mbps and 1Gbps called HPA, which we have now onboarded. However, this is only available in Chorus UFB areas. So, while many of the sites can be migrated to alternatives that are less expensive than today, we have a number of exceptions where a straight migration to the new product just doesn't work for our customers either for cost or inaccessibility of technology. Chorus is the only fixed access provider at these sites, and their alternatives to HSNS Premium are significantly more expensive.
24. [
25. ]
26. The case of HSNS Premium withdrawal serves as an example of Chorus' ability to execute price increases through changes made across its product range. The Commission should consider the scope for and impact of these decisions when determining the PQ path for PQP2.

## Approach to revenue cap

27. Having adequate controls in place to minimize price shocks for end-users remains critical, including to avoid financial hardship outcomes referenced above.
28. If price shock is only considered within the overall context of the MAR, there is a real prospect of one service increasing substantially above a price shock threshold even if Chorus remains within revenue allowances. This could have a significant impact on some groups of end users of FFLAS who have limited ability to pay more for services. For example, end users of entry level FFLAS services may be more affected by retail price uplifts driven by increases in wholesale charges than customers who are consuming higher value plans. []

## Determining Chorus' expenditure allowances

29. It is critical that the Commission scrutinises Chorus' expenditure proposals appropriately. We will evaluate Chorus' expenditure proposals when they are published. We request that sufficient detail of the proposals and time (at least 4 weeks) are provided to allow One NZ and other stakeholders, including end users ultimately affected by these proposals, to properly and effectively engage with them. The Commission's roadmap notes that the documents will be published for consultation in Q4 2023 – further clarity on timings would be helpful, noting that most industry stakeholder organisations will reduce operations from Christmas until the second half of January.
30. In determining the PQ path for the next regulatory period, the Commission is required to make a determination that best gives, or is likely to best give, effect:
    a. to the purpose in s 162 of the Act; and
    b. to the extent that it considers it relevant to the promotion of workable competition in telecommunications markets for the long-term benefit of end-users of telecommunications services, as specified in s 166(2)b) of the Act.
31. PQP2 determination should give greater weight to competition and not accept proposals that risk distorting the market. Promoting competition is a key outcome of the PQ regulatory regime and in making PQ determinations the Commission must consider how its decisions might affect competition between some types of fibre services and services delivered using other access technologies. As noted above, the Commission must also consider how its decisions operate to incentivise the offer of layer 1 fibre services on fair and reasonable terms, noting that the provision of layer 1 services on this basis is a structural feature of the fibre regulatory regime set out in the Act - and a building block for competition.
32. Accordingly, the Commission must carefully consider each expenditure proposal to ensure that that all parts of cost allocations and recoveries avoid competitive distortion. This includes ensuring that decisions on expenditure promote outcomes that are consistent with those seen in workably competitive markets. Some of the key outcomes the Commission must prevent are any proposals that enable double recovery of shared costs across FFLAS and services that are outside of the PQ regulatory regime, and proposed expenditure resulting in outcomes that distort competition (this point is particularly relevant when assessing proposed expenditure for delivering rural connectivity and resilience outcomes).
33. The Commission notes the following specific areas of potential interest for evaluation:
    a. Expansion of the fibre network in rural areas;
    b. Expenditure to reinforce resilience of the fibre network;
    c. Incentive payments associated with new connections and product upgrades;

d. Cost allocation and the impact of increasingly higher proportion of costs being attributed to fibre;
e. Other material capex expenditure areas such as network and customer IT and aggregation expenditure;
f. Material opex expenditure categories such as corporate support expenditure and network maintenance.

34. We provide One NZ's view on the first three areas below. We may have additional comments when Chorus' expenditure proposals are published for consultation.

## Rural fibre expansion

35. Improving rural connectivity is an important priority and One NZ has been calling for a long-term integrated strategy for improving rural and regional connectivity that takes into account the challenging industry economics of expanding services in sparsely populated parts of New Zealand. Our view is that a mixed technology approach is required to achieve enhanced rural connectivity outcomes in the most efficient and cost-effective way. Fibre has a role to play in areas with a minimum existing population density or firm projected growth. Outside these areas, we believe that rural connectivity will be delivered most effectively and at lowest cost via terrestrial mobile networks, with satellite providing connectivity in the most remote areas.
36. The competition consideration is highly relevant when making allowance for Chorus' proposed rural fibre expansion. It is critical that this allowance does not incentivise inefficient investment or distort the market in favour of fibre in areas where it makes more sense to use other technologies to deliver connectivity more efficiently.
37. These considerations are consistent with the Commission's consultation paper, which identifies the need to consider the following areas when evaluating proposals to expand fibre into rural areas:
    a. 'Competition within the rural area in the context of geographic expansion;
    b. The potential costs and benefits of the proposed expansion;
    c. Whether fibre is the most efficient way to meet the need;
    d. The relevant capital contribution policies and expected value of the contributions; and
    e. The cost of maintaining legacy network and how this has contributed to the decisions on the proposed fibre expenditure.'
38. One NZ submits that determination of Chorus' capex and opex allowances for PQP2 must not enable or incentivise inefficient deployment of fibre in areas where connectivity services can be more efficiently supported by alternative access technologies, such as mobile or satellite. Enabling this outcome would undermine competition for potentially more optimal and efficient technology to deliver rural connectivity improvements and be inconsistent with

the capex IM which states that Chorus' expenditure should reflect efficient costs that a prudent network would incur to deliver services.

39. We propose that clear criteria are set to define where expenditure on rural fibre expansion can qualify under the PQ regime. The Commission should seek to consider investment based on the number of households per sq km, with households based on both current and estimated in the next five years.

## Resilience expenditure

40. Chorus has indicated it is considering proposing expenditure to address network resilience to adverse weather events. Recent weather events have underlined the need for strengthened resilience across the critical infrastructures system and we are supportive of investment in the telecommunications sector to achieve resilience outcomes provided that it is proportionate and directly connected with verifiable resilience outcomes.
41. Our starting point is that access seekers expect that fibre services already have a level of resilience, and Chorus needs to demonstrate why standalone additional expenditure is required to increase resilience and how this benefit flows to access seekers and end users.
42. Chorus must not be given a blank cheque for resilience investment. The resilience outcomes that Chorus is seeking to achieve need to be clearly defined and Chorus must demonstrate that expenditure they are incurring has a direct link to the achievement of these outcomes. Chorus should also be specifically measured on the achievement and performance of these outcomes.
43. Critical infrastructure resilience is a priority for the current government, and a number of workstreams are currently underway across different government agencies aimed at achieving the outcome of enhanced resilience. In order for the Commission to be in a position to determine expenditure for enhancing fibre network resilience, specific resilience objectives need to be defined. Setting these objectives within the PQP2 process risks having the Commission determine resilience standards and settings for critical infrastructure provider like Chorus while these remain the focus of policy work currently being undertaken by government agencies, including the Department for Prime Minister and Cabinet (**DPMC**). It would not be appropriate for the Commission to define resilience standards that don't align with this broader policy work and the Commission should not attempt to determine Chorus' expenditure for resilience outcomes until the Government's work on critical infrastructure standards has concluded. Chorus can seek an allowance for resilience expenditure as an 'individual capex' proposal at that point.
44. We agree that in any evaluation of Chorus' resilience expenditure proposals, the following matters are relevant:
    a. That proposals have been sufficiently tested, demonstrating a good understanding of the risks that are being mitigated or managed;
    b. The alternative options for meeting the resilience need, including non-fibre alternatives and/or improved response capabilities; and

c. Why any standards relied upon to support the proposed investment are appropriate for the specific circumstances or physical environment in which the investment is being made.[10]

45. One NZ submits that that the following additional matters are also relevant:
    a. A cost-benefit analysis of the proposed expenditure;
    b. Confirmation that proposed expenditure has a direct link to resilience outcomes;
    c. Expected value of the proposed expenditure;
    d. Confirmation that proposed expenditure avoids any double recovery of shared costs across services that are regulated under PQ regime and those that are not;
    e. Assurance that outcomes of the proposed expenditure are consistent with the outcomes produced in workably competitive markets;
    f. Whether there are alternative ways to achieve resilience outcomes sought by Chorus in a more efficient and cost-effective way through other investments across the telecommunications sector – or through investment in other infrastructure sectors that have a direct impact on telecommunications resilience (e.g. power supply and roads). DPMC work on critical infrastructure resilience will be important here.
46. Relatedly, another factor that will be important to assess is whether the proposed expenditure is targeted at increasing resilience in the access network or backhaul network. Having a diverse and resilient backhaul fibre network is important, but Chorus is not the only provider of fibre backhaul services. The PQ determination must therefore not enable Chorus to invest in resilience enhancements that might be undertaken by other commercial providers and recover this spending across other business lines. This outcome would distort competition between Chorus and these other providers.
47. We look forward to engaging on expenditure proposals in relation to rural fibre expansion and resilience once Chorus' proposals are published for consultation. We request that sufficient detail be provided on these proposals to enable stakeholders to evaluate them.

[10] Commerce Commission, *Fibre price-quality regulation: Proposed process and approach for the 2025-2028 regulatory period*, 31 August 2023, para 6.53

## Incentive payments

48. The Commission notes 'incentive payments associated with new connections and product upgrades' as an area there they have 'sought specific information' and one 'that may warrant specific evaluation'.[11]
49. We engaged with the Commission on the issue of incentive payments extensively in the run up to the first PQ regulatory period. We continue to hold the views set out in our past submissions.[12] The Commission should not accept any proposals from Chorus to allocate expenditure to incentive payments due to the potential this would have to distort competition in retail markets as an activity expressly intended to lead consumers to choose fibre over alternative access technologies.
50. Allowing incentive payments as part of capex for the purpose of determining the MAR would enable Chorus to earn monopoly profit by resulting in increased revenue allowance exceeding the normal rate of profit. Incentives do not increase the cost of delivering network services, and therefore must not result in an increase in the revenue allowance. It is not necessary for Chorus to offer incentives to actively promote fibre uptake (to the extent that this remains a requirement of UFB agreements with the Crown). It can promote uptake of fibre services, for example, through general advertising campaigns without directly offering inducements to end users of fibre services that involve Chorus providing something of value directly to that retail customer in a manner that does distort competition and sway customer choice. A level playing field between providers of broadband infrastructure requires that any incentive offered by Chorus to drive fibre demand comes off its bottom line and does not create headroom that Chorus can recoup from captive customers.

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[11] Commerce Commission, *Fibre price-quality regulation: Proposed process and approach for the 2025-2028 regulatory period*, 31 August 2023
[12] Vodafone Aotearoa' submission on incentive payments as part of fibre price-quality decisions on expenditure allowances, 13 October 2021, https://comcom.govt.nz/__data/assets/pdf_file/0021/268140/Vodafone-Submission-on-Fibre-incentive-payments-13-October-2021.pdf; Vodafone Aotearoa' cross submission on the draft price-quality path to be applied to Chorus, 5 August 2021, https://comcom.govt.nz/__data/assets/pdf_file/0016/262240/Vodafone-Cross-submission-on-Fibre-PQ-draft-decisions-5-August-2021.pdf

# Quality standards review

## Mandatory standards

51. The quality standards that Chorus and other LFCs are subject to are critical to the service quality that we can provide to our customers using the wholesale services. The Commission is proposing to review and maintain the two mandatory standards: availability standard and performance standard. These standards must be maintained, and we wouldn't support any reduction in these standards.
52. In assessing quality standards, the Commission should consider real-world experience of how Chorus properly engages with customers and end users.

## Assessing the need to set optional quality standards

53. The Commission did not set standards for any of the optional quality dimensions - which include ordering, provisioning, switching, faults, and customer service quality – for PQP1. The Commission states the following reasons for its decision: 'we did not consider quality standards for the optional quality dimensions were warranted for PQP1, as we considered other regulatory tools, in particular ID regulation, and external factors such as competition from fixed wireless broadband, were sufficient to produce outcomes in the long-term benefit of end-users.'[13]
54. The Commission is now proposing to 'consider whether to add new quality standards for the optional dimensions if our analysis of quality measurement ID disclosures indicates that this is warranted.' In particular, the Commission will consider whether a provisioning standard should be implemented.
55. As the Commission's consultation paper notes, One NZ strongly advocated for a provisioning standard for PQP1. Our view remains that this needs to be introduced for PQP2. Chorus' reports on transitional quality show that provisioning timeframes increased significantly last

[13] Commerce Commission, *Fibre price-quality regulation: Proposed process and approach for the 2025-2028 regulatory period,* 31 August 2023, para 7.5

year. The median time to provision simple FFLAS in the Auckland region increased from 42 days in January 2022 to 102 days in September 2022. In the Christchurch region, the increase was from 27 days to 97 days and in Whangarei from 10 days to 106 days retrospectively[14]. This is an indicator that service quality offered by Chorus is highly variable – the Commission needs to address this through a mandatory provisioning standard.

56. One NZ's experience as an access seeker to Chorus' network also reflects the need for mandatory provisioning standards. Installation delays and missed appointments by Chorus are a continuous pain point for our customers, both across business and consumer customers. Missed appointments also most of the time mean the customer is placed at the back of the queue for the next visit, as there is no process to prioritise those customers. This results in very poor customer experience and Chorus face no consequences for this.

57. The poor customer experience is reflected in the consumer complaints data from the Telecommunications Dispute Resolution Scheme (**TDR**). Complaints about installation delays increased by 2,571% between 2020-21 and 2021-22. This is in addition to complaints relating to quality of installation, which include complaints about ONT placement. Meanwhile, network failure (including service interruption) related complaints increased by 49% in the same period. Customer complaints related to faults rank third in the TDR's latest data, making up nearly 12% of the total number of complaints received by TDR ('faults' complaints include delays in service restoration and equipment failure). This is followed by installation-related complaints, which make up 11% of the total.[15]

58. During the development of the quality standards for PQP1, we (jointly with other access seekers) called for:
    a. making determinations mandatory for the customer service dimension, including responsiveness to access seekers which has a direct link to outcomes for end users;
    b. making disclosure of wholesale service agreement reference offers mandatory to make transparent any reduction in quality or level of service provided; and

[14] Price quality and information disclosures | Chorus NZ
[15] Telecommunications Dispute Resolution, 2021-2022 Annual Report, updated in August 2023, https://www.tdr.org.nz/sites/default/files/2023-08/TDR%20Annual%20Report%202021%E2%80%932022%20updated.pdf

c. enhancing the customer (end user/RSP) satisfaction survey so it can play a critical role in identifying areas of underinvestment and in motivating regulated providers to respond appropriately to end user requirements.

59. Our view remains that these should be implemented. We note that the Commission does not 'currently consider that it will be appropriate to set standards' for the customer service dimension. The above examples of poor customer service delivered by Chorus under the PQ regime to date clearly show a need for these additional standards.

## Potential quality incentive scheme

60. We note that the Commission is considering introducing an incentive scheme to incentivise Chorus to improve quality where end-users likely value it above cost. The Commission's preferred option is a pilot quality incentive scheme, which would apply to a dimension where a standard already exists, with the incentive linked to revenue in some cases.
61. If the pilot incentive scheme is introduced, we agree with the Commission's view that it needs to be tightly limited in application and limit the total upsides for Chorus. Any incentive scheme also needs to:
    a. Avoid rewarding Chorus for simply meeting the standard. Reward should only be provided if the quality delivered is sufficiently above the set standard;
    b. Be symmetrical, with Chorus losing money for failing to meet the standard; and
    c. Be proportionate and not enable Chorus to increase their revenue through incentives where the cost to them of delivering the enhanced quality of service above the set standard is zero or minimal (e.g. over-provisioning on links would not result in increased costs for Chorus).
62. We would not support an outcome in which Chorus is allowed to earn additional revenue for simply meeting quality standards that it should be complying with already. This would not be consistent with 'outcomes produced in workably competitive markets' required by s162 of the Act. In a competitive market, providers are not rewarded with additional revenue for complying with laws and regulations. For example, One NZ is not able to charge its customers a premium for delivering services to a standard advertised.
63. The Commission's alternative idea is to set up a compensation scheme that sets minimum standards of performance and requires Chorus to pay prescribed amounts of compensation if it fails to meet those standards. We think this would be an effective way to address cases where Chorus' behaviour has resulted in undue costs to access seekers and/or end users, and should be considered further in addition to the incentive scheme for specific cases.

## Anchor services review

64. We note the Commission's emerging view not to undertake a review of the anchor services before the start of PQP2.
65. We recommend that the Commission re-considers its emerging view, particularly in the context of whether 100/20 product remains the right anchor product. There have been some significant developments since the PQ regime came into force and the 100/20 product was designated as the anchor service, the key one being Chorus' decision to migrate all end-users from the 100/20 anchor service to the 300/100 product which is unregulated. As the Commission rightly notes, there are currently no consumers using the 100/20 product and it is not being offered in market by RSPs. While Chorus has made a commitment to link the price of the 300/100 product to the price of the 100/20 anchor service, this commitment only extends until 2025. Chorus will then effectively be free to raise the price of the 300/100 product by as much as they like (within the overall revenue cap), risking bill shock for a significant portion of consumers. []
66. The Commission considers that:
    a. 'The maximum monthly prices for broadband and voice anchor services are meeting their purpose in providing an appropriate constraint on other FFLAS; and
    b. The Chorus UFB services agreement, ID, market-based competition from FWA and the quality standards under the regulatory regime are likely to be sufficient to maintain and improve quality over the next regulatory period.'[16]
67. We do not believe that the above factors provide sufficient constraint on Chorus not to hike the prices of its services. For it to be true that the mere existence of the 100/20 product as an anchor service (despite no consumers actually using the service) is sufficient to influence the quality of Chorus' services or constraint prices, the Commission needs to believe that:

[16] Commerce Commission, *Fibre price-quality regulation: Proposed process and approach for the 2025-2028 regulatory period*, 31 August 2023, para A4

a. Consumers would be willing to downgrade to the 100/20 product for the same price that they are currently paying for the 300/100 product if Chorus increased the price of the 300/100 service by a significant margin; and
b. Chorus is sufficiently incentivised to maintain the quality of service of non-anchor products at a sufficient standard.

68. In our experience, end users would not be willing to trade down to a lower speed product for the same price and requiring them to do so would undermine the value of the fibre rollout and Chorus' migration of end users from 100/20 to 300/100 at no additional cost, with consumers getting only a third of the speed for the same price.
69. In addition, none of the other LFCs support the 100/20 product anymore. It would therefore be difficult for One NZ to re-introduce this product into the market, as there would be regional disparities in availability.
70. Competition from FWA services helps to ensure that Chorus is sufficiently constrained on the price of lower speed, fibre starter products. However, the 300/100 product offers a different level of service in the minds of consumers, resulting largely from Chorus promoting higher specification fibre services and conditioning end users to view higher specifications and speeds as the sole indicator of quality for broadband services. Having done so, it has effectively positioned higher specification services as distinct and different from entry level fibre products, including the existing 100/20 anchor service. The Commission should therefore consider making 300/100 the new anchor service, with future price changes linked to CPI to ensure access to a base level fibre service that consumers have come to expect and prevent price shock for this large group of consumers. Alternatively, the Commission should require Chorus to commit to continuing to align the price of the 300/100 product to the anchor service for PQP2.
71. The Commission notes that they can carry out the anchor services review at any time and would do so if it observed behaviour from Chorus that merited potential changes to anchor services. This is not the right way to look at this. By the point at which Chorus implemented price rises that result in a significant bill shock to consumers, the damage would already be done.

## Confidentiality

72. Confidentiality is sought in respect of the information in this submission that is contained within square brackets and is highlighted (**Confidential Information**). Confidentiality is sought for the purposes of section 9(2)(b) of the Official Information Act 1982 on the following grounds:

    a. the Confidential Information is commercially sensitive and valuable information which is confidential to One NZ; and

    b. disclosure of the Confidential Information would be likely to prejudice unreasonably the commercial position of One NZ.

73. We ask that DPMC notify us if it receives any request under the Official Information Act 1982 for the release of any part of the Confidential Information, and that DPMC seek and consider its views as to whether the Confidential Information remains confidential and commercially sensitive before it responds to such requests.

74. Please contact the following regarding any aspect of this submission.


[redacted]

*Head of Legal and Regulatory*

[redacted]

[redacted]

*Senior Public Policy Advisor*

[redacted]