



Fibre price-quality regulation: process and approach for the 2025-2028 regulatory period

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Executive Summary

Thank you for the opportunity to provide feedback on the Commission's proposed approach to determining Chorus' price-quality path for the 2025 – 2028 regulatory period (**the draft**).

We support the Commission's planned approach, applying additional scrutiny on key issues to ensure regulatory settings deliver for end users. Significant change is expected through the second regulatory period: expected higher permitted revenues, Chorus transitioning to an all-fibre network, and cross sector critical infrastructure resiliency programmes. Accordingly, faced with this level of change, Commission is right to consider how it might better promote service quality, avoid price shocks, and avoid excessive cost allocation as end-users migrate from copper to fibre.

Nonetheless, given the level of change, we recommend that the Commission also consider:

- Benchmarking current outcomes (expenditure, price and end-user outcomes) against other fibre providers both here and overseas. The Commission is making key decisions with significant pricing implications – i.e., setting efficiency incentives, cost allocations, revenue smoothing and approving major new investments – and those decisions should be informed by current and expected future prices and costs compared to those seen overseas. This is particularly important when considering major new expenditure proposals that will be loaded into the Chorus cost base.

We recommend extending the proposed review of Chorus behaviours to benchmarking of financial and service outcomes against domestic and overseas providers.

- Accepting substantive new rural fibre and resiliency expenditure as individual capex proposals. While we appreciate the importance of resolving rural and resiliency investment, related policy and planning initiatives that will inform a decision on efficient investment are still in consultation:
 - The Government is currently implementing a new resiliency framework - including through the Cyclone Gabrielle Recovery taskforce, Emergency Management Bill and DPMC Critical Infrastructure reforms – that better recognises the inter-connected nature of critical infrastructure and today's risks.
 - Similarly, the Government released its connectivity strategy in late 2022 and Chorus has indicated that it is discussing rural fibre expansion with MBIE. Any rural expansion that can't be justified on commercial grounds is unlikely to be consistent with the Telecommunications Act purposes which require efficiency, competitive market outcomes and the promotion of competition. Accordingly, the Government will need to participate in any expansion programme that is justified based on wider social benefits.

So while the proposed timetable anticipates draft capex and opex decisions by Q1 2024, underlying resiliency frameworks and planning are unlikely to be completed until at least the end of 2024.

Accordingly, we recommend that any substantive new rural fibre and critical infrastructure expenditure be considered as individual capex proposals when the necessary planning has been completed. While de-linking these workstreams from the general PQP2 process would remove complexity, it is unlikely to slow rural and resiliency initiatives as a credible individual proposal could quickly follow the necessary Government decisions and wider planning.

- Consider its approach to the anchor service review further. Chorus has replaced the F100 with the F300 variant. However, the positioning of the F300 service suggests it is more likely a response to regulatory settings rather than a reflection of the F100 constraint or customer preferences. We do not believe it would be feasible to revert to the F100 variant, leaving the variant with little purpose in the current market. Setting an effective broadband anchor has increased importance where end users are at risk from an increased revenue cap.

We recommend that the Commission consider reviewing the anchor with a view to preserving the F300 status quo. Alternatively, Chorus may confirm that it will continue to price the F300 variant at the anchor price.

Introduction

1. Thank you for the opportunity to provide feedback on the Commission's proposed approach to determining Chorus' price-quality path for the 2025 – 2028 regulatory period (**the draft**).
2. We support the comprehensive approach anticipated by the draft process. Significant change is expected to occur over the 2025 – 2028 period – i.e., Chorus permitted revenues are expected to be higher than in the current regulatory period¹, Chorus expects to transition to a fibre only business, and key Government rural connectivity and resiliency programmes are likely to be implemented – and PQP2 settings should reflect this uncertainty. For example, the Commission plans to consider:
 - a. Setting standards for the optional IM quality dimensions and piloting of quality incentives. We already see significant variability in wholesale service quality and it's important that service quality expectations are set. We agree with the draft that enhanced quality standards should relate to service quality measures that end users care about, are proportionate and drive the right behaviours.
 - b. Whether, in light of higher permitted revenues, there are sufficient controls to avoid price shocks². The current framework relies on price quality path compliance and anchor products to mitigate price shocks.

The Commission further plans to monitor pricing through information disclosure and will act if it sees inefficient or anti-competitive pricing occurring³. However, even within the current regulatory period we are seeing significant price increases for some customers. For example, our HSNS premium customers are facing up to a 100% increase as they migrate to the replacement Bitstream 4 service.

- c. Cost allocations. Cost allocation choices are likely to have increased importance as the current framework assumes Chorus is a multi-product provider. Chorus plans to transition to an all-fibre digital infrastructure company by 2030⁴.
3. We agree these are important issues for the purposes of the 2025 – 2028 determination and are keen to engage further through the process.
 4. In this submission we provide feedback on the areas where the Commission might want to consider its approach further:

Comment

Establishing a baseline view for decision making

5. In determining how the regime evolves, the Commission proposes to consider how Chorus responds to PQP1 and PQP2 settings⁵. We believe the Commission should also look to identify the investment, price and end-user outcomes it expects to see, informed by benchmarking against other fibre providers.

¹ Paras 4.20 - 4.21. The paper signals that higher-than-expected inflation (higher value RAB), increased WACC, anticipated repayment of Crown financing, exhaustion of regulatory tax losses and changes to the allocation of shared costs as end-users migrate from the copper business all contribute to a higher MAR for the second regulatory period.

² Paras 4.20 - 4.21

³ Para 3.78

⁴ Chorus FY2023 Investor Presentation

⁵ Para 4.15

6. As noted above, significant changes are likely to occur over the regulatory period with increased revenue requirements, substantive new investment and Chorus transforming its business. The Commission anticipates making key decisions for this period relating to efficiency incentives, expenditure proposals, cost allocation and revenue smoothing.
7. The Commission should be addressing these issues with a clear view of the medium-term regulatory cost structure and pricing it expects to see over the period. For example, the Commission should consider the expected cost structure of a fibre-only provider in decisions relating to cost allocation, revenue smoothing and efficiency targets. In this case, the Commission should consider what a wholesale only, all fibre, cost structure looks like and – recognising the sharing of these benefits – build this into the forecast.

Rural expansion and resiliency as individual capex proposals

8. The draft notes that Chorus is considering significant investments as part of its rural expansion strategy and in network resiliency, and these may form part of Chorus' expenditure proposal⁶.
9. We agree that the expenditure proposal should include “BAU” expenditure for extending fibre to, for example, new sub-divisions or for incremental resiliency improvements. The economics and commercial viability of such investment is well understood.
10. However, we recommend that any substantive new investment programme be considered through individual capex proposals. The Government is in the process of implementing new regulatory frameworks that will see critical infrastructure providers, and Government, plan and invest further in rural and resilient infrastructure:

- a. Rural fibre. Chorus estimates it would cost around \$500m to extend its fibre network to an additional 75,000 premises, providing over 90 per cent of the population with access to fibre⁷, and has indicated it is willing to play a part in extending fibre if the Government agrees to pragmatic policy changes⁸ and the “right” investment incentives⁹. Chorus reports it is having ongoing conversations with MBIE over fibre backhaul and fibre-to-the-premise expansion¹⁰. Conversations are likely to continue into next year.

Chorus' preliminary view is that extending rural fibre could be economic from a wider social objective. However, such non-commercial fibre deployment is unlikely to be consistent with the Telecommunications Act purposes which require efficiency, competitive market outcomes and the promotion of competition. To the extent there are wider benefits that justify policy intervention, these should be considered by Government rather than through the Commission and Telecommunications Act.

- b. Critical infrastructure resiliency. The Government has several initiatives underway intended to increase critical infrastructure resiliency, including the Cyclone Gabrielle Recovery taskforce, Emergency Management Bill and DPMC Critical Infrastructure reforms. These initiatives recognise the more complex environment we live in and

⁶ Para 4.22

⁷ <https://company.chorus.co.nz/media/releases/chorus-signals-copper-retirement-within-decade-focus-rural-fibre-extension>

⁸ <https://www.nbr.co.nz/investment/chorus-keen-to-extend-ufb-reach-needs-govt-support/>.
https://sp.chorus.co.nz/system/files/resources_files/Help%20us%20shape%20New%20Zealand%27s%20fibre%20future%20-%20Oct%202022.pdf

⁹ <https://company.chorus.co.nz/media/releases/chorus-delivers-solid-full-year-result-as-kiwis-continue-to-favour-fibre>

¹⁰ <https://www.nzherald.co.nz/business/chorus-willing-to-chip-in-for-better-rural-broadband-if-the-govt-does-too/6CGAEHYNXNBF3CSSH5NS77RXB4/>

deepening connections between critical infrastructure, meaning they are more reliant on one another as an interconnected "system". This is particularly so for communications networks as other utilities rely on resilient data connections for network monitoring and control. The Government reforms emphasis the interconnected nature of critical infrastructure and the importance of a coordinated approach¹¹.

The telecommunications sector is further working to promote sector resiliency through the TCF, and in engaging with Government. The reforms and follow resiliency planning is likely to be completed through 2024. Chorus indicated in November 2022 that it would prepare its draft expenditure proposal based on a goal of broadly sustaining existing reliability standards and improving network resilience only where connection growth or better information increases risks beyond levels we've traditionally tolerated¹².

11. So while the proposed timetable anticipates draft capex and opex decisions by Q1 2024, underlying resiliency frameworks and planning are unlikely to be completed until at least the end of 2024. Rural connectivity policy conversations are continuing. It would be difficult for any independent verifier – or the Commission – to form a view on these aspects of the proposal where key policy decisions have yet to be made, and underlying planning yet to be done.
12. Accordingly, we recommend that the Commission de-risk the proposed timetable by making an early decision to consider substantive new rural fibre and resiliency programmes through individual expenditure proposals. The individual proposals could quickly follow Government decisions and wider planning and, by ensuring credible proposals are submitted to the Commission, is likely to speed up the PQP2 approval process.

Quality

13. We also support the Commission considering how it might promote wholesale service quality more generally.
14. At this stage, a focus on wholesale service quality is likely to bring most benefits to end users. TDR reporting¹³ suggests that a material proportion of Spark's complaints referred to TDR relate to wholesale service providers, including installation delays, ONT locations/replacement, approach to integrated wiring etc. The service issues we're seeing highlights the importance of ensuring techs receive training and support and peer checks / quality reviews to ensure work is to standard.
15. Further, UFB information disclosures indicate long provisioning lead times. For example, the Chorus median simple FFLAS provisioning lead time in Auckland ballooned the 42 to 102 days through 2022, from 27 to 70 days in Christchurch, Rangiora and Rollerston¹⁴. Performance varies across LFCs as, for example, Enable median provisioning time in Christchurch over the

¹¹ Proposals are set out in the Emergency Management Bill and DPMC Strengthening Resiliency consultation paper. The Te Waihanga infrastructure strategy and New Zealand's National Adaptation Plan for climate change both recommend taking a coordinated, systematic approach to building infrastructure resilience.

¹²

https://sp.chorus.co.nz/system/files/resources_files/Help%20us%20shape%20New%20Zealand%27s%20fibre%20future%20-%20Oct%202022.pdf

¹³ Source: Total dissatisfactions from Spark customers registered with the Telecommunications Disputes Resolution Service (TDRS) between March and September 2023

¹⁴ For January 22 to Sept 22. Results vary as, for example, Wellington provisioning time fell from 84 to 32 days while Whangarei increased from 10 to 106 days.

same period increased from 16 to 17 days. Some customers are waiting for a significant period for installation – likely facing multiple reschedules.

16. However, price quality information disclosure data is not yet available to interested parties and it's unclear what the most effective Commission response might be. Therefore, we recommend initially focusing on building a picture of Chorus quality and are keen to engage further when the additional information highlighted in the draft is available.
17. In terms of current focus areas, the Commission might want to consider:
 - a. Service company rescheduling which is a customer concern. In terms of reporting, through the periods of long provisioning times, Chorus provided limited reporting relating to customers who face multiple reschedules.
 - b. Provisioning lead times. We also received temporary detailed lead time reporting when provisioning times were long. We believe that a quarterly report to provide visibility on how Chorus and LFCs is performing should be provided. We have no visibility of long customer lead times outside customer complaints processes.

Whether to review the anchor service

18. The Commission has also indicated that it does not plan to review the anchor services.
19. However, it's unclear to us that the Fibre 100 (**F100**) variant provides a constraint on Chorus pricing and behaviour along the lines anticipated by the Act.
20. The F100 variant hasn't been used for the purposes of the first regulatory period. Chorus effectively replaced the F100 with the Fibre 300 (**F300**) variant at the time anchor services came into effect – initially provisioning the existing fibre 100 service with the higher 300Mbps download speed and establishing a new Fibre 100 anchor service (that has not been taken up). Accordingly, Chorus' migration approach - and positioning of F300 - suggests the F300 change were more likely related to the regulatory change rather than reflecting underlying customer preferences or demand.
21. Chorus further undertook to provide the F300 variant at the anchor price. Accordingly, for all practical purposes the F300 service has acted as the anchor service for the first regulatory period. It is difficult to infer from the background any ongoing effect of the F100 service. However, an implication of the not reviewing the anchor broadband service is that, when Chorus' F300 pricing commitment ends, we will see a degradation in effectiveness of the anchor (i.e., in effect, the speed of the effective anchor speed will have fallen from 300Mbps to 100Mbps).
22. While we agree that an anchor service need not be taken up to be effective, it would need to be a viable option for access seekers and end users to have the constraining effect intended by the Act. We do not believe that the F100 service is a viable alternative in the market:
 - a. The F300 price would need to increase markedly relative to the F100 price for the F100 service to be acceptable to customers, and
 - b. It is difficult for national service providers to support multiple variants Chorus and LFC franchise areas. Chorus is now the only wholesale provider with a F100 service (albeit not currently taken up in the market) as LFCs have removed F100 from their plan lineups.
23. Overall, we believe the F100 variant has little practical effect in the current market and – if confirmed as the “new” anchor going forward – will leave sufficient flexibility for increases in the real price of service variants that most customers consume.

24. Therefore, we recommend that the Commission consider further whether it should undertake a targeted review the broadband anchor with a view to preserving the F300 anchor status quo. Alternatively, Chorus may confirm that it will continue to price the F300 variant at the anchor price as it did for PQ1.
25. The anchoring effect is particularly important where higher permitted revenues risks price shocks for customers who are on non-anchor services. We are already seeing significant price increases for some customers, for example our HSNS premium customers are facing up to a 100% increase as they migrate to the replacement Bitstream 4 service. While our preference is that the Commission establish pricing principles to mitigate the risk of inefficient prices and price shocks, price quality path compliance and anchor services remain an important protection for vulnerable end users.

[end]

Attachment: questions

Revenue constraint

REV1 Do you think any additional revenue controls are needed and if so whether they are an appropriate way to manage price shock risk during the period?

26. We believe that Commission pricing principles are the best means of ensuring efficient pricing and to manage the price shock risk.

REV2 Are there any changes you would suggest to our proposed approach to applying a wash-up drawdown amount to the PQP2 MAR? Please provide reasons for any suggested changes.

REV3 Do you suggest any changes to our proposed approach to monitoring Chorus' compliance with its PQP2 price-quality path? Please provide reasons for any suggested changes.

Expenditure

EXP1 Are there any particular or additional aspects to our proposed evaluation process that you think we should consider?

27. In addition to the process set out in the draft, we recommend that the Commission:

- a. Develop a view of the expected costs and prices of a fibre only business. Establishing a view on expected costs and prices will inform decisions relating to, for example, the implications of substantive new expenditure and Chorus transition to a fibre only business.
- b. Specifically consider linkages to wider work underway in government and industry. For example, work within the Government on the connectivity strategy and – with other critical infrastructure providers – cross sector planning to improve national resiliency.

28. We recommend that, due to the wider Government policy and resiliency planning reforms underway, the Commission invite Chorus to submit individual capex proposals for any substantive new rural deployment or resiliency investment programmes. Current levels of BAU expenditure for resilience or incremental fibre expansion to new sub-divisions could be considered through the proposed process.

EXP2 Are there any additional areas or particular aspects of Chorus' expenditure that we should specifically focus on during our evaluation of Chorus' proposals?

29. We recommend that the Commission consider the implications of Chorus' planned transition to a fibre only business. Chorus proposes to be a fibre only business by 2030 and will, accordingly, be transforming its business through the PQP2 period. The costs of this transition will likely form part of the expenditure proposal, but end user should also expect to share the lower costs and efficiencies of a fibre only provider.

EXP3 Are there any particular aspects or characteristics that we should consider in our evaluation of Chorus' proposed rural fibre expansion expenditure?

30. The Commission should invite Chorus to submit an individual capex proposal for any substantive rural fibre deployment. This would follow Chorus conversations with Government and policy decisions being made.

31. Any non-commercial fibre deployment – i.e., where the deployment requires a cross-subsidy from other areas and customers – is unlikely to be consistent with the Telecommunications Act purposes which require efficiency, competitive market outcomes and the promotion of competition.

EXP4 Are there any particular aspects or characteristics that we should account for in our evaluation of Chorus' proposed resilience expenditure?

32. We recommend that any substantive resiliency expenditure beyond current BAU levels should be considered as an individual capex proposal.

33. In addition to the issues listed in the draft, the Commission should consider whether any individual capex proposal is aligned with the Government reforms and national guidelines, and requirements of other critical infrastructure providers.

Quality

QUAL1 Do you consider the current standards are effective at creating meaningful incentives on Chorus to ensure that its network meets appropriate standards of availability and performance in normal operating conditions. And what changes would you have us make and why?

QUAL2 Do you see the need for a new quality standard, what would you propose and why?

QUAL3 For RSPs that receive services from multiple telecommunications infrastructure providers, across the various dimensions of service quality and customer service experience, are there any areas where Chorus provides a materially different level of service or service quality?

QUAL4 Do you think we should develop a quality incentive scheme PQP2 and what kind of incentive scheme do you see as appropriate?

QUAL5 What measure or measures of quality, performance, or customer service do you consider should be subject to a quality incentive scheme that could deliver most benefits to end-users?

QUAL6 How could we determine an appropriate incentive rate for a quality incentive regime under PQ regulation and do you consider it possible to determine a Value of Lost Load (VoLL) equivalent for fibre?

34. We recommend that the Commission initially focus on making wholesale service quality information available to providers as its unclear where the key concerns lie and what initiatives would be most effective in promoting wholesale service.

Anchor service

AS1 Do you agree that the Commission should, at this stage, not undertake an anchor services review?

35. We recommend that the Commission undertake a limited review of the broadband anchor service with a view to maintaining the F300 anchor status quo. Alternatively, Chorus may wish to reiterate its commitment to provide the F300 service at the anchor price.