

The background image is a composite. On the left, there is a dark silhouette of a map of Canada with a network of glowing blue lines representing fiber optic cables. On the right, there is a photograph of a city skyline at dusk or dawn, with the CN Tower prominently visible. The sky is a mix of blue and orange tones.

Submission to Commerce Commission on the Fibre Regulation Emerging Views Paper

16 July 2019

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Introduction

Thank you for the opportunity to submit on the Commission's "Fibre regulation emerging views" paper of 21 May 2019.

This is the first time in a number of years that Vector Communications has formally engaged in consultations on the development of the regulatory environment for fibre in New Zealand.

Vector Communications has ambitious plans to invest and innovate in the fibre sector, to bring much-needed wholesale competition to the market. Vector has considerable experience operating regulated intermediary / wholesale businesses in the Auckland area. This means that we are uniquely placed to deliver further wholesale competition to the fibre telecommunications market. This will bring significant additional benefits to fibre customers, and help drive the innovation so crucial to the New Zealand economy. For us to be able to achieve those plans, it is critical that a robust regulatory framework is in place.

Our following submissions address:

- The historical context of UFB
- Observations on what has actually happened in the intervening years
- Realisations on the current market dynamic
- The importance of a fit for purpose PONFAS product
- Conclusions

The first appendix to this submission provides further detailed comments on the Commission's emerging views paper, the second highlights some key relevant policy statements while the other appendix sets out our initial views on the quality dimensions.

1. Historical context

We wish to take this opportunity to provide some historical context on the issues that are the subject of the emerging views paper (see appendix two). Vector was heavily involved in the UFB process from its inception and we believe we can bring valuable perspective to bear on the issues that are now being considered.

A key aspect of the UFB project was that the fibre operators committed to provide layer one services. The Government recognised at the time that the fibre operators which it was financially supporting could not become *de facto* monopolist networks. Layer one services would facilitate competition and would address this risk.

As we note in the first appendix to these submissions, the requirement to provide a P2MP layer one service is contained both in the NIPA and in Chorus' 2011 fibre open access deed. The NIPA stresses the importance of widespread uptake of layer one services, as well as layer two: "... and to generate widespread uptake of services (including Layer 1 Services and Layer 2 Services)".

We recognise that legislation has been passed and that accommodations have been made to Chorus on issues that run counter to the foundation of UFB. On such issues as recovery of losses, the risk of which was fully assumed by the fibre operators at the time, the historical context is valuable as we don't believe it can have been the intention of Parliament to undermine the fundamental premises of UFB by allowing the full recovery of previous UFB losses. Specifically, the construction and uptake risk was to sit squarely with the successful bidder, with the price for key services set by the then Crown Fibre Holdings. Further, the risk of technological change impacting the business case was to be borne by the respective LFC.

2. Observations on what has actually happened in the intervening years

The amending legislation has diluted the importance of layer one services

In the 2018 legislation that introduced the new regulatory regime for fibre networks, the importance of layer one services was diluted by delaying the time when P2MP fibre services would be regulated. The subsequent extension to the implementation date has exacerbated this issue.

This has served to consolidate the market power of Chorus and further prolong the moment that they have to face meaningful competition from service providers that use the layer one services as key inputs to fibre-based products. In so doing, competition, innovation and investment in high speed broadband markets has been stifled.

The Crown's investment has been undermined

The Crown committed approximately \$1,000 for every household in New Zealand to build the UFB network, implying an expectation that the taxpayers and the nation as a whole would see some form of return on their investment.

What has transpired is a market where 10% of total broadband connections¹ (as at the end of 2018) are on contended fixed wireless broadband networks instead of the less contended fibre network that the Crown, and by extension taxpayers, have paid for. Mobile network operators, with excess capacity, have amortised their networks through providing fixed wireless and, in doing so, reduced the amounts that they pay for UFB services. They have also, arguably, downplayed the significant benefits of fibre networks in their marketing. At the same time, the continued pressure by mobile network operators for lower input prices risks a simple value transfer from Crown-funded UFB providers to integrated mobile operators.

The levels of fixed wireless penetration in New Zealand are among the highest in the world among comparable jurisdictions, and the upward trend looks likely to continue. Vodafone's Jason Paris has been quoted in the media as looking to get more aggressive in this area².

The result of this form of bypass, and others such as Vodafone's HFC upgrades, is that the Crown's investment in UFB fibre infrastructure is being undermined.

¹ Source: *Commerce Commission: Annual Telecommunications Monitoring Report, 2018 Key Facts*

² For example, *Vodafone NZ could launch discount brand in mobile and broadband, Stuff, 15 May 2019*

Chorus' aggression in LFC areas

We observe that Chorus is prepared to compete aggressively with other LFC networks when it has the opportunity. In this case, Chorus overbuilds the other LFCs with copper upgrades with VDSL vectoring³, which further suppresses the uptake of UFB in those LFC areas. Chorus also offers lower DFAS pricing in those candidate areas where it is not the incumbent LFC. Again, the Crown's investment in UFB is undermined.

Attention is diverted from consumers

The current regulatory debates are a continuation of the arm wrestles with the dominant operator that beleaguered the industry for over twenty years. This is where we are, but the outcome is that attention is diverted from the interests of consumers and end users.

3. Realisations on the current market dynamic

These factors have a compounding effect on the fibre market, potentially for years to come if not properly addressed. All of the issues are weighted heavily in Chorus' favour, the symptoms of which are evidenced by its return on capital and share price (which notably softened only on the release of the Commission's emerging views paper, confirming our point that the market clearly agreed that regulation was not a constraint on Chorus' future earnings).

Future fibre-based wholesale competition from service providers such as Vector will be compromised if the current market dynamic continues. We are likely to see a continuation of fixed wireless alternatives to fibre networks, amplified with the emergence of 5G, presented by mobile operators as a fibre quality service. In the meantime, Chorus' powerful position in the market will further consolidate as they resist the development of layer one services over its network. Other LFCs will continue to be under pressure from Chorus' tactical behaviour, compromising the investment provided by the communities in those LFC areas in their networks.

4. The importance of a fit for purpose PONFAS product

Much of the focus of our submissions relates to the importance of layer one services in the promotion of competition. Our detailed submissions that follow concentrate on these issues, emphasising continued vigilance.

We request careful attention from the Commission, but also from Crown Infrastructure Partners and from the Ministry, who all have an important part to play in ensuring that the original premise of UFB is respected.

A key layer one service is PONFAS. Chorus' (and other LFCs') commercial construct – both price and non-price terms – for PONFAS is wholly inadequate and likely inconsistent with the foundation documents of UFB. In some cases, the proposed PONFAS pricing is in effect

³ <https://sp.chorus.co.nz/product-update/upgrading-vdsl-vectoring>

higher than the prices of layer two services, despite being of a lower specification. We share the deep misgivings of Vodafone and Vocus.

We wish to be heard on all consultations that the Commission will hold on these matters.

5. Conclusion

Most parties would agree that the UFB project has been a success to date for the Government, businesses and consumers alike, but it has been at a cost of the weakening of the checks and balances that were at the foundation of UFB. The result is a further consolidation of Chorus' market power, which was never the intention of Government when the UFB project was established.

The risk is that the potential for the next wave of innovation will be throttled if the regulatory settings are not correct to enable competition at all levels. We have witnessed the impact of this dynamic resulting in excessive market power in integrated operators in the telecommunications sector in New Zealand in the past, and no one would like to see a repeat of that era.

Given the changes outlined above and to the Act, in particular, it has become even more important that collectively we get the new regulatory regime for fibre right. We're confident the Commission appreciates the critical nature of the work, and the important juncture that we are at.

As we know, the downside risks are considerable and include competition and innovation suffering, an excessive wealth transfer from New Zealand consumers and business to Chorus and the other LFCs, with the resultant loss of consumer welfare and economic activity. World class fibre networks and competitive markets are crucial for a small open economy like New Zealand.

We look forward to participating further in the Commission's process and contributing to the key regulatory debates over the coming years.

Appendices

Appendix one: Legal framework and other topics

Legal framework

1. Many of the critical issues that the Commission must address under the IM and PQP process relate to situations where Chorus is subject to, or potentially subject to, workable competition. These include where Chorus provides key inputs that may be used to deliver fixed wireless access or higher level fibre services in competition with Chorus.
2. Where workable competition may be promoted by a decision to be made by the Commission or the Minister, then s. 166(2)(b) is activated. If workable competition may not be promoted, then outcomes consistent with outcomes produced in workably competitive markets are to be achieved.
3. Workable competition includes competition in upstream markets, not only in downstream markets.
4. We don't accept that, where promotion of competition is relevant, the Commission must strive to give effect to *both* promotion of outcomes etc *and* promotion of competition. That appears to be an artificial construct of s. 166(2). Promotion of outcomes and promotion of competition are complementary, they are not equals in this situation.

Further economic principles

Competition principle

5. While we note and welcome that the Commission has commenced work on the equivalence and non-discrimination obligations in the Deeds in order to provide guidance to the industry⁴, we do not believe that this is sufficient. We are of the view that the Commission should go one step further and develop competition principles that address the application of the non-discrimination and EoI obligations as they apply to FFLAS in the Deeds.

⁴ Letter of 4 June 2019 to Jason Paris and Mark Callander
Commerce Commission – Submission
Fibre Regulations Emerging Views Paper

6. This is especially important in relation to those FFLAS that are key inputs for competitive services, such as unbundled fibre. We have already seen that these issues are contentious in respect of Chorus' proposed commercial PONFAS product, both in terms of the pricing terms and also the other terms such as the stipulated requirement that service providers must consume the end-to-end PONFAS service comprising both the feeder and distribution fibres, as well as associated ancillary services, and the exclusion of NBAPs. We have a number of serious concerns around Chorus' proposed price and product terms for PONFAS that may not be directly relevant to the Commission's emerging views paper, but which we wish to address with the Commission at an appropriate time.
7. We note that the requirement to provide a P2MP layer 1 service is contained both in the NIPA and in Chorus' 2011 fibre open access deed. The NIPA stresses the importance of widespread uptake of layer 1 services, as well as layer 2: "... *and to generate widespread uptake of services (including Layer 1 Services and Layer 2 Services)...*". This is not just a dry historical context. The NIPA and the Deeds, together with the legislation⁵, formed the very foundation of UFB.
8. The purpose of the IMs is to promote certainty in relation to the rules etc applying to the regulation of FFLAS under Part 6. The purpose of Part 6 is to promote the long-term benefit of end-users in markets for FFLAS.
9. We therefore believe that providing greater certainty in relation to the rules for non-discrimination and Eol will serve the purpose of Part 6 and the purpose of the IMs.
10. This is the case, even though unbundled fibre services will not be price-regulated until the end of RP1 and DFAS pricing is still subject to the contracted pricing.
11. We note the Commission's view (note 78) that the price for unbundled fibre services is outside the scope of Part 6, but this does not mean the Commission should not consider the application of the key non-discrimination and Eol obligations in respect of this service.

Pricing principle

12. While we request that the Commission provide general guidance for how it intends to be setting maximum cost-based prices (see below), we believe the Commission should specifically develop pricing principles addressing the price squeeze risk that applies in relation to key input services (in particular unbundled fibre services) and Chorus' layer 2 prices.
13. s.195 does not limit the Commission in considering price squeeze issues, which address relativity between layer 1 and layer 2 prices.
14. It is the lack of clarity regarding the additional legal pricing requirements (e.g., geographic consistency, equivalency on pricing, etc) which creates the need for greater certainty that a price squeeze pricing principle (and a non-discrimination/Eol competition principle) would address.

⁵ See, for example, section 156AD of the Act
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Pricing guidance

15. As mentioned above, we believe the Commission should provide general guidance for how it intends to be setting maximum cost-based prices (including for unbundled fibre services). In our view, the potential dynamic efficiency benefits are compelling.
16. Providing this guidance would promote efficient investment by infrastructure and access-based competitors, consistent with the fundamental legislative purpose. For example, the current uncertainty surrounding the future determination of prices might cause unwelcome distortions to crucial investment decisions, such as layer 1 unbundling and 5G rollouts. Businesses may deem those investments to be too risky and either cut back or cancel them altogether.
17. Any business considering buying layer 1 dark fibre services ideally needs to know how the prices will be set in, say, 2025 so that they can be factored into their current investment plans. They might be reluctant to deploy capital towards these endeavours if there is a risk that Chorus' prices will ultimately prove uneconomic – or inefficiently underinvest.
18. We acknowledge that the Commission is not at this point required to state in quantitative terms what those maximum cost-based prices will be when they are introduced. However, we propose that the Commission can and should describe in *qualitative* terms the methodologies that it will use.

Asset valuation

19. The Commission's preliminary proposal for 'rolling forward' the initial fibre RAB values is to apply the same approach as it has adopted under Part 4⁶, i.e., it has suggested indexing the RAB values to address the impacts of inflation using a CPI measure.
20. As the Commission will be aware, Vector has argued strongly in other forums (most recently in our submission to the Commission's IM review for EDBs and Transpower)⁷ that it is appropriate for an unindexed approach to be applied in certain circumstances. The Commission has of course shown that the regulatory precedent for this by not indexing Transpower's RAB.
21. We believe the Commission should consider allowing firms to employ an unindexed roll-forward approach – even in special circumstances. Indexed and unindexed RAB values are NPV neutral options. In our opinion, future-proofing the IM in this fashion could deliver significant potential benefits while entailing no obvious drawbacks. An IM incorporating these additional elements would consequently be materially better at promoting the statutory objectives than the approach proposed in the emerging views paper.

6 Technical Paper, p.57.

7 Vector, Submission to Commerce Commission on changes to the input methodologies for electricity distributors and Transpower due 5th July (available: [here](#)).

22. For example, it is clearly in consumers' long-term interests for regulated businesses to have sufficient cashflows to fund their investment needs. That objective may be assisted considerably by better aligning cashflows with investment demands. Sometimes these considerations – or others – should rightly outweigh the intergenerational equity concerns that historically favoured indexation methodologies.
23. In its paper, the Commission sets out the potential asset stranding risks that providers might face from technological change, emerging competition and/or insufficient take-up of fibre services. To the extent that these risks are significant, they would all be addressed to some degree by applying an unindexed approach. There would also be less need for the Commission to adopt more intrusive and complex interventions of manipulating asset lives. Accordingly, there would seem to be no obvious downside to at least allowing for the option of an unindexed roll-forward approach in the IMs. This will ensure the immediate incentive for investment is not dampened due to recovery horizons being extended through revaluations.

Financial losses

General

24. We note that, if financial losses are overstated, then customers will be burdened with excessive prices for years to come, which would also be inefficient and inequitable. As we point out in our covering letter, this treatment of losses was not anticipated at the time of the original ITP. The Commission should be acutely aware of the risk of loss overstatement when it estimates past losses.

Nature of the financial losses

25. The financial losses must be *“incurred by the provider in providing [FFLAS] under the UFB initiative”* from 2011 until the implementation date (s. 177(2)). This is further developed in requirements that *“costs [must be] incurred ... as a direct result of meeting specific requirements of the UFB initiative”* (s.177(5)). The Commission must consider what are the *“specific requirements”* of UFB and what costs are the *“direct result”* of those requirements.
26. If costs are not directly incurred in providing FFLAS under the UFB initiative, then they cannot be considered in determining the financial losses.
27. The Commission must consider, therefore, whether a cost that had been incurred for multiple purposes, one of which being to provide UFB, and any costs that were incurred before the UFB, should be included in this calculation. Or whether it is just those incremental costs that are directly incurred by Chorus in providing UFB that should be taken into account.

28. An incremental costs approach would be consistent with how Chorus would have considered the business case for UFB in 2011. It would have considered its incremental costs (that it otherwise would not have had to incur), and revenues, in determining whether to participate in UFB.
29. We also note that the requirement for costs to be a “direct result” of meeting UFB obligations for the purposes of calculating losses is in contrast to the IMs to be applied going forward. In that instance, common costs are explicitly contemplated (s. 176(1)(a)).
30. While we acknowledge that the term “fibre assets” is defined in s.177(6) as including assets employed in providing other services, this extended meaning should not be applied to the financial losses calculation, where clearly the costs must be the direct result of UFB.
31. This analysis supports an argument that common costs, which are not incurred (solely/directly) in providing FFLAS under the UFB initiative, should be disregarded for the purposes of determining Chorus’ financial losses. Accordingly, the Commission will need to review carefully fibre providers’ audited accounts to ensure that *only* those costs that are a direct result of meeting UFB obligations are included in the assessment of past losses.

Return on capital during loss making period

32. When Chorus was first building out the UFB network, it was a high interest rate environment post GFC, which is no longer the case. Calculations of Chorus’ losses, therefore, should consider the changes in the rate environment over that period and take into account the capital incurred by Chorus in the early years compared to the later years of the UFB build, as well as the impact of Government funding over that period.

Tax benefit

33. Chorus receive a tax benefit as a result of its loss-making position in the period prior to the implementation date and this benefit should be taken into account in determining the loss to be added to the RAB.

Depreciation

34. We agree that the value of Crown financing should be subtracted from the accumulated cost of UFB assets when applying the rate of return during the loss-making period. We also consider that Chorus should not be entitled to claim depreciation on government funded assets during this period. This would be an unjustified recovery on a Crown funded asset. Similarly, we believe Chorus should not be entitled to depreciation on those assets after the implementation date.

No risk insulation

35. We note there is little discussion in the emerging views paper on s.177(4) that “...[it] is not the intention of subsections (2) and (3) that regulated fibre service providers should be protected from all risk of not fully recovering those financial losses through prices over time”.

36. We are conscious that the copper prices at the time were set with a view to not discouraging future fibre investment. These dynamics must be considered by the Commission in setting the WACC that is applied in determining the financial losses.

Cost allocation between different FFLAS

37. Cost allocation rules are required between layer 1 services, which will be key inputs to competitive services, and layer 2 services that Chorus and the LFCs provide; this would support the pricing principle that we propose.

38. Cost allocation rules should result in competitively neutral outcomes, not favouring particular technologies or access services. Chorus has incentives to allocate common costs to layer 1 services to foreclose potential competition. We favour a more prescriptive approach, given this potential impact on competition.

39. We do not believe this issue should be deferred, as proposed by the Commission. Layer 1 services are a current issue, notwithstanding that the Commission may not set price caps at this point. From 2020, Chorus and LFCs must provide unbundled fibre services. This was a requirement of the Act (s156AD), implemented through the Deeds, the service is FFLAS and compliance with the Deeds is a matter for the Commission.

Timeline

40. We propose that the draft ID for Chorus and LFCs be brought forward, so that it precedes and informs the draft and final price-quality path for Chorus. This will provide a rich information set to establish the price-quality path. This is consistent with the approach taken in electricity.

Appendix two: Contextual Policy Statements

1. From the Ministry of Economic Development's October 2009, *New Zealand Government, Ultra-Fast Broadband Initiative: Invitation to Participate in Partner Selection Process*

1. INTRODUCTION AND OBJECTIVES

1.1 Ultra-fast Broadband Initiative

- (a) The government's overall objective for the ultra-fast broadband¹ investment initiative (**UFB Initiative**) is:

To accelerate the roll-out of ultra-fast broadband to 75 percent of New Zealanders² over ten years, concentrating in the first six years on priority broadband users such as businesses, schools and health services, plus greenfield developments and certain tranches of residential areas (**UFB Objective**).

- (b) The UFB Objective will be supported by government investment of up to \$1.5 billion, which is expected to be at least matched by private sector investment and will be directed to open-access infrastructure.
- (c) The achievement of the UFB Objective will be consistent with the following principles:
 - (i) making a significant contribution to economic growth;
 - (ii) neither discouraging, nor substituting for, private sector investment;
 - (iii) avoiding 'lining the pockets' of existing broadband network providers;
 - (iv) avoiding excessive infrastructure duplication;
 - (v) focussing on building new infrastructure, and not unduly preserving the 'legacy assets' of the past; and
 - (vi) ensuring affordable broadband services.

2. From the Ministry of Business, Innovation and Employment website: *A new regulatory framework for the ICT sector*

Why the changes are necessary

The new regulatory framework is the outcome of a statutory review of the Telecommunications Act.

In 2011, Telecom (now Spark) and Chorus were structurally separated into 2 companies. This structural change, combined with the Government's UFB programme, meant it was the right time to bring New Zealand's telecommunications regulatory framework into the 21st century.

Most of the UFB build will be complete by 2020, and the Government's current contractual arrangements for setting wholesale fibre prices will fall away. At the same time, New Zealanders' demands for new services and capabilities continue to grow.

The changes we have seen in technology and market structure need to be supported by a flexible and responsive regulatory regime.

How the framework for UFB and copper will work

The new regime will ensure UFB providers cannot make excess profits at the expense of consumers. It will also ensure they can expect reasonable rates of return and incentives for ongoing investment.

The Bill provides that:

- all UFB providers will have to disclose information about their revenues and costs publicly
- Chorus will also be subject to a revenue cap
- local fibre companies will face competition from copper and cable, but can be regulated if problems arise.

A clear value will be set for regulated assets at the outset, with a predictable process for updating this over time. There will also be a clear process for approval in advance of new investments, similar to that which applies to the electricity grid operator Transpower.

Chorus will be required to supply price-regulated anchor products. These will initially be an entry-level broadband product (100/20Mbps) and a voice-only product.

The Commerce Commission will be required to:

- set clear rules ('input methodologies') that outline its approach to how assets will be valued and costs recovered
- smooth the impact of changes in regulatory settings to avoid price or revenue volatility.

Appendix three: Quality Dimensions

In this section we set out Vector Communications' high level thoughts on the quality dimensions section outlined in the Commission's paper. We note that this is an evolving area for us, as we consider both our "current state" operating environment and our planned "future state" environment. We therefore note our preliminary views in this section, which are set out as principles.

We are of the view this area is a key aspect of the new regulatory regime for fibre, and welcome the Commission's attention to it. We would be happy to discuss our thinking in more detail with the Commission.

The points we would like to touch upon are:

- The importance of the principle of equivalence with respect to quality metrics
- Quality standards for a development / build phase versus a stable built phase
- The need for appropriate incentives and penalties for the new environment
- Comments on the CEPA model and other metrics

1. Equivalence

Vector Communications proposes that quality dimensions are applied in accordance with the principle of equivalence, in particular with respect to layer 1 services (including PONFAS).

The concept of equivalence in telecommunications regulation is well-established, and is in fact foundational with respect to UFB. To recap from the original Deed⁸:

"6.3 In this Undertaking "Equivalence" means that if Chorus is required to provide Access Seekers with an Input Service under clause 6.2, it must do so on an equivalence of inputs basis, meaning:

(a) Chorus must provide itself and the Access Seekers with the same Input Service;

(b) Chorus must deliver that Input Service to itself and the Access Seekers on the same timescales and on the same terms and conditions (including price and service levels);

⁸ *Chorus Limited, Deed of Open Access Undertakings for Fibre Services. Deed submitted by Chorus in accordance with section 156AH of the Telecommunications Act 2001 on 6 October 2011*

(c) Chorus must deliver the Input Service to itself and the Access Seekers by means of the same systems and processes (including operational support processes);

(d) Chorus must provide its own business operations and the Access Seekers with the same Commercial Information about that Input Service, and those same systems and processes; and

(e) when providing that Input Service to itself, Chorus must use systems and processes that Access Seekers are able to use in the same way, and with the same degree of reliability and performance.”

These guidelines are clear and unambiguous. It is our expectation Chorus adheres to them.

2. Appropriate quality dimensions for different phases

With the UFB 1 build almost completed, the fibre infrastructure is in place for unbundling to be enabled, as well as existing layer 2 and layer 1 services. The quality metrics that apply in this more stable environment should be different to those in a development / build phase. Given the higher levels of predictability and improvements in operational processes and practices, the metrics should accordingly be more onerous and as noted, the principles of equivalence must be applied in practice.

This would provide a high level of certainty to service delivery timeframes, removing many causes to the current delays to service provisioning.

3. Requirement for enforceable penalties and incentives for a new era

In the next five to ten years the telecommunications industry is predicted to undergo rapid change. With fibre unbundling, 5G, WiPON, and a move towards automation as examples, it is critical to take an adaptable and flexible approach to regulation. Not only must the RSPs adapt to industry changes, but the fibre providers (including the LFCs) have a critical role to play in facilitating innovation and the evolution of the telecommunications industry in NZ. This dynamic needs to be carefully balanced by a credible regulatory regime to ensure the LFCs (and especially Chorus) deliver outcomes for the benefit of the industry and New Zealand.

Vector Communications proposes requiring Chorus to deliver to tighter service metrics with stronger non-performance penalties. This will incentivise Chorus to achieve a culture and practice of continuous improvement. To further foster innovation for new and non-defined processes associated with providing a step-change in service delivery such as automation and orchestration, a performance-based approach is proposed, which should be governed via an independent body (such as the TCF) with representatives from the industry and the Commission. Of course, one important consideration should be the costs to the industry of meeting various quality metrics.

As the monopoly fibre provider Chorus (and the other LFCs) need to:

- deliver layer 1 services in a consistent and repeatable manner;
- have a culture and behaviour of continuous improvement;
- allow wholesale service provider(s) to reliably build their service offerings based on known layer 1 service metrics;
- ensure cost allocation is correctly defined for layers 1 & 2 independently allowing competition on service offerings above layer 1 (adopt EoI principles and be held to them).

Competition will be enhanced at layer 2 level with service providers consuming a common layer 1 service (including Chorus of course), hence it is imperative that layer 1 service metrics are applied uniformly to ensure equivalence between Chorus and other LFCs.

4. The CEPA model and proposed metrics

While the Commission recommends level 3 compliance from the CEPA model, Vector Communications is of the view that it should consider increasing this to level 4 as strict measures and penalties are required to ensure adherence, enhance competition and drive towards continuous improvement.

The CEPA report introduced six defined domains constructing the service lifecycle of the fibre. Vector Communications agrees with this approach of the service lifecycle and suggests adding two additional domains; one at each end of the service lifecycle being pre-qualification and reporting respectively.

Pre-qualification covers all activities up to the ordering domain and needs service metrics covering availability, pricing.

Reporting ensures that visibility is provided at each stage of the service lifecycle and can be independently monitored with defined initiatives to drive improvements. Reporting is also required to be able the wholesale service provider to undertake key functions within their organisation (e.g. capacity management of splitters).

We are also of the view that there is an implicit metric (i.e. it should be covered by the others, but if not needs to be made explicit) that needs to apply to the provision / delivery of new services. A salient example of this is unbundled fibre (or PONFAS, in Chorus' terminology), which of course the LFCs are obliged to offer from 1 January 2020. The LFCs have strong incentives to favour the sale of their layer 2 services over layer 1, and therefore find – often spurious – reasons to delay service, or make it unnecessarily complicated to order, often falling back on “operational” reasons (e.g. lack of capacity in cabinets, exchanges etc (thereby implicitly favouring its own services), insufficient fibres in areas, service company issues etc). These are familiar tactics in the telecommunications industry in New Zealand, as the Commission will be aware. Further, the LFCs signed up to the unbundling requirement many years ago, so have had plenty of time to prepare themselves for it.

Consequently, we also strongly reject a more lenient approach during early stages (such as RP1), for FFLAS generally and the PONFAS service in particular in terms of metrics and penalties that apply to non-performance. As noted penalties are of course a critical incentive on parties to adhere to the prescribed quality measures.

Further, service installation at the customer premises should be under the control of the RSPs as this is independent from any Chorus asset and is an area where service differentiation and competition can occur (particularly with respect to layer 1 services). Vector Communications of course has many years of experience in this industry, including managing out-sourced service providers, so we are well placed to manage the operational /service layer. As a general principle, the RSP should have considerable latitude to consume services as it sees fit, using the resources it chooses to do so, unless there are justifiable and verifiable reasons for not allowing it. That is, Chorus (and other LFCs) should not simply be able to cite operational reasons for not allowing an RSP's team / partners (in some cases the same teams that the LFCs use) to perform the same tasks, without independently verified rules and operational procedures. Solutions to these issues exist today in the industry, including accreditation programmes, and industry working groups under the guise of the TCF.

5. Conclusion

Vector Communications is currently doing more work in the area of appropriate quality dimensions for fibre, including of course for unbundled fibre services. As noted, we consider it to be an important part of the new regulatory regime, and would like to be part of the ongoing consultation to formulate an industry-wide approach.