Submission on Draft Information Disclosure Determination

8 July 2021

CHORUS

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Executive summary

The ID regime must be fit for purpose

1. Our priority is to ensure the Part 6 information disclosure (**ID**) regime is fit for purpose and can be implemented after a sensible transition period. A fit for purpose disclosure regime:

   1.1 tailors disclosure to the purpose of the regime;

   1.2 balances the value of disclosure with the cost of compliance (including the costs of generating and validating information);

   1.3 recognises the formative stage of the regime, and the need for a transition to introduce new requirements;

   1.4 provides protection for the regulated provider's commercially, competitively and market sensitive information; and

   1.5 ensures that firms subject to price-quality (**PQ**) regulation are able to recover the costs of compliance through their expenditure allowances.

2. We acknowledge the progress the Commission has made in designing the new ID regime within a short timeframe. In many areas the Commission's proposals are fit for purpose but in some areas they fall short.

3. We do not agree the Commission has proposed a 'minimum package' for ID. The Commission has asked for a significant volume of information, at a level of granularity and cadence that is not justified in light of the purpose of the ID regime. This would impose significant compliance costs on regulated providers (and ultimately end-users) and cannot be implemented in the time available or with the expenditure the Commission proposes to allow.

4. While the ID regime under Part 4 of the Commerce Act is a useful starting point, there are important differences between the energy and telecommunication sectors that the Commission must consider when designing and implementing the ID regime under Part 6 of the Telecommunications Act. In particular:

   4.1 Chorus' network is newly built, increasing the operational challenge in transitioning to the new regulatory framework relative to the mature businesses subject to Part 4 of the Commerce Act.

   4.2 Unlike Part 4 businesses, Chorus operates in a competitive market and must be conscious about the information we disclose to competitors. The Commission must be careful in developing the ID regime to ensure it does not inadvertently distort competition in the market.

5. In some cases, without justification, the Commission has gone beyond what it requires of Part 4 regulated providers. The two most obvious examples, which we strongly disagree with, are:

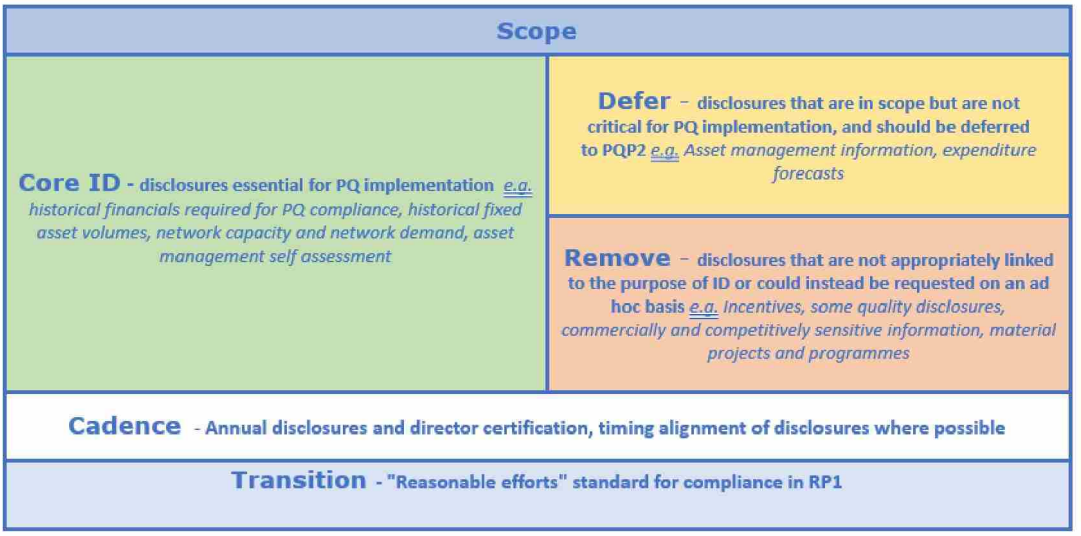
   5.1 The requirement for quarterly disclosure and director certification of quality and pricing information. This is extremely burdensome and wholly unnecessary. Director certification is a rigorous process requiring substantial input from senior management and auditors. Our prices can only increase once a year, following consultation with our customers. The

Commission has offered no persuasive case for quarterly rather than annual disclosure and certification.

5.2 The Commission's proposal will require Chorus to publicly disclose confidential and commercially sensitive information to our competitors and impact on our market disclosure obligations as a publicly listed company. There are more appropriate mechanisms the Commission can use to obtain this information.[1] Alternatively, if sensitive information must form part of the ID regime, it should be exempted from public disclosure.

6. It is not possible to implement a fully formed ID regime in the few weeks between receiving final ID and PQ Determinations and the PQ regime taking effect on 1 January 2022. A staged implementation is necessary and consistent with Commission precedent. The Commission deferred implementation of ID for Transpower until the PQ regime was embedded and then implemented ID in stages. In contrast, Part 4 ID for Electricity Distribution Businesses (**EDBs**) and Gas Pipeline Businesses (**GPBs**) was implemented in one step in 2012/13, in a determination that caused substantial confusion and compliance challenges.

Our recommendation for a minimum ID package with staged implementation



7. The Commission must start with an authentic 'minimum package'. Its focus for PQP1 should be on disclosures that are essential for implementing PQ regulation and for assessing Chorus' profitability and efficiency of expenditure. Any disclosures that are not sufficiently linked to the purpose of ID or can be requested on an ad hoc basis under section 187(1)(c) or section 221, must be removed. Any disclosures that are in scope but are not critical for PQ implementation should be deferred to PQP2.

8. The following changes are needed to achieve a 'minimum package':[2]

8.1 **Reporting and director certification should operate on an annual basis:** Quarterly pricing and quality disclosures with director-level certification is very burdensome, unnecessary and inconsistent with ID

[1] For example, sections 187(1)(c) or 221 of the Telecommunications Act 2001.
[2] A full list of changes needed is set out in Appendix 1.

regimes under both Part 4 of the Commerce Act and Part 4AA of the Telecommunications Act.

8.2 **Incentives should be removed from pricing disclosures:** The Commission has recognised that incentives are expenditure and therefore they should be reported as expenditure. Incentives are not part of the price and so should be removed from the pricing disclosures. Incentive programmes are semi-dynamic, consulted on ahead of implementation and fully transparent to stakeholders. ID is not the avenue for information to support the Commission's Part 4AA or Part 7 activities.

8.3 **Quality disclosures should be based on our UFB contract service level reporting requirements:** It is not clear whether the Commission has intentionally changed or expanded on UFB measures. The Commission has proposed granular quality disclosures, some of which have no clear relationship to the purpose of ID, or don't appropriately balance the value of the information with the cost of compliance (including external assurance costs). There are also new requirements that we cannot practically implement. The Commission should hold a technical workshop before it reaches any final decisions.

8.4 **Forecast disclosures should be deferred to PQP2 and not required in any year where there will be a PQP proposal or PQ Determination:** The Commission has proposed an annual disclosure of a rolling five-year forecast. This is overly onerous in the context of a three-year PQP, in addition to our PQP1 expenditure proposal, and so close to the preparation of our PQP2 expenditure proposal and will be confusing for stakeholders. If expenditure forecasts are required in ID, these should be deferred to PQP2 and not required in any year where there will be an expenditure proposal or PQ Determination.

8.5 **Material projects and programmes disclosures should be removed:** The proposed 'material projects and programmes' approach to expenditure disclosures is not well defined and appears to duplicate sub-category expenditure level reporting we are already required to provide. If the Commission can show that additional project reporting is necessary for ID, a better approach would be to agree, prior to the regulatory period, a list of projects that are to be reported.

8.6 **Asset condition reporting should be deferred to PQP2:** The proposed asset condition reporting requirements reflect a mature regime, not Chorus' relatively new fibre network.

8.7 **A realistic transition period is required:** Once the Commission has the 'minimum package', it must then allow a realistic transition period for the new ID regime, to recognise that we will largely deliver this information through manual solutions, and we won't necessarily understand all the challenges of implementation, until we start work on systematising the new requirements. The Draft ID Determination should include transitional measures for PQP1 which:

a. Apply a "reasonable efforts" standard for compliance; and

b. Relieve regulated suppliers of liability for non-compliance in PQP1, provided the reasonable efforts standard is met.

Compliance costs must be recoverable

9. We estimate the Commission's proposed ID regime would cost Chorus an additional $7 to 9 million in incremental opex in PQP1, plus a portion of a potential $5 million systems upgrade cost.

10. These costs were not provided for in our expenditure proposal (which the Commission has proposed to cut further) and will ultimately fall on end-users.

11. Our suggested 'minimum package' with staged implementation would allow the Commission to achieve its objectives, lower the costs for end-users and avoid having to amend our proposed expenditure for PQP1.

12. We also want to ensure there is no timing overlap between the new ID regime and the current Part 4AA ID regime. We understand the Commission does not currently use our annual ID information in any meaningful way. We are separately seeking an exemption from the requirement to provide an annual disclosure for the period from 1 July 2020 to 30 June 2022, so Part 4AA ID does not overlap with implementation of the Part 6 ID regime.[3]

13. Given the size and complexity of the task ahead, further engagement between the Commission and regulated providers is necessary for the Commission to make informed choices on transition into the new ID regime.

14. This submission should be read alongside our other submissions responding to the Commission's consultations on the *[Draft] PQ Determination 2021,* the *Draft Guidance on* Section *201 - Geographically Consistent Pricing*, and the *[Draft] IM Amendments.*[4]

[3] Under clause 4.2 of the *Chorus Information Disclosure Determination 2018*.
[4] Chorus, *Submission on Price-Quality Path Draft Decision*, 8 July 2021; Chorus, *Submission on Section 201 Draft Guidance*, 24 June 2021; Chorus, *Amendments to the Input Methodologies for Fibre*, August 2021 amendments, 24 June 2021; Chorus, *Amendments to the Input Methodologies for Fibre – November 2021 amendments*, 8 July 2021.

Criteria against which the Commission's proposals should be assessed

1. The Commission has stated that its proposed ID regime:

   1.1 meets the purpose of ID in section 186 of the Act, and the Part 6 purpose;[5]

   1.2 represents the 'minimum package' of information that interested persons need to understand whether the purpose of Part 6 is being met;[6] and

   1.3 balances the benefits of ID against the costs of complying with the requirements.[7]

2. We agree that those are relevant criteria against which the Commission's proposals should be assessed. But we don't agree that the Commission's proposals satisfy those criteria. Despite statements in the Draft Decisions Reasons Paper, the Commission's proposals:

   2.1 are not in all cases justified with reference to the purpose of ID and Part 6 of the Act;

   2.2 do not represent a 'minimum package' required to implement ID, and will materially increase our cost of compliance; and

   2.3 would require Chorus provide a significant amount of commercially, competitively and market sensitive information to network competitors.

Commission's proposals are not justified with reference to the purpose of ID

3. The purpose of ID regulation is to ensure that sufficient information is readily available to interested persons to assess whether the purpose of Part 6 is being met.[8]

4. The purpose of Part 6 is to promote the long-term benefit of end-users in markets for Fibre Fixed Line Asset Services (**FFLAS**) where there is little or no competition and little or no likelihood of a substantial increase in competition. This is achieved by promoting outcomes that are consistent with the outcomes produced in workably competitive markets so that regulated providers:[9]

   4.1 have incentives to innovate and to invest, including in replacement, upgraded, and new assets;

   4.2 have incentives to improve efficiency and provide services at a quality that reflects end-user demands;

   4.3 allow end-users to share the benefits of efficiency gains in the supply of FFLAS, including through lower prices; and

   4.4 are limited in their ability to extract excessive profits.

[5] Commerce Commission, *Fibre Information Disclosures, Draft Decisions, Reasons Paper*, 27 May 2021, at X15.
[6] Commerce Commission, *Fibre Information Disclosures, Draft Decisions, Reasons Paper*, 27 May 2021, at X12.
[7] Commerce Commission, *Fibre Information Disclosures, Draft Decisions, Reasons Paper*, 27 May 2021, at X16.
[8] Telecommunications Act 2001, s 186.
[9] Telecommunications Act 2001, s 162.

5. Each proposal must be justified against the purpose of ID in section 186 and the Part 6 purpose. This means that the specific information that is requested, including the form and frequency of the disclosure, must be demonstrably necessary to enable interested persons to understand whether the Part 6 purpose is being met with respect to Chorus. If the Commission is not able to demonstrate this, then the proposal is not justified and is beyond the proper scope of ID.

6. A number of the Commission's proposals – both the information it has requested and the frequency of disclosure – are not justified with reference to the purpose of ID. For example, interested parties do not need quarterly reporting for pricing and quality disclosures to assess whether the purpose of the regulatory regime is being met. ID is designed to monitor performance and trends over time, and annual reporting (as required under existing ID regimes under the Commerce Act and Telecommunications Act) is sufficient for this purpose.

7. It also appears that the Commission is proposing to use ID as an opportunity to gather very detailed information about the telecommunications services that end-users are receiving, rather than the services that Chorus provides. The purpose of ID is limited to assessing Chorus' performance against the Part 6 purpose statement. Chorus is a wholesale supplier and therefore ID should be focused on Chorus' wholesale services. Monitoring retail services is not within the proper scope of ID. If the Commission wants to better understand the telecommunications services that end-users receive and the prices that they are paying for them, it can and should use its market monitoring powers and require that information from RSPs directly.

Commission's proposal is not a 'minimum package'

8. The Commission has not proposed a 'minimum package' of information.

9. A 'minimum package' of ID requirements would be:

   9.1 focused on those requirements that are essential for implementing PQ regulation and for assessing Chorus' profitability and efficiency of expenditure; and

   9.2 comparable to the ID requirements that were imposed on Part 4 regulated suppliers on entry into the Part 4 regime.

10. Instead, the Commission has proposed extensive ID requirements that will materially increase our cost of compliance and require expenditure that was not anticipated in Chorus' PQP1 expenditure proposal. The Commission's proposals also significantly exceed Chorus' current disclosure obligations and appear, without any justification, to be more onerous than the ID requirements for energy networks.

11. We cannot implement the Commission's proposals in the time available. We therefore strongly recommend a staged approach to implementing ID requirements, with a "reasonable efforts" standard for compliance in PQP1.

The Commission's proposal would materially increase compliance costs

12. Implementing the proposed ID requirements would introduce material new compliance costs. The Draft ID Determination requires significant changes to both existing and new activities. This would require changes to business processes, financial and other systems, which would take years to specify, deliver and implement.

13. In parallel, interim manual solutions would be needed to gather, process, audit and submit the disclosures. These interim solutions would be labour intensive for Chorus directors, management and staff, and for our external auditors.[10] Even once business processes and systems changes are completed, the compliance task would remain considerable.

14. We estimate the incremental opex cost of implementing and delivering the Commission's Draft ID Determination would be $7 million to $9 million in PQP1, in addition to capex costs to implement system changes. This estimate comprises:

    14.1 interim solution opex cost of $2.5 million - $3 million per annum, including an audit greater in scale to the statutory audit;[11]

    14.2 system design, build and implementation capex costs estimated at $5 million, subject to exact specifications and requirements; and

    14.3 recurring, post system implementation, opex cost of $1.5 million to $2 million per annum, including annual audit.

15. These costs are not provided for in our PQP1 expenditure proposal (which the Commission has proposed to cut further). Our expenditure proposal would need to be adjusted, prior to the Commission's PQ decision later this year, to address these additional costs. In revising the scope of the disclosures, the Commission should consider whether the cost of compliance (which will ultimately be borne by consumers), is justified by reference to the purpose of ID.

Part 4 regulated providers

16. The Commission appears to have imported the 'mature' ID regime from Part 4 of the Commerce Act with a focus on EDB and GPB precedent. While Part 4 is a useful starting point, there are important differences between the energy and telecommunication sectors, which the Commission must consider, both when determining the appropriate scope of ID and the manner of implementation.

    16.1 The Part 4 regulated providers, in 2010, were all mature businesses supplying a relatively homogenous and mature service. In contrast, Chorus' network is newly built and we are still in the process of transitioning from the build phase to the operating phase. FFLAS, in contrast to transmission and distribution, is differentiated. The degree of operational challenge in transitioning to building blocks regulation is therefore greater for us than it was for the Part 4 regulated providers.

    16.2 Although Part 4 was a new regulatory framework in 2010, regulated providers were accustomed to building blocks as a form of regulation that predated the 2008 amendments to the Commerce Act. Those regulated providers were better placed in 2010 than Chorus is now in terms of the information they had historically captured to support the regulatory framework that predated the amended Part 4. In contrast, Chorus' copper services have historically been regulated using TSLRIC rather than a BBM, and FFLAS services via contracts with CIP. Transitioning to a BBM is therefore a more substantial challenge for Chorus.

    16.3 Unlike Part 4 regulated providers, we operate in a competitive market, and therefore must be conscious about the information we disclose to customers who are also competitors. The Commission therefore needs to be judicious

[10] See *KPMG letter*, 7 July 2021, Attachment 1 to this submission.
[11] See *KPMG letter*, 7 July 2021, Attachment 1 to this submission.

in developing the ID regime to ensure it doesn't inadvertently distort competition in the market by reducing competitive tension.

17. We note that implementation of disclosure requirements for Transpower were deferred by several years and were implemented in stages. In contrast, disclosure requirements for EDBs and GPBs were largely implemented in one step in 2012/13, in a determination that caused substantial confusion and compliance challenges. That experience suggests that staged implementation is not only appropriate but consistent with Commission precedent.

The new ID regime needs a staged implementation

18. It appears that the Commission intends to require Chorus to comply with all disclosure requirements immediately. It is unreasonable to issue a determination at the end of November 2021 and require compliance with new ID requirements from 1 January 2022.

19. To ensure the ID regime is workable from the implementation date, a staged implementation is essential. This should start with a 'minimum package' that builds over time. The Commission should:

    19.1 reconsider the scope of disclosures, so that it is an authentic 'minimum package'. This includes removing proposals that are not appropriately linked to the purpose of ID (or could instead be requested on an ad hoc basis under section 221), and deferring to PQP2 proposals that are not necessary initially;

    19.2 allow a realistic transition period for the new ID regime. The Draft ID Determination should include transitional measures for PQP1 which:

        a. applies a "reasonable efforts" standard for compliance. This is similar to the standard the Commission agreed to for EDBs and GPBs for the introduction of the Part 4 ID regime in 2012;[12] and

        b. relieves regulated suppliers of liability for non-compliance in PQP1, provided the reasonable efforts standard is met;

    19.3 hold technical workshops with us and the other regulated providers to determine the requirements that should be subject to the transitional period and to work through technical implementation matters; and

    19.4 establish a clear process, in advance of 1 January 2022, for resolving clarifications of the Commission's Final ID Determination and for providing exemptions.

20. A staged approach would recognise the following considerations:

    20.1 The way the new ID regime is being developed. There is a very short timeframe between the Commission's final ID Determination and the implementation date: approximately 20 working days. In parallel, there are multiple concurrent processes to establish the PQ regime. This increases the risk of regulatory error, underestimation of compliance costs and unintentional non-compliance.

    20.2 The short timeframe between the Commission's final ID Determination and the implementation date means regulated providers will have to adopt

[12] Commerce Commission, *Information Disclosure for Electricity Distribution Businesses and Gas Pipeline Businesses: Final Reasons Paper*, at [8.33].

interim manual solutions while the necessary system changes are defined and implemented. This not only increases workload and cost on regulated providers, it also increases the risk of error and makes it more difficult to certify and assure. The Commission should strictly prioritise 'must have' vs 'nice to have' information.

20.3 Implementation of the new ID regime will be a learning process for both regulated providers and interested persons, and the value of ID is in building an enduring time series of information as the PQ regime matures. The reality in New Zealand is that regulation is easy to introduce but extremely difficult to modify or remove – even where clearly beneficial to do so.

Level of granularity required raises competition concerns

21. The Commission's proposed disclosures may result in regular publication of confidential and competitively sensitive information about our financial forecasts, pricing, assets, network capabilities and network location. This information would be available to our network competitors. Under ordinary circumstances, absent a regulatory mandate, we would consider that disclosing some of this information would be inconsistent with our competition law compliance obligations. We presume the Commission would be equally concerned that ID does not reduce competitive tension in a way that undermines competition in the market.

22. Requiring disclosure of competitively sensitive information is also contrary to the Part 6 purpose statement because it is not consistent with what would occur in a workably competitive market; nor is it a legitimate means of promoting competition to advantage competitors of regulated providers by requiring disclosure of competitively sensitive information. To the contrary, disclosures of competitively sensitive information distort competition and lessen competitive tension between competitors.

23. The Commission has the same objective as Chorus to ensure that all proposed disclosures comply with the Commerce Act. We understand that the Commission may need access to competitively sensitive information in order to assess Chorus' performance against ID objectives, but we are concerned the Commission does not appear to have taken the sensitivity of information into account in setting its proposed disclosure requirements.

24. If the Commission requires this sensitive information, the appropriate avenue would be a request under either section 187(1)(c) (if the information is necessary to assess compliance with the ID requirements) or section 221 (if the information is necessary to carry out the Commission's functions and to exercise its powers under Part 6) of the Act, rather than via the ID regime. If the Commission is convinced this sensitive information should form part of the ID regime, then it should be exempted from public disclosure, effected through either section 188(3)(d) or section 222 of the Act.

Director certification and assurance

25. Our position on the director certification and assurance requirements in the Draft ID Determination is that:

    25.1 **Frequency of reporting and director certification:** We do not support the Commission's proposal for quarterly reporting and director certification of pricing and quality disclosures. This is unnecessarily burdensome on directors and inconsistent with ID regimes under Part 4 of the Commerce Act and Part 4AA of the Telecommunications Act. Pricing and quality disclosures and director certification should be annual, rather than quarterly.

    25.2 **Level of assurance:** While we support the Commission's proposed level of assurance for historic financial data, it is not appropriate for the level of granularity required to be provided (and audited) for quality measures. As recommended by KPMG, a better approach to the assurance requirement for the quality measures is an opinion of the form that the "information has been materially extracted correctly from system and operational data."[13]

    25.3 Similarly, the level of assurance proposed for the mandatory notes on Schedule 14 is not appropriate, as the notes are narrative. The mandatory notes should be excluded from the scope of the audit.

Quarterly reporting and director certification for pricing and quality disclosures

26. The Commission has proposed quarterly pricing and quality disclosures with director-level certification. This is unnecessarily burdensome and inconsistent with ID regimes under the Commerce Act and Telecommunications Act.

27. Disclosure and certification requirements for all industries under Part 4 of the Commerce Act, and for Chorus and other LFCs under Part 4AA of the Telecommunications Act, are annual. While there are some quarterly disclosures of our KPIs under the Open Access Deeds of Undertaking, director certification is annual rather than quarterly. This approach reflects the reality that director certification is a time-consuming process. The Commission recognised this in the context of our Open Access Deeds of Undertaking when it extended the deadline to provide director certification from within 20 working days of financial year end to within 45 working days.

28. The Commission has not justified why disclosure and certification of quality and pricing information needs to be four times as frequent under Part 6 as it is under Part 4 of the Commerce Act and Part 4AA of the Telecommunications Act. Interested persons do not need quarterly reporting to assess whether the purpose of the regulatory regime is being met. ID is designed to monitor performance and trends over time, and annual reporting (as required under existing ID regimes under the Commerce Act and Telecommunications Act) is sufficient for this purpose. Conversely, it would not be possible or appropriate to conclude that the Part 6 purpose statements is or is not being achieved based solely on short-term information.

29. The Commission has stated that quarterly reporting of prices and incentives reflects the dynamic nature of telecommunications markets where prices, and particularly

[13] See *KPMG letter*, 7 July 2021, Attachment 1 to this submission.

incentives, may be revised more frequently than annually.[14] This is not accurate. Chorus can only increase prices once per year, following consultation with our customers. Our ability to change prices is constrained by both our UFB services agreements (which will continue in our post 2022 CSA) and the Telecommunications Act.[15] In addition, our prices are already public. As noted in paragraph 86 and following, incentives do not form part of price and so should not be part of any pricing reporting.

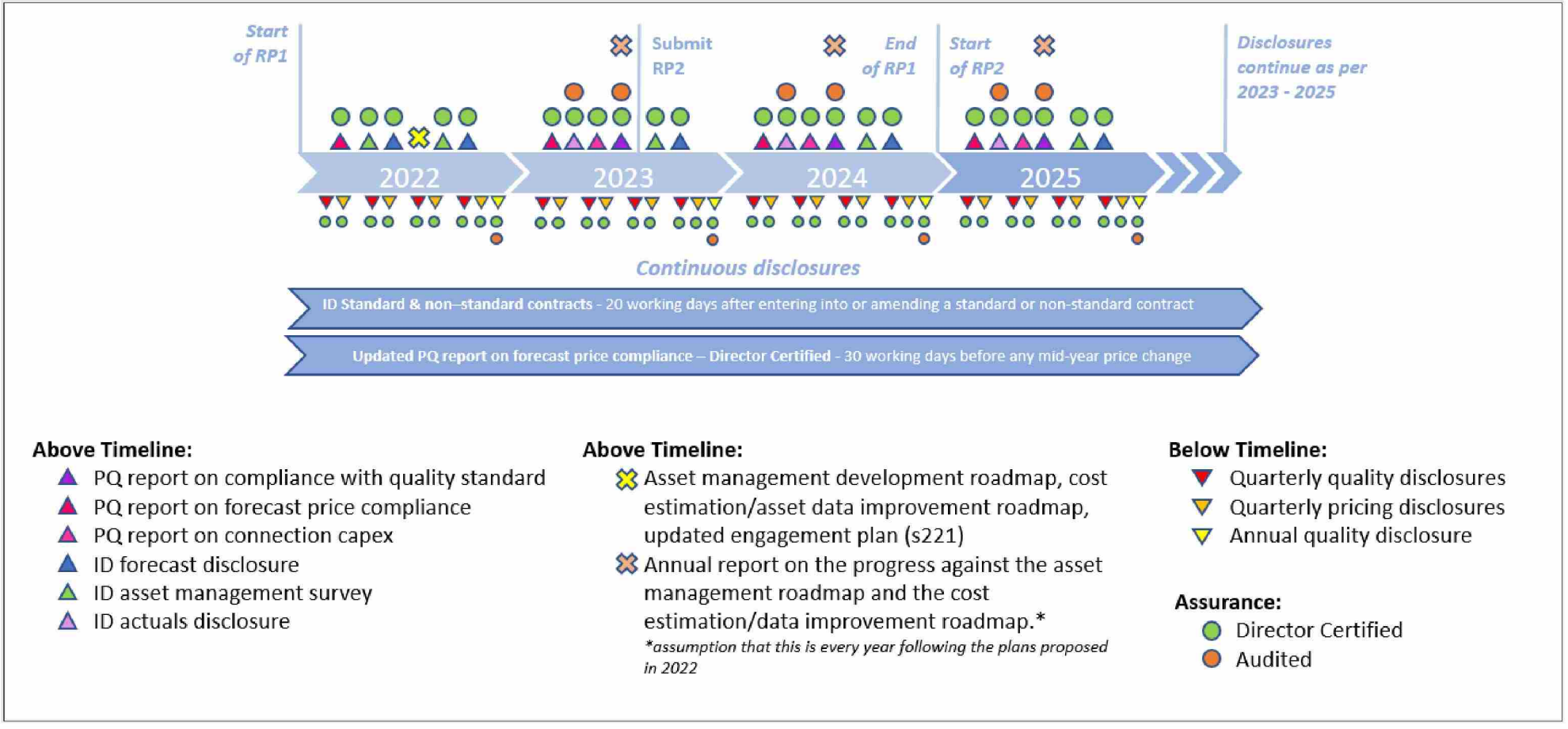
30. We disagree with the Commission's comment in paragraph 8.17 of the Draft Decisions Reasons Paper that "director certification is a relatively cost-effective means of gaining assurance". Quarterly director certification processes require an equivalent amount of work to audits, as directors require a high level of comfort before they can certify. Indeed, the value of director certification is that it is the culmination of a rigorous process. It is impractical for Chorus to carry out its usual director certification process every quarter.

31. The Commission must step back and consider this reporting and certification requirement in the context of all the reporting the new regulatory regime will impose on Chorus. Figure 1 below illustrates how quarterly reporting and certification fits in with Chorus' other disclosure and certification requirements, including continuous disclosure requirements.

32. As demonstrated in Figure 1, quarterly disclosures and certification will result in an almost continuous workstream for Chorus directors, with directors required to certify 14 to 15 disclosures each year. On top of this, will be the additional disclosures Chorus needs to make, to comply with the NZX market disclosure obligations.

[14] Commerce Commission, *Fibre Information Disclosures, Draft Decisions, Reasons Paper*, 27 May 2021, at [5.24].
[15] Telecommunications Act 2001, Sch 1AA, cl 9(6).

Figure 1: Frequency of proposed disclosures and certification under PQ and ID



Scope of assurance opinion

33. The Commission has proposed that regulated providers provide an assurance opinion by an independent auditor annually of the regulated provider's quantitative historical information. The Commission's proposal is that the level of assurance provided in the opinion should be that the regulated provider has "complied, in all material respects with the ID Determination".

34. That level of assurance is appropriate for historic financial data but is not appropriate for the level of granularity required to be provided (and audited) for quality measures. The information required to be disclosed for quality measures will be taken from Chorus' internal operational systems and is not currently subject to audit requirements. As recommended by KPMG, a better approach to the assurance requirement for the quality measures is an opinion of the form that the "information has been materially extracted correctly from system and operational data."[16]

35. In addition, the Commission's proposal would require the mandatory explanatory notes to be included within the scope of the auditor's opinion. This is a departure from Chorus' current disclosure requirements, where the mandatory explanatory notes are not required to be audited. The mandatory notes should be excluded from the scope of the audit as the mandatory notes will include several assumptions which will be challenging for the auditors to sign off on. Alternatively, if the mandatory notes are to be included in the scope of the audit, the audit should be limited to the notes relating to audited figures and schedules only.

[16] See *KPMG letter*, 7 July 2021, Attachment 1 to this submission.

Financial Information

36. We broadly support the Commission's approach to disclosure of financial information in the Draft ID Determination. However, we have some concerns around:

36.1 **Scope of ID:** We agree in principle with the Commission's proposal for a rolling five-year forecast disclosure, but suggest the requirement be amended so that it is not required in years in which Chorus submits an expenditure proposal or the Commission determines the PQP for the next regulatory period.

36.2 We do not support the Commission's proposals for a consolidation statement, project and programme reporting and the sub-component expenditure items of 'insurance costs' and 'research and development expenditure'. The value of these disclosures is clearly outweighed by the cost of compliance. These disclosure requirements should be removed.

36.3 **Commercial and market sensitivity:** Our forecast information, particularly at the granular level and in the outer forecast years, may be competitively sensitive and market sensitive. Reporting on "projects and programmes" may reveal information on commercially sensitive projects. If the Commission requires this sensitive information, the appropriate avenue would be a request under either section 187(1)(c) or section 221 of the Act, rather than via the ID regime. If the Commission is convinced this sensitive information should form part of the ID regime, then it should be exempted from public disclosure.

36.4 **Transition:** The Commission should defer the requirement for the annual rolling five-year forecast until at least PQP2. The Commission should apply a "reasonable efforts" standard for compliance in PQP1.

36.5 **Refinements:** We propose minor changes to the expenditure categories (acknowledging that we are open to solutions that would work better for ID-only regulated providers), and to the ROI formula (to ensure consistency with the MAR).

37. Each of the above issues is discussed in further detail in the sections that follow. Further information about the transition to implementation and our concerns around the sensitivity of information is set out in paragraphs 8 to 20 and 21-24. Our recommended changes to the ID Determination are set out in **Appendix 1**.

Rolling five-year forecast disclosure

38. We agree in principle with the Commission's proposal for disclosure of a rolling five-year forecast. However, we suggest this requirement be deferred to at least 2025, given that PQP1 is only three years, and amended so that there is no requirement to produce a forecast in the years in which Chorus submits an expenditure proposal or the Commission determines the PQP for the next period.

39. The Draft ID Determination does not define "forecast". We understood from Commission staff at the 18 June 2021 workshop that the Commission's intention is that the forecast requirement is a rolling five-year forecast disclosure.

40. We acknowledge that we will need to implement a five-year rolling forecast, but our five-year business plan isn't currently in a regulatory format. Producing this will be labour intensive and we will need time to put this in place. We will also need clarity on cost allocation settings before we can implement.

41. For PQP1, we will need to prioritise engaging with the Commission on, and implementing, the systems and processes to deliver PQ regulation to ensure a high-quality regulatory outcome for PQP1.

42. We do not think a rolling forecast is necessary in PQP1 because in:

    42.1 2022 we will be focusing on the implementation of the new PQ and ID regime;

    42.2 2023 the Commission will receive our PQP2 expenditure proposal, which will already include five-year forecast information; and

    42.3 2024 the Commission will evaluate our proposal and make their PQP2 Determination.

43. Producing a five-year forecast in the same years as an expenditure proposal or PQP decision is unnecessary additional work and potentially confusing for stakeholders. There would be a short timeframe between the ID forecast and the PQ view of the forecast.

44. We note that, in some similarly regulated industries, expenditure forecast requirements were not introduced until several years after PQ regulation was implemented and bedded in. We also note Transpower has relief from forecasting related disclosures in the PQ decision year, and that the Commission has exempted EDBs from the requirement to produce an Asset Management Plan in the year they submit CPP applications (for example, in the case of Powerco and Aurora's CPP applications).

45. In addition, forecast information in the outer forecast years may be competitively and market sensitive. Aside from our proposal for PQP1 (RY2022 – 2024), expenditure forecasts are not public. Outer year forecasts provide insights into Chorus' medium and long-term commercial strategy that could be used by our competitors to reduce strategic uncertainty, supporting potentially anticompetitive outcomes through a higher degree of transparency about Chorus' trajectory than would be the case in a workably competitive market. If the Commission needs the outer year forecasts, the appropriate avenue would be a request under either section 187(1)(c) or section 221 of the Act, rather than via the ID regime. Alternatively, if this information must form part of the ID regime, it should be exempted from public disclosure.

Consolidation statement

46. We do not support the Commission's proposal to require a consolidation statement reconciling Chorus's GAAP accounts and the ID disclosures. This disclosure requirement should be removed.

47. The Commission has not justified why Chorus needs to produce a consolidation statement. Chorus' information disclosures, combined with the audit opinion and director certification, is sufficient to enable the Commission to monitor compliance with ID regulation for FFLAS.

48. Preparing a consolidation statement would be difficult and the cost of doing so would be high. The Commission did not require EDBs produce a consolidation requirement and has not explained why it is departing from Part 4 precedent. The reasons for the Commission's decision not to require EDBs to produce a consolidation statement apply equally to Chorus:[17]

    48.1 Our GAAP financial accounts are currently prepared on a total Chorus basis. We don't currently intend to produce a FFLAS version of GAAP accounts.

    48.2 The Commission has previously acknowledged that information prepared for regulatory purposes is on a different basis from general purpose financial statements.[18] This is particularly the case for RAB information and regulatory tax.

    48.3 Chorus has a different regulatory disclosure year-end (31 December) compared to our general-purpose financial statements year-end (30 June). Any consolidation or reconciliation will not be able to be tied to externally reported 12-month data. The Commission has previously acknowledged that this complicates and increases the cost of preparing consolidated information.[19]

Material projects and programmes disclosures

49. We do not support the Commission's proposal for reporting on project and programme expenditure. This disclosure requirement should be removed. If the Commission can show that project reporting is needed for ID, we should agree prior to the disclosure period a list of projects on which Chorus must report.

50. If the Commission remains of the view that reporting on project and programme expenditure is necessary, then we disagree with the Commission's approach to setting a materiality threshold.

Project and programme expenditure reporting is unnecessary

51. The Commission has not defined what projects and programme expenditure is or explained why it thinks disclosure of projects and programme expenditure, including forecasts, is necessary. The sub-category expenditure level reporting provides enough information for the Commission and interested persons to assess whether the Part 6 purpose is being met.

52. It is unclear what the 'scope' of project and programme is. The terms 'project' and 'programme' are too vague to provide a useful basis for reporting. The scope of disclosure can change at any time as components are added or removed from projects, or as work moves through strategy into planning and delivery. The sub-categories are more clearly defined and stable, and so are better suited to generating a useful time series of information for interested persons.

53. We already have a number of capex reporting requirements and project and programme reporting would duplicate this reporting. We currently report on the

[17] Commerce Commission, *Information Disclosure for Electricity Distribution Businesses and Gas Pipeline Businesses: Final Reasons Paper*, at [3.115]–[3.117].
[18] Commerce Commission, *Information Disclosure for Electricity Distribution Businesses and Gas Pipeline Businesses: Final Reasons Paper*, at [3.116.1].
[19] Commerce Commission, *Information Disclosure for Electricity Distribution Businesses and Gas Pipeline Businesses: Final Reasons Paper*, at [3.116.2].

UFB programme to CIP (and will continue until UFB2 is complete). We will be reporting on connection capex through the IM reporting requirements and we may be required to complete individual capex reporting should an individual capex project be approved. In addition, many areas of our expenditure are iterative programmes with repetitive capex spend that doesn't fit with 'projects' or 'programmes'; for example, our UFB fibre connections build.

54. We are also concerned that reporting on projects and programmes will reveal information on commercially and competitively sensitive projects. Giving our competitors a higher degree of transparency about our confidential commercial strategy will reduce strategic uncertainty for our competitors, which will disadvantage us in contractual negotiations and distort competition in the market.

55. If the Commission agrees that the requirement for project and programme reporting should be removed, it will also need to update Schedule 14 to remove the "Link between forecast expenditure and network quality performance".

56. Alternatively, if the Commission decides to retain reporting on projects and programmes, the Commission should follow a "listed project" approach similar to Transpower where projects to be reported on are agreed prior to the disclosure period.

The materiality threshold is too low

57. If the Commission decides that reporting on project and programme expenditure is necessary, then we do not support the Commission's approach to setting the materiality threshold.

58. The Commission hasn't clearly explained why it has set the materiality threshold at '0.1%' of the opening allocated RAB. This is too low. Based on an estimated $5.5 billion opening RAB, the materiality threshold would be approximately $5.5 million per annum, which would mean nearly all our capex projects would be in scope for separate reporting. As explained above, this would result in duplication of reporting.

59. If a materiality threshold is needed, then the Commission should look to the thresholds for materiality for our financial reporting and NZX market disclosure obligations. Auditing standard ISA 320 says that materiality is a matter of professional judgment, but typically a threshold of 5-10% profit, 0.5-1% of revenue, or 1-2% net assets is considered an appropriate benchmark for materiality. NZX has a general rule that (when monitoring whether information has had a material effect on our share price), a 5%-10% price movement is likely to be material.[20]

60. In addition, Schedule 14 requires us to explain how our expenditure has tracked to plan. We think this explanation should be limited to "material" variances only, rather than all variances.

Sub-component expenditure items

61. The requirement to disclose sub-component expenditure items of insurance costs and research and development expenditure should be removed.

[20] NZX, *Guidance Note on Continuous Disclosure*, 10 December 2020, page 8.

62. While it is technically possible to provide the sub-components of insurance costs and research and development costs, this level of granularity is unnecessary and reporting at this level simply adds to our compliance cost.

63. Reporting at the sub-category level should be sufficient for the Commission and interested persons. If it becomes clear after PQP1, that a further level of sub-component information is needed, then we would be open to discussing and agreeing with the Commission how this information should be defined and reported. If it was needed, the Commission could then amend the ID Determination.

Other proposed changes and refinements

Expenditure categories

64. We support the Commission's proposal to use the expenditure categories from our PQP1 proposal. These categories have a clear relationship to a driver or outcome of expenditure.

65. However, while the Commission's proposal is consistent with our capex categories, it is not consistent with our opex categories. The Commission's proposed split between "network" and "non-network" is not workable for us, as network and non-network may span more than one category. For example, the asset management and technology category would include both a network and non-network component.

66. We suggest the Commission target our opex reporting requirements to the splits proposed in our PQP1 proposal: "customer", "network" and "support". We developed this three-way split for our PQP proposal because it reflects the nature of a telecommunications wholesaler, where customer-facing systems are a significant part of our operations and investment.

67. Adopting our "customer", "network" and "support" split, means Schedules 5, 7 and 11a should be amended to reflect:

    67.1 Customer sub-total representing customer operations and product, sales and marketing subcategories;

    67.2 Network sub-total representing maintenance, network operations and network, operating costs subcategories; and

    67.3 Support sub-total representing asset management, corporate opex and technology subcategories.

68. As discussed at the 18 June workshop, we would also support more aggregated reporting for capex and opex categories (i.e. just reporting at our category level, or grouping of two or more categories into a more aggregated category) if that made the information easier to prepare for other ID-regulated providers.

69. Adopting this approach would mean data is comparable between ID-regulated providers. As the regime develops over time, it may be that more granular information is required to be disclosed and the ID Determination could be amended then, once the initial requirements are bedded in. We note the experience from other ID regimes, both here in New Zealand and overseas, is that it can take multiple iterations to bed in consistent reporting across regulated providers.

Return on investment

70. The Commission detailed in the Draft Reasons Paper, a draft ROI formula based on a standard IRR calculation that takes as its inputs the opening investment, mid-year cash flows and the closing investment. However, Chorus' revenue cash flows do not align with a mid-year assessment. We have prepared a derivation of the ROI formula that we will use to calculate the ROI, and that uses the MAR formula as a starting point to adjust for this cash flow misalignment. This formula is set out in **Appendix 2**. The Commission should ensure that the IRR Excel function that solves for the ROI, reflects Chorus' amended derivation of the ROI formula.

71. Our calculations show that the Commission's draft formula over-states the ROI by 0.17% if the draft PQ WACC and draft MAR building blocks are used as inputs. The ID ROI will be most useful when it can be clearly reconciled back to the WACC.

72. Our proposed formula produces results that are consistent with the MAR. In other words, if the revenue received were equal to the MAR and if all of the actual RAB and other building block components were equal to their forecast values, then the ROI calculated by our amended formula would be equal to the regulatory WACC.

73. We note that the template Schedule 1b calculation gives the correct ROI, except in relation to the Crown financing adjustment, which should be a year-end cash flow to be consistent with the MAR calculation. However, we consider that having an accompanying ROI formula that also gives the correct ROI will make it easier to calculate ROI variances in a consistent way. Use of this mid-year cash flow-based formula would also simplify the Schedule 1b calculation while also giving the correct result.

Value of the Regulatory Asset Base

74. We support the Commission's proposed disclosure requirements in relation to the value of the RAB. We note that the IMs currently do not allow depreciation for FFLAS assets to commence until the year after the assets have been commissioned. As explained in our submission on IM amendments, this is an unnecessary divergence from GAAP, introduces operational complexity, and is a source of potential error. We have submitted that the existing IM rules be aligned with GAAP.[21]

75. Also, we note that the Draft ID Determination requires Chorus to split works under construction between unallocated and allocated assets. Where costs are shared between Chorus' copper and fibre assets, identifying the FFLAS component is challenging. While we may know where the cost has originated, we may not necessarily know or be able to identify the final asset it will settle to (i.e. FFLAS or non-FFLAS). This exercise will require us to make several assumptions using the historical information or business expert judgment of the assets these costs will likely settle to. We will need time to implement this change in our systems.

Forecast and asset management information disclosures

76. We do not support the Commission's proposal that Chorus provide Schedules 11, 11a, 12, 12a and 13 prior to the start of the disclosure year. These Schedules should be provided with the other required Schedules in one package, 5 months after the end of the disclosure year. Aligning the timing of the disclosures would be more efficient for our assurance processes, reducing the compliance burden.

[21] Chorus, *Amendments to the Input Methodologies for Fibre – November 2021 amendments*, 8 July 2021.

Aligning the timing of the disclosures would also increase their value to interested persons. The forecast Schedules (11, 11a, 12 and 12a) include actual information for the disclosure year, so it makes sense for the disclosure year to be complete before we provide these.

77. We also propose providing the report on asset management capability (Schedule 13) 5 months after the disclosure year along with the other schedules. We do not see benefit in the Commission receiving this information before the end of the disclosure year and the compliance cost to carry out a separate assurance process for a single schedule outweighs any benefit in providing the information prior to the end of the disclosure year.

78. As regards to Chorus' asset management practices, the Commission's Draft ID Determination requires completion of Schedule 13, a 42 question self-assessment questionnaire. We agree that the proposed asset management report is a sensible approach that will enable the Commission to establish a sense of each regulated provider's asset management practices.

79. However, we would appreciate further clarity on why the Commission has asked for this information so that we can ensure we are able to answer the questions to the satisfaction of the Commission. It is not clear what the Commission intends to do with the asset management information or how long they expect us to record information in this form.

80. The second part of the questionnaire refers to the ISO 55000 standard. Chorus does not compare its practices against this standard but instead uses an equivalent standard. Chorus suggests the standard reference column of Schedule 13 should be amended to refer to the relevant ISO standard "*or another equivalent industry standard*". We also note there are related asset management reporting requirements proposed for PQ,[22] and we suggest the Commission consider the alignment of these asset management reporting requirements and whether the frequency of reporting is necessary (as this would be 6-monthly in 2022 at least).

81. We note the Commission intends, at some future date, to develop requirements for an asset management plan. We already have a requirement to produce an Integrated Fibre Plan (**IFP**) with our regulatory proposals for each regulatory proposal period. There is a risk that a requirement to produce an asset management plan under ID would duplicate the IFP requirements. Rather than introducing duplicate requirements, it would make more sense to rely on the IFP.

[22] Chorus, *Submission on Price-Quality Path Draft Decision*, 8 July 2021.

Pricing and Contract Disclosures

82. We broadly support the Commission's approach to pricing and contract disclosures. However, we are concerned about:

82.1 **Scope of ID:** We do not support the Commission's proposal to include incentives in pricing disclosures. Incentives are 'expenditure', which the Commission has recognised, and the Commission and interested persons will receive enough information through our PQP1 proposal, expenditure category disclosures and contract disclosures. This disclosure requirement should be removed.

82.2 We do not support the Commission's proposal for quarterly reporting and director certification of pricing disclosures. Our prices are public and don't change frequently or materially. Under our UFB agreements (which will continue in our post-2022 CSA) and the Telecommunications Act,[23] Chorus can only increase prices once per year, following consultation with our customers. The value of quarterly reporting and director certification is clearly outweighed by the cost of compliance. Pricing disclosures and director certification should be annual, rather than quarterly.

82.3 It is unclear what level of granularity the Commission is expecting for the pricing disclosures; we propose that we report at the level of Chorus' core FFLAS products, which is shown in the list in Appendix D of our PQ submission. This list sets out our current core products that fall within the Commission's FFLAS IM Service Categories.[24]

82.4 The pricing schedules in their current format do not work for FFLAS services that are not access services. We cannot quantify connection numbers for services such as backhaul and co-location. Pricing for these services is variable, as it depends on several different factors, making it difficult to specify a 'list price' in a meaningful way.

82.5 **Commercial sensitivity:** Reporting at a more granular level than at the level of Chorus' core FFLAS products (and, in particular, in combination with reporting connection numbers) would expose information that is commercially sensitive to Chorus and to RSPs, and potentially market sensitive information. Disclosing this commercially sensitive information to competitors would be inconsistent with our competition law compliance obligations (as it would reduce competitive tension) and is contrary to the Part 6 purpose statement (as it is not consistent with what would occur in a workably competitive market).

82.6 If pricing information is disclosed at the level of Chorus' core FFLAS products as we have proposed, disclosure would not give rise to the same competitive concerns and it would still provide meaningful information for the Commission and interested persons.

82.7 Likewise, disclosure of our non-standard contracts (of which we expect there would be relatively few because of our contractual and regulatory obligations, and which would mostly involve non-FFLAS services), would

23 Telecommunications Act 2001, Sch 1AA, cl 9(6).
24 Chorus, *Submission on Price-Quality Path Draft Decision*, 8 July 2021, Appendix D.

expose information which is commercially sensitive to Chorus and to RSPs. Again, disclosing this information would be inconsistent with our competition law compliance obligations and with what would occur in a workably competitive market.

82.8 If the Commission requires this sensitive pricing and contractual information, the appropriate avenue would be a request under either section 187(1)(c) or section 221 of the Telecommunications Act, rather than via the ID regime. If the Commission is convinced this sensitive information should form part of the ID regime, then it should be exempted from public disclosure.

82.9 **Transition:** Considerable work is required to deliver new ID requirements, as some pricing disclosures are different to the way we record information in our existing systems. The Commission should apply a "reasonable efforts" standard for compliance in PQP1.

82.10 **Refinements and other proposed changes:** We propose changes to ensure the scope of the pricing and contract disclosures is appropriately targeted, clear and workable.

83. Each of the above issues is discussed in further detail in the sections that follow. Further information about the transition to implementation, our concerns around the sensitivity of information, and discussion on the requirement for quarterly reporting and director certification, is set out in paragraphs 8 to 20, 21 to 24 and 25 to 32. Our recommended changes to the ID Determination are set out in **Appendix 1**.

Incentives

84. Incentives payments are capex, and should be treated as capex, consistent with GAAP (and NZ IFRS 15 accounting standard). Incentives payments are not part of 'price', so should be removed from the pricing disclosures. Including incentives in pricing disclosures will also not achieve the Commission's objective, given the nature of incentives, as we describe more fully below.

85. We acknowledge the Commission wants more information than it gets today, so that it can better understand our incentives programme. The Commission and interested persons will get this information and understanding through our PQP1 proposal, expenditure category disclosures and contract disclosures.

86. If, after PQP1, the Commission decides it needs more information on our incentives, it can ask for it. However, the Commission must be clear whether it is appropriate for that information to be provided under ID reporting, PQ reporting, or via a specific information request. ID is best used where there is value in setting up a systematic, repeated disclosure that will build a time series of information over time. It is less well suited to information gathering that is bespoke, ad hoc or time critical.

Incentives are 'capex', not part of the 'price'

87. The Commission's starting position appears to be that incentives are part of the "price" of FFLAS, and that if they have more information on our incentives, they will better understand the "actual" prices our customers pay for FFLAS and ultimately, the "actual" prices paid by end-users.

88. As we explain more fully in our submission on the Commission's section 201 draft guidance, incentives are not part of the "price" of FFLAS. The Commission appears to have conflated the concepts of "incentives" and "discounts" and has incorrectly assumed that incentives can be attributed to the price of a FFLAS service, or to the price ultimately paid by an end-user.

89. Incentive offers change from year to year, are made separately to the provision of the underlying service and, in some cases, are calculated across a bundle of services rather than a single service. They therefore cannot be attributed to the price at which any given service is supplied.

90. In addition, any incentives are not necessarily predicated on an expectation that RSPs will make a corresponding reduction in retail prices. Our incentives are designed to encourage certain behaviours or activities from RSPs, for example, specific fibre-focused marketing activity. RSPs will choose how to apply the value of our incentive. They may choose to absorb all or part of the value. Or, they may decide to pass-through all or part of the value to end-users, which could be through additional features rather than through lower prices.

91. While we appreciate there may be times when the Commission wants to investigate wholesale prices for PQ or compliance purposes, the Commission has other more appropriate tools at its disposal to undertake these specific investigations. If the Commission wants to better understand how RSPs are flowing through the value of our incentives to end-user pricing, the Commission could use its market monitoring powers and require this information from RSPs directly.

92. We treat incentives as capex in accordance with GAAP, specifically the NZ IFRS 15 accounting standard. If incentives are part of a capex proposal (as the Commission acknowledges), they cannot also be part of the price for FFLAS. The Commission's proposal implies both an unjustifiable and confusing divergence between our regulatory disclosures and our corporate accounting and will result in incentives being accounted for twice in our regulatory disclosures: as commissioned assets and as a reduction in revenue.

93. Finally, the Commission's approach is inconsistent with the relevant definitions of "price" in the Telecommunications Act. The Commission's argument that incentives are part of the price of FFLAS is based on the reference to "related terms of payment" in s 164 of the Telecommunications Act. However, s 164 must be read together with s 5, which provides that "price" means "valuable consideration in any form, whether direct or indirect". Section 164 is an extended definition of price for the purposes of Part 6 but does not replace the definition in section 5. This follows from the fact that:

    93.1 section 164 does not itself provide a specific definition of the word "price" but rather provides that price means "1 or more of individual prices, aggregate prices, or revenues";

    93.2 section 5, in contrast, provides a specific definition of the word "price" – i.e. valuable consideration in any form; and

    93.3 section 5 states that the definition of price set out in that section does not apply in subpart 6 of Part 2A, and therefore by implication has general application to every other part of the Telecommunications Act.

94. In a transaction for the supply of FFLAS, the relevant consideration is provided by the RSP. Incentives are not part of the consideration provided by RSPs for FFLAS. They

are a separate payment made by Chorus to RSPs, under separate terms and conditions, made to secure certain behaviours or activities.

The proposed incentives disclosures are not workable and won't provide meaningful information

95. In addition to incentives not being appropriately characterised as price, the Commission's proposed disclosures on incentives are not workable and won't provide interested parties with meaningful information.

    95.1 Monthly results would be heavily skewed as our largest incentive programme is paid quarterly.

    95.2 Our incentives are often also subject to clawbacks on an annual basis, which would further skew monthly results.

96. We are also concerned by the note in Schedule 24(ii), which suggests Chorus should report on whether an incentive is available or not at an individual address level. We don't currently report on this level of granularity and it is not clear why the Commission thinks this level of granularity is necessary. The same note does not appear in the equivalent schedule for ID-only regulated providers and is not referenced in either the Draft ID Determination or the Commission's Reasons Paper.

97. It is also not clear whether the draft ID Determination requires reporting on areas where an incentive is not available simply because the product is not available in that area.

Granularity of pricing disclosures

98. The Commission proposes pricing disclosures in Schedule 24 by "Regulated FFLAS". However, it is unclear what level of granularity the Commission is expecting for the pricing disclosures, because of the reference to "List prices" in columns O and Q of Schedule 24 (i).

99. We propose that we report Regulated FFLAS at the level of Chorus' core FFLAS products, which is shown in the list in Appendix D of our PQ submission.[25] This list sets out our current core products that fall within the Commission's FFLAS IM Service Categories. This approach would require amendments to columns O and Q in Schedule 24(i) to enable us to provide a range of prices in these columns.

100. In addition to the current Chorus core FFLAS products, we can include the four speed groupings under Bitstream 2 as these groupings currently represent over 90% of our connections.

101. Providing pricing information at this level of detail would provide the Commission and interested parties with sufficient information to assess whether the purpose of the ID regime is being met, and would provide a useful view of pricing trends over time on our Regulated FFLAS services.

102. Reporting pricing information of our Regulated FFLAS at a more granular level, for example at a plan level, has not been justified and would produce an excessive amount of detail that would not be meaningful for interested persons - we have

25 Chorus, *Submission on Price-Quality Path Draft Decision*, 8 July 2021, Appendix D.

more than 190 billed plans for access services alone across layer 1 and layer 2, with, in some cases, multiple price points under a plan.

103. Reporting pricing information at a plan level (and, in particular, in combination with reporting connection numbers) would raise significant confidentiality concerns. At a more granular level, the Commission's proposed disclosures would result in regular and detailed publication of Chorus's confidential and commercially sensitive information about our connections, price points and speeds, and would include information which is commercially sensitive to RSPs. For example, our competitors would have access to granular information about the number of connections on each plan, together with the prices for each plan. This information is not currently available. There has been no reason provided that would justify granular and commercially sensitive pricing information being made available as part of ID.

104. The result would be that granular, commercially sensitive pricing information would be available to be used by our competitors for competitive purposes. RSPs with competing services could use our pricing information to determine 'the size of the prize' and what they would need to offer in terms of price or speed to target any given connections on a particular plan. Further, MNOs with competing alternative products will obtain additional granular information that they do not have today about the plans that their competitors' customers are on, which would give them a competitive advantage.

105. Disclosure of this commercially sensitive information to competitors is contrary to the Part 6 purpose statement because it is not consistent with what would occur in a workably competitive market. It is not a legitimate means of promoting competition to advantage certain competitors by requiring disclosure of competitively sensitive information. To the contrary, disclosure will distort competition and reduce competitive tension.

Contracts

106. We support the draft ID requirements for **standard contracts**, with minor clarifications and amendments to clarify the regime (that would apply across both standard and non-standard contracts). We have set out information about each of these amendments in **Appendix 1**.

107. However, we do not support the draft ID requirements for **non-standard contracts**, as they are very likely to lead to the disclosure of information which is commercially sensitive to Chorus and to RSPs. Our non-standard contracts should be exempted from public disclosure.

108. While we are not required to disclose price in relation to non-standard contracts, the effect of the proposed requirements for non-standard contracts, is that our pricing will be revealed. Unlike for standard contracts, there is no requirement for non-standard contracts that there must be a certain number of access seekers which have the same prescribed terms and conditions. Where there are only one or two access seekers under a non-standard contract, which we would expect to be the case, the disclosure of target revenue under clause 2.3.28(1)(iii), and the disclosure of quantity (as part of the prescribed terms and conditions), would essentially require disclosure of Chorus's pricing for these non-standard contracts to competitors.

109. We expect there would be relatively few non-standard contracts, and these would largely involve non-FFLAS services. Chorus' existing contractual obligations in

respect of the supply of FFLAS originate from the UFB reference offer agreed with the Crown which are uniform terms offered to all RSPs. That combined with Chorus' non-discrimination and equivalence obligations means that our initial analysis has identified very few instances of potential non-standard contracts. However, if we do have any non-standard contracts, they should be exempted from public disclosure, as they are very likely to lead to the disclosure of information which is commercially sensitive to Chorus and to RSPs.

Refinements and other proposed changes

Pricing disclosures

110. While the requirement to report on connection numbers in Schedule 24 works for Regulated FFLAS that are access services, it doesn't work for Regulated FFLAS that are not access services.

111. For co-location and backhaul services, there is no correlation between the relevant services and connection numbers. Co-location and backhaul are effectively aggregation services, which may serve both FFLAS and non-FFLAS. We would only have limited visibility of connection numbers served by co-location and backhaul services due to RSP routing, and we would not be able to quantify connection numbers for these services.

112. Pricing for these services will also be very complex and variable as it depends on several different factors, making it difficult to specify a 'list price' in a meaningful way. If we were required to list every possible price based on a particular combination of factors, this would produce an excessive level of detail that would not be meaningful for interested persons. Pricing for co-location services depends on central office definition (which has five options), footprint size (per square metre or standard footprint) and power consumption (which has three options). Pricing for backhaul services will depend on different factors, including distance and speed. The pricing schedules in their current format are not workable for Regulated FFLAS that are not access services for these reasons.

113. We also ask the Commission to clarify:

113.1 **The definition of 'Central Office':** Schedule 24(i) requires Chorus to report on service availability at the level of Central Offices (**CO**). The definition of 'Central Office' in the Draft ID Determination includes 'cabinets'. This is different to the definition of 'Central Office' under Chorus' current Part 4AA ID requirements, which defines Central Offices as exchanges servicing the UFB network. It is not meaningful or relevant for Chorus to report on service availability at the level of cabinets other than for those fibre cabinets that contain active equipment and have been designated as Central Offices within our network. To address this, the Commission should limit reporting on service availability to exchanges and to those fibre cabinets that contain active equipment and have been designated as Central Offices.

113.2 **Connection charges under Schedule 24(i):** The requirement to calculate an ARPU connection based on the number of opening and closing connections will not make sense where the relevant charges will only be earned on new connections, not on existing base connections. The calculation of ARPU connection charges in column AA of Schedule 24(i) should be adjusted to reflect that this charge is only levied on new connections. We expect that 'Other Charges' would predominantly include

one-off items, rather than recurring charges. On that basis, it similarly would not be appropriate to apply Other Charges across the whole base.

Contract disclosures

114. Further, while we are not required to disclose price in relation to non-standard contracts, the Schedule 24 pricing templates do not distinguish between standard and non-standard contracts. Schedule 24 should be amended to clarify that non-standard contracts are not intended to be captured by this pricing disclosure requirement.

115. Finally, clause 2.3.28(3) of the Draft ID Determination requires Chorus to publicly disclose "any criteria or methodology used for determining prices for access seekers on non-standard contracts". However, this is not consistent with clause 5.51 of the Reasons Paper, which provides that disclosure of the methodologies used to determine pricing is not required under the initial ID Determination. We agree that pricing methodologies should not be provided at this stage. This disclosure requirement should be removed.

116. Additional minor amendments are required to the contracts disclosure regime to ensure the scope of the disclosures is appropriately targeted. We have set out information about each of these amendments in **Appendix 1**.

Asset management and network characteristics

117. We broadly support the Commission's approach to disclosure of asset management and network characteristics information in the Draft ID Determination.

118. However, we have some concerns around:

118.1 **Scope of ID:** We suggest changes to the Commission's proposed reports on network capacity and network demand to remove unnecessary requirements and ensure these reports produce accurate and meaningful information.

118.2 **Commercial sensitivity:** ID-only asset information is commercially and competitively sensitive, as exposure would give insight of our investment in LFC areas, to our competitors. Reporting on revenue and connections will also be commercially and competitively sensitive if the reporting is required at a more granular level than at the level of Chorus' core FFLAS products. Disclosing this commercially sensitive information to competitors would be inconsistent with our competition law compliance obligations (as it would reduce competitive tension) and is contrary to the Part 6 purpose statement (as it is not consistent with what would occur in a workably competitive market).

118.3 If the Commission requires this sensitive information, the appropriate avenue would be a request under either section 187(1)(c) or section 221 of the Act, rather than via the ID regime. If the Commission is convinced this sensitive information should form part of the ID regime, then it should be exempted from public disclosure.

118.4 **Transition:** The requirements proposed by the Commission for asset volumes and asset condition reflect a mature regime and networks for which proactive maintenance is an optimal strategy. We can provide the limited asset volume information we have today in our operational systems but note it has varying levels of accuracy and would not be accurate from 1 January 2022. We recommend deferring the asset condition requirements to PQP2. Transitional measures will also be required for network capacity reporting requirements as we do not currently have a system in place that produces a report in the format requested by the Commission. The Commission should apply a "reasonable efforts" standard for compliance in PQP1.

118.5 **Refinements:** We propose minor changes to Schedule 12 and 12a.

119. Each of the above issues is discussed in further detail in the sections that follow. Further information about the transition to implementation and our concerns around the sensitivity of information, is set out in paragraphs 8 to 20 and 21 to 24. Our recommended changes to the ID Determination are set out in **Appendix 1**.

Report on network capacity and utilisation

120. Under Schedule 12, we are required to provide information on network capacity and five-year forecasts on network capacity measures by POI area.

121. Most of the information requested in Schedule 12 is reasonable and useful for the Commission and interested persons. However, some changes are needed to

remove granular information requirements that we do not currently prepare and that would not be accurate or meaningful to the Commission or interested persons.

122. These changes are:

122.1 The utilisation metric in column Q should be changed from "% fill (lit fibres)" to "Central Office (CO) to fibre flexibility point (**FFPs**), with percentage fill greater than 85%" (or agreed level). We think this would be a more meaningful metric because it more closely aligns to how we monitor capacity in the network. Aggregating data to populate the proposed column '% fill' would result in a metric that is unlikely to be meaningful and may lead interested persons to make incorrect conclusions.

122.2 The requirements for forecast information in columns H, J, L, N, P and R should be removed:

a. We don't currently forecast P2P or GPON connections at the POI level, as required in columns H and J. We consider that forecasting at this level would be too granular to be accurate or meaningful at this time.

b. We don't currently forecast the number of FFPs with FFLAS fibre connections and the number of GPON end-users from FFPs, as required in columns L and N. We do not currently forecast this information as it would not be meaningful for decision-making.

c. We don't forecast the CO to FFP capacity (total fibres) or the % fill (lit fibres) at the level required in columns P and R. Instead, we use a demand forecast combined with actual network capacity monitoring to form a view on expected network capacity and required investment.

122.3 The requirement in columns S and T to provide information on premises passed should be removed. This measure was useful during the UFB build, as it related to our contractual requirements with CIP, but is no longer useful under the new fibre regime that applies to a built network. The key driver of premises passed is now infill developments, which we do not have visibility of until we receive an installation request. In addition, given the wide variation in connection to premises ratio, the information may not be meaningful and may in fact be misleading to the Commission and interested parties.

122.4 A few changes are required to the POI areas to align these areas to the existing POI areas that we use in our reporting to CIP. This would involve:

a. grouping Waiheke Island, Waiuku and Pukekohe into the Auckland POI area,

b. adding Fielding into the Palmerston North POI area, and

c. removing 'The Rest of NZ' POI as this is not a POI area (connections in 'The Rest of NZ' would be aggregated under their respective POIs).

123. Work will be required to update our operational systems to produce the report in the format requested by the Commission, even with our proposed changes. For this reason, the network capacity reporting requirements should be subject to a transitional period. We have set out further information about the proposed transitional period in paragraphs 8 to 20.

Report on network demand

124. Under Schedule 12a, regulated providers are required to provide observed and forecast information on demand for the current and following five disclosure years, by POI area.

125. While we consider most of the information requested in Schedule 12 is reasonable and useful for the Commission and interested persons, some changes are needed to produce more meaningful information for the Commission and interested persons:

    125.1 Rather than reporting on aggregate maximum peak demand across all ports by POI area, it would be more appropriate to report on peak throughput. Peak throughput is the sum of demand across all handover ports nationally in the busiest 15 minutes of the year, measured in terabits per second (**Tbps**). We consider this measure is equivalent to the measure proposed by the Commission.

    125.2 Average throughput per user (**ATPU**) could then be calculated in the schedule by dividing peak throughput by connection volumes. This would replace the peak to average ratio proposed from row 101 in Schedule 12a. Our approach to forecasting is to use expected ATPU growth at a national (or global) level and apply the growth rate to actual ATPU rates at a POI level. The drivers of demand are at a national (or global) level which is why this forecast approach is appropriate. This forecast approach would drive the forecast ATPU numbers that would be populated in schedule 12a.

126. The Commission will also receive granular port utilisation reporting under schedule 19, which will give the Commission enough information to monitor network capacity.

Revenue and connections

127. Schedule 12a requires disclosure of GPON connections for the current and future five years split at the product level (a "demand forecast"), while Schedule 7 requires PQ FFLAS and ID-only FFLAS for the year prior split by connection revenue, monthly access revenue and other product revenue. We agree that the proposed approach to revenue and connections information is achievable and suitable to meet the purpose, provided the reporting is at the level of Chorus' core FFLAS products.

128. However, we would appreciate further clarity on:

    128.1 It is unclear if GPON connections at the product level is intended to mean each suite of products or at each individual price point of a product. We consider that this information should be provided at the level of Chorus' core FFLAS products, which is shown in the list in Appendix D of our PQ submission. To require the individual price points would require further internal resources and heighten our cost of compliance, disproportionate to the purposes for which this information is required. This aligns with our position on the granularity of pricing disclosures.

    128.2 Whether the Commission intends Schedule 12a to include or exclude P2P information. FFLAS revenue comprises fibre GPON, fibre P2P as well as some other products and backhaul. Schedule 12a requests only GPON connections, a narrower segment of our FFLAS revenue. It would be more

appropriate to provide both GPON and P2P information. Without P2P information our disclosures would be incomplete and will not easily reconcile to the current market disclosure updates we give on fibre connection information.

Asset volumes and asset condition

129. We agree that information on our asset volumes and asset condition is useful information for the Commission and interested persons. However, the requirements the Commission proposes are new for us and reflect a mature regime. Schedules 10a and 10b require fibre asset volume, asset condition, percentage forecast to be replaced in the next 5 years, forecast cost of assets to be replaced in the next 5 years, and the age profile of assets.

130. The proposed disaggregation of asset classes is not how we record asset volume information in our operational systems. While data accuracy has a value set of 1 to 4, no definitions are provided, and we would need this rating system to be clarified. We cannot create the appropriate internal systems and processes to be in place from 1 January 2022. It is also not possible for us to identify at this stage all practical implementation issues (which would need to be done between November 2021 and 1 January 2022).

131. We cannot provide a forecast of assets to be replaced in the next 5 years because we forecast our capex using outcomes and not asset classes. We think forecast information should only be provided from PQP2 (as discussed in the table in paragraph 24) and therefore we request a deferral of this requirement. This will give us time to focus on implementing PQ activities.

132. We do not have asset condition reporting available today, primarily because of the age of our fibre network. Asset condition reporting in Schedules 10a and 10b should be deferred until at least PQP2 once we have had more time to develop our reporting capability.

133. Most of the asset classes proposed by the Commission make sense, but we recommend the following clarifications and refinements.

    133.1 Remove the breakdown of cabinet distribution fibre, backhaul fibre, feeder fibre, direct fed fibre and fibre route length and report fibre optic cable in one line. Splitting fibre cables into these categories requires an arbitrary split. While this categorisation may be relevant in an EDB context, this doesn't reflect the way the assets are built or configured in the Chorus network - where individual cables, and even fibres within a fibre cable can have multiple uses. Responding to this level of granularity will be potentially misleading and irrelevant.

    133.2 OFDF should be reported in one line as the split between 24 port, 48 port and greater than 48 port is not meaningful.

    133.3 Network land and buildings should be reported as one category. We don't think there is benefit in splitting between access, mesh, core, handover as a building may serve multiple purposes and may change over time.

    133.4 Network spares are held in distribution centres around the country. While they are held as spares, we do not distinguish whether they will be used in PQ or ID-only areas. We can only do this reporting at a National level.

134. ID-only asset information is commercially and competitively sensitive information. Publishing this information would give insight to our competitors of our investment in LFC areas. If the Commission does not agree with our position on deferring these requirements to PQP2, then we should not be required to publicly disclose our ID-only information on asset volumes and asset condition.

Other proposed changes and refinements

135. We note that there appears to be a typo in Schedule 11. Schedule 11(iii) (report on forecast capital expenditure) requires capex to be split based on customer type, while schedule 6(iii) (report on historical capital expenditure for the disclosure year) requires capex to be split by project or programme. If this is not a typo, we ask that the Commission provides further detail on what is meant by customer type to ensure that we do not duplicate connection capex reporting.

Quality metrics and performance measures

136. We do not support the Commission's approach to disclosure of quality metrics and performance measures. Our concerns are:

136.1 **Scope of ID:** A different approach is required to the scope and content of the quality disclosures. Some of the disclosures and the granularity required have no clear relationship to the purpose of disclosure, or would require significant cost to Chorus in preparing the information that would outweigh any benefit to the Commission or interested parties by having access to this information. There are also disclosures that we cannot complete.

136.2 **Commercially sensitivity:** Quality disclosures are commercially sensitive. Granular information disclosures may be used by competitors to prejudice Chorus' commercial position. If the Commission requires this sensitive information, the appropriate avenue would be a request under either section 187(1)(c) or 221 of the Act, rather than via the ID regime. If the Commission is convinced this sensitive information should form part of the ID regime, then it should be exempted from public disclosure.

136.3 **Transition:** It is not clear whether the Commission has intentionally changed or expanded upon UFB measures or whether the intent is that we continue our current reporting. The Commission should therefore hold a technical workshop on the proposed quality disclosures before it reaches any final decisions. We cannot start producing new or altered measures by the implementation date, nor will we know for certain how challenging implementation will be until we start putting them in place. The Commission should therefore apply a "reasonable efforts" standard for compliance in PQP1.

137. Each of the above issues is discussed in further detail in the sections that follow. Further information about the transition to implementation, our concerns around the sensitivity of information, and discussion on the requirement for quarterly reporting and director certification, is set out in paragraphs 8 to 20, 21 to 24 and 25 to 32. Our recommended changes to the ID Determination are set out in **Appendix 1**.

Proposed quality disclosures go beyond the purpose of ID and are impractical

138. The Draft ID Determination extends, and amends quality disclosures currently required under our UFB service level reporting and Part 4AA. We have concerns about the scope of these disclosures:

138.1 some of the disclosures and the granularity required go further than is required to meet the purpose of disclosure; and

138.2 there are several disclosures that we are unable to complete, and that go beyond the information recorded by our existing systems.

Proposed quality disclosures go beyond the purpose of ID

139. The quality metrics and performance measures required to be disclosed in Schedule 19 are extensive and granular, covering the dimensions of provisioning, availability, faults, performance and customer service.

140. The purpose of these disclosures is, and should be, limited to monitoring by the Commission and interested parties to ensure we have incentives to provide quality of service demanded by end-users by monitoring our operation of the network and services.

141. Instead, it appears the Commission proposes to use ID as an opportunity to gather detailed information about the telecommunications services end-users are receiving. If the Commission wants to better understand the telecommunications services that end-users receive, it can and should request regular disclosure about these services by using its market monitoring powers and by requiring that information from RSPs directly.

142. It is not the role of ID to monitor Chorus' performance of its contractual obligations to its RSP customers. The service level terms in our fibre services agreements require us to report against service level performance every month. This is timely information provided to enable our customers to assess performance against our obligations to them. It is not the role of ID to address issues which should be resolved commercially.

143. We consider that a better approach to determining the scope of disclosures would be to:

    143.1 use the UFB measures and reports from the UFB contract service level reporting requirements as a starting point, removing those which are no longer necessary; and

    143.2 consider where the market context and other regulatory requirements mean there are reasonable grounds to believe Chorus has the incentive and opportunity to allow FFLAS quality to deteriorate which would not be detected by the remaining measures from UFB. Only then should new or expanded measures be imposed and only in a manner that is proportionate with the purpose.

144. There are several disclosures that would result in significant cost to Chorus that would far outweigh any benefit to the Commission or interested parties by having access to this information. Those disclosures include measurement of traffic performance on all FFLAS connections (described below).

145. Other disclosures require information that is unlikely to tell the Commission anything relevant to the purpose of ID. For example, a granular breakdown by geography and ID FFLAS type of the proportion of simple new connection orders that take ≥ 50 calendar days to complete. These numbers are unlikely to be meaningful as most prolonged delays will be due to the customer or a third party, and in smaller POI areas the sample sizes are likely to be so small the output percentages will be meaningless.

146. Given the complexities and cost associated with providing this information relative to the benefit that would be obtained through having access to this information, we suggest that the Commission excludes these requirements from the Draft ID Determination or clarifies that the intent is for existing UFB reporting to continue.

If the Commission later considers that this information is necessary to meet the purpose of ID, it can make an amendment to the Draft ID Determination to request this information.

Some proposed quality disclosures are impractical

147. It is not always clear from Schedule 19 and the accompanying definitions whether the Commission has intentionally changed or expanded upon UFB measures or whether the intent is that we continue our current reporting. Amendments should clarify these points. For example:

147.1 **'Cycle time' for P2P services:** The Draft ID Determination proposes provisioning for all FFLAS to be broken down into simple and complex. The decision to include this is likely based on the provisioning 'cycle time' service level included in our GPON services such as Bitstream 2. The cycle time service level for GPON services was introduced to solve a particular problem – residential installs which were languishing. The Commission claims its draft decisions on provisioning are consistent with reporting practices under the UFB contracts but it appears to have expanded the 'cycle time' distinction to cover all FFLAS connections including P2P services. Currently, our customer contracts require us to treat all P2P installations as complex but this does not align with the Commission's proposed definitions. Therefore we must assume the Commission intends us to reclassify P2P installations based on its definitions. This would require changes to operational processes, including potential changes to categorisation in the field. We may also need to consider changing our customer contracts to align with the Commission's reporting requirements (to avoid two different approaches to 'complex') – though this may not be possible if existing definitions are incorporated into declared services regulations.

147.2 **Measurement of traffic performance on all FFLAS:** The Draft ID Determination appears to require direct measurement of traffic performance on all FFLAS. The UFB contracts set traffic performance service levels for all UFB fibre bitstream services but it was soon realised that direct measurement of traffic performance on all services was impractical. Accordingly, Chorus and CIP agreed and incorporated into the UFB contracts and fibre Reference Offer the Layer 2 Performance Measurement and Reporting Regime. This requires us to measure traffic performance by port utilisation, a sample set of OLT reference probes and by OAM probes on request if an RSP can provide reasonable evidence the service may not be complying with traffic service levels.[26] The Draft ID Determination appears to require OAM probes on every connection to the fibre network. This is a significant departure from agreed UFB processes and will involve costly network changes which may impact network performance. This is also inconsistent with Reference Offer contractual terms and potentially anchor service requirements (which incorporate existing layer 2 measurement and reporting requirements).

148. The above examples illustrate the real practical difficulties that result from seemingly small departures from existing obligations. It is for these reasons we would like the Commission to be explicit where any particular measure is intended to be continuation of what we report for UFB today or a new or expanded measure.

[26] https://www.crowninfrastructure.govt.nz/wp-content/uploads/2011/12/UFB-Performance-Management-and-Reporting-17-Nov.pdf.

Where measures are new or expanded there should be clear reasons for the addition/expansion tied to the purpose of ID, and consideration of the time and expenditure needed for implementation.

149. There are also some proposed disclosures which do not make sense. For example, the Draft ID Determination proposes disclosure of layer 1 intact provisioning performance for remote activation. Any change to layer 1 requires a truck roll and physical intervention, not something that can be achieved remotely.

150. These examples illustrate that the scope, descriptions, and granularity of the proposed quality disclosures need to be rethought. We think our proposed approach described in paragraph 144 is likely to lead to more practical quality disclosures consistent with the purpose.

Additional expenditure would be required to meet quality disclosure requirements

151. Our PQP1 expenditure proposal did not take into account the possibility of significant changes to systems and processes (and even the network itself) in order to meet ID reporting requirements. For example, if probes are required to be deployed to directly measure traffic on every service on the fibre network this will be a significant expense.

152. If these kinds of disclosures are to be required, they will need to be supported by the expenditure necessary to meet them. In revising the scope of proposed quality disclosures, the Commission should take into account the costs of its proposals, which will ultimately be borne by consumers, and whether they can be justified by reference to the purpose of ID. The Commission must also consider the effect of its decisions on our expenditure proposal including any allowance for new or additional disclosures.

Confidentiality concerns

153. Chorus' connection numbers, required to be recorded monthly by POI area and FFLAS type, are highly commercially sensitive. We generally disclose connection numbers as part of our market disclosure obligations every quarter approximately one month following the end of the quarter.[27] The information included in our market disclosures presents our connection information and information about our mix of fibre services at a far more aggregated level than is proposed to be included in Schedule 19 of the Draft ID Determination for the purpose of determining average downtime. This approach has been developed to give investors the information they need to assess Chorus' performance at a frequency and level of aggregation which doesn't risk exploitation by competitors.

154. We understand that the Commission may need access to commercially sensitive information in order to assess the effectiveness of Part 6 arrangements, but we are concerned the Commission does not appear to have taken the sensitivity of information into account in setting its proposed disclosure requirements.

155. Where the Commission determines the granular quality disclosures to be necessary to monitor performance, we consider that there are two options to mitigate the risk that competitively and commercially sensitive information is disclosed:

[27] See for example: http://nzx-prod-s7fsd7f98s.s3-website-ap-southeast-2.amazonaws.com/attachments/CNU/370669/344182.pdf.

155.1 **Commission-only disclosures:** Granular quality disclosures, especially if they are required on a frequent basis as is currently proposed, should either be requested under either section 187(1)(c) or section 221 of the Act, rather than via the ID regime. If the Commission is convinced this sensitive information should form part of the ID regime, then it should be exempted from public disclosure section 188(3)(d) or section 222 of the Act.

155.2 **Limiting frequency and timing of disclosures:** Information loses its ability to skew competition as it ages. Accordingly, we consider it would be more appropriate to limit the frequency and timing of disclosures to annually, following audit and certification. For example, the Open Access Deeds of Undertaking provide that information more than 18 months old cannot be "Commercial Information" recognising that beyond that information loses its ability to impact competition and therefore doesn't need to regulated. This supports limiting the frequency and timing of disclosures to an annual basis and also reinforces the need to ensure all disclosures and levels of granularity have a purpose.

156. If the Commission does not limit disclosure by requiring less granular information, or by changing the timing of the disclosures such that the commercial sensitivity of the information is mitigated, then Chorus and other regulated providers would need to apply for extensive section 222 exemptions to protect this information. An exemption period of 18 months, as is used in the context of the Open Access Deeds of Undertaking for limiting Commercial Information, is a good precedent for the exemption that would be required. That said, the first question is whether this information should be required in the first place because it is necessary to monitor an identifiable issue.

Transition to new ID regime

157. It appears that the Commission intends to require measurement and disclosure of all quality measures immediately. It is entirely unworkable to issue a Determination in November 2021 with quality measures required from 1 January 2022. For this reason, quality measures should be subject to a transition to implementation as set out in paragraphs 8 to 20.

158. Finally, where we have previously disclosed information to the Commission about the quality of our services, we have been very clear on the limitations of the information:

158.1 Our quality reporting extracts operational information directly from the relevant systems. This means that the information may contain errors due to the fact that our systems are deployed in a complex operational environment, with data entered in some cases directly from field activities.

158.2 Information is generated and held by us in our systems for particular purposes. It is also often intended to be used by staff and third-party contractors familiar with the information, the systems and their limitations. Accordingly, caution is necessary before using information for other purposes or in selecting particular elements of information for use outside of its business context.

159. CIP is familiar with the limitations of our quality reporting for the reasons described above. Our current approach strikes a balance between accuracy and cost-effectiveness. We will need time to work with the Commission to resolve errors or

deficiencies resulting from these limitations and find a balance the Commission is comfortable with.

Other proposed changes and refinements

160. Attachment B of the Reasons Paper states that the first disclosure is required on 31 March 2022 (i.e. the first quarter from the implementation date). We assume this is an error as it will not be possible to disclose performance for a quarter on the final day of that quarter. Rather, the timing of the first disclosure should align with clause 2.3.5, which requires Chorus to complete and publicly disclose a report on quality no later than one month after the end of a quarter.

Appendix 1: Our proposed amendments to the ID Determination

We have set out below the amendments that are required to the Draft ID Determination to ensure a fit for purpose ID regime, that can be implemented from 1 January 2022, while providing for a staged approach. Additional amendments may be required for consequential changes.

We recommend the Commission exercises restraint at this point. The initial requirements can be amended or added to, if required, as the ID regime beds in.

Reference	Disclosure Requirement	Change needed	Reasoning
Staging and transitional arrangements			
N/A	N/A	Specify an obligation to use 'reasonable effort' to comply with ID requirements (rather than strict liability).	Refer paragraphs 18-20 of our submission.
N/A	N/A	Relieve regulated providers of liability for non-compliance in PQP1, provided the 'reasonable efforts' standard is met.	Refer paragraphs 18-20 of our submission.
N/A	N/A	Determine a minimum package and defer remaining requirements until PQP2. Reassess need as part of PQP2 decision-making. At least the following should be deferred to PQP2: 1. Asset volume and condition reporting 2. Annual five-year rolling forecast 3. Sub-component expenditure items 4. Information on incentives	Refer paragraphs 18-20, 38-45, 61-63, 118, 129-134, of our submission.

Director certification and assurance			
Cl 2.3.5	Quarterly reporting	Amend requirement so that reporting (and consequently director certification) of pricing and quality information is annual, rather than quarterly.	Refer paragraphs 25-32 of our submission.
Cl 2.5	Assurance opinion: quality measures	Express the assurance opinion for those quality measures in the negative – for example: "…based on the work performed, as described in this report, nothing has come to our attention…".	Refer paragraphs 25, 33-35 of our submission.
Sch 14	Assurance opinion	Exclude mandatory explanatory notes from scope of the auditor's opinion.	Refer paragraphs 25, 33-35 of our submission.
Financial Disclosure Requirements			
Cl 2.3.3	Forecast disclosure	Defer requirement to PQP2 and amend requirement so that forecast disclosures are not required in the years in which Chorus submits an expenditure proposal or the Commission determines the PQP for the next period.	Refer paragraphs 38-45 of our submission.
Sch 11, 11a, 12a CY+4, CY+5.	Forecast disclosure	Remove outer forecast years from public disclosure.	Refer paragraph 45 of our submission.
Cls 2.3.1 (16), 1.4.3, Sch 8	Consolidation statement	Remove requirement.	Refer paragraphs 46-48 of our submission.
Cl 2.3.23, Sch 6	Material projects and programmes disclosures	Remove requirement.	Refer paragraphs 49-56 of our submission.
Sch 14(14), (16), (17).	Material projects and programmes disclosures	Remove link between forecast expenditure and network quality performance.	Refer paragraphs 49-56 of our submission.

Cls 1.4.3; 2.3.23	Material projects and programmes disclosures	If project reporting is required, adopt listed project approach to determining major projects and programmes.	Refer paragraphs 49-56 of our submission.
Cl 1.4.3	Materiality threshold in definition of "material project or programme"	If material project or programme reporting is required, the Commission should look to the thresholds for materiality for our financial reporting and NZX market disclosure obligations.	Refer paragraphs 57-59 of our submission.
Sch 14, cl 17	Variance between forecast and actual expenditure	Limit to "material" variances only.	Refer paragraph 60 of our submission.
Sch 5(ii), Sch 6(viii), Sch 7 (iv), Sch11(i), Sch 11a	Sub-component expenditure items	Remove sub-component expenditure items of insurance costs and research and development expenditure.	Refer paragraphs 61-63 of our submission.
Schs 5(i), 7, 11a	Expenditure categories	Amend schedules 5, 7 and 11a to reflect expenditure categories of "customer", "network" and "support." Amend schedules 5, 7 and 11a to reflect: 1. Customer sub-total representing customer operations and product, sales and marketing subcategories; 2. Network sub-total representing maintenance, network operations and network, operating costs subcategories; and 3. Support sub-total representing asset management, corporate opex and technology subcategories.	Refer paragraphs 64-69 of our submission.
Sch 5, 6, 7, 11, 11a	Expenditure categories	We would support more aggregated reporting for both capex and opex categories, i.e. just reporting at Chorus' category level, or grouping of 2 or more	Refer paragraphs 68-69 of our submission.

		categories into a more aggregated category.	
Schs 1a, 1b, 1c	Return on investment formula	The Commission needs to ensure the IRR Excel function that solves for the ROI, reflects Chorus' amended derivation of the ROI formula.	Refer paragraphs 70-73 of our submission.
Cl 2.3.3	Forecast and asset management disclosures disclosed prior to the start of the disclosure year.	Amend requirement so that forecast and asset management disclosures (Schedules 11, 11a, 12, 12a and 13) are disclosed along with other Schedules, 5 months after the end of the disclosure year.	Refer paragraphs 76-77 of our submission.
Sch 13	Asset management self-assessment questionnaire	Amend the standard reference column of Schedule 13 to refer to the relevant ISO standard "or another equivalent industry standard"	Refer paragraphs 78-80 of our submission.
Pricing and Contract Disclosures			
Pricing Disclosure Requirements			
Sch 24(ii) (Incentives – PQ and ID-only), Sch 26	Reporting requirements for incentives, pricing report definitions	Remove Sch 24(ii) (Incentives – PQ and ID-only sheets) and flow through consequential changes to Sch 26.	Refer paragraphs 82-97 of our submission.
Cl 1.4, Column E of Sch 24, Sch 26	Regulated FFLAS	Clarify that column E, "Regulated FFLAS" requires reporting at the level of Chorus' current core FFLAS products, which is shown in the list in Appendix D of our PQ submission. Flow through any consequential changes to cl 1.4 and Sch 26.	Refer paragraphs 82, 98-105 of our submission.
Columns O and Q (List prices) of Sch	Provide List Prices	Amend columns O and Q so that a range of prices can be provided in these columns.	Refer paragraphs 98-105 , 110-113 of our submission.

24(i) (Pricing – PQ and ID-only)		Amend requirement so that it only applies to Regulated FFLAS that are access services.	
Rows K-M (Active Connections) of Sch 24(i) (Pricing – PQ and ID-only)	Report on connection numbers for all Regulated FFLAS	Amend requirement so that it only applies to Regulated FFLAS that are access services.	Refer paragraphs 98-105 , 110-113 of our submission.
Cl 1.4.3	Definition of 'central office'	Amend the definition of 'central office' as follows: central office means: • a physical building ~~or cabinet~~ used to house a termination point of a fibre network; and • includes a fibre cabinet that contains active equipment and has been designated as a central office by the regulated provider	Refer paragraph 113 of our submission.
Column AA (ARPU Connection charge) of Sch 24(i) (Pricing – PQ and ID-only)	Calculation of ARPU Connection Charges	Calculation should be adjusted to reflect that this charge is only levied on new connections.	Refer paragraph 113 of our submission.
Column AE (ARPU Other charges) of Sch 24(i) (Pricing – PQ and ID-only)	Calculation of ARPU Other Charges	Calculation should be adjusted so that other charges are not a recurring charge and should not be applied across the whole base.	Refer paragraph 113 of our submission.
Contract Disclosure Requirements			
Sch 24(i) (Pricing – PQ and ID-only)	Providing pricing information	Commission should clarify that non-standard contracts are not intended to be captured by pricing disclosure requirements in Sch 24.	Refer paragraph 114 of our submission.

Cl 1.4.3	Definition of "non-standard contract"	Amend the definition of "non-standard contract" as follows: non-standard contract means a contract for the provision of regulated FFLAS between an ID-regulated provider and an access seeker that […].	This amendment would achieve consistency with the definition of **standard contract**.
Cl 1.4.3	Definition of "prescribed terms and conditions"	Clarify "quantity" requirement.	We need clarity on what is required to be disclosed in relation to terms and conditions that determine the quantity or amount of goods/services, and how this differs from the requirement to report quantity under the pricing schedules. The Commission should ensure there is no duplication. Assessing quantum would be complex for services that are not access services.
Cl 2.3.28	Disclosure of comparative information	Clarification that disclosure under clause 2.3.28 is subject to section 188(4) of the Act: Subject to s 188(4) of the Act, before the start of a disclosure year …	The Commission generally acknowledges that contract disclosures are subject to section 188(4) of the Act, and for consistency should do so in clause 2.3.28.
Cl 2.3.28	Disclosure of comparative information	Clarification that disclosure under clause 2.3.28 is not required before the start of **disclosure year 2022**. For example, insert new (5): in respect of **disclosure year** 2022, each ID-regulated provider is not required to disclose the information set out in clauses 2.3.28(1)–(4).	To align the Draft ID Determination with Attachment B of the Reasons Paper.
Cl 2.3.28(1)(b)	Disclosure of target revenue	Clarification that disclosure relates only to regulated FFLAS:	Clause 2.3.28(1)(b)(iii) requires Chorus to disclose the target revenue that it expects to collect in a disclosure year under all equivalent non-standard

		the target revenue the ID-regulated provider expects to collect in the disclosure year from the provision of regulated FFLAS under …	contracts. A non-standard contract could include the provision of FFLAS as well as other services that are not FFLAS. To ensure the scope is limited to regulated services, we suggest clarifying that disclosure is only required where it relates to the provision of regulated FFLAS.
Cl 2.3.28(3)	Disclosure of criteria or methodology used for determining prices for access seekers on non-standard contracts	Remove requirement.	Refer paragraph 115 of our submission.
Cl 2.3.28(4)	Obligations and responsibilities when provision of FFLAS to end-users is interrupted	Remove requirement.	Our non-standard contracts are not for the provision of FFLAS to end-users. Chorus may provide regulated FFLAS to an access seeker as an input to their network. The contract would not set out any obligations and responsibilities of Chorus to end-users, as our obligations and responsibilities would be to access seekers. Separately, and given the difficulty in meeting this requirement, we are not sure how this disclosure requirement is related to the purposes in s 166(2). We consider that this obligation should be removed, or otherwise we would require further clarity on the purpose of this requirement.
Asset management and network characteristics			
Column Q of Sch 12	Provide % fill (lit fibres)	Amend the utilisation metric in column Q from "% fill (lit fibres)" to "Central Office (**CO**) to fibre flexibility point (**FFPs**),	Refer paragraphs 121, 122.1 of our submission.

		with percentage fill greater than 85%" (or agreed level).	
Columns H and J of Sch 12	Provide forecast P2P and GPON connections at the POI level	Remove columns.	Refer paragraphs 121, 122.2(a)of our submission.
Columns L of Sch 12	Provide forecast number of FFPs with FFLAS fibre connections	Remove column.	Refer paragraphs 121, 122.2(b) of our submission.
Column N of Sch 12	Provide forecast number of GPON end-users from FFLAS	Remove column.	Refer paragraphs 121, 122.2 (b) of our submission.
Columns P and R of Sch 12	Provide forecast of the CO to FFP (total fibres) and the % fill (lit fibres)	Remove columns.	Refer paragraphs 121, 122.2(c) of our submission.
Columns S and T of Sch 12	Provide information on premises passed	Remove columns.	Refer paragraphs 121, 122.3 of our submission.
Column E of Sch 12	Provide information on each POI area	Amend the POI areas in column E to: • group Waiheke Island, Waiuku and Pukekohe into the Auckland POI area, • add Fielding into the Palmerston North POI area, and • remove 'The Rest of NZ' POI.	Refer paragraphs 121, 122.4 of our submission.
Row 27 of Sch 12a	Report on aggregate maximum peak demand across all ports by POI area	Amend requirement to report on peak throughput rather than aggregate maximum peak demand.	Refer paragraph 125.1 of our submission.
Row 101 of Sch 12a	Requirement to report on peak to average ratio	Amend requirement to provide average throughput per user rather than peak to average ratio.	Refer paragraph 125.2 of our submission.
Row 10 Sch 12a	Provide information on GPON connections	Amend requirement to clarify that GPON information is to be provided at the level of Chorus' core FFLAS products, which is	Refer paragraph 128 of our submission.

		shown in the list in Appendix D of our PQ submission.	
Sch 12a	Provide information on GPON connections	Amend requirement to provide information on *both* GPON and P2P information.	Refer paragraph 128 of our submission.
Columns J and P of Sch 10a and 10b	Provide rating of data accuracy	Add in a note to schedule to clarify the 1 to 4 rating system for data accuracy.	Refer paragraph 130 of our submission.
Columns K to O, Sch 10a and 10b	Asset condition reporting	Defer requirement to RP2.	Refer paragraph 132 our submission.
Column Q Sch 10a and 10b	Provide a forecast of assets to be replaced in the next 5 years	Defer requirement to RP2.	Refer paragraph 131 of our submission.
Rows 16-29 Sch 10a and 10b	Provide breakdown of fibre optic cable by cabinet distribution fibre, backhaul fibre, feeder fibre, direct fed fibre and fibre route length	Combine rows 16-29 so that fibre optic cable is reported in one line.	Refer paragraph 133.1 of our submission.
Rows 13 - 15 of Sch 10a and 10b	OFDF reporting	Combine rows 13-15.	Refer paragraph 133.2 of our submission.
Rows 38 - 42 of Sch 10a and 10b	Report on network land and buildings	Combine rows 38-42.	Refer paragraph 133.3 of our submission.
Row 51 of Sch 10a and 10b	Report on network spares	Reporting on network spares should be at a national level, rather than separating between PQ and ID-only areas.	Refer paragraph 133.4 of our submission.
Sch 10b	ID-only FFLAS asset register	This schedule should not be published.	Refer paragraphs 21-24, 118, 134 of our submission.
Quality metrics and performance measures			
Sch 19	Quality disclosures	Adopt the UFB measures and reports from the UFB contract service level reporting requirements as a starting	Refer paragraphs 136-160 of our submission.

		point, removing those which are no longer necessary. Implement additional requirements only where there are reasonable grounds to believe Chorus has the incentive and opportunity to allow FFLAS quality to deteriorate.	
Sch 19	Quality disclosures	Remove the requirement to provide a granular breakdown by geography and ID FFLAS of the proportion of simple new connection orders that take greater than 50 calendar days to complete.	Refer paragraph 145 of our submission.
Sch 19	Quality disclosures: 'Cycle time' for new connections	Align definitions of simple and complex new connections with cycle time requirements under fibre reference offer.	Refer paragraph 147 of our submission.
Sch 19	Quality disclosures: Measurement of traffic performance on all FFLAS	Measure traffic performance in accordance with the existing Layer 2 Performance Measurement and Reporting Regime (by port utilisation and a sample set of OLT reference probes, rather than requiring OAM probes on every connection).	Refer paragraph 147 of our submission.
Sch 19	Quality disclosures: layer 1 intact provisioning performance for remote activation	Remove requirement to disclose layer 1 intact provisioning performance for remote activation.	Refer paragraph 149 of our submission.
Sch 19	Quality disclosures: connection numbers	Align disclosure of connection numbers with content of Chorus' market disclosures.	Refer paragraphs 153-156 of our submission.

Appendix 2: Derivation of an ROI formula

Starting with the formula for the MAR, using the same terms as defined in ID determination paragraph A14, plus the use of CFA (for crown financing adjustment), AAS (for adjustment for asset stranding), ORI (for other regulated income). The vanilla wacc is w.

$$MAR = \frac{1}{(1+w)^{148/365}}[w.RAB_0 + VCA\,((1+w)^{182/365} - 1) - CFA + TCSD + AAS(1+w)^{148/365} + (Opex - ORI)(1+w)^{182/365}$$

$$- Reval + Depn + Tax(1+w)^{182/365}]$$

Rearrange...

$$MAR(1+w)^{148/365}$$

$$= w.RAB_0 + VCA\,((1+w)^{182/365} - 1) - CFA + TCSD + AAS(1+w)^{148/365} + (Opex - ORI)(1+w)^{182/365} - Reval$$

$$+ Depn + Tax(1+w)^{182/365}$$

The RAB roll-forward can be expressed as...

$$RAB_1 = RAB_0 + VCA - Adn - Depn + \Delta CA + Reval$$

Or...

$$Depn - Reval = -RAB_1 + RAB_0 + VCA - Adn + \Delta CA$$

Substituting that into the previous formula...

$$MAR(1+w)^{148/365}$$

$$= w.RAB_0 + VCA\,((1+w)^{182/365} - 1) - CFA + TCSD + AAS(1+w)^{148/365} + (Opex - ORI)(1+w)^{182/365} - RAB_1$$

$$+ RAB_0 + VCA - Adn + \Delta CA + Tax(1+w)^{182/365}$$

Then group together the RAB-related terms...

$$MAR(1+w)^{148/365} = (1+w)RAB_0 + VCA(1+w)^{182/365} - CFA + TCSD + AAS(1+w)^{148/365} + (Opex - ORI)(1+w)^{182/365} - RAB_1 - Adn + \Delta CA + Tax(1+w)^{182/365}$$

Divide both sides by (1+w)...

$$MAR(1+w)^{-217/365} = RAB_0 + VCA(1+w)^{-183/365} - CFA(1+w)^{-1} + TCSD(1+w)^{-1} + AAS(1+w)^{-217/365} + (Opex - ORI)(1+w)^{-183/365} - RAB_1(1+w)^{-1} - Adn(1+w)^{-1} + \Delta CA(1+w)^{-1} + Tax(1+w)^{-183/365}$$

And rearrange, bringing RAB_0 to the front...

$$RAB_0 = MAR(1+w)^{-217/365} - VCA(1+w)^{-183/365} + CFA(1+w)^{-1} - TCSD(1+w)^{-1} - AAS(1+w)^{-217/365} - (Opex - ORI)(1+w)^{-183/365} + RAB_1(1+w)^{-1} + Adn(1+w)^{-1} - \Delta CA(1+w)^{-1} - Tax(1+w)^{-183/365}$$

Gathering similar terms...

$$RAB_0 = \frac{(MAR - AAS)(1+w)^{-34/365} - VCA + Adn(1+w)^{-182/365} - (Opex - ORI) - Tax \quad (RAB_1 - \Delta CA) - TCSD + CFA}{(1+w)^{183/365}} + \frac{1}{(1+w)}$$

Then replace the w on the bottom halves with the vanilla ROI, reflecting the form used by the Commission in paragraph A14. A precise treatment would replace all of the w with ROI and then solve (probably by using a goal seek). But the Commission's approach, using half-year cash flows, is more pragmatic and practical because it enables use of Excel's IRR function. To enable that same approach in the formula below the w has been retained on the top half and so the cash flow timing adjustment for Revenue/ASS should be calculated using the regulatory vanilla wacc.

Two further simplifying assumptions have also been made below. One is that the cash flow timing factor for Revenue/AAS is well approximated by the term used below (a simple, first-order binomial expansion) and the other is that cash flow timing for Adn is not material, which then yields the same treatment of Adn as in A14.

$$RAB_0 = \frac{(Revenue - AAS)(1 - \frac{34}{365}w) - (VCA - Adn) - (Opex - ORI) - Tax}{(1 + ROI_v)^{0.5}} + \frac{(RAB_1 - \Delta CA) - TCSD + CFA}{(1 + ROI_v)}$$

The differences between this formula and the one used by the Commission in A14 are:

- Revenue and other regulated income should be treated separately because they have different cash flow timing factors.
- The wash-up adjustments should be included in revenue for the purposes of this calculation, because that's the best fit. So other regulated income should not include wash-up adjustments.
- The adjustment for asset stranding should be included
- The (Revenue – AAS) amount should be adjusted by $(1 - \frac{34}{365}wacc)$, otherwise net cash flows and the ROI will be over-stated.

The ROI including and excluding crown financing (as per paragraph 4.91) are calculated by either switching on or off the CFA term in the formula above.