

**APPLICATION FOR PRICING REVIEW DETERMINATION UNDER SECTION 42
TELECOMMUNICATIONS ACT 2001**

5 February 2013

The Telecommunications Commissioner
Commerce Commission
PO Box 2351
WELLINGTON

- 1 Pursuant to section 42 of the Telecommunications Act 2001 ("the Act") notice is hereby given seeking a **pricing review determination** for a designated access service.
- 2 Chorus is paying the required initial payment of \$22,500 (inclusive of GST) today, by way of electronic transfer to the Commission's bank account:

BNZ North End Commerce Commission

02 0536 0329867 000

- 3 We acknowledge that we may be required to meet any additional application costs incurred by the Commerce Commission ("the Commission"). We agree to make periodic payments, as invoiced, to reimburse the Commission for a portion of the costs it incurs in completing the determination requested. Furthermore, we acknowledge that in relation to the application and the determination we may be required to meet some or all the costs that were incurred by the other party to the determination (including costs incurred by the Commission that were invoiced to the other party).

DETERMINATION DETAILS

Person Giving Notice

- 4 Chorus Limited ("Chorus")

Vanessa Oakley
General Counsel and Company Secretary
Chorus Limited
PO Box 632
Wellington 6140
Email: vanessa.oakley@chorus.co.nz
Phone: 04 498 9240

Price and Service Description

- 5 Chorus seeks a pricing review determination in relation to Decision NZCC 37/2012: *Final determination on the benchmarking review for the unbundled copper local loop service*, 3 December 2012. This Decision was issued under section 30M of the Act. A detailed description of the UCLL Service is set out in that Decision.
- 6 The specific prices for which a review is sought are those listed in Appendix E of Decision NZCC 37/2012.

- 7 Chorus seeks a pricing review determination to determine the prices of the UCLL Service by applying the TSLRIC final pricing principle under the Act (“**FPP**”).

Justification for Application

- 8 Chorus considers that the initial prices set by the Commission in Decision NZCC 37/2012, set by reference to benchmarking against prices for similar services in comparable countries that use a forward-looking cost-based pricing method, underestimate the TSLRIC of providing the UCLL Service in New Zealand.
- 9 A very limited data set was available for the benchmarking study, and all data points came from European jurisdictions with networks that are lower cost than the Chorus network. While adjustments were made in Decision NZCC 37/2012, we do not believe that the final benchmarked prices accurately reflect the forward looking costs of providing the UCLL Service in New Zealand. The reasons for this have been canvassed in the comprehensive submissions Chorus has made to the Commission and include, for example:
- 9.1 The challenges of accurately reflecting New Zealand network characteristics – such as line length and population density - through benchmarking methods;
 - 9.2 The uncertainties of currency conversion;
 - 9.3 The difficulties of adjusting for the effect of the UFB investment on forward looking copper network costs through benchmarking methods.
- 10 As a result, the price does not accurately reflect forward looking costs in New Zealand.
- 11 The price set in Decision NZCC 37/2012 for the UCLL Service will:
- 11.1 under-compensate Chorus for the forward-looking costs of the UCLL service, undermining infrastructure investment incentives and dynamic efficiency in the telecommunications sector;
 - 11.2 encourage inefficient consumption of the UCLL Service, distorting wholesale competition;
 - 11.3 flow through to the price set for the UBA service, distorting consumption of that service also; and
 - 11.4 defer the migration to the UFB network by encouraging RSPs to continue with business models on the copper network, and affecting the relative pricing of copper and fibre services.
- 12 These are material adverse affects, impacting on both investment incentives and the transition to the UFB network. Accordingly, Chorus considers that it will promote the long term benefit of end users to determine the prices for the UCLL Service in accordance with the FPP.

Requirements for Application

- 13 The factors which Chorus considers indicate that the prices set by the Commission were not appropriate are identified in paragraph 9 above, and in the submissions made by Chorus during the Decision NZCC 37/2012 process.
- 14 Information which is relevant to assessing the appropriateness of the price set in the initial determination is the set of resources relating to:
- 14.1 Commerce Commission, Decision No. 739: *Final decision in relation to the review of the UCLL, UBA and Sub-loop Services standard terms determinations (STDs) for the purpose of implementing clause 4A of the Telecommunications Amendment Act 2011*, 24 November 2011; and
- 14.2 Commerce Commission, Decision No. NZCC 37/2012: *Final determination on the benchmarking review for the unbundled copper local loop service*, 3 December 2012.
- 15 All consultation documents, including detailed submissions by Chorus, expert economist reports and conference transcripts can be accessed on the Commission's website (<http://www.comcom.govt.nz/review-to-average-ucll-sub-loop-ucll-and-uba-prices/> and <http://www.comcom.govt.nz/re-benchmarking-prices-for-chorus-s-unbundled-copper-local-loop-service/> (accessed 5 February 2013)).
- 16 Also relevant is the CEG report: *Effect of fibre on bitstream prices*, January 2013, submitted in response to the Commission's *Draft Determination to amend the price payable for the regulated service Chorus' unbundled bitstream access made under s 30R of the Telecommunications Act 2001*, 3 December 2012. The CEG report can be accessed on the Commission's website (<http://www.comcom.govt.nz/uba-benchmarking-review/> (accessed 5 February 2013)).

Terms of Determination

- 17 In the absence of an existing process for the industry and the Commission to agree on a TSLRIC cost model, Chorus is unable to propose specific prices it considers are consistent with the final pricing principle and should be payable for the service. However, for the reasons set out in paragraph 9 above, we think that the prices will be higher than the prices set in Decision NZCC 37/2012.
- 18 Chorus is willing to actively participate in the Commission's process to develop a TSLRIC model. If the Commission was to issue a request under section 45 of the Act for Chorus to calculate the TSLRIC price, Chorus would facilitate that process.
- 19 Chorus considers that the terms and conditions that will attach to a pricing review determination should be considered by the Commission and the parties to the determination during the pricing review determination process.

Confidentiality

- 20 No aspect of this application is confidential.

DECLARATION

THIS application is made by Chorus Limited.

Chorus Limited hereby confirms that:

- all information specified by the Commission has been supplied;
- all information known to the applicant which is relevant to the consideration of this application has been supplied;
- all information supplied is correct as at the date of the application.

Chorus undertakes to advise the Commission immediately of any material change in circumstances relating to the application.

Dated this 5th day of February 2013.

Signed by Chorus Limited:

A handwritten signature in blue ink, appearing to read 'V. Oakley', is written over a horizontal line.

Vanessa Oakley
General Counsel and Company Secretary

I am an officer of the company and am duly authorised to make this application.