

27 January 2014



Dr Stephen Gale
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Dear Dr Gale

UCLL FPP review

I am responding to the Commission's request for any views InternetNZ might have in regard to the UCLL FPP review.

Our major interest in the review is that it is conducted in line with the purpose statement of the Act and serves to promote competition in the best long-term interest of end-users.

InternetNZ is of the opinion that the current situation is, unfortunately, unsustainable. The legislation, largely designed for a monopoly copper network, is out of kilter with the Government's policy to facilitate a more competitive hybrid fibre/copper network and the legislation, or the policy - or both - needs to be amended.

We understand that the Government has no intention of changing the legislation before the 2014 election. While we and others are strongly opposed to the Government legislating to override the Commission's independent regulatory functions, we nevertheless believe that the current flaws can be remedied by the Government without damaging that independence.

We anticipate therefore that at some stage the Government will need to either amend legislation or change policy, or more likely both, to reflect the changing network environment. Such change is likely to either pre-empt any determination the Commission makes in regard to the UCLL FPP, or will be necessary as a consequence of the FPP. Given this likelihood it is regrettable that Chorus has exercised its right to seek an FPP.

We are firmly of the belief that if Chorus withdrew its FPP request, all other operators would do likewise and in the short term the UCLL IPP price would provide a level of certainty that was in the best interest of all operators and end-users. It would also save the Commission, Chorus, other operators and end-users a significant amount of time and effort in undertaking the UCLL FPP review which is likely to be overtaken. We do understand however that as it stands the Commission has no

option under the law other than to undertake the review and as I say it is regrettable that Chorus has chosen to pursue the course of action that it has.

In light of the situation outlined above, our initial comments on the Commission's discussion paper are focussed upon whether or not the FPP price is backdated as this is likely to create additional uncertainty and we consider it an issue that should be resolved sooner than the FPP determination. Indeed, from the advice we have received early resolution of the backdating issue might persuade Chorus that its best interests would be served if it withdrew its FPP.

In summary, it is our opinion that:

- It is the Commission's decision whether to backdate or not;
- There are significant legal and practical reasons why the Commission should not backdate the price;
- Chorus faces significantly greater risks from backdating than access seekers;
- To minimise uncertainty for the whole of the industry and end-users the Commission should make a decision on backdating as soon as possible thereby allowing Chorus, or others, sufficient time to challenge the decision - through the courts if necessary.

A copy of the legal opinion obtained by InternetNZ that supports these points is attached.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Jordan Carter', with a stylized flourish at the end.

Jordan Carter
Chief Executive