



28 March 2014

Keston Ruxton  
Chief Adviser  
Regulation Branch  
Commerce Commission  
WELLINGTON

By email: [telco@comcom.govt.nz](mailto:telco@comcom.govt.nz)

Dear Keston,

## **Determining the cost of capital for the UCLL and UBA price reviews**

We appreciate the opportunity to comment on the Commerce Commission's technical consultation paper "Determining the cost of capital for the UCLL and UBA price reviews", dated 7 March 2014. No part of our submission is confidential.

We support the Commission's proposed approach of using the cost of capital IMs as the starting point for determining WACC for UCLL and UBA services. This submission focuses on the issue of cross sector consistency and the interaction between the Commission's work on WACC for telecommunications services under Part 2 of the Telecommunications Act and services regulated under Part 4 of the Commerce Act (Part 4).

### **Cross sector consistency desirable for 'generic' regulatory matters**

Adopting a consistent approach to generic regulatory matters, such as the determination of WACC across the different sectors and regulatory regimes is conducive to a stable and predictable regulatory environment.

In practice there are likely be many areas of commonality between the Commerce Commission decisions under Part 2 of the Telecommunications Act and Part 4 of the Commerce Act. Where this is the case, the Commission should favour consistency unless there are good reasons to differ. Those reasons may be substantive, for example the economics or competitive dynamics of the sectors may differ, or procedural, for example while the policy objectives of the governing legislation overlap they are not identical. They may also be grounded in administrative efficiency and the desire to minimise regulatory compliance costs<sup>1</sup>. In any case the rationale for any decision to align or diverge on generic issues should be clear and objectively justifiable.

### **FPPs crystallise linkages between Part 4 and telecoms regulation**

It seems inevitable that submissions on WACC in relation to the UCLL and UBA price reviews will raise issues about how the WACC should be determined that are both generic (pan-industry) and telecommunications-specific. This is clear from submissions the Commission has already received. Chorus, for example, has noted that "time has passed since the Commission's IM decision. New evidence, including important international regulatory precedent, has become available. It is important that the Commission retains an

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<sup>1</sup> We comment on this issue specifically in our submission the Commissions concurrent 11 March consultation "Proposed amendments to input methodologies for Transpower".

open mind to the prospect of changing aspects of its cost of capital approach under the input methodologies where improvements can be identified, and where these are consistent with the recent High Court decisions.”<sup>2</sup>

Where submissions on the UCLL and UBA reviews raise issues of a generic nature that suggest the cost of capital IMs set the WACC too high or too low, the Commission should be open to revisiting these issues when it undertakes its review of the cost of capital IMs.

**Telecommunications work should precede cost of capital IM review**

The Commission is required to make “reasonable endeavours” to complete the UBA price determination by December 2014, but is not required to undertake a section 52Y Commerce Act review of the cost of capital IMs until 2016-2018. Given this, we believe the Commission should seek to complete its WACC determination for UBA and UCLL services, including consideration of whether the regulatory WACC for copper services should be selected above the mid-point estimated WACC, prior to commencing any review of the cost of capital IMs. The UBA and UCLL price determinations would then provide a useful precedent, and synergies, for the Commission’s cost of capital IMs review.

Please let me know if you would like clarify or discuss any of the points made in this submission.

Yours sincerely

A handwritten signature in black ink, appearing to be 'JC' followed by a long horizontal stroke.

Jeremy Cain  
**Chief Regulatory Advisor**

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<sup>2</sup> Paragraph 86, Chorus, Submission in response to the Commerce Commission’s Process and issues paper for determining a TSLRIC price for Chorus’ unbundles copper loop service in accordance with the Final Pricing Principle, 14 February 2014.