2degrees, Spark, Vocus and Vodafone

Joint submission on the quality aspects of the Commerce Commission's draft decision on the fibre fixed line access service input methodologies

28 January 2020

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About this joint submission

This is a joint submission from 2degrees, Spark, Vocus and Vodafone on the quality aspects of the draft fibre input methodologies. We have worked together on this submission as appropriate quality regulation will be essential to supplying our customers with services that meet their requirements. By working together we have been able to pool our experience and resources to provide the Commission with the most robust feedback possible in the time available.

Together we provide the fixed broadband connections to 87% of all New Zealanders. We deal with our end-users directly on a daily basis. We understand consumer demands better than any other party involved in this process. Furthermore, we have a nuanced understanding of what is possible in our industry, and the cost-quality trade-offs.

We also have extensive experience as key the customers of the wholesale local fibre companies (LFCs). We understand how they are likely to act in the face of regulatory rules.

We all share the same concern that the quality regime proposed by the Commission would leave too much in the hands of the fibre providers and result in poor outcomes for our customers.

We have focussed this submission on the dimensions and metrics that will be covered by the input methodologies. Where any standards or specific products are mentioned it is purely as an example and does not represent the collective view of this group.

Summary of recommendations

- Set a mandatory quality metric under the customer service dimension to measure LFCs' compliance with a specified process for setting or changing service descriptions, general terms or operational terms, consisting of:
    - A specified change process based on the current process specified in the General Terms of the LFCs Reference Offers at clauses 24 and 25
    - A requirement that the LFCs confirm that any new terms, or any changes are not unfair as defined in section 46L(1) of the Fair Trading Act.

- Enhancing the capability of information disclosure regulation by:
    - making determinations mandatory for the customer service dimension, including responsiveness to access seekers;
    - making disclosure of fibre wholesale service agreement reference offers mandatory to make transparent any reduction in quality or level of service provided; and
    - including a customer (end-user/RSP) satisfaction survey so it can play a critical role in identifying areas of underperformance and underinvestment and in motivating regulated providers to respond appropriately to end user requirements; and

We also provide a set of learnings from the Part 4 Commerce Act regime experience on quality in Attachment B to this paper. These learnings must be applied to fibre regulations to ensure consistency and the best possible outcomes for end-users.

Quality is critical for our customers

Any discussion on the quality metrics in the fibre regime must start from the outcomes expected by end-users. We deal with our customers every day and understand their needs better than anyone else. The following key outcomes must always be front of mind for the Commission.

- The wholesale and retail providers work seamlessly together.
- Fibre connections are installed quickly with minimal adverse impact on any property.
- Outages are rare, and when they occur they are resolved quickly.
- The connection allows for modern internet services to work flawlessly.
- End-users understand their responsibilities to ensure their service runs as intended.
- Price changes are reasonable and follow an established process that allows for plenty of advanced warning.
- RSPs and therefore the customers, receive full transparency and understanding of all costs charged on to them through the LFCs.
- There is an appropriate allocation of costs and risk consistent with overall regulatory settings.

A clear signal has been given by government to lift the level of telecommunications quality experienced by customers. Independently we each have programmes underway to deliver on this, and we expect quality to become intensely competitive, just as price currently is.

This will be supported by the retail quality regime set up under Part 7 of the Telecommunications Act. These regulations will help encourage competition on quality metrics and set some minimum standards we all have to comply with. These regulations have three parts.

1. Information on quality metrics to help drive competition between providers.
2. Retail service quality codes that set minimum standards for certain topics.
3. Dispute resolution oversight to ensure that there is an adequate safety net for consumers.

We are all committed to working with the Commission to ensure that these regulations are established in the best way possible to improve consumer outcomes.

However, to truly lift outcomes on the things that matter most to consumers it will be a joint effort between wholesale and retail providers. Wholesaler providers and RSPs need to be acting in the best interests of end users. No retail code can compensate for weak wholesale regulations.

Quality forms a key part of a price-quality regulatory framework

The Commission's quality approach focuses on a regulated supplier's incentives to reduce service quality. Regulated suppliers do not face strong incentives to provide the quality that end-users demand, and incentives to use quality to lessen competition in adjacent and downstream markets.

The Commission has proposed a high-level principle-based approach to setting quality. The service dimensions and metrics appear to cover the main features of the current SLAs, however detailed service specifications are left unstated. Telecommunications services, however, are complex, the quality and technical specification of services are readily amended, and changes made may not be

transparent to end-users. Our key concern is that fibre suppliers, if faced with only high-level regulations, not only have the incentive and ability to amend services in a way that reduces quality or distorts competition, but also shift costs or risk to access seekers and end users.

The Commission is tasked with making price and quality determinations, - i.e. setting out the technical service that is being provided for the determined price. Any reduction in quality or the level of service provided should result in a reduction in price, but this will not necessarily happen in the new regime. A high-level approach will inevitably result in the specified revenues and risk becoming disconnected from fibre fixed line access service (FFLAS) provided in practice.

For the regime to function properly there needs to be a level of consistency in the service quality provided. We appreciate the difficulty for the Commission of setting technical specifications, but without transparency it will be difficult to assess whether funded costs and risks are being pushed on to other parties. Therefore, the IMs should provide for transparency through disclosure of technical specifications and a change mechanism. The technical specifications would form the baseline against which allowable revenues have been set. The change mechanism would act as a smoothing of change (promoting benefits for end-users) and enable access seekers to highlight to the Commission where there has been a material shift in risk or price via technical changes.

We also strongly disagree with the Commission that it can rely on potential future competition in lieu of service descriptions.[1] Market power has been identified as a current market condition, which the Commission must address. If competition emerges in the future the Commission has the tools to respond through deregulation. Until that point Government has determined that Chorus must be subject to price quality (PQ), with Chorus and the other local fibre companies (LFCs) subject to information disclosure (ID) regulation. The Commission cannot pick and choose where this obligation applies.

[1] Commerce Commission *Fibre input methodologies: Draft decision – reasons paper* (19 November 2019) (Draft Decision) at 3.1436.

Commercial agreements will fail under the proposed regime

LFC wholesale agreements are a critical part of the telecommunications market in New Zealand. They sit behind every service offered to end-users by determining the type of service and level of quality that retail service providers (RSPs) can provide. The agreements do this by setting out what support services are available to access seekers, what information reporting we can access, key processes and responsibilities, technical specifications for services, and more.

Unfortunately, the important role that these agreements play is not reflected in the regime proposed by the Commission. This is a significant departure from past telecommunications regulations where many of these terms were set directly by the Commission. At a bare minimum we would expect the Commission to play a role in the process for how RSPs and LFCs set terms, so that the negotiations function more consistently with a workably competitive market.

Internationally many comparable regimes have service terms at their core.[2] This is because they recognise that without regulation, a company with market power would have all the power in setting terms. An imbalance of power leads to poor outcomes for end-users without regulatory intervention.

The New Zealand Government is currently amending the Fair Trading Act (**FTA**) for this very reason. They have recognised that where there is an imbalance of power there is a high chance of unfair trading practices. In the explanatory note to the FTA Amendment Bill the Government notes:

> *Unfair commercial practices … may restrict competition and, with it, productivity and innovation. Even where practices are not strictly anti-competitive, they may restrict the ability of firms to grow and thrive, by diverting their attention away from their core business.*[3]

In other words, where there is an imbalance of power there will be an outcome that is inconsistent with a workably competitive market, in direct conflict with the Part 6 purpose statement.

Ofcom has also recognised that an imbalance of power is a key feature of the wholesale fixed line telecommunications market, applying to all RSPs, not just smaller firms.

> *In recognition of the likely imbalance in negotiating positions as between Openreach and its customers, we have concerns about the predictability and visibility of the process that determines critical aspects of SLA/SLG terms.*[4]

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[2] BEREC *Common Position on best practice in remedies on the market for wholesale (physical) network infrastructure access (including shared or fully unbundled access) at a fixed location imposed as a consequence of a position of significant market power in the relevant market* (8 December 2012) at [BP32c]: "NRAs should take oversight for the process of setting SLAs. NRAs should determine the level of their involvement in this process by taking into account specific market circumstances and particular concerns for discriminatory behaviour". This guideline has recently been applied by Ofcom where it imposed remedies on BT in four geographic areas where Ofcom found that BT has SMP. One of the remedies was a requirement to publish a reference offer and to notify changes to charges, terms, conditions and technical information. See: Ofcom *Promoting competition and investment in fibre networks: review of the physical infrastructure and business connectivity markets, Volume 1: market analysis, SMP findings, and remedies for the Physical Infrastructure Market Review* (28 June 2019) at [4.121].
https://www.ofcom.org.uk/__data/assets/pdf_file/0027/154593/volume-1-pimr-final-statement.pdf

[3] Fair Trading Amendment Bill 2018 (213-1) (explanatory note) at 1.

[4] Ofcom *Promoting competition and investment in fibre networks: review of the physical infrastructure and business connectivity markets, Annexes 1-25 of 26* (28 June 2019) at [A22.5].

Once the Part 6 regime comes into force, LFCs will be motivated to erode quality related terms. LFCs have the necessary market power to push these changes through without fairly negotiating with access seekers. If the Part 6 regime fails to address the important role of service level agreements, there is a significant risk that end-users will not be supplied with fibre services that are of a quality that meets their needs.

We have been able to identify seven specific topics in the current Reference Offers between the LFCs and RSPs that would be at risk with no further regulatory intervention. We are not aware of any other regulatory constraints that would stop the LFCs from exploiting their position on these matters.

1. Notice periods afforded to RSPs.
2. Requirements to provide timely information to RSPs.
    - This may also be addressed by enhanced ID requirements as discussed in the following section.
3. Additional services provided to RSPs and end-users.
4. Processes and responsibilities.
5. Vetting of RSPs or end-users.
6. Additional charges.
7. Technical and service specifications.

These are covered in more detail in Attachment A to this paper.

An incentive based approach to wholesale service agreements

We strongly disagree with the Commission's view that wholesale services agreements simply set obligations between third parties and, as a result, are not within the scope of the quality input methodology (IM), PQ or ID regulation[5]. Wholesale service agreements set many critical aspects of the service offered to RSPs and ultimately those passed on to end-users. Once the Part 6 regime is implemented, LFCs will be motivated to amend these terms in their favour.

The purpose of PQ regulation is to regulate the price and quality of fibre fixed line access services provided by regulated fibre service providers[6]. The section 166 purpose statement requires the Commission to set regulations consistent with outcomes produced in workably competitive markets. Allowing an imbalance of power that will result in unfair trading practices is inconsistent with this obligation.[7]

https://www.ofcom.org.uk/__data/assets/pdf_file/0028/154594/pimr-bcmr-llcc-final-statement-annexes-1-25.pdf

[5] Commerce Commission *Fibre input methodologies: Draft decision – reasons paper* (19 November 2019) (Draft Decision) at 3.1586.

[6] s192 of the Act.

[7] It is further inconsistent with the purpose of ID and PQ regulation. The purpose of ID is to assess whether the purpose statement is being met, i.e., whether the market is consistent with outcomes in a workably competitive market. The purpose of price-quality regulation is to regulate price and quality, as we have shown contractual terms are a critical component of quality.

The Commission has made it clear that it is reluctant to directly set service terms as it has done in the past for copper services. However, even under a light-touch regime, there is significantly more scope for the Commission to set incentives consistent with a workably competitive market.

We propose that rather than setting service terms directly, the Commission requires disclosure of fibre wholesale agreements and measures whether or not the LFCs comply with certain basic process steps and assurances when setting or changing service terms. This solution could fall under the customer service dimension given that it includes both responsiveness to end-users and access seekers. We recommend the inclusion of an additional "changes to quality related service terms" metric under the customer service dimension. Under ID the adherence to these measures could be transparently disclosed. Under price-quality regulation targets for compliance can be set, and any breaches enforced in the usual way.

We propose the following requirements:

- Require disclosure of wholesale agreements for the provision of FFLAS services.
- Adopt a change process similar to that specified in the General Terms of the LFCs Reference Offers at clauses 24 and 25, with necessary changes to remove the role of Crown Infrastructure Partners. This would require that changes or new clauses must be consulted with RSPs, sufficient notice periods are given, and in some cases a vote before changes could come into effect.
- Require that as part of the process the LFCs certify that any new terms, or any changes are not unfair as defined in section 46L(1) of the Fair Trading Act, i.e.:
    (a) would not cause a significant imbalance in the parties' rights and obligations arising under the contract; and
    (b) does not create terms that are not reasonably necessary in order to protect the legitimate interests of the party who would be advantaged by the term; and
    (c) would not cause detriment (whether financial or otherwise) to a party if it were applied, enforced, or relied on.

Under this approach the Commission would not need to regulate or monitor specific terms. Standard contract law, or the dispute resolution process in the contracts themselves could be employed by any aggrieved party. However, requiring some standard process steps and assurances that would be expected in a workably competitive market will help address the power imbalance. It will also provide an information basis to show if any further regulation is required in the future.

This is similar to the negotiation regulations that have been put in place by Ofcom.

> *While maintaining that regulatory intervention should be the last resort, we consider that there should be a defined, structured and open process for the negotiation of SLA/SLG terms which reserve a central role for the OTA2 and set a time limit for negotiations.*[8]

The Commission considered a similar proposal in response to a suggestion from some RSPs to regulate the consultation process for any change to the service terms. The Commission concluded

[8] Ofcom *Promoting competition and investment in fibre networks: Wholesale Fixed Telecoms Market Review 2021-26, Volume 3: Non-pricing remedies* (8 January 2020) at [3.108]. https://www.ofcom.org.uk/__data/assets/pdf_file/0033/188970/wftmr-volume-3-non-pricing-remedies.pdf

that this was not necessary because "submitters were not supportive"[9] of this measure. After reviewing submissions the only party we were able to find that disagreed with measuring process change or consultation was Chorus.[10]

Many submissions were supportive of this approach. For example, Enable and UFF submitted that "[w]e think Vodafone's proposal to link the quality regime to the WSA obligations should be seriously considered by the Commission."[11]

In order to implement this regime we propose that the Commission holds an industry workshop to work through the specifics, to effectively implement our proposed amendments to the regime.

[9] Commerce Commission *Fibre input methodologies: Draft decision – reasons paper* (19 November 2019) (Draft Decision), footnote 697.
[10] Chorus *Submission in response to the Commerce Commission's fibre regulation emerging views* (16 July 2019) at [270].
[11] Enable and UFF First cross-submission on NZCC Fibre Regulation Emerging Views: Technical Paper (31 July 2019) at [7.4].

The importance of information disclosure to the quality input methodology

There is significant uncertainty about how the new fibre regime will perform on quality standards in the first regulatory periods. This is for two key reasons.

- The proposed light touch approach to determining service quality that is uncommon internationally.
- The potential of technological change to impact on the telecommunications market. As noted by the Commission, the nature of the technology and competition in the future is uncertain. However, we note that the possible future development of competition over time cannot be relied on to deliver appropriate quality outcomes in the absence of more detailed price-quality and ID requirements.

Because of this uncertainty we want to emphasise the critical role that detailed ID regulations will play. ID obligations must include provisions for regular, detailed reporting as this will provide a foundation of data from which the Commission can identify areas of quality regulation that are functioning well and those that need to be revised. ID should focus on today's market and have a process to deal with change.

Specifically, we recommend:

- making determinations mandatory for the customer service dimension, including responsiveness to access seekers which has a direct link to outcomes for end users;
- making disclosure of wholesale service agreement reference offers mandatory to make transparent any reduction in quality or level of service provided.
- enhancing the customer (end user/RSP) satisfaction survey so it can play a critical role in identifying areas of underinvestment and in motivating regulated providers to respond appropriately to end user requirements; and

To support end-user needs, responsiveness to access seeker requirements must be emphasised

Quality dimensions are defined under the Telecommunications Act 2001 as including responsiveness to both end users and access seekers.[12] Regulated providers do not have a direct relationship with end users. Access seekers, on the other hand, own the customer relationship, placing them in a unique position with regards to understanding end user requirements and being motivated to meet their needs. Aside from a customer satisfaction survey (addressed below), encouraging responsiveness to access seekers is one of the main tools available to the Commission to ensure that regulated providers are incentivised to provide FFLAS that meets end user requirements.

However, in its decision paper, the Commission appears to have limited consideration of access seeker requirements to only the customer service quality dimension, a dimension for

[12] Telecommunications Act 2001, s 164.

which PQ and ID determinations are not mandatory.[13] By limiting access seeker requirements to a non-mandatory quality dimension, the Commission is compromising outcomes for end-users.

To reflect the role of access seeker requirements in supporting end-user needs, PQ and ID determinations must be mandatory for the customer service quality dimension. Given that the customer service dimension underpins all six of the other quality dimensions, this would provide an incentive to ensure regulated providers are appropriately responsive to end users and access seekers across the lifecycle of FFLAS products.

As stated above, we also recommend that the Commission add a metric to the customer service dimension to monitor the process by which LFCs set or change service descriptions, general terms or operational terms. This should follow or reflect the process in fibre wholesale arrangements. ID obligations should be used to monitor LFC compliance with the process that is set under the price-quality determination. This will provide a crucial level of transparency on LFC responsiveness to access seekers.

In addition, ID obligations must require regular reporting to ensure that regulated suppliers are appropriately responsive to access seekers. For example, under the UFB contracts, regular reporting requirements include:

- Monthly performance reporting.
- In the event that a specified threshold is breached, the monthly report includes details on the cause of the default and the procedure for correcting the default. This includes a requirement for updates to be given on the steps taken to remedy any ongoing defaults.
- A weekly report published on the LFC website showing how the LFC is performing against target installation times.

These obligations do not merely represent obligations "between third parties"[14], they are essential tools that help to provide an up-to-date indication of wholesaler responsiveness to access seekers and end user needs. Mandatory ID obligations that require regular detailed reporting will help the Commission determine whether the quality IM is fulfilling the purpose of the Part 6 regime.[15]

Information disclosure regulation should supply the Commission with robust data to make decisions for future regulatory periods.

The Commission states that in determining the extent to which the quality IM should be prescriptive or flexible, it has considered which elements of quality regulation will require

[13] Commerce Commission *Fibre input methodologies: Draft decision – reasons paper* (19 November 2019) (Draft Decision) at 3.1509.7, see footnote 694.
[14] Commerce Commission *Fibre input methodologies: Draft decision – reasons paper* (19 November 2019) (Draft Decision) at 3.1486.
[15] Telecommunications Act 2001, s 186 states that 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."

change and the exercise of judgment at each regulatory reset and those that will not.[16] This position is reasonable. The appropriate service quality requirements (both in terms of the appropriate measures to apply, and the targets which should be set) will evolve over-time requiring greater flexibility than provided for under the IMs.

However, it is precisely in areas of uncertainty that detailed ID obligations are required. Robust data in those areas will enable the Commission to identify aspects of quality regulation that are working well and those that are not. This information will provide a solid foundation from which the Commission can make decisions as we move into future regulatory periods.

To be an effective tool, ID obligations must include:

- Wholesale agreements for FFLAS services, including:
    - Detailed descriptions of the services offered by regulated providers. This includes speed, EIR/CIR, latency and fault restoration times.
    - Detailed descriptions of the ancillary services offered by regulated providers. This includes fault management and fault reporting (for example, notification of planned and unplanned outages including expected restoration times and notification of restored services), and B2B portal availability.
- Whether any products have been stopped or descriptions changed, including a description of any changes that were implemented and which products were affected.
- Any new ancillary charges that were introduced, or existing charges that were increased (for example, the introduction of missed appointments or no fault found charges).
- The number and size of changes to core charges.
- Details of what reporting regulated providers have provided to access seekers, including the frequency of that reporting.
- Details of what congestion management processes regulated providers have in place, including how frequently those processes were employed.
- Reporting requirements that are imposed if specified thresholds are breached. This will enhance LFC accountability and ensure greater predictably for access seekers in the event of a breach. We note that this is a feature of the Part 4 regime (see Attachment B of this document).
- In addition to customer service, performance and availability being mandatory, determinations for the faults dimension must also be mandatory. Faults are so closely linked to network performance and availability that the Commission will not get a clear view of the latter two dimensions unless determinations are also mandatory for the faults dimension. These need to be defined in end user terms as well as in relevant network level terms.

[16] Commerce Commission *Fibre input methodologies: Draft decision – reasons paper* (19 November 2019) (Draft Decision) at 3.1496.

A customer satisfaction survey will increase responsiveness to end users

Currently, under the UFB reference offer, there is a requirement for LFCs to assess end-user satisfaction with the fibre installation process via a quarterly connection satisfaction survey. The survey is not in a standardised form, making comparisons across the LFCs difficult, and it is limited to only assessing end user satisfaction at the start of the fibre product's life cycle. This obligation will come to an end in 2022.

We recommend the ID obligations include a requirement for a periodic customer satisfaction survey (ie, quarterly) that is broader and more detailed than the requirement under the reference offer. A detailed customer satisfaction survey could play an important role in incentivising regulated suppliers to deliver services that meet end user demands. Regulated suppliers have few other incentives to provide FFLAS that meets end-user requirements.

The survey has the potential to play a similar role to asset management plans by giving insight into whether appropriate investments are being made. Indeed, the Commission has recognised that "quality regulation can … be used to help identify poor asset management".[17] In the short-term, a detailed customer satisfaction survey would provide transparency on the performance of regulated suppliers against end-user expectations. Over time the information gathered from the survey would likely provide a basis for the Commission to develop more detailed quality metrics.

To ensure the survey provides robust data to the Commission and other interested parties, we recommend that the survey has the following features.

- The survey is carried out by an independent expert or firm.
- The terms of reference are overseen by the Commission and are set with input from interested parties. This process will help ensure that the wholesale service quality survey is consistent with the surveys that the Commission will undertake on retail service quality.
- The survey covers:
    - end-user satisfaction across the lifecycle of the service (installs, faults, performance, available speeds, etc);
    - a breakdown of satisfaction scores for the top and bottom percentiles;
    - a breakdown of satisfaction scores by region;
    - a breakdown of satisfaction scores by product type; and
    - RSP satisfaction with the relevant regulated supplier. By including a section for RSP satisfaction, the Commission can help address the power imbalance between access seekers and regulated suppliers.

[17] Commerce Commission *Fibre input methodologies: Draft decision – reasons paper* (19 November 2019) (Draft Decision) at 3.1441.

Attachment A: Details of aspects of the reference offers that are at risk if there is no regulatory oversight

Notice periods afforded to RSPs

For example the notice given for ending a service, planned maintenance, or any changes to the service terms. Sufficient notice is critical to allow us to flow these changes through our systems and provide sufficient warning to our customers. In the recent past Chorus has attempted to shorten these notice periods, for example, in August last year to cancel unacknowledged appointments.

Specific clauses that may be at risk are:

- Notice periods for ending a service (General terms, clause 5.2).
- Notice periods for planned maintenance (General terms, clause 5.5).

Requirements to provide timely information to RSPs

For example monthly reporting on faults, and more detailed information if there is any breach, including procedures to correct the issue. These reporting obligations give access seekers transparency in relation the performance of the fibre network, enabling us to ensure that the impact of underperformance on end-users is limited as much as possible. It is unlikely that ID requirements will be responsive enough to fill this same function.

Specific clauses that may be at risk are:

- Requirement for LFCs to provide RSPs with signalling and network management information (General terms, clause 3.2).
- Features of the fault reporting service, and the requirement to notify RSPs (General Terms, clause 6).
- Monthly and weekly reporting of performance against SLAs (Service Level Terms, clause 6.1 and 10.4).
- Requirement to notify RSPs of the cause of any SLA defaults, and the procedure for correcting the problem (Service Level Terms, clause 7.1).
- Notification of expected service start date for ancillary services (Service Level Terms, Appendix 3).

Additional services

These are services that provide additional functionality, enhance the core service, or make it easier to interact with the LFCs. For example the requirement to have two ATA voice ports on each ONT, the Business to Business Portal, an automatic tool for service requests, pre-qualification tools, and testing to ensure the service is working properly. These services are

essential to supporting quality and performance ultimately received by end-users however, in the new regime, LFCs may be incentivised to scale them back or where possible remove them altogether as a means of cost saving.

Specific clauses that may be at risk are:

- Requirement to provide an ATA port for voice services, and the codec they must use (General Terms, clause 9.2).
- The Business to Business portal used for setting up enterprise customers, restoration targets, change process, fees, etc (Operational Manual, clause 7).
- Requirement to provide home voice wiring in UFB 1 areas (Operational Manual, clause 12.18).
- Support for RSP remote access to the ONT (Service Description, clause 3.11)
- Testing to ensure that the service provided meets the agreed technical specifications (Service Descriptions, clause 3.3).
- Ancillary services offered by the LFC, such as in-premise wiring, testing of RSP end-user equipment. (Service Description, clause 3.5).
- Ability to request an LFC creates additional Service Templates (Service Description, clause 3.7).
- A requirement for the LFC to provide certain support and other assistance, including: an automated tool for service requests; an automated facility for fault notifications; pre-qualification tools. (Service Descriptions, clause 3.15).

Processes and responsibilities

The agreements set processes and responsibilities which define how certain activities will function, and what responsibilities sit with the LFCs, RSPs and customers. For example, how to escalate and respond to emergency faults, rules and processes for visiting LFC sites, who is responsible for gaining consents, that invoices cannot be created for services received more than 99 days ago, processes for making changes, and dispute resolution. There is a strong incentive on the LFCs to shift more of these responsibilities on to RSPs or our customers.

Specific clauses that may be at risk are:

- Right to issue an invoice expires 99 days after the date of supply of service (General Terms, clause 7.4).
- Dispute resolution process (General Terms, clause 20).
- Change process including notice periods and consultation requirements (General Terms, clause 24).

- process for no-shows and late cancellations, including evidence required (Operational Manual, clause 9).
- How to handle changes or cancellations of reported faults (Operational Manual, Clause 11.11).
- Management of planned outages (Operational Manual, clause 11.24).
- Protocol for escalating emergency faults for medical emergencies or community services (Operational Manual, clause 11.31).
- Requirement to reinstate property with like for like materials following an install (Operational Manual, clause 12.20).
- Process and responsibilities for gaining consents for installations (Operational Manual, clauses 13-15).
- Process for allowing end-users to visit LFC sites (Operational Manual, clause 28).

Vetting of RSPs or end-users

Such as insurance requirements, credit rating or site pre-qualification. Leaving this in the hands of the LFCs gives them an opportunity to dictate who their customers are, potentially damaging the market.

Specific clauses that may be at risk are:

- Security requirements necessary to accept credit (General Terms, clause 8).
- Requirements for the level of insurance required to acquire services (General Terms, clause 18.6).
- Site pre-qualification requirements (Operational manual, clause 8).

Additional charges

Such as interest on unpaid bills, charges for no fault found callouts, missed appointments, definition of non-standard installs and POA charges. We are increasingly seeing these charges, such as the introduction of charges for cancelled truck rolls. If unchecked additional charges could become a work-around for the LFCs to increase prices for fixed price services, such as the anchor products and DFAS.

Specific clauses that may be at risk are:

- Interest charges for unpaid bills, such as those in dispute (General Terms, clause 7.6, 7.7 and 7.8).
- Service Request Charges (Operational Manual, clause 9).
- Costs of no fault found call-outs (Operational Manual, clause 11.1).

- Definitions of standard and non-standard installations (Operational Manual, clause 12.2).

Technical specifications

The exact technical standards used to deliver the service, the design of the hand-over points, and operations and maintenance (O&M) service. While these will need to upgrade over time, leaving this entirely in the hands of the LFCs may mean they do this too quickly, causing costs for RSPs as we scramble to keep up, or too slowly leaving vulnerabilities or poor service for end-users.

Specific clauses that may be at risk are:

- Specifics of the termination points (Operational Manual, clause 12.21 – 12.25).
- The exact specification of the service available over a bitstream service, including compliance with the Mass Market service specified in the TCF Ethernet Access Service Description (Service Descriptions, clause 2.4).
- The ability to tag certain traffic as high priority, and how to do so (Service Descriptions, clause 2.4.4).
- The technical specifications of the Operations and Maintenance service for testing, fault diagnostics and performance measurement. (Service Description, clause 3.12).
- The technical specifications used for the service. (Service Description, Appendix B).

Attachment B: Learnings from the Electricity Distribution 2015-20 Default Price Quality Path determination in relation to service quality

We consider that the following is relevant for setting service quality measures and standards for Chorus' fibre business (and in relation to service quality measures for LFCs):

- **Service quality should distinguish between planned and unplanned outages:** The separation of service quality performance measures/standards for planned and unplanned outages is important as it removes any incentive to reduce planned interruptions in years with a high number of unplanned interruptions.
- **The service quality measures/standards for unplanned outages are on a year-by-year basis, while the service quality measures/standards for planned outages are set over the duration of the regulatory period**. We agree with the Commission's reasoning for measuring planned outages over the full regulatory period: "Our decision to set the planned reliability standard over the full regulatory period will allow distributors to schedule planned works in a way that works best for their business and consumers, rather than to comply with an annual planned reliability standard. For example, previous settings may have incentivised distributors to inefficiently defer or bring forward work to avoid contravention".
- **Extreme event service standard should be set:** Introduction of "a new 'extreme event standard' to deal with extreme one-off events that may cause serious inconvenience for consumers". We support the Commission's view that "The introduction of an extreme event standard" incentivises regulated suppliers "to take practicable steps to minimise the likelihood of high impact, low probability events that are within its control as well as mitigating the extent of them".
- **There should be no deterioration in service quality:** The "starting point … that distributors should at least maintain the levels of reliability that they have provided historically, all other things being equal. We refer to this principle as 'no material deterioration'".
- **Service quality should improve over time:** The recognition service quality standards should change overtime, reflecting (i) "changes in a distributor's cost to serve, driven by factors like improved technology …", (ii) "changes in consumer expectations, whether that is a willingness to accept more interruptions, given the availability of self-supply (solar PV, batteries, microgrids) or a greater willingness to pay to avoid interruptions as more services (most prominently transport) depend on the grid", and/or (iii) "better understanding on the part of distributors about customer expectations from an improved level of customer engagement". The latter reflects the importance of requiring Chorus to engage and consult with its customers to better understand what their expectations are.
- **Service quality that directly reflects end-user impacts is important:** The Commission has recognised "Additional quality standards that reflect consumer demands should be explored " which "could … relate to …: … 1 ordering and provisioning of new

connections; … 2 management and restoration of faults (including the number and duration of faults); … 3 service performance, reflecting technical characteristics of the service …; and … 4 customer service (such as the time taken to respond to customer complaints or enquiries)".We consider that these are important dimensions which should be reflected in Chorus' service quality measures/standards.

We note the Commission will explore setting standards for these dimensions for the next regulatory period (2025-2030) but didn't introduce them this time round because "we generally require a historic dataset of any new measure to set a standard against". Where there are similar gaps in relation to Chorus, we consider the Commission should consider using its information gathering powers to require Chorus to provide the data necessary for setting service quality standards for these types of dimensions for the 2022 determination.

We also note the Commission issued Transpower with asset health and risk modelling information requirements. Similar requirements could be useful in relation to Chorus to help determine appropriate service quality measures and standards.

- **There should be robust self-reporting requirements that are triggered by a contravention of any quality standard:** The Commission has updated/strengthened its reporting requirements "to provide for greater accountability of distributors for their performance, and in order to increase predictability for suppliers following the contravention of any quality standard" This includes "two enhanced reporting requirements relating to: … 1 quality standard contravention self-reporting; and … 2 major event reporting".
- **Revenue-service quality links should not be introduced for the first regulatory period:** The quality incentive scheme for planned and unplanned SAIDI (service quality-revenue link) wasn't introduced until the 2nd regulatory period for EDBs, and then was only introduced tentatively. If the Commission considers adopting a similar type arrangement for Chorus we would not anticipate that it could be introduced before the 2nd regulatory period given the time constraints the Commission is facing to implement the new fibre regulatory regime.