InternetNZ Submission: Further Consultation on issues relating to determining a price for Chorus' UCLL and UBA services under the Final Pricing Principle.

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Public Version
(there is no confidential version)

Introduction

Thank you for the opportunity to respond further on issues relating to determining a price for Chorus UCLL and UBA services under the final pricing principle.

We attended the two recent Commission workshops and note that a number of questions and points that we asked or made were under the Chatham House Rule and we were informed that if we wished them to be drawn to the attention of Commissioners they would have to be included in submissions. We have therefore taken that opportunity.

Our submission covers both process and issues responses, we have attempted to separate them as much as possible but there is some overlap.

We have taken the opportunity presented to summarise our concerns with the process identified in previous submissions and which we feel have not been adequately addressed in either supplementary papers or in the workshops. Where possible we have proposed straightforward solutions to those concerns.

Executive Summary - Process

For a number of reasons we believe that the Commission should not self-impose a deadline of 1 December 2014 for completion of the final pricing principle (FPP) pricing review determinations.

The reasons to take a more careful and considered approach include:

- The need to make a sound decision rather than an early decision;
- The desirability of reaching a substantial level of agreement between the parties on major components of the pricing model before modelling commences;
- Recognition that the relatively simple IPP process took approximately two years to complete and was still subject to legal challenge by Chorus;
- In the absence of agreement on the major components of the pricing model the need to ensure that there are no avenues open for down-stream judicial review of the decisions made by the Commission;
- The dangers of choosing MEAs that are easier to model rather than MEAs that are the most relevant;
- The length of time necessary to accurately model the costs of the current Chorus network in the absence of any agreement on the breakdown and apportionment of those costs;
- The length of time necessary to model multiple MEAs for multiple services in the absence of any agreement on what are the correct MEAs;
- The dangers of putting all eggs into the one basket of a complex modelling process;
- The length of time required to obtain accurate information on the costs of various MEAs and the ability to audit those costs, particularly if needing to seek information from incumbent providers or from overseas;
- The need to allow all parties sufficient time to make submissions given asymmetric resources, incentives and access to information of the interested parties;
- Delays already being experienced in the review.

For a number of reasons we are not convinced of the necessity to meet the 1 December deadline:

- We consider the Commission has already met the Act's requirement to make every effort to complete the pricing determination;

- Achieving the 1 December deadline does not increase certainty for anybody, indeed it increases uncertainty because a rushed process is more likely to be wrong, more likely to be legally challenged or result in government intervention;
- There are mechanisms by which the Commission can reduce uncertainty such as increased modelling, seeking greater level of prior agreement, completing the two (UBA and UCLL) determinations together. However these options will in and of themselves require more time;
- The presentation of the TERA price modelling showed little evidence that the model will be able to provide sufficient cost accuracy to avoid subsequent dispute or litigation.

We recommend that:

- The 1 December deadline be re-termed an aspirational target date;
- That the dates for draft determinations and final determinations are made flexible to allow for delays;
- The Commission obtain prior agreement from the interested parties in regard to areas of potential legal challenge or threats of judicial review or in the absence of agreement the Commission seeks a declaratory judgment from the courts;
- In the absence of any agreements on the most appropriate MEAs, multiple MEAs are modelled.

Executive summary - specific issues

We have a number of concerns regarding the choice of the MEA, and the modelling of both the current UCLL and UBA services and future networks using the MEA(s). These include:

- The choice of the MEA(s) is critical and there is little agreement within the industry which is the most appropriate MEA(s);
- The MEA issue is a circular one – the Commission asked our views on the most appropriate MEA(s) to model – we responded that the lowest cost MEA is the most appropriate – the lowest cost cannot be known until the modelling is undertaken;
- The UBA and particularly the UCLL services that will be delivered over the MEA are insufficiently defined and there is little agreement on the correct definition - this may affect the choice of MEAs;
- Services that may be delivered over a future MEA network that cannot be delivered over current networks are innumerable and offer significantly greater value. There has been little discussion on how the additional value of the MEA services will be abated or how or when S 18 will be considered;
- The modelling process is highly complex, overly reliant on data from interested parties and makes a number of large assumptions;

Comment

Process Issues – timing

The need to make a sound decision rather than an early decision.

Our major concern with the short time frame the Commission has set itself for completing these determinations is the opportunity a curtailed process possesses for error. The Commission itself noted[1] that international experience and process suggests that TSLRIC modelling processes can take several years to complete in the extreme. The Commission also points out that the New Zealand environment is unique – that alone would make it

[1] Commission issues paper December 6 2013

extreme. Yet we are attempting to conclude the determinations with three or four months of the 12 month project plan already gone and with little agreement among parties regarding major areas of the determination.

As all submitters with the exception of Chorus have said, it is more important for the Commission to ensure that its decision is accurate rather than speedy. Accuracy is dependent upon proven facts and sound analysis - both are difficult to obtain quickly. The dangers are that in an effort to complete the determination quickly, facts will not be audited or tested. Data will have to be taken "on trust" and analysis will not be subject to rigorous review. End-users are particularly disadvantaged in this regard – we have little or no ability to contract experts to analyse the reams of purported analysis that interested parties submit in submission and cross submission processes – we are largely reliant upon the Commission acting in the best long term interests of consumers. Where there is a decision to be made, it will be in the best interest of end-users if the Commission has sufficient time to gather the relevant facts, analyse the data and explain its analysis. That is going to take time. The more complex the issue the more time it will take and to have deadlines set in concrete will devalue the consultation process.

We consider that the Commission's process and issues papers to-date have correctly been driven, in part, by the desire to reach agreement "up-front" with interested parties in order to simplify the determination process. For example, if agreement could be reached on a single or small number of MEAs to be modelled, the modelling process would be simpler and speedier. That agreement is not able to be reached on relatively straightforward matters is indicative of future disagreement and on matters of greater complexity.

The timing leaves no room for identification of error and correction of oversights. From an end-user perspective it is difficult to identify pertinent issues in advance of seeing the outcome. The approach we would take would be to observe the outcome at the draft determination stage and then audit the reasoning behind the determination. That approach is not possible in the constrained timeframe imposed by the Commission's process and the Act. If issues of omission only come to light at the draft determination stage the ability to adjust the finding might require a complete re-think of the model – that will not be possible in the 20 day window. All the incentives for the Commission at that stage will be to concede to Chorus in order to maintain the timing schedule and avoid litigation. The incentives on Telecom and Vodafone, the other affected parties with significant resources, are likely to be different to the incentives of end-users and they might not be incentivised to take up legal challenges on behalf of end-users. End-users do not have the resources, or potentially the rights, to mount any significant legal challenge in comparison to operators.

The desirability of reaching a substantial level of agreement between the parties on major components of the pricing model before modelling commences in order to avoid judicial review.

The constrained timeframe of the draft determination and the threat of judicial review pushes the Commission towards resolving major areas of dispute before arriving at that point. It seems clear from Chorus' submissions that it is fundamentally opposed to the Commission's approach on a number of critical issues (choice of MEA, backdating, S 18) and in some places challenges whether the Commission has any discretion in the approach it is taking.

We applaud the Commission for its efforts in being as open as it can be about its intended approach and how this, if supported or agreed by the affected parties, will speed up the process. However, it is clear that Chorus is keeping all its options open – if a Commission decision favours Chorus it will accept it; if it doesn't it will seek judicial review. This has the potential to sabotage the determination and put it back significantly. In this regard, **it needs to be recognised that the relatively simple and relatively well defined IPP process took**

approximately two years to complete, yet was still subject to legal challenge by Chorus.

There would seem to be two ways through this impasse, Chorus can, as all other parties have done, agree in advance with the Commission's interpretation of the Act and in particular the degree of discretion that the Commission has. Alternatively, the Commission, or Chorus, or any other party could seek a declaratory judgement. While this initially might take time it would be time well spent if it served to minimise the likelihood of downstream litigation that might cause the pricing model to be restructured.

In a similar vein, **substantial agreement on the major components of the pricing model is also desirable before developing the model and loading it with data. This would ensure that there are no avenues open for down-stream judicial review of the decisions made by the Commission**. The alternatives would be to construct a model that was extremely flexible and that could be reconfigured at very short notice (say within the 20 day draft determination period) or model a range of potential outcomes that could be chosen from at a later stage – for example by applying a S 18 lens.

The dangers of choosing MEAs that are easier to model rather than MEAs that are the most appropriate.

The TERA presentation of its modelling process indicated several short-cuts that are intended to make modelling simpler and quicker - for example: that a new efficient operator would locate exchanges and cabinets in the same locations as Chorus' current cabinets; that they would always follow streets and roads; that satellite mapping would be accurate enough; and that observable infrastructure was available for use or co-location. This is likely to lead to the favouring of an MEA(s) that can be accommodated by the model rather than choosing an MEA(s) that is most appropriate for a given circumstance and which an efficient operator would choose. For example; we understand that difficulties in reaching agreement on shared access routes for end-user connections are such that operators are considering using fixed wireless access from the kerb or wireless within multi-dwelling units. Also, in some areas communities are using Chorus' fibre connections to schools, installed under the RBI and UFB, as hubs for community wireless networks. Such initiatives are certainly low cost and are certainly providing a far superior service to the current UBA, UCLL services yet will be immensely difficult to model using the TERA modelling approach.

The length of time required to accurately model the costs of the current Chorus network in the absence of any agreement on the breakdown and apportionment of those costs.

The current Chorus physical layer 0 and 1 network is theoretically relatively easy to model, albeit a very large job that if rushed is prone to error. What is not easy to model or measure accurately is the multiple services that use that physical infrastructure or the value that users place on those different services. In common situations where multiple services are using the same infrastructure, the expectation is that the common costs would be apportioned in some manner (e.g. by contract or regulation). In the discussions and workshops to-date there has been little discussion about the services other than UCLL and UBA and variations such as SLU and UCLFS let alone how the costs of shared infrastructure will be apportioned between these and other services.

The current Chorus network was largely built to provide a basic POTs service. Hundreds of thousands of households still only require a basic telephone service and not a broadband service. Tens of thousands are unable to obtain a useable broadband service. There is a vast range of: commercial services offered to businesses; wireless and cellular backhaul services; duplicate circuits for security purposes; etc. It may be possible with the assistance of Chorus and retailers to identify all these services, it may just be possible to identify the

routes they take and the infrastructure they partially use and share but to apportion the costs of that shared infrastructure use between services will be massively difficult and impossible in the current timeframe.

To-date in the workshops there has been no identification of the additional services let alone how the routes they will take can be mapped or how common costs will be apportioned. At best we imagine the only way to do this is by arriving at an estimate – possibly based on revenue from those services. The likelihood is that such an estimate will heavily influence the final cost figure and will be heavily contested by parties.

We consider that additional time allocated to resolving such issues in advance of commencing the modelling will be time well spent.

The length of time necessary to model multiple MEAs for multiple services in the absence of any agreement on what are the correct MEAs.

As we have said earlier, in the absence of agreement on the most appropriate MEA(s), one option to head off potential litigation would be to model multiple MEAs for multiple services (UCLL, UBA), multiple locations (urban, rural) and multiple technologies (copper, FWA, FTTH, FTTN, hybrids).

Indications were given at the workshops that this was a valid option as long as the choice of MEAs was made before modelling commenced and that the number of MEAs would determine the length of time and / or resource required to undertake the task.

We are doubtful that the time / resource trade off can simply be controlled within a fixed timeframe – there comes a point at which additional resources cease to add anything and ultimately incur greater delay.

There are significant dangers of putting all eggs in one basket of a single MEA - consequently we are very supportive of modelling multiple MEAs. We believe that additional time should be spent up-front in reaching agreement in order to arrive at a relatively narrow range of MEAs to be modelled. This will ultimately save time and resource insomuch as it will head off potential downstream litigation and redevelopment of the pricing model.

A significant length of time will be required to obtain accurate information on the costs of various MEAs and the ability to audit those costs, particularly if needing to seek information from incumbent providers or from overseas.

The Commission's ability to require information from operators is understood, but to a large extent operators have great flexibility to present information in a form and in a light that best suits their own objectives. It is clear from the workshops that a vast amount of information is going to be required from Chorus and potentially others who are already building new networks. That information is going to be plugged into computer models to be analysed. We have doubts that in the time available for the pricing determination that there will be sufficient time to have even a cursory look at a fraction of the information and that it will be taken on trust. Instead, reliance will be placed upon looking at the output of the modelling exercise and assessing whether it is in the right ball-park and whether it accords with other MEAs being modelled. This reason alone is one that supports the choice of multiple MEAs.

If the results do not fall within the expected range, or even if they do, the opportunity to revisit the input data and make corrections will not be possible in the time available given the vast amount of data.

If data is required (say for example about an MEA that has been deployed overseas but not in New Zealand) the ability of the Commission to require that information in a form and in the

timeframe that the Commission may want is heavily constrained as is the ability to conduct any meaningful audit of the data.

We believe that additional time should be allocated to ensuring that input data is thoroughly and independently audited in advance of the price modelling exercise.

The degree of progress since the FPP requests.

The relatively easy IPP took two years to complete, for many that appeared to be a process that was undertaken quickly and possibly too quickly insomuch as Chorus was subsequently able to seek judicial review of the determination. In comparison the FPP process is significantly more complex and there are more elements that are being tested. In such circumstances the expectations of all but Chorus are that the FPP process will take at least two years and probably longer. Even Chorus in its submission recognised that the tight timeframes could only be achieved by using its top-down framework and its information, modelling its copper network – a solution that is totally unacceptable to all other parties.

The FPP was notified in December 2013, to complete it by December 2014 means a 12 month process. As the Commission has identified, New Zealand is unique in the world and is limited in its ability to draw on other countries experience – flying blind and flying fast is a recipe for disaster. The indications to-date are that a 12 month FPP process is impossible.

We are concerned that we are four months into the process and with little sign that major differences of opinion are resolved or are resolvable. We have had several process papers and the Commission has given some preliminary views but we have barely started to address many of the complex issues. Meanwhile Chorus is consistently challenging whether the Commission has the discretion to make decisions.

This lack of progress is to be expected and should be accommodated by extending out the time for the determination rather than letting issues concertina up against a fixed end date.

There needs to be an ability to allow all parties sufficient time to make submissions given asymmetric resources, incentives and access to the information of the interested parties.

As a voice of end-users we are critically dependent upon open and thorough consultation processes as our access to resources and often information is constrained. In that regard the Commission's willingness to hold Chatham House Rule meetings and issue shorter supplementary issues papers is appreciated. Nevertheless, the timeframes involved are clearly far too short even for organisations such as Telecom and Vodafone which have significant resources at their disposal. There are several areas identified later in this submission where we have had to make a conscious decision not to respond, simply because we have insufficient time or resource. That cannot be good for a process that is intended to be in the best interests of end-users.

Of recent concern has been the process for this submission. Attendance at a very worthwhile workshop on 28 March to discuss the issues in this submission revealed many topics on which we wished to comment. We were promised notes from the meeting by Monday 31st to be told on Tuesday 1st of April that they would not be available before Wednesday 2nd of April and then told we would not be getting them at all. At the same time we are being told that in future there will be no leeway allowed to delay until 8am Monday submissions that are due at 5pm on a Friday.

To be clear, we are not being critical of the Commission staff that is doing an excellent job in very difficult circumstances – we are simply using this example to show how the need to

meet unrealistic and fixed deadlines is affecting the Commission's process and affecting our ability to effectively contribute to the determination relative to others.

The presentation of the TERA price modelling showed little evidence that the model will be able to provide sufficient cost accuracy to avoid subsequent dispute or litigation.

In the absence of the notes from the presentation of the TERA model our view is that the modelling process is highly complex, overly reliant on data from interested parties and makes a number of large assumptions.

The only networks on which TERA were able to demonstrate their model were a copper cabinetised network and a fibre to the node network following the same routes and using the same cabinets. TERA couldn't demonstrate or answer questions on any other network that might use a different MEA (for example a fixed wireless network, a hybrid fibre/FWA or a point to point FTTH). There needs to be further opportunity to question how TERA will model alternative MEA(s).

There was little evidence provided by TERA that they understood the NZ infrastructure environment (e.g. the RMA, the capacity to share third party layer 0, transit authority road reserve requirements, etc) and its impact upon the modelling. While it is possible to educate TERA on these issues, that is not a simple matter when Territorial Local Authorities each have different rules which are sometimes only known and understood by operators working in those authority areas.

Process Issues – criteria for the timing constraints.

For a number of reasons we are not convinced that it is either necessary, or in the best interest of end-users or the majority of the industry, to complete the FPP pricing determination by December 2014. We are perplexed as to why the Commission feels it needs to rush this process.

We consider the Commission has already met the Act's requirement to make every effort to complete the pricing determination. In completing the IPP and commencing the FPP process the Commission has done as much as it is reasonable to expect.

Achieving the 1 December deadline does not increase certainty for anybody, indeed it increases uncertainty because a rushed process is more likely to be wrong, more likely to be legally challenged or result in government intervention.

We understand that one of the driving forces for the Commission's haste may be a desire to provide certainty for investors and we agree that the sooner sound decisions can be made the greater the level of certainty.

The qualifying words here are "sound decisions" and as we have explained above we do not consider that it is possible to make sound decision quickly in such a complex area.

Furthermore, the Commission's principle requirement under the Act is to promote competition not investment. Competition will always create uncertainty for investors and that cannot be avoided. If there is a trade-off to be made between promoting competition and providing certainty then the Act is clear the Commission is bound to promote competition.

If the Commission wishes to minimise uncertainty for investors and promote competition we would respectfully suggest that uncertainty is more likely to be generated by a hasty process that will draw legal action than a steady process that will not.

There are mechanisms by which the Commission can reduce uncertainty such as increased modelling, seeking greater level of prior agreement, and completing the two (UBA and UCLL) determinations together, however these options will in and of themselves require more time.

As we have said earlier there are a number of options that the Commission can chose from that will contribute to reducing uncertainty however all of those options are to some degree predicated upon taking more time to complete the FPP pricing determination.

Specific Issues

The 14 March consultation paper asked for our views on a number of specific issues and the two Chatham House Workshops also raised a number of similar issues.

As discussed earlier we are constrained by the tight time frames in being able to respond to all these issues in the depth we would like.

Modern equivalent assets and services

The choice of the MEA(s) is critical yet there is little agreement within the industry which is the most appropriate MEA(s).

We generally agree with the legal opinion of James Every-Palmer as we believe it is necessary to first determine the core components of the current UCLL and UBA services, then determine the cost of those services, then chose an MEA(s) and finally determine the cost of providing the equivalent service over the MEA(s).

We agree that the Commission is not constrained by the STD definition of UCLL nor is it required as a matter of law to mechanically adopt a MEA which replicates all of the specific features of Chorus' present network. We note however that Chorus has an opposite view on these issues.

While we are not qualified to comment in detail on the finer points of the legal interpretations of the Act we do have a number of concerns and some observations from the perspective of end-users.

The services being priced are the services the non-price terms of which are included in the STD. However characteristics of the service such as electricity conductivity and compatibility with end-user equipment are not part of the service, they are means by which the service is delivered and by which the end-user may use the service. As long as a modern equivalent service is capable of delivering an equivalent service and allows use of equivalent user equipment the MEA would capture the core functionality of the service.

The MEA issue is a circular one – the Commission asks our views on the most appropriate MEA(s) to model – we respond that the lowest cost MEA is the most appropriate – the lowest cost cannot be known until the modelling is undertaken.

If the Commission's first step is to identify the service being priced for comparative purposes with an equivalent future service there needs to be some standards of service that are measurable across the network being modelled. We consider that **the current UBA and particularly the UCLL services that will be delivered over the MEA are insufficiently defined and there is little agreement on the correct definition - this may affect the choice of MEAs.**

To be clear, the service which an end-user receives either via UCLL or UBA, when that end-user is in an urban area and close to an exchange becomes a significantly different standard of service if the end-user is in rural New Zealand at the end of a wet piece of string. There is no consistent service standard or minimum service standard that applies across the Chorus copper network. In choosing an MEA, is the "equivalent service" matching the "urban service" or is it matching the "rural service"? In apportioning costs, if the service is not available or not taken because it is not functional what level of cost can be applied? – we would say none. In the reverse situation when attempting to apportion the costs of the MEA equivalent service do you abate the cost - towards the urban service or towards the rural service or some average in between? Or do you simply remove from any calculation those parts of the rural network that are incapable of meeting any minimum standard?

What is lacking in the STD definitions of the service and which might not be able to be included retrospectively is any sense of the standard of the service that end-users receive. A possible reference point might be the TSO where there is a requirement for Chorus to provide a 9.6 Kbps or 14.4 Kbps service. While we are not in favour of TSO requirements being included in the pricing determination, if this level of service is the only minimum level of service that exists, it may be a fall back option. As with other aspects of the determination it would be preferable if the time were available to reach agreement between parties on what constitutes a minimum service and what portion of the Chorus network is technically able to provide that level of service. If this is not possible the option of modelling different services with different service capabilities might be feasible.

As an absolute minimum we consider that different MEAs are required for urban and rural New Zealand. It is highly unlikely that an efficient entrant would deploy a new fixed wire network in rural areas, either copper or fibre.

Having first defined the services to be modelled and the cost of providing those services, the later part of the determination modelling process is to choose an MEA(s) and calculate the portion of the new services costs that are apportioned towards delivering the original service – i.e. UCLL or UBA.

Services that may be delivered over a future MEA network that cannot be delivered over current networks are innumerable and offer significantly greater value. There has been little discussion on how the additional value of the MEA services will be calculated, abated or how or when S 18 will be considered;

There is general agreement that a new entrant building a new service would not simply choose to replicate an existing service standard. For example the government contracts for the UFB service stipulate a 100/100Mbps minimum service capability within the urban (75%) footprint of the UFB. The RBI contracts specify different minimum service capabilities. As we have said above, as a minimum we would expect different UCLL - MEAs for urban and rural situations. It is unclear whether different MEAs would also be required for the UBA service, or whether the services be bundled for the purposes of choosing the MEA in rural but not in urban. As with other issues covered earlier, the level of discussion has seen insufficient operators with years of experience, hard pressed to analyse the multiple implications to be sufficiently confident of choosing the most appropriate MEA for a particular service or a particular geography.

Given this impasse the solution we would proffer is that further discussions take place with the intention of getting agreement upon a range of MEAs to be modelled. Irrespective of the agreement there should be a minimum of two MEAs that are able to be associated with each major service component or technology (UBA/UCLL, rural/urban, copper/fibre/FWA). On completion of the modelling the Commission then applies S 18 to determine the level of abatement that would apply to achieve equivalence with the original Chorus services and which MEA for which component best meets the purpose of the Act.

By first determining the costs, the Commission will be meeting the strict requirements of the Act to use a cost based approach and by then applying S 18 the Commission meet its obligations under the purpose statement. In this regard it is following the method it applied for the IPP determination which the High Court has approved.

Relativity

We have little further to say on relativity beyond our original submission and cannot identify any additional matters that should be taken into account. We will be interested to see other submissions before saying more.

Expiry Date Clarification

We have not focused upon this issue - we assume that the issue does not become relevant until 2019 and will be addressed before then if it is a major issue.

Confidentiality process

We have little to say on this, we agree with the view of the Commission that the timeframes are tight and with the view of RSPs that there is little Chorus information or data that needs to remain confidential.

TSO

In general terms we do not consider the TSO particularly relevant to the determination. If it was to be considered relevant then we would suggest that the determination timeframes be adjusted to coincide with the review of the TSO that is currently being undertaken by the Government.

One area where the TSO may be useful as a reference point is if the issue of defining a minimum service standard for the current UCLL/UBA services cannot be agreed in that the TSO sets a contractual minimum service level of 9.6 Kbps and 14.4 Kbps.

LFCs as sources of cost data or as the MEA

We consider that this is relatively straight forward – For UCLL, if a MEA model of a scorched node approach is chosen then we assume either Northpower's or Ultra-Fast Broadband's UFB networks would be suitable sources of cost data in so much as they are recent market entrants and will have constructed their networks from scratch. The degree to which they are able to utilise their electricity assets (e.g. poles) and the apportionment of those costs would also be valuable for modelling and analysis purposes.

Backdating

We have already submitted substantially on the backdating issue. We note that the majority of the industry agrees with our opinion with only Chorus disagreeing. If Chorus was concerned with obtaining certainty it would agree that the Commission has the discretion to decide whether backdating should apply. It would also agree that certainty is best served by the Commission not backdating.

WACC - Cost of Capital

We have not submitted on this issue other than to say the Commission's approach seems to be sensible and based upon experience with similar issues in the electricity sector.

One issue that we are not clear upon and which might be worthy of further discussion is that of accounting for grants, subsidies, levies, etc. the most obvious example being the government's $1.35billion UFB programme. It is not clear to us how this will be treated in the costing exercise. While the UFB is partially a cost to Chorus they are also receiving ~ $1 billion from taxpayers either in interest free loans or grants to offset that cost. Under an MEA test would the government subsidy be taken into account? i.e. would the calculated cost to an efficient provider be off-set by ~$1 billion? Or is the $1 billion interest free loan to be factored into the "Cost of Capital calculation"? Furthermore, if at some point in the future the Government writes off that interest free loan – what opportunity would there be for the Commission to revisit the costing?

In slightly different scenarios: how will the Commission treat the ~$650 million cost of the current FTTN network which at the time was built by Telecom in return for the government of the day not imposing certain operational separation undertakings? And, how will the ~$50 million per year, contributed to Telecom by other operators for maintenance of the network under the TSO, be treated?

Likewise, depreciation, in calculating the cost of the current UCLL/UBA services how is the depreciated value of the Chorus network – i.e. the book value factored into costs? It would appear that if the Commission value the network on a full replacement cost basis Chorus stands to be significantly over compensated for a network that has already been heavily subsidised.

With many thanks for your consideration,

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