

PUBLIC VERSION

1288493



COMMERCE COMMISSION

**STANDARD TERMS DETERMINATION FOR  
CHORUS' UNBUNDLED COPPER LOCAL  
LOOP NETWORK SERVICES**

**SERVICE APPENDIX 2, SCHEDULE 3  
SUB-LOOP CO-LOCATION SERVICE LEVEL  
TERMS**

**PUBLIC VERSION**

**18 June 2009**

Updated to incorporate Commerce Commission decisions, amendments, and clarifications through 30 November 2011

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1 **INTRODUCTION**

1.1 These Service Level Terms (**SLT**) are part of the Sub-loop Co-location Terms, which set out the rights and obligations of Chorus and Access Seekers in relation to Chorus' Sub-loop Co-location Service.

1.2 The operational requirements for the Sub-loop Co-location Service are set out in the Sub-loop Co-location Operations Manual.

1.3 References to clauses or sections are references to clauses and sections of this SLT unless stated otherwise. The definitions set out in the Sub-loop Services General Terms and the Sub-loop Co-location Operations Manual apply to the extent that they are not expressly modified by or inconsistent with the context of this SLT. The definitions set out in clause 1.4 apply to this SLT.

1.4 **Definitions:** In this SLT:

*Appendix 2 Deliverables* means those deliverables set out in Appendix 2.

*Appendix 2 Service Levels* means those Service Levels set out in Appendix 2.

*BAU* means business as usual for the Sub-loop Co-location Service.

*Charge* means any amounts payable under the Sub-loop Co-location Price List.

*Deliverable* means a Level A Deliverable or a Level B Deliverable.

*Escort* means an escort provided to the Access Seeker by Chorus for the purposes of fault management (where applicable).

*Future Service Level Deliverable* means any deliverable that is added to this SLT in accordance with the change mechanism set out in section 9 of the Sub-loop Services General Terms.

*Future Service Levels* is the means by which Chorus' performance of a Future Service Level Deliverable will be measured.

*Level A Deliverables* means those deliverables performed by Chorus pursuant to this SLT for which failure by Chorus may cause the Access Seeker diminished service quality in providing services to its End Users, as set out in Appendix 1 and Appendix 2.

*Level A Service Level* is the means by which Chorus' performance of a Level A Deliverable is measured (except as may be otherwise provided) on a calendar monthly basis, as set out in Appendix 1 and Appendix 2. A Level A Service Level is subject to any exclusions specified in this SLT.

*Level A Service Level Default* means a failure by Chorus to meet the Level A Service Level corresponding to a particular Level A Deliverable.

*Level B Deliverables* means those deliverables performed by Chorus pursuant to this SLT for which failure by Chorus is unlikely to cause the Access Seeker diminished service quality in providing services to its End Users, as set out in Appendix 1 and Appendix 2.

*Level B Service Level* is the means by which Chorus' performance of a Level B Deliverable is measured (except as may be otherwise provided) on a calendar monthly basis, as set out in Appendix 1 and Appendix 2. A Level B Service Level is subject to any exclusions specified in this SLT.

*Level B Service Level Default* means a failure by Chorus to meet the Level B Service Level corresponding to a particular Level B Deliverable.

*Performance Penalty* means the amount that an Access Seeker is entitled to claim in the event of a Level A Service Level Default, calculated in accordance with section 8 and Appendix 3.

*Receipt Time* means:

- (a) for Orders that are made using the OO&T system, the time that the electronic communication containing the Order enters the OO&T system; or
- (b) for Orders that are made by email, the time that a Order is received in the Chorus designated inbox for receipt of such Orders,

provided that where an Order is received outside Business Hours, the Receipt Time will be the start of the first Business Hour of the following Working Day.

*Service Levels* means, collectively, Level A Service Levels and Level B Service Levels (and *Service Level* has a corresponding meaning).

*Service Level Default* means a Level A Service Level Default or a Level B Service Level Default.

*Site* means any Distribution Cabinet or other part of Chorus' Network as the context requires.

*Specified Date* means in respect of Future Service Levels, the date agreed under the change mechanism set out in section 9 of the Sub-loop Services General Terms.

*Tolerance Level* means the minimum acceptable level of performance of a Service Level for a Deliverable, expressed as a percentage in Appendix 1 and Appendix 2.

## 2 SCOPE

### 2.1 This SLT:

- (a) sets out the quality and performance of the Service Level commitments of Chorus to the Access Seeker for the delivery of the Sub-loop Co-location Service; and
- (b) provides for a penalty mechanism where Chorus fails to meet its Service Levels.

2.2 This SLT may be changed in accordance with the change mechanism set out in section 9 of the Sub-loop Services General Terms.

2.3 Chorus will review this SLT 12 months after the Determination Date and thereafter every second year, with each biennial review commencing on the anniversary of the determination date of the Unbundled Copper Local Loop STD<sup>1</sup> (7 November 2007) (or earlier if requested by the Access Seeker and an earlier review is agreed to by Chorus). The change mechanism set out in section 9 of the Sub-loop Services General Terms will apply to any changes proposed by Chorus as a result of any review.

## 3 SERVICE LEVELS

3.1 Chorus will provide the Deliverables in accordance with this SLT.

3.2 Service Levels are classified as either Level A Service Levels or Level B Service Levels.

3.3 The Service Levels in Appendix 1 will apply from the Determination Date.

3.4 The Service Levels in Appendix 2 will apply from 10 Working Days from the Determination Date.

3.5 Any Future Service Levels will apply from the Specified Date.

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<sup>1</sup> Commerce Commission Decision 609, *Standard Terms Determination for the designated service Telecom's unbundled copper local loop network*, 7 November 2007.

- 3.6 The nature of any Future Service Levels, including their respective Tolerance Levels, will be set in accordance with the change mechanism process under section 9 of the Sub-loop Services General Terms.
- 3.7 If the Access Seeker updates or changes an Order under clause 21.5 of the Sub-loop Co-location Operations Manual, the Service Levels applicable to that Order (as updated or changed) will be measured from the Notice date as set out in clause 21.5.2(c) of the Sub-loop Co-location Operations Manual.

#### 4 **EXCLUSIONS**

- 4.1 The Service Levels will not apply where:
- (a) a Service Level Default is due to a Force Majeure Event;
  - (b) a Service Level Default is a direct result of the Access Seeker failing to comply with an express obligation under the Sub-loop Co-location Terms;
  - (c) it is expressly stated in the Sub-loop Co-location Operations Manual or Sub-loop Service General Terms;
  - (d) a Service Level Default is a direct result of:
    - (i) a fault that is the Access Seeker's responsibility under the Sub-loop Services General Terms; or
    - (ii) anything (including any fault) caused by the telecommunications network or equipment of any third party or the Access Seeker's Network or the Access Seeker Equipment;
  - (e) a fault is reported and no fault for which Chorus is responsible is detected when the service is tested from end to end;
  - (f) a Service Level Default is due to a failure by the Access Seeker or its End-User to allow access to the premises or equipment when reasonably requested;
  - (g) remedying a Service Level Default would result in a material health and safety risk for a Chorus employee or agent, the avoidance of which could not have been realistically predicted by Chorus; or
  - (h) agreed between Chorus and the Access Seeker.
- 4.2 Further exclusions or limitations to Chorus' liability in respect of specific Service Levels are set out in Appendix 1 and Appendix 2. The exclusions and limitations provided in Appendix 1 and Appendix 2 are in addition to the general exclusions

set out in this section 4 and in no way limit the exclusions set out in this section 4.

- 4.3 Where Chorus makes a decision that a Service Level Default has not occurred because one or more of the exclusions apply, the details of the exclusion are to be recorded and reported in Chorus' monthly performance report provided in accordance with clauses 6.1 and 6.2.

## **5 ACCESS SEEKER FORECASTS**

- 5.1 The Access Seeker will provide Sub-loop Co-location Forecasts to Chorus in accordance with the procedures and time frames set out in the Sub-loop Co-location Operations Manual.
- 5.2 If the Access Seeker fails to provide Chorus with Sub-loop Co-location Forecasts, Chorus will use reasonable endeavours to process any relevant Orders but the Service Levels set out at Item Numbers 1 (Site Audit) and 4 (Provision of Quote) of Appendix 1 will not apply.
- 5.3 If the Access Seeker provides Chorus with an inaccurate Sub-loop Co-location Forecast, then there will be no requirement for Chorus to meet the Service Levels set out at Item Numbers 1 (Site Audit) and 4 (Provision of Quote) of Appendix 1, to the extent that any failure to meet the Service Levels is attributable to the inaccurate Sub-loop Co-location Forecast.

## **6 REPORTING ON SERVICE LEVELS**

- 6.1 Once an order has been placed, Chorus will provide the Access Seeker with a performance report each month, from the first full month in which the Service Level Terms apply. The report will be delivered or made available to the Access Seeker within 10 Working Days of the end of each relevant calendar month in electronic format. The report will detail Chorus' performance and compliance with each of the Service Levels over the preceding month. The format and content of the performance report will be proposed by Chorus within 10 Working Days of the Determination Date for approval by the Commission.
- 6.2 Chorus will provide the Access Seeker and the Commission with an electronic copy of a consolidated performance report within 10 Working Days of the end of each calendar month in which the Service Level Terms apply. The report will detail Chorus' performance and compliance with each of the Service Levels over the preceding month for all Access Seekers. The format and content of the performance report will be proposed by Chorus within 10 Working Days of the Determination Date for approval by the Commission.

- 6.3 The consolidated version of the performance report provided in accordance with clause 6.2 must be made publicly available on a Chorus website at the same time as it is provided to the Access Seeker and the Commission.

## 7 SERVICE LEVELS DEFAULTS

- 7.1 In the event of a Service Level Default, Chorus will provide a report to the Access Seeker and the Commission detailing:

- (a) the cause of, and procedure for correcting, such Service Level Default;
- (b) the steps taken by Chorus to remedy the Service Level Default and the effectiveness of those steps; and
- (c) any previous Service Level Defaults in respect of that Deliverable occurring during the current and preceding Half Contract Year.

The report will be provided each month until the Service Level Default is remedied, at the same time as Chorus provides its report under clause 6.1.

- 7.2 The report provided in accordance with clause 7.1 must be made publicly available on a Chorus website at the same time as it is provided the Access Seeker and the Commission.

## 8 PERFORMANCE PENALTIES

- 8.1 Subject to section 4, in the event of a Level A Service Level Default, the Access Seeker will receive a Performance Penalty from Chorus. The Performance Penalty will be that set out in Appendix 3.
- 8.2 Notwithstanding clause 8.1, the Access Seeker will not be entitled to receive any Performance Penalties for a Service Level Default relating to a Service Component of the Sub-loop Co-location Service set out in section 6 of the Implementation Plan that has not been included in a completed Soft Launch (where "Soft Launch" and "Service Component" have the meanings set out in the Implementation Plan).

## 9 RECONCILIATION OF PERFORMANCE PENALTIES

- 9.1 Within 10 Working Days after the end of each calendar month (the **Relevant Month**), Chorus will provide a summary report to the Access Seeker that will detail the total amount of Performance Penalties imposed for Service Level Defaults in accordance with section 8 during the Relevant Month, detailed by Service Level.



- 9.2 Where the Access Seeker is entitled to receive payment of a Performance Penalty from Chorus, Chorus will set off the total amount of the Performance Penalties from the Charges due in the next invoice issued by Chorus to the Access Seeker in relation to the Sub-loop Co-location Service. If the Performance Penalties exceed the Charges due, then Chorus must pay the amount equivalent to the Performance Penalty, or that part of the Performance Penalty not so set off, to the Access Seeker within 20 Working Days of the end of the Relevant Month.
- 9.3 Within 10 Working Days after each Half Contract Year, Chorus will provide a summary report to the Access Seeker that will include the following:
- (a) with respect to each Deliverable for which there was a Service Level Default during the preceding Half Contract Year:
    - (i) statistics on Chorus' average monthly performance of that Deliverable, detailed by calendar month, during that Half Contract Year; and
    - (ii) the average of Chorus' average monthly performance of that Deliverable during that Half Contract Year;
  - (b) the total amount of Performance Penalties imposed for Service Level Defaults in accordance with section 8, detailed by calendar month, during the preceding Half Contract Year.
- 9.4 Any Performance Penalty imposed under the provisions of this SLT is credited on the basis that there is:
- (a) no admission of liability by Chorus or the Access Seeker; and
  - (b) that any amount credited will be credited without prejudice to any right of either Chorus or the Access Seeker to claim for additional loss resulting from the Service Level Default.

**APPENDIX 1 - INITIAL SITE READINESS AND RACKPRINT READINESS**

Item No.	Level A / Level B	Service Attribute	Deliverable	Service Level	Tolerance Level	Exclusions
1	Level A	Site Audit	Chorus will complete a Site Audit	Site Audit to be completed within 10 Working Days of an Order by the Access Seeker	90%	

**Provision of Sub-loop Co-location Service**

Item No.	Level A / Level B	Service Attribute	Deliverable	Service Level	Tolerance Level	Exclusions
2	Level B	Order acknowledgement	Chorus will acknowledge receipt of an Order	Provide acknowledgment to the Access Seeker within 4 Business Hours following the Receipt Time	99%	
3	Level B	Notification of rejection	Chorus will reject an invalid Order	Provide notification of the rejection to the Access Seeker within 3 Working Days following the Receipt Time	90%	
4	Level B	Provision of Quote	Chorus will provide a Quote (including notification of expected completion date) in response to an Order	Provide Quote within timeframe specified in section 15 and 16 of the Sub-loop Co-location Operations Manual,	80%	This Service Level will not apply to Quotes provided in respect of space on or around a Distribution Cabinet

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Item No.	Level A / Level B	Service Attribute	Deliverable	Service Level	Tolerance Level	Exclusions
5	Level A	Meet expected Chorus Build completion date	Chorus will complete the Chorus Build within the time specified in the Firm Order and in accordance with the Quote and Chorus Build terms	Complete the Chorus Build within the time specified in the Firm Order and in accordance with the Quote and Chorus Build terms	100%	This Service Level will not apply where the Access Seeker fails to give notice of acceptance or rejection of Chorus' Quote or fails to provide any Access Seeker Equipment that Chorus has been requested to install (by the date specified by Chorus)
6	Level B	Confirmation of completion of Chorus Build	Chorus will provide confirmation of completion of the Chorus Build	Chorus will confirm completion of Chorus Build to the Access Seeker within 2 Working Days of completing the Chorus Build	90%	
7	Level B	Notification of Planned Outages	Chorus will advise of Planned Outages	Advise at least 5 Working Days before Planned Outage occurs	90%	Chorus will use all reasonable endeavours to schedule Planned Outages between the hours of 11:00pm and 6:00am
8	Level B	Notification of Unplanned Outages	Chorus will advise of Unplanned Outages	Advise within 2 hours, 24 hours a day, 7 days a week, of Chorus discovering or receiving notification of the Unplanned Outage	90%	

**Fault Management for Sub-loop Co-location Service**

Item No.	Level A/ Level B	Service Attribute	Deliverable	Service Level	Tolerance Level	Exclusions
9	Level B	Fault report receipt acknowledgement	Chorus will acknowledge receipt of each fault report	Provide fault report receipt acknowledgement within half a Fault Restoration Hour of the fault being reported <sup>2</sup>	90%	This Service level does not apply where an invalid fault report has been submitted
10	Level B	Notification of expected restoration time	Chorus will provide notification of the expected restoration time	Provide notification of the expected restoration time within 8 Fault Restoration Hours of the fault being reported <sup>3</sup>	90%	This Service Level does not apply in the event of an emergency
11	Level A	Meet notified expected restoration time	Chorus will restore the fault within the expected restoration time	Restore fault within notified expected restoration time	90%	
12	Level B	Availability of Escort	Chorus will make an Escort available during BAU	Chorus will make available during BAU an Escort within 2 Working Days of request	80%	This Service Level does not apply in the event of an emergency

<sup>2</sup> If a fault is logged outside Fault Restoration Hours, for the purposes of this Service Level, the report will be deemed to have been received from 7.00am the following day.

<sup>3</sup> The expected restoration time will be provided in accordance with Chorus' fault prioritisation systems.

**APPENDIX 2 - OPERATIONAL SUPPORT SYSTEM SLTs FOR SUB-LOOP CO-LOCATION**

Item No.	Level A/ Level B	Service Attribute	Deliverable	Service Level	Tolerance Level	Exclusions
13	Level B	Availability of OO&T	Chorus will make OO&T available to the Access Seeker	OO&T is available to the Access Seeker 24 hours a day, 7 days a week	99.8%	Availability to be measured 24x7 over a calendar month, excluding any periods of Permitted Maintenance.
14	Level B	Availability of OFM	Chorus will make OFM available to the Access Seeker	OFM is available to the Access Seeker 24 hours a day, 7 days a week	99.8%	Availability to be measured 24x7 over a calendar month, excluding any periods of Permitted Maintenance.

**Notes:**

**Where availability measured**

In respect of Items 13 and 14, availability is measured from the point at which the public internet meets the OO&T or OFM (as the case may be).

**Permitted Maintenance**

The OO&T and OFM systems may be taken out of service for routine maintenance, testing, configuration changes, software upgrades or updating facilities. Chorus will, where practicable, carry out such work between 10:00pm and 7:00am. In such cases, Chorus shall advise Access Seekers not less than 5 Working Days prior to the event.

Chorus may, at such other times as Chorus considers reasonably necessary, take the OO&T and OFM systems out of service, taking into account the need to minimise any disruption caused to the Access Seekers. Chorus will advise of such outages not less than 10 Working Days prior to the planned event.

**Unplanned Outages**

If the OO&T or OFM systems must be taken out of service to resolve a fault affecting the system, where reasonably practicable, Chorus shall give notice to the Access Seeker of any such unscheduled outages and the Access Seeker will be kept regularly updated regarding the resolution of the fault.

Appendix 3 - **PERFORMANCE PENALTIES**

Item No.	Level A / Level B	Service Attribute	Deliverable	Tolerance Level	Performance Penalty
1	Level A	Site Audit	Chorus to complete Site Audit	90%	<p>Where Chorus fails to meet the specified Tolerance Level, the Performance Penalty must be calculated in respect of each fault falling below the Tolerance Level, in accordance with the following formula:</p> <p>Performance Penalty = A x B</p> <p>Where:</p> <p>A = 7% of the average (mean) Charge for all Site Audits exceeding 10 Working Days in the calendar month.</p> <p>B = the number of instances during the calendar month where Chorus' performance fell below the specified Tolerance Level.</p> <p>For clarity, in assessing which Orders (if any) fall below the Tolerance Level, each month's Orders must be assessed chronologically from the time and date of failure to meet the Service Level</p>
5	Level A	Meet expected Chorus Build completion date	Chorus will complete the Chorus Build within the time specified in the Firm Order and in accordance with the Quote and Chorus Build terms	100%	<p>The Performance Penalty is to be calculated on a per calendar month basis in accordance with the following formula:</p> <p>Performance Penalty = A x B</p> <p>Where:</p> <p>A = [(\$1.85 x Average (mean) number of Access Seeker End Users at default Build completion) x number of Working Days in the calendar month that Chorus Builds exceeded the Firm Order date] ÷ number of Chorus Builds in the calendar month</p>

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					<p>exceeding the Firm Order date.</p> <p>B = the number of Chorus Builds in the calendar month where Chorus' performance fell below the specified Tolerance Level.</p>
11	Level A	Meet notified expected restoration time	Chorus will restore the fault within the expected restoration time	90%	<p>Where Chorus fails to meet the specified Tolerance Level, the Performance Penalty must be calculated in respect of each fault falling below the Tolerance Level, in accordance with the following formula:</p> <p>Performance Penalty = A x B</p> <p>Where:</p> <p>A = 7% of the monthly Charge to co-locate at the affected Distribution Cabinet.<sup>4</sup></p> <p>B = the number of instances during the calendar month where Chorus' performance fell below the specified Tolerance Level</p> <p>For clarity in assessing which faults (if any) fall below the Tolerance Level, each month's faults must be assessed chronologically from time and date of failure to meet the Service Level</p>

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<sup>4</sup> Service Components 2.1-2.3 as set out in the Sub-loop Co-location Price List.

**Notes:**

**Performance Penalty Example –Site Audit (Item 1)**

Access Seeker requests 10 Site Audits during the calendar month. Chorus defaults on 3 of these audits, but due to the tolerance level (90%) will only be penalised for 2 of these defaults. The performance penalty will be calculated as follows:

Site Audit #1 = \$2,000, Site Audit #2 = \$3,000, Site Audit #3 = \$4,000

$$A = 7\% \times [(2,000 + 3,000 + 4,000) \div 3] = \$210, B = 2$$

$$\text{Performance Penalty} = \$210 \times 2 = \$420$$

**Performance Penalty Example – Chorus Build (Item 5)**

Access Seeker requests 10 Chorus Builds during the calendar month. Chorus defaults on 3 of these Builds, but due to the tolerance level (90%) will only be penalised for 2 of these defaults. The performance penalty will be calculated as follows:

Build #1 = 2 Working Days overdue and 50 End Users, Build #2 = 3 Working Days overdue and 100 End Users, Build #3 = 4 Working Days overdue and 30 End Users

$$A = [\$1.85 \times [(50 + 100 + 30) \div 3]] \times [(2 + 3 + 4) \div 3] = \$333, B = 2$$

$$\text{Performance Penalty} = \$333 \times 2 = \$666$$