Cross-submission on Price-Quality draft decision

3 August 2021

CHORUS

Summary of key points

Introduction

1. This is Chorus' cross-submission on the Commerce Commission's (**Commission**) draft price-quality path decision (**PQ draft decision**) for PQP1. This cross-submission is not confidential.

2. This section discusses some key issues, while detailed responses to submitter feedback are in the Appendix.

RSP submissions do not provide new evidence

3. In general, the submissions on the PQ draft decision made by Spark, Vodafone, 2degrees and Vocus do not raise any new issues – their positions and claims have been canvassed and addressed previously.

4. We do not consider that the submissions have presented any evidence to justify a departure from Chorus' proposed expenditure plan or quality standards. Nor have they provided sufficiently detailed proposals to enable any alternative approaches to be readily adopted by the Commission without further consultation. The Commission can therefore proceed to a final PQ decision on the basis of Chorus' expenditure proposal.

Investor submissions show the final PQ decisions need to restore confidence

5. Submissions from L1 Capital, Global Listed Infrastructure Organisation and TelstraSuper show there is international concern about the impact of fibre regulatory decisions to date. Those decisions have clearly harmed New Zealand's reputation as a reliable location in which to invest capital – we continue to see international investors exit their holdings in Chorus due to what they consider to be difficult regulatory settings. This emphasises how critical it is that the final PQ decisions are robust and reflect Chorus' actual commercial context.

6. As L1 Capital says, "every incrementally negative outcome going forward is likely to have an outsized impact on Chorus' ability to invest and innovate".[1] The final decisions need to restore confidence to the investment community and provide a solid foundation for Chorus to continue to invest in FFLAS services, promoting the long-term benefit of end-users.

Expenditure proposal

Our proposal is on the lean side of efficient

7. Chorus is efficient. Submissions from investors have reiterated Chorus' history and context in relation to the UFB contract driving efficiencies from the start, the requirement to manage for cash due to real world financial strains and the shareholder expectation that we focus on reducing costs. This all supports our

[1] L1 Capital submission on PQ draft decision, page 16.

position that we are entering PQP1 from a lean base, with significant ambition already 'baked into' our forecasts.

8. Some RSPs have supported the Commission's proposed cuts to our expenditure. However, these are based on the draft decision's misunderstanding and misapplication of Chorus' information. In contrast, these same submitters also raise concerns that we would underspend and push down end-user service quality.

9. Our submission[2] provided analysis and evidence demonstrating that the expenditure reductions proposed in the draft decision are unjustified and would harm consumers. Specifically, proposed opex reductions would force significant and inefficient cost cutting, capex reductions would inhibit efficient investment, increasing costs over time, and excluding incentive capex would create uncertainty and impact retail competition.

Chorus starting position different to Part 4

10. The submission from 2degrees seeks to unfavourably contrast Chorus' proposal with firms regulated under Part 4 of the Commerce Act.

11. The Part 4 regime has been in place for over a decade while critical elements of the fibre regime are yet to be finalised. We note:

    11.1 At the equivalent stage of development for the Part 4 regime little, if any, of the information cited by 2degrees was published or even available. Sustained investment by energy networks to improve asset management, cost and revenue forecasting capability over the last decade was supported by the Commission and provided for in expenditure allowances.

    11.2 Our asset management focus has appropriately been optimised for network build, connecting customers and meeting demand. Our capability here is strong, evidenced by performance and external capability assessment.[3] We are clear in our plans that evolving this capability is a priority for RP1 and subsequent periods.

12. Our plan to evolve our asset management capability over time involves modest investment in RP1 with scope for this to build over successive periods. As noted in our submission, the benefits of this investment accrue through more optimal management of risk, future maintenance and renewal pressures – not efficiency diminishing cuts in the short term.

Adjustments to demand forecast are an overreaction

13. Our demand forecasting is prudent, the Commission is too pessimistic in its draft decision and overestimates the impact of demand changes with its adjustments.

14. Whilst Vodafone's submission supported the Commission's proposed reduction to the demand forecast, we have provided an independent expert report and evidence of recent demand that proves the integrity of Chorus' demand forecasts for PQP1.

[2] Chorus, *Submission on price-quality path draft decision*, 8 July 2021, ('our submission') available at: https://comcom.govt.nz/__data/assets/pdf_file/0028/259354/Chorus-Submission-on-Fibre-information-disclosure-draft-decision-8-July-2021.pdf

[3] This contrasts with energy networks where demand growth is flat (or negative) and focus is predominantly on maintaining and renewing aging networks.

15. We also note Vodafone's key argument is that it felt our demand forecasts are overly optimistic due to the ambitions of MNOs to drive growth fixed wireless access (**FWA**), which Vodafone views as a direct competitor to lower-speed fibre services.[4]

Expenditure plans reflect competitive pressures

16. Our largest customers are also our competitors. Several submitters have emphasised the strength of competition in the telecommunications sector, particularly from FWA. This competition reinforces both expenditure discipline and a focus on end-user experience and service quality.

17. Therefore, to treat Chorus as if it were any other traditional monopoly supplier fails to adequately reflect the nature of Chorus' business risks and costs.

Chorus' incentive programmes support the long-term benefit of end-users

18. As Trustpower has stated, incentives are pro-competitive and meet the purpose of the Act: "our view is that incentive payments play an important role in promoting the uptake of fibre-based broadband, given the alternative forms of broadband access, which consumers benefit from in the long-term. As the Commission notes, this is consistent with behaviour expected in a workably competitive market."[5]

19. Spark and Vodafone, both vertically integrated operators with competing access technologies, have raised objections to our incentive payments (yet are active participants in our incentive programmes). Their objections reflect their motivations as competitors; their objections are not novel and previous complaints to the Commission have not been upheld.

20. Deferring or declining to approve our incentive expenditure will only serve to disadvantage smaller RSPs and reduce the vibrancy of retail market competition.

21. The Commission can and should approve incentive expenditure as part of base capex and connection capex allowances. In particular:

    21.1 Our incentive investment is well-established and the continuing safeguards around competition and compliance testing mean the assessment by the Commission of our incentives expenditure does not need to re-examine these points;

    21.2 There is enough evidence to show our incentives programme is prudent and efficient, compliant, and promotes competition in telecommunications markets at both network and retail levels;

    21.3 We have robust processes for competition and compliance testing for individual initiatives;

[4] Chorus, *Submission on price-quality path draft decision*, 8 July 2021, footnote 2 (page 4).
[5] Trustpower, *Submission: Consultation on Chorus' Price-Quality Path from 1 January 2022 – Draft decision*, paragraph 3.

21.4 The Commission has published guidance on equivalence and non-discrimination obligations[6] prompted by historical concerns; our initiatives comply with that guidance.

22. The Commission should be more concerned about the costs of under-investment in incentives (e.g. reduced downstream competition, foregone social benefits from increased connectivity, ongoing duplicated costs of running parallel copper and fibre networks). It should be less concerned about the risk of over-investment in incentives because these are addressed by the proposed "commercial rationale" test.[7]

23. This leaves the Commission with the question of how much incentive capex to approve, which is guided by whether our proposed level of investment satisfies the relevant economic test.

24. Vodafone made suggestions for how incremental costs and incremental revenues should be quantified when applying the Commission's commercial rationale test.[8]

25. We acknowledge Vodafone's suggestions and, noting our position that a less stringent test would be appropriate anyway, emphasise:

25.1 Our economic testing already includes the incremental cost of servicing new connections (i.e. lead-in costs).

25.2 Limiting revenue to the period of the incentive is too conservative because most customers will stay connected for longer and the expected life of the acquired customer is therefore important. Customer churn at a retail level is likely to be higher than at an access level so Vodafone's concerns aren't warranted here. It is also the principled approach to take because customer lifetime value is a widely accepted measure to account for costs firms incur in a workably competitive market in acquiring and retaining customers.

25.3 The reference to the finding of the 2019 Electricity Price Review that customers who seek incentive payments can often be transient is not relevant to Chorus. Our incentive payments go directly to RSPs, not end-users.[9] RSPs make their own decisions as to what they do with incentives.

26. The information we have provided to the Commission demonstrates our proposed capex is prudent and efficient. Concerns raised by submitters are either not relevant or do not alter this fact. Evidence to support this assessment is available to the Commission, as demonstrated in Table 1 below.

[6] Commission, *Equivalence and non-discrimination – guidance on the Commission's approach for telecommunications regulation*, 30 September 2020, available at: https://comcom.govt.nz/__data/assets/pdf_file/0027/225972/Equivalence-and-non-discrimination-guidance-30-September-2020.pdf.

[7] Commission, *Chorus' price-quality path from 1 January 2022 – Draft decision*, 27 May 2021, ('draft decision'), Attachment G, G3.1 describes this test as "is there evidence to show that the expected incremental revenues exclusively from the incremental end-users outweigh the incremental costs?".

[8] *Vodafone Aotearoa's submission on the draft price-quality path to be applied to Chorus*, 8 July 2021, paragraph 17.

[9] With the exception of one small-scale trial that will be completed before 1 January 2022.

Table 1: Chorus' incentive payments and the Commission's tests

Commission – preliminary and substantive tests	Evidence to support Chorus incentive payments meet assessment requirement
Preliminary threshold test: do the costs Chorus incurs in making incentive payments to obtain contracts with RSPs meet the definition of "capex" in the IMs?	We treat incentives as capex in our audited accounts. If the IMs do not clearly allow this same treatment, then they should be amended to clarify incentive investment is capex and correctly align the IMs to GAAP. Otherwise the IMs fail to meet their intent by not providing an *ex-ante* expectation of recovering efficient costs. We have also submitted on this point in the draft decisions for fibre-PQID IM amendments process.[10]
Preliminary threshold test: do the proposed incentive payments comply with the geographically consistent pricing (**GCP**) requirement under s201?	Capex incentives are not part of price, so GCP requirements are not relevant. Even if they were, it is possible for incentives to operate consistently with GCP requirements, so compliance would be an ongoing post-approval obligation, not a reason to decline high-level capex allocation.[11]
Commission's proposed 'commercial rationale' test: is there evidence to show that the expected incremental revenues exclusively from the incremental end-users outweigh the incremental costs?	We have calculated the incremental net benefit from uptake and upgrade incentive investment which demonstrates we meet the Commission's commercial rationale test. This information has been provided in our submission and in response to Commission requests for information earlier this year.[12]
Incentive payments benefit end-users (promote s162), are consistent with the expenditure objective and good telecommunications industry practice (**GTIP**).	Incentive payments benefit end-users through the incremental net benefit (see above) and wider benefits including: • non-monetised end-user benefits – including superior performance and attractive pricing of fibre services relative to alternatives; assisting RSPs to overcome consumer inertia, meaning more consumers begin enjoying these benefits earlier than would otherwise occur • retail competition benefits – including benefits that flow from challenger RSPs exerting pressure on incumbent

[10] Chorus, *Submission on price-quality path draft decision*, 8 July 2021, paragraph 131.1, and Chorus submission on the draft decisions for fibre-PQID IM amendments, 24 June 2021, page 17-18, available at: https://comcom.govt.nz/__data/assets/pdf_file/0024/258108/Chorus-Submission-on-draft-decisions-for-fibre-PQID-IM-amendments-24-June-2021.pdf.

[11] Chorus, *Submission on price-quality path draft decision*, 8 July 2021, paragraph 131.2, and *Chorus submission on Commission draft guidance on section 201 of the Telecommunications Act 2001 (geographically Consistent Pricing guidance)*, 24 June 2021, page 4-6, available at: https://comcom.govt.nz/__data/assets/pdf_file/0023/258107/Chorus-Submission-on-draft-guidance-on-section-201-of-the-Telecommunications-Act-2001-24-June-2021.pdf.

[12] Chorus, *Submission on price-quality path draft decision*, 8 July 2021, Appendix 2 paragraphs 15-22 and RFI005.

Commission – preliminary and substantive tests	Evidence to support Chorus incentive payments meet assessment requirement
	MNOs to innovate, improve efficiency, sharpen prices, and improve service quality • network competition benefits – incentive programmes allow us to compete effectively with competitor networks operated by unregulated and vertically integrated suppliers • non-quantified cost reductions – including efficiency gains from stimulating more efficient and consistent installation volumes and improving cost per connection • lower non-premium prices – greater uptake of premium (high speed) products by willing end-users reduces the residual MAR per connection across other users, which also flows through to lower average fibre wholesale prices over time, which itself may support further uptake longer-term. Given the benefits of incentives, they are consistent with the expenditure objective and GTIP.[13] The independent verifier for our expenditure proposal, Cutler Merz reviewed incentives expenditure and concluded that it reflected "the efficient costs that a prudent fibre network operator would incur to deliver regulated FFLAS at an appropriate quality, … and having regard to GTIP".[14]

Confidentiality

The Commission's approach is robust

27. Several submitters have raised concerns with the Commission protecting Chorus' confidential information from public disclosure. Disclosure of information which would prejudice Chorus' commercial and competitive position would be contrary to the purpose of Part 6 as it would not be consistent with the practice in a workably competitive market. Nor would the disclosure of regulated providers' competitively sensitive information to network competitors be a legitimate means of promoting competition; it would be anti-competitive.

[13] Chorus, *Submission on price-quality path draft decision*, 8 July 2021, paragraphs 128-133, Appendix A2 paragraphs 3-23; Chorus, *Our Fibre Assets*, December 2020, 3.0 Installations chapter including, 3.4 Attracting customers, 3.6 Our plans, and 3.7 Forecast expenditure, available at: https://comcom.govt.nz/__data/assets/pdf_file/0022/234364/Chorus-Our-Fibre-Assets-10-February-2021.pdf

[14] Chorus report from independent verifier, December 2020, CutlerMerz, at 7.2.4, page 47, available at: https://comcom.govt.nz/__data/assets/pdf_file/0017/234341/Chorus-Report-from-the-Independent-Verifier-10-February-2021.pdf.

28. The very detailed financial and forecast information we have and will continue to provide to the Commission for it to determine our initial RAB and MAR contains commercially sensitive and competitively sensitive information.

29. The Commission has run a very robust confidentiality process across the information Chorus has been required to provide, using standard categories of confidentiality it has used across telecommunications regulatory proceedings for many years. It is striking a careful balance between ensuring stakeholders have sufficient information to allow them to engage meaningfully with the PQD consultation and preventing disclosure of information that would prejudice Chorus' commercial and competitive position.

30. As a listed company, we need to manage continuous disclosure obligations. Our market disclosures include information about connections and our fibre services throughout each financial year, at a frequency and level of aggregation that gives investors the information they need to assess Chorus' performance without risking unwarranted use of that information by competitors. The listed Part 4 companies are in a different position. They do not face competition and are subject to default price-quality paths so are not required to deliver the very detailed inputs to a PQD that Chorus is required to under the Part 6 IMs.

Appendix: Response to submission points on the PQ draft decision

Table A: Expenditure

No.	Submitter	Position/statement	Chorus response
Efficiencies and over-forecasting			
A1	TelstraSuper and L1 Capital	**TelstraSuper Page 1.** Concerned at Commission proposed cuts. Says that the suggestion Chorus can simply cut its expenditure by 10% for potential efficiencies is concerning; Chorus has done its utmost to constrain costs following copper pricing decision. Fibre costs must be increasing because of growing regulatory requirements and reducing role of copper. Believes the draft decision overlooks the true nature of the Chorus business. **L1 Capital Page 4.** Takes a view that Chorus is already efficient, Commission should not apply further cuts. An efficiency regime is being applied to costs where no	Agree. As we discussed in our PQ submission, Chorus is lean, and our plans likely underestimate efficient expenditure due to real world pressures.[15] Expenditure cuts and exclusions will harm consumers in the short and long term.[16]

[15] Chorus, *Submission on price-quality path draft decision*, 8 July 2021, paragraph 3.
[16] Chorus, *Submission on price-quality path draft decision*, 8 July 2021, paragraphs 7-10.

No.	Submitter	Position/statement	Chorus response
		efficiency adjustment is necessary – the 10.7% cut in opex implies the business is being run inefficiently today.	
A2	Global Listed Infrastructure Organisation	**Page 1.** The transition from contractual phase of the PPP to a new reg framework is now penalising the investors in this infrastructure and has created an environment of uncertainty.	Investors are concerned about uncertainty caused by the new regulatory regime and question the incentives for ongoing investment beyond committed UFB rollout plans. Similar themes are seen through the L1 Capital and TelstraSuper submissions, as well as the New Street Research note.[17] We believe these issues stem from IMs that drive low starting RAB and WACC estimates, as well as draft decisions that reflect a misunderstanding of Chorus' business context and a misinformed belief that Chorus has similar drivers as traditional monopolies regulated by the Commission.[18]
A3	Vodafone	**Paras 28-34.** Supports Commission proposed changes to capex and opex. Takes a view that Chorus has incentive to increase forecasts and that Commission must assess whether base year after 2018 materially changed.	We disagree. There is a greater risk of distortion being caused by regulatory error (e.g. in cutting prudent and efficient spend) than by the theoretical incentives discussed in the draft decision and MNO submissions.[19] Chorus has been delivering one of NZ's largest infrastructure projects to a fixed price contract in a way that exceeded expectations, managing

[17] New Street Research, *Chorus and New Zealand Broadband Policy: Grasping failure from the brink of success*, available at: https://comcom.govt.nz/__data/assets/pdf_file/0031/259366/NewStreet-Research-Chorus-and-New-Zealand-Broadband-Policy-18-June-2021.pdf

[18] Chorus, *Submission on price-quality path draft decision*, 8 July 2021, paragraphs 41-42. Chorus, Submission on Fibre Regulation Process and Approach, 14 October 2020, paragraphs 14-19, available at: https://comcom.govt.nz/__data/assets/pdf_file/0020/226703/Chorus-Limited-Submission-on-PQID-process-and-approach-paper-14-October-2020.pdf.

[19] Chorus, *Submission on price-quality path draft decision*, 8 July 2021, paragraphs 3, 41-42. Chorus, Submission on Fibre Regulation Process and Approach, 14 October 2020, paragraphs 14-19, available at: https://comcom.govt.nz/__data/assets/pdf_file/0020/226703/Chorus-Limited-Submission-on-PQID-process-and-approach-paper-14-October-2020.pdf.

No.	Submitter	Position/statement	Chorus response
		With Corporate Support opex believes – Commission hasn't gone far enough, due to unnatural incentives for costs between 2018 and 2022, plus cost allocation approach. For Labour overlay, network operations and asset management – disagrees with the Commission choosing not to reduce this, given there have been significant reductions elsewhere.	efficient costs and maintaining a lean base.[20] During recent years, Chorus has been constrained by debt metrics and a 'manage for cash' regime, as well as facing real world competitive pressures from vertically integrated mobile network operators (**MNOs**), which reinforces expenditure discipline.[21] As Vodafone states in its submission, "the fixed telecommunications market is entering one of the most dynamic and competitive phases in its history."[22] This context means Chorus is operating on the lean side of efficient. FY2019 is a reasonable and efficient base.[23] The so-called 'labour overlay' is a misrepresentation. Our proposal already includes significant cost reductions as network build is completed and connection growth slows, including labour costs.[24] Additional information has been provided to the Commission through RFIs and submissions on why our labour forecasts are appropriate.[25]
A4	Vocus	**Para 15**. Concerned that regulatory overlays should be removed as not a legitimate basis for Chorus to reinstate expenditure.	We disagree. These are not 'regulatory overlays' but rather 'variances to the 5YP'. Our 5-year business plan was approved by the Board in June, but like any we have business plan adjustments over the year. Our PQP1 proposal was not submitted until December. This allowed us to

[20] Chorus, *Submission on price-quality path draft decision*, 8 July 2021, paragraph 54.
[21] Chorus, *Submission on price-quality path draft decision*, 8 July 2021, paragraph 3.
[22] *Vodafone submission on Chorus' price quality path from 1 January 2022 draft decision*, 8 July 2021, paragraph 5.
[23] Chorus, *Submission on price-quality path draft decision*, 8 July 2021, paragraphs 52-61. Also refer to RFI012 provided to the Commission (tranche 1 cover memo, page 2).
[24] Chorus, *Submission on price-quality path draft decision*, 8 July 2021, paragraph 62.
[25] *Chorus submission – consultation on RP1 expenditure proposal*, pages 7-8, available at: https://comcom.govt.nz/__data/assets/pdf_file/0028/248068/Chorus-ChorusE28099-Expenditure-Proposal-for-PQP1-12-March-2021.pdf). Also refer to RFI012 and RFI021 for further information on labour modelling and trends.

No.	Submitter	Position/statement	Chorus response
			bring in additional post-June business plan information and assurance, and to test that the forecast is fit for purpose for a regulatory proposal. Our variances to the 5YP were scrutinised, challenged and approved by management and Board. They have also been independently verified by CutlerMerz and reviewed by KPMG as part of their assurance. These variances included items where post business plan developments were needed and items where different treatment is required for regulatory purposes. We have provided the Commission with extensive information on these adjustments.[26] They are well justified and should not be removed.
A5	Spark	**Paras 5-10, 15.** Expresses view that expenditure proposal will 'overbuild' competitive transport routes and links to scope of FFLAS and cost allocation. Criticises Commission expenditure assessment approach and cost estimation, saying it applied limited assurance.	Refer to row C14 of the table on scope of FFLAS, and rows A13 and C15 for cost allocation. We disagree with claims the expenditure proposal has yet to be scrutinised and assured as anticipated. Chorus' expenditure proposal was subject to extensive management and board scrutiny, challenge and approval. In addition, CutlerMerz completed a rigorous independent verification exercise and the proposal was audited by KPMG.[27] During the evaluation phase to date,[28] the Commission has issued and received responses on 22 detailed information requests, including deep dives into forecast models. Several workshops have been held between the Commission and their consultants with Chorus' internal specialists,

[26] Refer to RFI021 provided to the Commission and Our proposal, Modelling and Cost Allocation report, December 2020, page 3, available at https://comcom.govt.nz/__data/assets/pdf_file/0019/234361/Chorus-Modelling-and-cost-allocation-report-16-December-2020.pdf
[27] For more information, please refer to *Our Fibre Plans*, December 2020, 3.0 Governance chapter, available at: https://comcom.govt.nz/__data/assets/pdf_file/0016/234340/Chorus-Our-Fibre-Plans-12-February-2021.pdf
[28] Commerce Commission, *Chorus' price-quality path from 1 January 2022 – draft decision*, *reasons paper*, paragraph 4.40.

No.	Submitter	Position/statement	Chorus response
			as well as with CutlerMerz. These requests and discussions have been wide ranging and comprehensive.
A6	2degrees	**Page 6:** Refers to Chorus potentially not continuing to invest (quoting L1 Capital's concerns about the regulatory framework). Requests additional reporting, consistent with reporting required for Aurora's CPP.	2degrees' submission has mischaracterised comments made by Chorus' shareholder L1 Capital about the incentive effect of recent regulatory decisions as suggesting that Chorus may not spend its allowable revenues during PQP1.[29] As the Commission is aware, Chorus has indicated it does not see sufficient benefit for it to invest in further deployment of UFB beyond the current contracts. And as a general rule, discretionary capex would be deprioritised if the MAR is too low. However, we are committed to completing existing contractual obligations and making investments necessary to complete the UFB roll-out and deliver ongoing high-quality services to end-users. Our submission on the PQ draft decision set out the criticality of the expenditure proposal and why it is in the long-term benefit of end-users that Chorus is fully funded for PQP1. We disagree that additional reporting is required. The draft PQ decision already proposes Chorus produce annual reports on asset management development and cost estimation/asset data improvement, as well as an engagement plan and much relevant information will be provided under ID. The level of regulatory requirements is already extremely high and there is no reason to require further reporting. The additional reporting required for Aurora was in response to a long period of under-investment in the Aurora network, leading to material network performance problems. Chorus is clearly in a very different

[29] 2Degrees submission, *Chorus' price-quality path from 1 January 2022 – Draft decision Reasons paper*, 8 July 2021, page 6.

No.	Submitter	Position/statement	Chorus response
			environment, coming to the end of the network build process, and there is no justification for applying Aurora's level of reporting to Chorus.
Incentive payments			
A7	Trustpower	**Paras 2-6.** Supports Chorus proposal for incentive payments as they can benefit end-users in long term and are beneficial to smaller RSPs. Takes the view that the Commission proposal to shift incentives to individual capex creates uncertainty. The Commission should finalise its decision on incentives during the present consultation.	We agree that incentive payments are beneficial to end-users and pro-competitive.[30] We agree that treating base capex incentive payments as requiring an individual capex proposal will create uncertainty for Chorus and smaller RSPs.[31] We also agree the Commission can finalise its decision on incentives as base capex and connection capex now as it has the information before it to assess incentives.[32]
A8	Spark	**Paras 18-70.** Supports Commission exclusion of incentives. Views include that incentives do not align with s201 – GCP requirements, non-discrimination and equivalence of	We disagree. Incentive payments are pro-competitive, justified and produce economic outcomes that are beneficial to end-users.[33] Incentives are not part of price, so GCP requirements under s201 are not relevant. Even if they were, it is possible for incentives to operate consistently with GCP requirements, with compliance and ongoing post approval obligations, so this is not a high-level reason to decline capex.[34]

[30] Chorus, *Submission on price-quality path draft decision*, 8 July 2021, paragraphs 11-12, 14, 128.
[31] Chorus, *Submission on price-quality path draft decision*, 8 July 2021, paragraphs 14, 17, 121-122, Appendix A2 paragraphs 8.
[32] Chorus, *Submission on price-quality path draft decision*, 8 July 2021, paragraph 15-22, 128-133, Appendix A2 paragraphs 3-23; Chorus RFI005 response to the Commission; report from independent verifier, December 2020, CutlerMerz, at 7.2.4, page 47, available at https://comcom.govt.nz/__data/assets/pdf_file/0017/234341/Chorus-Report-from-the-Independent-Verifier-10-February-2021.pdf
[33] Chorus, *Submission on price-quality path draft decision*, 8 July 2021, paragraphs 11-12, 14, 128.
[34] Chorus, *Submission on price-quality path draft decision*, 8 July 2021, paragraph 131.2.

No.	Submitter	Position/statement	Chorus response
		inputs, and they do not promote competition.	We test for Commerce Act compliance and non-discrimination and equivalence obligations with all our incentives.[35] We have shown our incentives can meet the test proposed by the Commission.[36]
A9	Vodafone	**Para 9b**. The use of incentives to price below cost undermines competition. **Paras 16-17**. Incentives undermine competition and should be individual capex. Suggests changes to 'commercial rationale'/incremental benefits test proposed by Commission, including that the period should be period of incentive payment and cost should include servicing a connection (in addition to cost of incentive). Unlikely that incentives meet the test proposed by Commission.	We disagree. Incentive payments do not result in prices that are below cost, they are pro-competitive and should not be considered as individual capex.[37] Furthermore, the IMs do not permit the Commission to consider connection capex incentive spend as individual capex.[38] Our evidence shows we can meet the commercial rationale test already including the incremental cost of servicing new connections (i.e. lead-in costs).[39] We consider it appropriate to consider incremental revenues over the expected life of the acquired customers. Limiting revenue to the period of the incentive is too conservative because most customers will stay on for longer. Customer churn at a retail level is likely to be higher than at an access level so Vodafone's concerns aren't warranted here. We test for Commerce Act compliance, non-discrimination and equivalence obligations with all our incentives.[40]

[35] Chorus, *Submission on price-quality path draft decision*, 8 July 2021, Appendix A2 paragraph 23.
[36] Chorus, *Submission on price-quality path draft decision*, 8 July 2021, paragraph 15-22, 128-133, Appendix A2 paragraphs 3-23; Chorus RFI005 response to the Commission.
[37] Chorus, *Submission on price-quality path draft decision*, 8 July 2021, paragraphs 11-12, 14,112-131, 128.
[38] Chorus, *Submission on price-quality path draft decision*, 8 July 2021, paragraphs 116 and Appendix A1, rows A1 and A15.
[39] Chorus, *Submission on price-quality path draft decision*, 8 July 2021, paragraph 15-22 and RFI005.
[40] Chorus, *Submission on price-quality path draft decision*, 8 July 2021, Appendix A2 paragraph 23.

No.	Submitter	Position/statement	Chorus response
A10	2degrees	**Page 9.** Supports removal of incentives payments that would be more appropriately applied for as individual capex.	We disagree. The Commission has the information before it to assess incentives payments now.[41] Incentive payments should not be considered as individual capex.[42] The IMs do not permit the Commission to consider connection capex incentive spend as individual capex.[43]
Demand forecasting			
A11	Vodafone	**Paras 23-27**. Considers Chorus demand forecasts optimistic as MNOs will grow FWA. Refers to maintenance opex and network related capex affected by change in system peak bandwidth forecast. Requests an independent report on demand forecasting.	We disagree. Independent experts and evidence of recent demand prove the integrity of Chorus' forecasts, while the MBIE 2020 construction pipeline report (which the Commission relies on) is an acknowledged outlier produced at a time of great uncertainty.[44] Notwithstanding that, the Commission has over-estimated the impact that a weaker construction outlook would have on our demand forecasts, including making links to areas of expenditure not affected by construction demand.[45] This includes the system peak bandwidth forecasts, where there is no material link to MBIE construction pipeline,[46] and maintenance opex, where fault rates are weighted towards older assets and therefore are not materially impacted by network extension activities in the near term.[47]

[41] Chorus, *Submission on price-quality path draft decision*, 8 July 2021, paragraph 15-22 and RFI005.
[42] Chorus, *Submission on price-quality path draft decision*, 8 July 2021, paragraphs 11-12, 14,112-131, 128.
[43] Chorus, *Submission on price-quality path draft decision*, 8 July 2021, paragraphs 116 and Appendix A1, rows A1 and A15.
[44] Chorus, *Submission on price-quality path draft decision*, 8 July 2021, paragraphs 7.2, 134-143.
[45] Chorus, *Submission on price-quality path draft decision*, 8 July 2021, paragraphs 140-143.
[46] Chorus, *Submission on price-quality path draft decision*, 8 July 2021, paragraphs 140.3, 141.2.
[47] Chorus, *Submission on price-quality path draft decision*, 8 July 2021, paragraph 141.3.

No.	Submitter	Position/statement	Chorus response
			Please also refer to Sapere's expert report, included with our PQ draft decision submission.[48]
Innovation			
A12	Spark, 2degrees, Vodafone	Supports innovation exclusion **(Spark para 71, 2degrees page 9, Vodafone para 30a)**. Spark also notes innovation spend should not be part of the regulated service **(para 72)**.	We agree that uncommitted PQP1 innovation capex is highly uncertain and accept that applying for innovation investment through the individual capex mechanism could be appropriate for PQP1.[49] Spending for in-flight, committed innovation projects should be approved by the Commission.[50] We disagree that innovation is not part of FFLAS, as innovation spend can support FFLAS.
Cost allocation			
A13	Vodafone, Vocus, 2degrees, Spark	Concern with proposal approach to allocation, IM compliance and double recovery. Chorus' expenditure forecasts are over-inflated due to a preference for ACAM and OVABAA, when the IMs only allow for ABAA. (Vodafone – para **26d** in relation to connections demand and allocation, Vocus – **para 1.3, 1,4 and 1.6**,	These submitters have raised concerns regarding cost allocation for expenditure. We understand the Commission will consider cost allocation assessments and decisions for expenditure through the PQ RAB process. We agree with the Commission's process to address expenditure proposal cost allocation as part of the PQ RAB process and have aligned our cost allocation approach for the expenditure proposal with Chorus' initial RAB.

[48] Sapere, 2021, *New Zealand Residential Building Consents, 2021 to 2025*, available at https://comcom.govt.nz/__data/assets/pdf_file/0029/259355/Sapere-on-behalf-of-Chorus-Submission-on-Chorus-price-quality-path-from-1-January-2022-draft-decision-residential-building-consents-8-July-2021.pdf
[49] Chorus, *Submission on price-quality path draft decision*, 8 July 2021, paragraph 100.
[50] Chorus, *Submission on price-quality path draft decision*, 8 July 2021, paragraph 101.

No.	Submitter	Position/statement	Chorus response
		and **9-14**; 2degrees – **page 2**; Spark – page 1 and **para 8**)	Refer also to row C14 of this appendix. In addition, we refer to our previous submission in response to the Commission's consultation paper on Chorus' PQ RAB.[51]
Cost escalation			
A14	2degrees	**Page 9.** Supports Commission alternative cost escalation proposal.	Agree.[52]
Asset management			
A15	2degrees	**Pages 3-5**. Takes a view that there is lack of transparency on expenditure forecast and asset management maturity in comparison to Part 4. No information available on what asset management improvements mean for service quality.	The 'Our Fibre Assets' section of our RP1 proposal[53] contains information on our assets for each of our expenditure categories, including asset management plans. For example, age and type of fibre cables,[54] our pits and manholes condition audit[55] or Network Capacity asset management objectives.[56] Section 1.3 of Our Fibre Assets, titled 'How we manage our assets', outlines our asset key management capabilities and improvement initiatives. Further information is also contained in the Delivery report and the Investment Summary within Our Fibre Plans.[57]

[51] Chorus, *Submission on Commission's consultation on Chorus' initial PQ RAB*, 28 May 2021, paras 49-57, available at: https://comcom.govt.nz/__data/assets/pdf_file/0029/256196/Chorus-Submission-on-Fibre-PQID-initial-proposal-28-May-2021.pdf.
[52] Chorus, *Submission on price-quality path draft decision*, 8 July 2021, Appendix A1, row A5 of the table.
[53] Chorus, *Our Fibre Assets*, December 2020, available at: https://comcom.govt.nz/__data/assets/pdf_file/0022/234364/Chorus-Our-Fibre-Assets-10-February-2021.pdf
[54] Chorus, *Our Fibre Assets*, December 2020, Figure 5.4, page 43, available at: https://comcom.govt.nz/__data/assets/pdf_file/0022/234364/Chorus-Our-Fibre-Assets-10-February-2021.pdf
[55] Chorus, *Our Fibre Assets*, December 2020, page 51, available at: https://comcom.govt.nz/__data/assets/pdf_file/0022/234364/Chorus-Our-Fibre-Assets-10-February-2021.pdf
[56] Chorus, *Our Fibre Assets*, December 2020, pages 88-89, available at: https://comcom.govt.nz/__data/assets/pdf_file/0022/234364/Chorus-Our-Fibre-Assets-10-February-2021.pdf
[57] Chorus, *Our Fibre Plans*, December 2020, available at: https://comcom.govt.nz/__data/assets/pdf_file/0016/234340/Chorus-Our-Fibre-Plans-12-February-2021.pdf

No.	Submitter	Position/statement	Chorus response
		Page 6. Commission should require additional reporting on delivery of investment plan to present to customers, including on service quality.	The Quality report within Our Fibre Plans emphasises that our proposal aims to sustain the quality of our fibre services during PQP1.[58] Subject to expenditure allowances, we agree in principle with providing an updated asset management capability roadmap. There are also extensive reporting disclosures in relation to asset management under the information disclosure (**ID**) scheme. We broadly support the Commission's approach to these disclosures. Please refer to our ID submission[59] for further information on our views.
Engagement			
A16	Vocus	**Para 1.9**. Engagement with customer and stakeholders is important part of business as usual. The current experience of Chorus engagement highlights deficiencies, in part reflecting development of a new regime and short time period for implementation. Notes the Transpower experience that this can evolve and improve over time.	We agree engagement is an important part of our BAU. We engaged on our proposal in circumstances constrained by tight timeframes, the COVID-19 lockdown (which occurred at the point of consultation) and the lack of IMs or a clear understanding of the PQ determination process. We agree this should develop over successive regulatory periods, as has been the experience with Transpower under Part 4.[60]

[58] Chorus, *Our Fibre Plans*, December 2020, 5.0 Quality, page 47, available at: https://comcom.govt.nz/__data/assets/pdf_file/0016/234340/Chorus-Our-Fibre-Plans-12-February-2021.pdf
[59] Chorus, *Submission on draft information disclosure determination*, 8 July 2021, paragraphs 76-81, 117, available at: https://comcom.govt.nz/__data/assets/pdf_file/0028/259354/Chorus-Submission-on-Fibre-information-disclosure-draft-decision-8-July-2021.pdf.
[60] Chorus, *Submission on price-quality path draft decision*, 8 July 2021, Appendix A1, row A22 of the table.

No.	Submitter	Position/statement	Chorus response
Confidentiality			
A17	Vodafone, 2degrees, Vocus	**Vodafone para 35-38.** Concerns about the extent of confidential information. **2degrees page 3-5.** Concerns about confidential information, including forecasts for 2025-26, demand/connections and asset maturity. **Vocus para 16.** Concerns that confidentiality has affected their ability to review the draft decision.	As discussed in paragraphs 27-30 above, we consider the Commission's approach to confidentiality is appropriate to protect Chorus' commercial and competitively sensitive information as we enter the new fibre regulatory regime. We have made information publicly available to the extent we are able to with our proposal, while still protecting information that is commercially and competitively sensitive. This includes supplier sensitive information, and information that could affect contractual negotiations and/or our competitive position. We understand the new regulatory regime requires detailed Chorus information in our expenditure proposal to be available publicly. This has been made available through our expenditure proposal, including our integrated fibre plan reports. As the regime matures, including in the second and subsequent regulatory periods, we expect there will be less sensitivity with some of our information (such as aggregated forecast and asset management information), rules such as cost allocation will be clearer and it will be appropriate for more information to be made public. There will also be information that we will need to continue to protect as it would reveal our suppliers' pricing, affect contractual negotiations and our commercial and competitive positions. We note other submitters take the same approach to protect their confidential information.

Table B: Quality standards

No.	Submitter	Position/statement	Chorus response
Quality standards			
B1	2Degrees, Vocus, Vodafone	Quality standards should be imposed for the optional quality dimensions **2degrees page 8** **Vocus page 6-7** **Vodafone page 5**	We disagree. There are no good reasons to impose quality standards under the optional dimensions. In particular: • *Ordering* - Ordering has generally been of lower importance in the telecommunications industry. Service levels relating to ordering are ancillary in both the fibre reference offer and regulated copper Standard Terms Determinations meaning they are reported against only and there are no service credits payable for failure. It would be odd to elevate the importance of this part of the service by setting a quality standard. • *Provisioning* – We agree with the Commission there are strong market incentives to get this right.[61] While our challenges regarding fibre installations are well known, the fact we have taken significant steps resulting in improved customer installation experience suggests further regulation is not required to provide an incentive to do this. Provisioning is also likely to be subject to regulated service levels under declared services regulations so quality standards are doubly unnecessary. • *Faults* – As for provisioning, there are strong market incentives to perform on this dimension and fault restoration will be regulated under declared services regulation. We also agree with the

[61] Commission, *Draft PQ Determination reasons paper*, Para 5.67

No.	Submitter	Position/statement	Chorus response
			Commission that because faults are a component of availability, they will be implicitly controlled by availability standards.[62] • *Switching* – The ability for end-users to move easily between RSPs is vital to a competitive retail telecommunications market. But we agree with the Commission there are not good reasons to impose a switching quality standard. Switching is not just a Chorus matter - all parties need to play their part to make switching work well for end-users. Disconnections and intact provisioning (the steps in a switch) are both subject to service levels under our customer contracts. These service levels are likely to be incorporated in declared services regulation. Therefore, switching will be regulated by other instruments in the framework. • *Customer service* – We agree with the Commission we already have the right incentives to provide high quality customer service and no quality standards are necessary.[63] RSPs have a significant role to play in connection satisfaction and setting a quality standard in relation to this would violate the principle of controllability. Missed appointments are better addressed at an individual level and our customer contracts do this through service levels and credits for missed appointments. The establishment of new access seekers has always worked well. Also, the establishment of new access seekers was more important when UFB was starting but is less critical today as the number of new access seekers each year is relatively small.
B2	2degrees	**Page 9.** UFB SLAs are an appropriate starting point for quality	We agree that the UFB SLAs are the appropriate starting point for thinking about quality standards. But it would be clearly inappropriate

[62] Commission, *Draft PQ Determination reasons paper*, para 5.70
[63] Commission, *Draft PQ Determination reasons paper*, Para 5.67

No.	Submitter	Position/statement	Chorus response
		and there is no justification for adding a 'buffer'	to transpose contractual service levels into regulatory compliance obligations without considering the different circumstances. We have submitted on this point several times[64] and we are pleased the Commission has recognised this in its draft PQ determination.
B3	Vocus	**Page 7**. Quality standards should include the fault restore obligation from Bitstream 2 service SLAs	We disagree. Service restore times are one of the ways we differentiate layer 2 service offerings. The UFB contracts required Chorus to offer different service restore times for consumer and business services, and an optional enhanced restoration service level. Setting a quality standard for service restoration would potentially dilute service differentiation reducing the ability of RSPs and end-users to make their own price-quality trade-offs. The restore time SLA from Bitstream 2 is also likely to be incorporated into the anchor service regulations so will be provided for under Part 6 regulation anyway. This is a far better mechanism for baselining the obligation as it allows differentiation to continue.
B4	Vocus	**Page 7**. Regulatory focus should be on wholesale rather than competitive retail services	If the goal of the Commission is to further improve the quality of telecommunications services experienced by all end-users in New Zealand then regulation under Part 7 should be a key area of focus. Retail regulation has the advantage of helping all end-users of telecommunications services not just those whose services use Chorus

[64] See for example: Chorus, *Submission in response to Fibre Regulation Emerging Views*, 16 July 2019, paras 250-251, available at: https://comcom.govt.nz/__data/assets/pdf_file/0025/161917/Chorus-Fibre-emerging-views-submission-16-July-2019.pdf; and Chorus, *Submission on Fibre Regulation - Process and Approach*, 14 October 2020, para 39, available at: https://comcom.govt.nz/__data/assets/pdf_file/0020/226703/Chorus-Limited-Submission-on-PQID-process-and-approach-paper-14-October-2020.pdf.

No.	Submitter	Position/statement	Chorus response
			fibre inputs. We refer to our comment in our submission on the draft PQ determination.[65]
B5	Vodafone	**Page 6-7**. It may not be possible for Chorus to meet the proposed layer 1 availability standard and the proposed layer 2 availability standard may also be challenging	We agree. At the levels proposed in the draft price-quality determination we would expect to breach the proposed availability standards every year even while maintaining existing quality and operating the network in accordance with good telecommunications industry practice. We have discussed this extensively and suggested solutions in our submission on the draft PQ determination.[66]
B6	Vodafone	**Page 7**. The maximum utilisation should be 90% as proposed, though 80% will impact customer experience	We disagree. As set out in our submission, there are strong reasons to set the maximum utilisation at 95%.[67] We don't agree that when aggregation links reach 80% utilisation customer experience will be impacted. When the UFB Layer 2 Performance Measurement and Reporting Regime[68] was developed the industry went through a process to determine the appropriate maximum utilisation threshold. A threshold of 95% is supported by evidence generated through that process and we are not aware of any evidence showing performance will be impacted at 80%.
B7	Vodafone	**Page 5.** In the absence of a quality standard Chorus could abandon the missed appointments service credit	We disagree. As noted, above we have very strong commercial incentives to get provisioning right. One of the characteristics of FWA promoted by MNOs (and noted by Vodafone in its submission) is the relative ease of installation compared to a new fibre install. In that

[65] Chorus, *Submission on price-quality path draft decision*, 8 July 2021, para 173
[66] Chorus, *Submission on price-quality path draft decision*, 8 July 2021, paras 174-202
[67] Chorus, *Submission on price-quality path draft decision*, 8 July 2021, paras 207-209
[68] Available on CIP's website here: https://www.crowninfrastructure.govt.nz/wp-content/uploads/2011/12/UFB-Performance-Management-and-Reporting-17-Nov.pdf

No.	Submitter	Position/statement	Chorus response
		framework in the fibre reference offer	context we have every incentive to maintain or improve the quality of fibre provisioning. Missed appointments are better addressed at an individual level rather than through network wide quality standards and our customer contracts do this through service levels and credits for missed appointments. The Commission could consider whether an obligation on RSPs to pass on missed appointment service credits to affected end-users would be beneficial under a retail service quality code.
B8	Vodafone	**Page 6**. The anchor service is unlikely to constrain the terms on which Chorus offers other services or Chorus' wider activities	We disagree. The declared services will provide a strong constraint on our activities. The purpose of anchor services is to act as a baseline for the price and quality of other fibre services within the layer 2 portfolio as well as ensure the availability of basic voice and broadband at reasonable prices. If Chorus were to offer inferior quality or terms of service on non-anchor services then end-users and RSPs could switch to the anchor service. This would only cease to be true if the anchor service was specified at a level that failed to provide a serviceable broadband experience to end-users. It cannot credibly be argued that is the case with a 100/20Mbps fibre service today, and it is highly unlikely to be the case before the end of RP1. The regime is set up so that Chorus has incentive to sell services over and above the anchor service. We have encouraged, and expect to continue to encourage, end-users to buy premium fibre plans through *improved* quality and competitive pricing. The anchor service becoming 'less relevant' would be an indicator of pro-consumer outcomes. The

No.	Submitter	Position/statement	Chorus response
			idea that we could ignore the anchor service specification and reduce quality on other plans doesn't withstand scrutiny. In fact, if Vodafone's claim is correct and FWA becomes a practical substitute for 100/20Mbps fibre, then this provides an even stronger incentive on Chorus to offer improved quality across its fibre portfolio – a potential switch from fibre to FWA provides more incentive to maintain and improve quality than a potential downgrade from premium fibre to the anchor service.

Table C: All issues other than expenditure and quality standards

No.	Submitter	Position/statement	Chorus response
Alternative depreciation & asset stranding			
C1	Spark	**Para 75.** We support the Commission applying a depreciation profile that manages or smooths revenues over time.	We agree. Smooth revenue profiles over time are in the interest of Chorus and consumers, including during the transition into the first regulatory period.
C2	Spark	**Para 75.** If Commission does accelerate recovery, recommend it is applied across all the relevant assets.	Chorus is comfortable with spreading the alternative depreciation adjustment across core fibre assets as well as the financial loss asset (**FLA**). This is what we originally proposed to the Commission with our MAR model submission in May 2021. However, we accept that adjusting the FLA only has some pragmatic advantages and are comfortable with that approach for PQP1.

No.	Submitter	Position/statement	Chorus response
C3	Spark	**Para 76.** Maintaining current revenues and prices may result in less efficient outcomes than lower prices now (to grow demand).	We disagree. It seems to contradict concerns raised elsewhere (see paragraph 81 of the Spark submission) about a risk that Chorus will price too low. Spark seems unable to decide if lower prices are efficient or anti-competitive. A smooth transition is needed to give Chorus incentives to keep connecting new customers to the UFB network and improving our services. A revenue allowance that is too low would put pressure on us to further reconsider investment plans and growth strategy.[69]
C4	Spark	**Para 74b.** The ability to recover the FLA comes from being attached to assets that generate income. FLA is less prone to stranding than assets at the edge of the network.	We disagree. Spark appears to be challenging the view that the FLA is more at risk of stranding than other assets. Spark appears to have misunderstood that the FLA is a sunk cost with no alternative use that new entrants would not need to bear.[70]
C5	Vodafone	**Para 24.** Chorus' demand forecasts are optimistic given MNO's plans to grow market share of FWA over PQP1 to capture 30%-40% of the fixed internet market. Vodafone argues that this "over-estimation" should be addressed by the use of independent forecasts and a wash-up for changes in cost directly related to changes in demand.	Leaving aside the issue of demand forecasting (which is addressed above), this comment is further evidence of the material asset stranding risk facing Chorus; such that the 10 basis point allowance is clearly inadequate. It also indicates the value in Chorus' proposed wash-up for cost allocator metrics where those metrics are based on forecast demand.

[69] Chorus, *Submission on price-quality path draft decision*, 8 July 2021, paragraph 220.5.
[70] Chorus, *Submission on price-quality path draft decision*, 8 July 2021, paragraph 220.1.

No.	Submitter	Position/statement	Chorus response
C6	L1 Capital	**Page 13.** Disagrees with tilting being needed to shore up the regulatory regime – depreciation is NPV neutral and does not bring any economic value to Chorus shareholders. Should be addressed through the WACC and stranding risk, or recognition of the costs associated with the UFB contract.	L1 Capital is right that depreciation tilting is not an ideal solution to the under-stating of the WACC, asset stranding allowance and the costs & risks of the UFB project. However, given the stage of the regulatory process we are in and the growing stranding risk to fibre posed by competing technologies, Chorus continues to believe our alternative depreciation proposal would promote long-term benefits of end-users.
C7	L1 Capital	**Pages 11-12.** Stranding risk is exacerbated by other regulatory settings that apply to Chorus (and do not apply to other regulated firms) such as anchor prices and GCP.	We agree. These are sound reasons for increasing the asset stranding allowance in the IMs and applying alternative depreciation to bring forward asset recovery.
C8	L1 Capital	**Page 12.** Chorus' position viz-a-viz FWA is not protected by the ability to sell backhaul services. Mobile networks use a number of backhaul networks, including their own, to connect towers. Where a tower is connected by Chorus the backhaul revenue seems unlikely to cover the connection revenue that would otherwise be lost.	We agree. See paragraph 229.3 of Chorus' submission.

No.	Submitter	Position/statement	Chorus response
Revenue path and wash-ups			
C9	Vodafone and Spark	**Vodafone para 11.** Chorus may price below cost to reduce or distort competition / has incentive to remove competition provided by other access technologies **Vodafone para 13.** Disagree with Commission that Chorus' investment needs would diminish this risk. There is no financing reason to stop Chorus achieving higher long-term returns by pricing lower in the short term. **Spark para 79.** Chorus has the ability to temporarily under-recover with a future wash-up, giving it an advantage over FWA providers.	We disagree that Chorus has incentives to price below cost or that the wash-up could be used to distort competition. These submissions (and similar submissions by 2degrees and Vocus on the IM amendments) have misunderstood the reality of Chorus' investment drivers – the concerns they raise are wildly exaggerated. As NERA has noted in relation to incentives,[71] "Predating rival networks would require a prospect of recoupment to be rational". The MNOs operate and build mobile networks for their mobile businesses, and these networks could be used to 're-enter' the FWA market if fibre prices increased in future. As the Commission is aware, Chorus has concerns about our longer-term ability to recover our investment in the fibre network due to increasing levels of competition from alternative technologies.[72] While it is efficient, and beneficial to consumers, for Chorus to tailor pricing to ensure our services remain attractive, it would not be rational to forego revenues when it appears likely that there will not be an opportunity to recover these revenues in future.
C10	Vodafone	**Para 14.** Should be a limit on how much voluntary under-charging can be placed in the wash-up account	We disagree. As a first point, s196 of the Act does not permit any limits on the revenue wash-up.

[71] NERA, *Customer incentive payments and the long-term benefit of end-users*, 7 July 2021, page 3, available at: https://comcom.govt.nz/__data/assets/pdf_file/0023/259340/NERA-on-behalf-of-Chorus-Submission-on-Chorus-price-quality-path-from-1-January-2022-draft-decision-incentive-payments-8-July-2021.pdf.
[72] Chorus, *Submission on price-quality path draft decision*, 8 July 2021, paragraphs 223 and 227.

No.	Submitter	Position/statement	Chorus response
		and on how long the funds can remain in the wash-up account	Section 196 says the Commission ***must*** apply a wash-up mechanism that provides for ***any*** over-recovery or under-recovery of revenue by the regulated fibre service provider during the previous regulatory period to be applied in a manner that is ***equivalent in present value terms*** (as calculated in the manner that the Commission thinks fit) over 1 or more future regulatory periods. Taking each emphasised point in turn: • "must" – the Commission does not have a discretion. It is required to implement the wash-up as specified in s196. • "any" – the wash-up applies to any under or over-recovery. Were the Commission to place limits on wash-up amounts, there would be some part of the over- or under-recovery that would not be applied in future regulatory periods, which is inconsistent with the s196 requirement. The use of the term "any" also indicates that the wash-up must be symmetrical. • "equivalent in present value terms" – the Act requires a time value of money adjustment to be made to account for the timing of recovery of wash-ups in future periods, which provides further support for the proposition that Parliament intended Chorus to be kept whole in terms of any under- or over-recovery in a regulatory period. As we discussed in our PQ submission,[73] the Part 4 undercharging limit was introduced for very different firms – small EDBs not subject to competitive pressure that are owned by their customers – and the way the EDBs' 2 year rolling wash-up mechanism operates gives rise to

[73] Chorus, *Submission on price-quality path draft decision*, 8 July 2021, paragraph 269.

No.	Submitter	Position/statement	Chorus response
			concerns that do not apply to Chorus. It is therefore not a relevant precedent for Chorus. In response to the point on the length of time costs can remain in the wash-up account, it is clearly preferable that the wash-up balance is drawn down as quickly as possible.[74] However, there will be times when other priorities (e.g. to minimise the risk of price shocks or undue financial hardship) mean it would be in end-users' interests to extend the draw down timeframe. A fixed time limit would reduce flexibility and could result in windfall gains or losses for no reason other than a timing question. Finally, Vodafone did not specify what the limits on undercharging should be or what the time limit on the costs remaining in the wash-up account would be. This is not a meaningful proposal for the Commission to consider.
C11	Vodafone	**Para 27b.** There should be a wash-up for changes in cost directly related to changes in demand	We disagree. The largest area of demand uncertainty relates to installation volumes and is already addressed through the connection adjustment mechanism. Our understanding is that Vodafone is asking for *all* expenditure allowances to be revisited for changes in demand. The wash-up proposed would substantially insulate Chorus from variations between forecast and actual expenditure, which would be a material departure from incentive-based regulation and shift all demand risk to consumers.

[74] Chorus, *Submission on price-quality path draft decision*, 8 July 2021, paragraph 270.

No.	Submitter	Position/statement	Chorus response
			Vodafone has not described how this wash-up would work or proposed any IM drafting to achieve it.
C12	Spark	**Para 82.** Recommend the Commission separately consult on requirements to mitigate the under-charging risk	We disagree. Spark has not proposed any actual solution to the alleged problem. It is not clear what these suggested requirements would be, or how they would be consistent with s196. It is also not clear what process or timeframe the proposed consultation would fit within.
C13	Vodafone	**Para 26a.** If Chorus' uptake forecasts are wrong customers may face sharper price changes	The risk of price shock is substantially mitigated by competition – it would not be in Chorus' interest to "sharply" increase prices if fibre uptake turned out to be materially lower than forecast. Also, the initial three-year revenue path reduces the risk of forecast error while the ability to smooth revenues within and across regulatory periods mitigates the risk of price shocks to consumers.
Scope of FFLAS			
C14	Spark	**Para 14-17.** Raises concerns with the table in Appendix I of the draft decision.	As discussed in our submission,[75] the list in Attachment I is not a clear picture of the scope of FFLAS services that have been applied in PQ. Unfortunately Spark's comments have been made on a list that is not the most helpful representation of the FFLAS services. In Appendix D of our submission we provided an updated list of FFLAS services which will be more meaningful for stakeholders to consider.

[75] Chorus, *Submission on price-quality path draft decision*, 8 July 2021, paragraph 281.

No.	Submitter	Position/statement	Chorus response
Scope of draft decision: Asset valuation & cost allocation			
C15	2degrees and Vocus	**2degrees pages 1-3 and Vocus paragraphs 9-16.** 2degrees and Vocus devote considerable space in their submissions to challenging Chorus' asset valuation and cost allocation approach. These include: • The process and timeframe for determining Chorus' initial regulated asset base (**RAB**) value • Allocation of costs to the fibre business / stand-alone cost approach to setting initial RAB.	Our cross-submission on the IM amendments[76] addresses the process and timeframe for determining the initial RAB value. We also addressed these points in our submission on the initial PQ RAB[77] and refer the Commission to that submission, particularly paragraphs 33-37, 49-53 and the table on pages 19-21. Cost allocation and the opening RAB valuation topics were not part of the PQ draft decision and so are out of scope for this process. Stakeholders had an opportunity to raise these points in May in the consultation on Chorus' proposed PQ RAB and will have another opportunity when responding to this month's draft decision on Chorus' PQ RAB. We trust the Commission will disregard these comments. In addition, we have submitted previously on these points: - Chorus (14 October 2020), *Submission on fibre regulation – process and approach*, para 29. - Chorus (1 October 2020), *Cross-submission on the Commerce Commission's fibre input methodologies – further consultation draft (initial value of financial loss asset) reasons paper*, para 42-45. - Chorus (17 February 2020), *Cross-submission in response to the Commerce Commission's Fibre input methodologies: Draft*

[76] Chorus, *Cross-submission on Amendments to the Input Methodologies for fibre*, 22 July 2021.
[77] Chorus, *Submission on Commission's consultation on Chorus' initial PQ RAB*, 28 May 2021, available at: https://comcom.govt.nz/__data/assets/pdf_file/0029/256196/Chorus-Submission-on-Fibre-PQID-initial-proposal-28-May-2021.pdf.

No.	Submitter	Position/statement	Chorus response
			decision – reasons paper dated 19 November 2019 and Draft fibre input methodologies determination 2020 dated 11 December 2019, para 27-31. - Chorus (31 July 2019), *Cross-submission in response to the Commerce Commission's fibre regulation emerging views*, para 58-66. Refer also to row A13.