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Dr Stephen Gale
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Commerce Commission
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19 November 2013

Dear Stephen

Comments on the Commission's draft TDL liability allocation determination for FY13

Thank you for the opportunity to comment on the Commission's draft liability allocation determination for the Telecommunications Development Levy for 1 July 2012 to 30 June 2013 (**draft determination**).

Our comments on the draft determination relate to:

- Chorus' ability to pass through the costs of the TDL, in contrast to all other liable persons; and
- the Commission's role in carrying out a compliance review of parties' qualifying revenue information to ensure that the TDL rules are being applied consistently.

Pass through of the TDL

As we have submitted earlier in this TDL process, it is appropriate that Chorus should be able to recover the costs of the TDL in the same way as other liable persons, including through Chorus prices.¹

In its draft decision on the 2011/2012 TDL, the Commission invited Chorus to raise any concerns at our ability to pass through the cost of the TDL in the processes for setting the prices of UCLL and UBA under the Act.² Chorus did this.³ However, the Commission's 5 November 2013 final UBA price review determination makes no reference of Chorus' ability to pass through TDL costs.

If Chorus is prevented from separately passing through the levy in the same way as other liable persons, this will create distortions. Approximately 80% of Chorus' revenues are based on regulated prices, some of which have dropped in price, or are due to drop significantly in the next year. The Commission has acknowledged that levies are rarely accounted for in cost-based regulated prices. It is not appropriate to assume that Chorus should (or can) absorb price decreases and levies in the new industry environment. Post-demergers, there are no retail revenues through which Chorus can "make up" the difference.

¹ See our 2 November 2012 *Submission in response to the Commerce Commission's Telecommunications Development Levy Qualified Revenue Framework Discussion*, paragraph 5.1; and our 5 June 2013 *Chorus comments on draft liability allocation*.

² Commerce Commission, *Draft liability allocation determination for the Telecommunications Development Levy for 1 July 2011 to 30 June 2012*, paragraph 141.

³ See, for example, paragraph 28 of Chorus' 1 February 2013 *Submission in response to the Commerce Commission's Draft [UBA] Determination*.

As we have previously submitted,⁴ if we cannot pass through the costs of the TDL, Chorus' TDL contributions effectively amount to a tax on Chorus and its shareholders. In contrast, retail service providers are almost unconstrained in their ability to pass through any TDL contribution.

Chorus believes application of the levy should avoid outcomes where one set of investors in a market are taxed, but not others.

We have previously provided to the Commission a mechanism by which Chorus can achieve TDL pass through. We request confirmation that Chorus can implement this approach as a matter of priority.

The Commission's compliance review

Chorus supports the Commission checking the calculations of qualifying liable persons for compliance with the qualified revenue notice, and adjusting qualified revenues according to its findings.

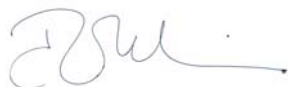
As the Commission notes in the draft determination, the purpose of the TDL process is to allocate a fixed levy amount between qualifying liable persons, in proportion to each person's qualified revenue. The fairness of that allocation depends on each qualifying liable person applying the Commission's rules consistently.

While parties are required to provide audit reports with their qualifying liable revenue calculations, each party's calculation is necessarily confidential. This means that the responsibility for the credibility of the TDL remains with the Commission. As such, the onus is on the Commission to ensure that the TDL is allocated fairly.

We acknowledge that the Commission has identified a potential discrepancy with one party's liable revenue calculation. While we appreciate mistakes can be made, this highlights the importance of the Commission's role in ensuring that the rules are applied consistently. Once the Commission has resolved this particular issue, we would expect that any overpayment by other liable persons is remedied.

We also support the Commission's plans to continue to refine its guidance on preparing qualifying revenue in its 2013/14 specified information instructions.

Yours faithfully



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⁴ See our 2 November 2012 *Submission in response to the Commerce Commission's Telecommunications Development Levy Qualified Revenue Framework Discussion Paper*, paragraphs 5-8.