Cross-submission on the further consultation on issues relating to Chorus' UCLL and UBA services

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1. Introduction and summary

Introduction

1.1. Orcon's market success or failure is keyed to the success or failure of the New Zealand broadband market. Unlike many of the respondents, we do not have the ability to cross subsidise from other markets or rely on legacy revenues from legacy services. We are 100% an internet company, and UCLL and UBA connect our services to customers in most situations.

1.2. The fundamental view we hold is that there is that there are 4 main factors yet to play out fully in the New Zealand market, and we see the actions of the Commission with regard to the FPP as pivotal in helping define the landscape for these opportunities and to broaden competition and yield a positive outcome for consumers.

1.2.1. The New Zealand broadband market penetration has not yet reached 100% of homes. Various studies (including the Commission's) have penetration in the 80's. This suggests that there is still price elasticity, packages and solutions to be developed to meet this objective. Today the market is defined as a $75 inc GST entry price point market for many consumers. Of this a minimum $59.25 ($68.14 inc GST) is the cost for broadband and POTs, effectively dial tone and last mile. This has 90% of the bill going to Chorus. Any downward movement in these prices will undoubtedly grow penetration.

1.2.2. The speed of broadband to the majority of New Zealand homes is woeful in comparison to the few that have fibre today under the UFB program. The step change in performance and what that offers is yet to be experienced by most. For many this is still 5+ years away, and for a sizeable portion of the market, namely many towns and suburbs outside the main metro areas, it will never come. This leaves room for companies to innovate through emerging standards and technologies that support the last mile. Today this is evidenced in VDSL and there are faster copper based technologies under development. It will fall to the RSPs to innovate to fill in these pockets.

1.2.3. The current upfront costs of number porting, broadband migration, and provision of modems make shorter terms for customers than one year difficult, and prepaid, or itinerant schemes near impossible. These costs are significant enough that solutions for students over the academic year, holiday homes, people on low incomes etc are not economically viable and this is limiting access for a percentage of the

market. These costs need to be considered in the customer life cycle and in relation to their impacts on consumer costs.

1.2.4. The control of speed, or rather the downgrading of speed of customer connections in order to devalue or cripple services in order to drive customers to more expensive, non-crippled ones is feared by the industry and has been made possible through the regulated minimum speed aspects in the STD. Actions of this nature should be guarded against. To take retrograde steps in the internet experience of New Zealanders through the introduction of technology to deliberately cripple the service would be highly counterproductive.

1.3. We are very concerned that the needs of our customers are not being met by a process that is going so fast that it may lead to higher final prices than it should, and that it is not covering all relevant issues by a large margin, which also artificially pushes up the price. We want to help the Commission get to the right outcome so that our customers benefit from the final price decisions. But there is only so much we can do

1.4. We consider that our industry and the Commission are potentially on a path that will lead to a poor outcome for consumers. This will unjustifiably take money out of the pockets of New Zealanders and put it into the pockets of Chorus shareholders as dividend payments. That is not fair on our customers. We outline below, how, on just one of multiple decision points, the currently proposed model could produce a higher UBA price in the order of $7.30 per month than if the other contender was chosen (which adds up to around $44M for every 100,000 customers over the 5 years). We cannot understand how it can be in the interests of our customers for the Commission not to do the work to get those aspects right.

1.5. While we have a role to play in this, as industry participants, and we have said we will pass on price reductions, we and our customers must look to the Commission to champion the right thing for consumers. We can only do so much. We are the largest RSP of the UFB initiative. We have led the market in terms of prices going down, exchange unbundling, and introduction of products and services. We are in most cases doing this for cents within our package price, with the bulk of the customer price passed onto Chorus.

1.6. It is also ironic that, in the month that Northpower announce the completion within weeks of their UFB roll-out, well before the contracted completion date:

1.6.1. the Commission seems to be asking only Chorus, with all its troubles, expensive roll-out, and vested interests, for information on pricing the Chorus UFB services;

1.6.2. Northpower is ignored, despite it being a fine example;

1.6.3. the Commission's model is so heavily focussed on the Chorus legacy network and that will happen when even more as the inevitable pressure comes on to meet the Commission's promised 1 December delivery date;

1.6.4. the speed forces more reliance on such information, forcing the price up and against the interests of consumers (and under s 18 the Commission should be the champion for consumers);

1.6.5. Northpower has a much quicker and less expensive implementation yet, despite submissions from us and other submitters, what they can say seems to be ignored.

1.6.6. The Northpower model is much fit for purpose to model pricing on. It is less expensive. And it is a greenfields implementation, without all the legacy constraints for Chorus such as reuse of existing uneconomic infrastructure.

1.7. As we said above, we want to help the Commission get to the right outcome so that our customers properly benefit from the Commission's decisions, and the decisions promote competition to the long-term benefit of end-users. But there is only so much we can do. For example, we don't expect RSPs to have much ability to help given the short consultation period after the draft determination: there just isn't the time even for the better resourced of the RSPs. We are told that it takes economists that specialise in TSLRIC modelling several weeks just to get to understand the model let alone meaningfully analyse and comment on it. The Commission will of course get excellent help from Chorus which already has undertaken its own TSLRIC modelling. When all in our industry know what incumbents do in those situations, as night follows day, what's good in that for our customers?

1.8. We fear that the process will lead to RSPs and others being outspent, out manoeuvred and outgunned, and the Commission itself will compromise its principles in order to meet a timeframe rather than the best outcome for consumers. We support and encourage that the promotion of completion from RSPs who consume UCLL and UBA for the benefit of the New Zealander consumer is kept front of mind.

Summary

1.9. Orcon welcomes the opportunity to cross-submit on the issues relating to UCLL and UBA services. Our cross-submission comments on the establishment of a MEA(s), the time-frame for the TSLRIC determinations, and the irrelevance of the impact of the Commission's decisions on Chorus'

profitability. We also recognise that relativity is an important issue, if the Commission is to continue to promote competition, but do not address this matter in the cross-submission.

1.10. Wigley & Company have prepared a memorandum in support of this cross-submission. Additionally in the body of their memorandum, especially when dealing with the Chapman Tripp opinion, they have commented on multiple more detailed modelling issues that do not appear either in their summary or in this submission. Both documents are complementary and so we do not summarise their memorandum in this cross-submission: that is summarised in their memorandum.

1.11. As to this submission, in summary:

1.11.1. **Purpose of the Act is to promote competition:** The outcome the Commission should be seeking is vigorous competition on multiple platforms and technology in order to maximise consumer choice. That is what the Act is all about. Promoting competition for the long-term benefit of end-users. It is not and cannot be about encouraging Chorus's investment and migration to UFB unless that by chance also encourages competition in the LTBEU. Chorus and some other vested interests may not like it, and may mount contrary arguments, but the model is one of encouraging competition between copper, fibre and other platforms.

1.11.2. What the Act is all about, in this context, is therefore establishing the TSLRIC-based cost of UBA and UCLL and it is all about consumer welfare and only consumer welfare (as that is the only focus of s 18).

1.11.3. **Establishment of a MEA[s]:** There was widespread concern amongst submitters, apart from Chorus, that the Commission has not produced the information required to determine the appropriate MEA[s] for a TSLRIC price determination. This requires modelling and quantitative analysis to test which is the lowest cost/most efficient MEA option(s).

1.11.4. Not only do the parties not get an opportunity to submit on worked up and quantified costing, but also there are strong indications the Commission does not intend to undertake the required quantitative analysis. We give an example below of the problems in this area, an example building on what seems to be the Commission's currently preferred urban MEA (FTTN). That MEA could produce a UBA price in the order of $10 per month higher than scorched earth FTTH. Not only does that indicate that an efficient provider would not select FTTN but it also indicates that FTTN produces an artificially high price.

1.11.5. With a UBA price potentially in the order of 50% higher if a FTTN MEA is used instead of a FTTH MEA, the apparent absence of analysis by the Commission (particularly empirical analysis) is especially concerning. This contrasts for example with the analysis around choice of MEA done by TERA in Denmark last year.

1.11.6. To the extent that the Commission over or under estimates the prices, the impact is considerable. If the possible difference is in the order of $10 per month, assuming a 5 year regulated period the price range for every 100,000 UBA customers is around $60M. That is only on one dimension for there are other issues that can produce a large range. Even half or quarter of that difference produces dramatically different outcomes. This in turn translates into substantial long-term adverse impacts on consumers.

1.11.7. This means that there is much at stake and the level of detail required of the Commission in its analysis and decision making must be commensurate with those sums. The apparent approach by the Commission is well short of this.

1.11.8. **FTTH and Wireless most likely to be the appropriate MEA:** Subject to the absence of cost modelling to determine which technology option is the most efficient MEA, we agree with Telecom and Vodafone that FTTH with wireless/mobile is likely to be the most appropriate MEA option.

1.11.9. We agree with InternetNZ about "The dangers of choosing MEAs that are easier to model rather than MEAs that are the most appropriate".[1] This is a particular risk with a timeframe for a determination that is far too rushed. "[S]hort cuts that … make modelling simpler and quicker"[2] would seem inevitable.

1.11.10. **Time-frame for TSLRIC determination:** A clear theme from submissions, with the exception of Chorus, is that the time-frame for a TSLRIC determination will require the Commission to cut-corners in the development of a TSLRIC model and in relation to consultation. We think the likelihood is that that this will result in much higher TSLRIC prices than a more considered time-frame that includes multi-step consultation (consistent with all other Commerce Commission cost and price determination processes). As noted above, the difference in outcomes can be very large. For example, there is the difference noted above between FTTH and FTTN UBA MEAs, where the Commission has

[1] InternetNZ, Further Consultation on issues relating to determining a price for Chorus' UCLL and UBA services under the Final Pricing Principles, 11 April 2014, page 5.
[2] InternetNZ, Further Consultation on issues relating to determining a price for Chorus' UCLL and UBA services under the Final Pricing Principles, 11 April 2014, page 5.

not done sufficient analysis due to tight time lines. And that is just one dimension. There are multiple other dimensions.

1.11.11. We consider the Supreme Court comment about "reasonable efforts" to adhere to a specific legislative timetable to be highly relevant. The Supreme Court, in relation to the TSO net cost determination, stated that "the complexity of its task" made it "quite impossible" to adhere to the legislative timetable.[3] This was after the Commission already had made a number of periodic TSO net cost determinations.

1.11.12. In the Orcon/CallPlus submission we explained that, if it is necessary to take this matter further, we fully expect an affidavit from an overseas regulator familiar with costing of telecommunications services would confirm the proposed process is insufficient. The Supreme Court observation reinforces the likely approach of the courts. The approach of the Supreme Court, where it delved into the detail of the modelling choices (PSTN copper v mobile as the choice of the equivalent of the MEA) indicates that the choices the Commission is making are appealable points of law.

1.11.13. We agree with InternetNZ's observation that "… it needs to be recognised that the relatively simple and relatively well defined IPP process took approximately two years to complete, yet was still subject to legal challenge by Chorus."[4]

1.11.14. We also agree with InternetNZ that "There needs to be an ability to allow all parties sufficient time to make submissions given asymmetric resources, incentives and access to the information of the interested parties."[5]

1.11.15. Finally, we agree with InternetNZ that "a rushed process is more likely to be wrong".[6]

1.11.16. **Chorus' financial viability and fibre roll-out:** If Chorus considers that the Commission's copper price determinations could jeopardise its financial viability or unreasonably impair its profitability it is beholden on Chorus to provide evidence supporting this claim. The Commission would need to consider any such evidence through the lens of the s 18 purpose and consumer welfare.

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[3] Vodafone v Telecom [2011] NZSC 138, paragraph [30].

[4] InternetNZ, Further Consultation on issues relating to determining a price for Chorus' UCLL and UBA services under the Final Pricing Principles, 11 April 2014, pages 4 and 5.

[5] InternetNZ, Further Consultation on issues relating to determining a price for Chorus' UCLL and UBA services under the Final Pricing Principles, 11 April 2014, page 7.

[6] InternetNZ, Further Consultation on issues relating to determining a price for Chorus' UCLL and UBA services under the Final Pricing Principles, 11 April 2014, page 8.

1.11.17. The so called "funding gap" for UFB roll-out is nothing more than a partial removal of Chorus' pre-existing excessive copper returns. It can be expected that UFB will still be rolled out even if Chorus's finances are adversely affected.

2. Purpose of the Act

2.1. Telecom has asked the question "What is the purpose of the FPP process?"[7]

2.2. It is useful to step back and consider why network access services are designated under the Telecommunications Act 2001. Fundamentally, it is about ensuring access seekers can obtain access to bottleneck monopoly services on efficient terms so they can offer services to end-users and compete, in the LTBEU.

2.3. What the Act is all about in this context, is establishing the TSLRIC-based cost of UBA and UCLL and it is all about consumer welfare and only consumer welfare (as that is the only focus of s 18).

2.4. The Act is not intended to enable Chorus to entrench or continue to earn excessive returns. It is not about protecting "legacy investment decisions taken by Chorus".[8] It is not about propping up or subsidising Chorus's activities in other sectors or markets such as fibre. The interests of Chorus and its shareholders are irrelevant, as is confirmed by s 18 and explained in the Wigley & Company opinion, unless they coincide with consumer welfare interests.

2.5. Nor is the Act about the Commission "picking winners" or determining which technology platform access seekers should compete on. That is for the market to determine through a combination of competitive process and consumer choice.[9]

2.6. The outcome the Commission should be seeking is vigorous competition on multiple platforms and technology that maximises consumer choice. That is what the Act is all about. Promoting competition for the long-term benefit of end-users. It is not about the regulator determining whether access seekers should use copper (or whether they should use a UCLL or UBA platform) or fibre, or how quickly migration from copper to fibre should occur. That is for

[7] Telecom, UCLL and UBA FPP: further consultation and supplementary paper, 11 April 2014, paragraph 26.
[8] Telecom, UCLL and UBA FPP: further consultation and supplementary paper, 11 April 2014, page 12.
[9] This is highlighted by Chorus' announcement that fibre broadband connections rose by 8,000 to 35,000 during the first quarter of this year, while the number of super-fast VDSL copper broadband connections rose by almost 70% to 42,000 over the same year. And that the total number of broadband connections rose by 12,000 to 1.14 million during the quarter.

the market to determine through a combination of competitive process and consumer choice.

3. Establishment of a MEA[s]

3.1. We agree with Chorus that "there are no grounds … for assuming that the benchmarked prices will hold during the more sophisticated TSLRIC process".[10] If the TSLRIC process is done properly, and not rushed, we would expect it to result in lower prices than the IPP determinations. The shortcuts required to reach a 1 December 2014 deadline, including the need to rely on Chorus's existing network infrastructure, will likely produce the opposite result.[11] This is likely to be why Chorus is the only party supporting a 1 December 2014 determination deadline.

3.2. We agree with Chorus that "The Commission should take care not to confuse the first step in the Act (identifying the service to be modelled) with the second step (calculating the TSLRIC price of the service). Questions around the MEA and network optimisation are (and can be) addressed at the second step …"[12]

3.3. Chorus then go on to contradict themselves by linking the service, and existing service platform, with the MEA by demanding "The Commission … model a copper network to estimate … TSLIRC …"[13]

3.4. We agree with Telecom that it "cannot be correct", as Chorus claims, that ""forward looking" requires the Commission to model the existing network at current replacement costs".[14]

3.5. We also agree with Telecom that "The mechanistic application of replacement costs as proposed by Chorus departs from … efficient pricing signals. The approach inevitably captures inefficiencies and asset costs that

[10] Chorus, Submission in response to the Commerce Commission's Further consultation on issues relating to determining a price for Chorus' UCLL and UBA services under the final pricing principle – Consultation Paper (14 March 2014) and Supplementary Paper (25 March 2014), 11 April 2014, paragraph 5.
[11] As we explain at Para x of the CallPlus/Orcon submission.
[12] Chorus, Submission in response to the Commerce Commission's Further consultation on issues relating to determining a price for Chorus' UCLL and UBA services under the final pricing principle – Consultation Paper (14 March 2014) and Supplementary Paper (25 March 2014), 11 April 2014, paragraph 12.
[13] Chorus, Submission in response to the Commerce Commission's Further consultation on issues relating to determining a price for Chorus' UCLL and UBA services under the final pricing principle – Consultation Paper (14 March 2014) and Supplementary Paper (25 March 2014), 11 April 2014, paragraph 14.
[14] Telecom, UCLL and UBA FPP: further consultation and supplementary paper, 11 April 2014, paragraph 10.

will not be incurred, or required, looking forward (such as reused civil engineering infrastructure)".[15]

4. Copper MEA versus FTTN versus FTTH and Wireless

4.1. Chorus assert, without substantiation, that "a fibre MEA … is unlikely to be the most efficient MEA".[16] This is a surprising statement given Chorus is currently rolling out a fibre network. It is also contrary to the observations by TERA in their Danish MEA Assessment in 2013, for which, in a country which is one of the two IPP benchmarks:

4.1.1. A Layer 1 FTTN build costs about 12 % less than a Layer 1 FTTH build.
4.1.2. The opex cost feeding into the MEA costs is considerably less for FTTH than FTTN and
4.1.3. As noted below, the incremental Layer 2 cost for FTTH is a small fraction of the incremental FTTN cost.

4.2. It is unclear on what basis Chorus claim "Consistent with the rest of the industry, Chorus has recommended that the Commission model the full copper network" [emphasis added]?[17]

4.3. We instead agree with the other submitters that "it is difficult to conclusively identify the most appropriate MEA without undertaking some level of cost modelling analysis"[18] and that "The MEA issue is a circular one – the Commission asks for our views on the most appropriate MEA(s) to model – we respond that the lowest cost MEA is the most appropriate – the lowest cost cannot be known until the modelling is undertaken".[19]

4.4. Vodafone also articulate well why the consultation on MEA has been inadequate for determining the appropriate MEA to be used in the TSLRIC modelling.

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[15] Telecom, UCLL and UBA FPP: further consultation and supplementary paper, 11 April 2014, paragraph 12.
[16] Chorus, Submission in response to the Commerce Commission's Further consultation on issues relating to determining a price for Chorus' UCLL and UBA services under the final pricing principle – Consultation Paper (14 March 2014) and Supplementary Paper (25 March 2014), 11 April 2014, paragraph 2.2.
[17] Chorus, Submission in response to the Commerce Commission's Further consultation on issues relating to determining a price for Chorus' UCLL and UBA services under the final pricing principle – Consultation Paper (14 March 2014) and Supplementary Paper (25 March 2014), 11 April 2014, paragraph 8.
[18] Vodafone, Comments on further consultation papers on issues relating to determining a price for Chorus' UCLL and UBA services under the final pricing principle, 11 April 2014, paragraph C2,
[19] InternetNZ, Further Consultation on issues relating to determining a price for Chorus' UCLL and UBA services under the Final Pricing Principles, 11 April 2014, page 9.

4.5. We agree with InternetNZ, Telecom and Vodafone's view that the cost of multiple MEA's should be modelled to determine the appropriate MEA for TSLRIC purposes.[20]

4.6. Addressing any or all of these matters would take longer than a 1 December 2014 deadline would permit.

4.7. Subject to cost modelling to determine which potential MEA would be the most efficient, we agree with Telecom and Vodafone that "the most appropriate MEA is likely to be a FTTH and fixed wireless access (FWA) network"[21,22] and/or mobile. We also agree with Telecom that "If … the Commission chooses a FTTN network … for its MEA, then we recommend it also model a FTTH MEA in parallel, and use this architecture either to "cap" FTTN costs, or to replace FTTN architecture in areas where FTTH proves cheaper. There can be absolutely no argument that any efficient provider would deploy FTTN in any area if that proved to be more expensive than deploying FTT[H]".[23]

4.8. We agree with Vodafone that "even if a copper-based MEA is preferred, … the Commission should still consider whether a wireless solution may still be appropriate for rural consumers".[24]

4.9. We appreciate that there are some challenges in costing and then pricing the Layer 1 component and the Layer 2 components for GPON and mobile/FWA. However, it is far more important is to get the MEA right: of secondary concern is the challenge of estimating the split. That can be done and should not stop the use of the most suitable MEAs.

4.10. InternetNZ observe that "There is no consistent service standard or minimum service standard that applies across the Chorus copper network"[25] and rural service is inferior to urban. This reinforces the viability of wireless as the MEA in rural areas as service equivalence translates to the "rural service" not the "urban service".[26]

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[20] InternetNZ, Further Consultation on issues relating to determining a price for Chorus' UCLL and UBA services under the Final Pricing Principles, 11 April 2014, page 7. Vodafone, Comments on further consultation papers on issues relating to determining a price for Chorus' UCLL and UBA services under the final pricing principles, 11 April 2014, paragraph C18.

[21] Vodafone, Comments on further consultation papers on issues relating to determining a price for Chorus' UCLL and UBA services under the final pricing principle, 11 April 2014, paragraph C1,

[22] Telecom, UCLL and UBA FPP: further consultation and supplementary paper, 11 April 2014, page 2.

[23] Telecom, UCLL and UBA FPP: further consultation and supplementary paper, 11 April 2014, page 2.

[24] Vodafone, Comments on further consultation papers on issues relating to determining a price for Chorus' UCLL and UBA services under the final pricing principle, 11 April 2014, paragraph C8.

[25] InternetNZ, Further Consultation on issues relating to determining a price for Chorus' UCLL and UBA services under the Final Pricing Principles, 11 April 2014, paragraph 10.

[26] InternetNZ, Further Consultation on issues relating to determining a price for Chorus' UCLL and UBA services under the Final Pricing Principles, 11 April 2014, page 10.

4.11. To this end, we welcome Vodafone's offer to "assist the Commission and TERA by assessing what proportion of rural customers served by Chorus' copper network could efficiently be served by existing and future mobile technology (including RBI footprint, to the extent it overlaps with Chorus customers)".[27]

4.12. Telecom's recommendation to "Apply a "wireless cap" in the same way as it did in the TSO process"[28] may also be a pragmatic option. Based on the wireless cap approach the Commission adopted in its TSO net cost determinations we would note that the cost of wireless options (per customer) will vary from region to region, based on a number of factors such as topography and customer density.

5. It appears the Commission has made a preliminary decision on MEA and this is reflected in the information requests it has issued to Chorus and Vodafone

5.1. We are aware of four information requests so far, two to Vodafone and two to Chorus. Thank you for providing copies and also a copy of the TERA terms of reference.

5.2. We understand that no requests are to be made of the LFCs.

5.3. We have already observed that:

5.3.1. It seemed from the workshops that TERA is heading down a scorched node path, using existing cabinets and exchanges as the nodes;

5.3.2. The modelling appeared to be FTTN based on copper from the nodes but it was said by TERA that:

5.3.2.1. The modelling could change to fibre from the nodes relatively easily; and

5.3.2.2. The modelling could adjust for cabinets or poles.

5.3.2.3. The difference in cost between fibre and copper tails from the same nodes is not great; and

5.3.2.4. Modelling a scorched earth FTTH would not make much difference from a scorched node FTTH.

5.3.3. It is likely, given the critical path, that in practice or in terms of final decision making, the scorched node approach has been chosen. The lead in time requires this, it seems.

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[27] Vodafone, Comments on further consultation papers on issues relating to determining a price for Chorus' UCLL and UBA services under the final pricing principle, 11 April 2014, paragraph C7.
[28] Telecom, UCLL and UBA FPP: further consultation and supplementary paper, 11 April 2014, page 2.

5.3.4. The Commission has not evaluated the appropriate MEAs (and in any event has not closely looked at rural options) beyond a minimal approach and has not undertaken an empirical analysis.[29]

5.4. We now have the TERA scope and the four information requests. Our impression is now reinforced. In particular:

5.4.1. The request of Chorus seeks information only as to the PSTN network save for some broad information sought on UFB;

5.4.2. No requests are made of the LFCs, which have valuable information, such as in relation to the use of poles and ducts, and rolling out a network unconstrained by historic legacy issues.

5.4.3. This implies that a scorched earth FTTH is not being considered and/or the decision has already been made not to go in that direction.

5.4.4. There is no sign that the Commission has done an adequate analysis (particularly an empirical analysis) to select the optimal MEA.

5.4.5. The TERA contract requires them to produce a draft Model Reference Paper by 7 May, which is only 7 days after the current round of submissions close. This is strong confirmation that in practice, the path and the MEA has already been decided. TERA would have no time to make changes to the MEA and its implementation 7 within days.

5.4.6. It seems that decisions not to ask information of LFCs have been made after the CallPlus and Orcon (and other) submissions were filed, and those squarely raise concerns about how the Commission is progressing these issues. Yet the Commission is still proceeding down this path (although perhaps it is waiting for cross submissions before deciding an announcing a changed approach).

5.4.7. There is no time to make material changes to the modelling following, say, submissions on the draft determination. The Commission has made an unambiguous commitment to deliver the determination by 1 December.

5.5. Historically, regulators have often opted for scorched node instead of scorched earth to reduce the cost and complexity of the modelling. It is not readily apparent why that is appropriate in this context:

5.5.1. The comparison is no longer scorched earth copper v scorched node copper. It is between copper (with fibre from cabinets/nodes) and an FTTH. Generally, the central office (the scorched earth nodes) differs from exchanges and cabinets. Apples and Pears. The starting point is that scorched earth FTTH is to be modelled to compare with scorched node FTTN.

[29] As discussed in the preceding subsection, with the exception of Chorus, submitters considered that establishment of the appropriate MEA(s) requires cost modelling to determine which MEA option is the lowest cost/most efficient.

5.5.2. What emerged from the session with TERA is that relatively recently available software makes the modelling exercise much easier. Thus there is less need for scorched node.

5.5.3. Wigley & Company outline legal reasons why a scorched earth MEA of an FTTH network would best meet the requirements of the Telecommunications Act.

6. A simple illustration of the problems

6.1. A rudimentary comparison of FTTN and FTTH MEAs for urban illustrates the problem, based on TERA's own work in Denmark, outlined in their report to the Danish regulator, *Modification and Development of the LRAIC model for fixed networks 2012-2014 in Denmark – MEA Assessment (called in this submission* "the TERA Denmark MEA Assessment") .[30]

6.2. At Para 2.2.2 of that report, TERA note:

> As stated in MEA definition quoted in section 1.2, it is necessary to compare the cost of the different fixed access network technologies in the MEA assessment. To conduct this comparison, existing LRAIC models can be used but as it is important to compare technologies on a like with like basis, adjustments have been made to make sure copper and FTTH are compared with similar geographical scope and similar network scope… To avoid differences in economies of scale, only the total investment to reach a given coverage is compared. Results show that the investment required for a FTTH network would be around 12% higher than the investment in a copper network today. This excludes CPE and active equipment since costs of copper active equipment and CPE can vary significantly depending on the technology chosen (vectoring, pair bonding, etc.). However, the passive part of the copper and FTTH networks should represent the very large part of costs. (footnotes omitted.

6.3. TERA also report that for the excluded Layer 2 FTTH components: "In the GPON scenario, CPE and OLT represent 3% of total costs only."[31]

6.4. In summary, for Denmark:

6.4.1. A Layer 1 FTTH network build today would cost around 12% more than a Layer 1 copper network build today

6.4.2. The Layer 2 component of FTTH represents 3% of total FTTH costs.

6.5. If we use those figures in the New Zealand environment and we assume the IPPs are inputs into a cross-check model and based solely on cost:

6.5.1. For an FTTH MEA:

6.5.1.1. The UBA price would be $27.11 (namely the UCLL IPP plus 12% plus 3% in order to introduce (a) the higher FTTH price and (b) to add the layer 2 component).

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[30] http://erhvervsstyrelsen.dk/file/370080/meaassessment.pdf

[31] Footnote 32 TERA Denmark MEA Assessment

6.5.1.2. The relativity between UBA and UCLL would be in the order of 79 cents (based on the 3%) producing a UCLL price of $26.32.

6.5.2. For an FTTN MEA:

6.5.2.1. the UBA price would be $34.44 (namely the $23.52 IPP for UCLL plus the UBA IPP uplift of $10.92)

6.5.2.2. The UCLL price would be $23.52.

6.5.3. Thus the UBA price based on an FTTN MEA would be around $7.33 higher (that is, around 33% higher) and the relativity between UCLL and UBA would be around $10 higher (that is around 1,700% higher). In model the UBA price is higher and relativity is lower: the position is the reverse for the other model.

6.6. This implies a large difference as to prices flowing from the choice of MEA. Further, as price directly derives from the underlying capex and opex associated with the MEA network, this implies that FTTN as a network is considerably more expensive than FTTH.

6.7. In drawing the TERA comparison we have not yet addressed the considerably lower opex for FTTH relative to FTTN. That is a further factor making FTTH much less expensive. The large difference in opex is explained in the TERA Model Assessment report.

6.8. While this is a broad brush assessment and there are multiple other moving parts to factor in, on these key dimensions, there are signs that there are considerable differences in outcome which are not being considered by the Commission. Each of the inputs may move by substantial amounts, but there will still be great disparity. For example, FTTN looks as though it will likely produce far higher UBA prices, whether 20% higher or 75% higher.

6.9. Among the moving parts is of course the fact that this is New Zealand not Denmark. However, the cost of the build for FTTN and FTTH should still be in the same ballpark, as will Layer 2 FTTH cost (cost modelling of different MEA options can confirm this). In any event, given the Layer 1 and Layer 2 costs are in the same ball park – a fact confirmed by many commentators in New Zealand given 80% of the build is the civils – the analysis above largely remains unaffected by the ultimate choice of Layer 1 price. In any event, Denmark is one of the two benchmarks used by the Commission. The main relevant variable in the calculation above is that the Layer 2 increment over the Layer 1 platform for an FTTH MEA is low and the increment over that platform for Layer 2 on an FTTN MEA is high.

6.10. It appears that the Commission is not planning to do anything like the level of choice of MEA assessment undertaken by TERA for Denmark. Quite apart from the fact this is an international benchmark involving its own consultants, this raises the concern as to the adequacy of the proposed process. We note in particular that TERA undertook a detailed empirical

assessment, as confirmed at Para 5 of their report. Wigley & Company have advised that the Commission must do a robust empirical MEA assessment.

6.11. As TERA note at Para 5 of their report:

> "Comparing costs of the different technologies available for fixed access networks must be conducted by making sure that the scope of costs calculated for each technology is similar. It is necessary to make sure that the geographical scope, the network scope and the level of economies of scale are similar to be able to achieve a true cost comparison"

7. Court precedent on efficient/forward-looking costs

7.1. In the CallPlus/Orcon joint submission we made reference to Vodafone's successful appeal of the Commerce Commission's TSO cost determination.

7.2. This is an important precedent given the parallels between TSLRIC and calculation of avoidable incremental cost, and between the forward-looking and efficient service provider principles. The TSLRIC and TSO net cost determinations are both based on the calculation of the incremental cost of an efficient service provider.

7.3. Vodafone took the appeal because it "maintained that the Commerce Commission had overstated the net cost of providing the service … by valuing the capital cost to an efficient service provider of providing the service using Telecom's existing network rather than by valuing the distribution system that would be used by an efficient service provider, using new mobile technology where appropriate".[32] Vodafone was successful in its challenge. (The same concerns are now being raised about the potential outcome and direction of the TSLRIC determinations.)

7.4. The Court case made it clear the Commission was modelling the cost too closely to (pre-Chorus split) Telecom's network, and was not adequately applying the concept of an efficient service provider or lowest cost technology options such as wireless. This case is worth re-emphasising given Chorus's continued advocacy that the Commission apply a copper MEA that is closely aligned to its own network and does not apply other technologies such as wireless.

7.5. We appreciate that there are some differences between the TSO and the PRDs. However, there are multiple overlapping issues.

7.6. By way of example, we note the following statements from the judgments that we consider to be relevant for the TSLRIC determinations:

[32]Vodafone v Telecom [2011] NZSC 138, paragraph [3].

… the Commission's approach was skewed by its adherence to the historic network maintained by Telecom, with only limited optimisation beyond the core network. What was required was an assessment of the network that would have been used by an efficient service provider.[33]

… the determination of the Commission … disclosed error of law in preferring adherence to its existing model (based on Telecom's existing core network modified for new technology only in relation to nodes and local access …[34]

… [I]t treated consistency (or otherwise) with its scorched node model as the key controlling consideration instead of going back to, and applying, the key statutory provisions.[35]

The error of law … was compounded … when it decided not to factor in the delivery of services … using new mobile technology beyond that already contained in the existing model …[36]

In ceasing to optimise with new technology the Commission has … abandoned consideration of whether Telecom's costs are efficiently incurred and whether services could be more efficiently provided through the application of new technology.[37]

… the statute is not concerned with the return on legacy assets unless they are efficient.[38]

By deciding that it would not model new technology into its calculation of capital, the Commission … allowed net cost to be set above that incurred by an efficient service provider.[39]

The network of an efficient service provider may or may not include components of Telecom's existing network.[40]

The Commission … failed to address … the distortion caused by artificially revaluing old assets (already wholly or partly depreciated) which were in reality not likely to be replaced …). It is sensible to revalue on an optimised basis, say, a switch by attributing to it the lower value (price) of a new switch which performs the same or better function but is able to be acquired at a lesser price. It is quite another thing to attribute a modern equivalent value to an old asset which is not actually being replaced and for which no replacement would sensibly be introduced. All that does is to artificially inflate the value of the old asset and provide a windfall for the firm in terms of an enhanced return on and of capital employed. This emerges starkly in relation to the very significant value attributed to installed copper wire … the attributed value of which is in large measure the current cost of putting it in the ground. It cannot be right, where the ESP is supposed to be a proxy for a firm which will continue to employ old assets, to attribute new … value to them, including the cost of work notionally needing to be done if the assets were being newly installed (in the ground). That cost which was not actually incurred included notional current fuel and labour costs.[41]

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[33]Vodafone v Telecom [2011] NZSC 138, paragraph [10].
[34]Vodafone v Telecom [2011] NZSC 138, paragraph [11].
[35]Vodafone New Zealand Ltd v Telecom New Zealand Ltd HC Wellington CIG 2008-485-2194, 1 April 2010, paragraph [56].
[36]Vodafone v Telecom [2011] NZSC 138, paragraph [12].
[37]Vodafone New Zealand Ltd v Telecom New Zealand Ltd HC Wellington CIG 2008-485-2194, 1 April 2010, paragraph [56].
[38]Vodafone v Telecom [2011] NZSC 138, paragraph [13].
[39]Vodafone v Telecom [2011] NZSC 138, paragraph [14].
[40]Vodafone v Telecom [2011] NZSC 138, paragraph [17].
[41]Vodafone v Telecom [2011] NZSC 138, paragraph [70].

8. Timeframe too tight to undertake a proper and robust TSLRIC determination

8.1. A recurring theme of submissions, other than that of Chorus, is that the time-frame of 1 December 2014 is far too tight, does not allow time for proper or meaningful consultation, and limits the scope for the Commission to change its mind or approach on matters (which would jeopardize or make impossible the 1 December deadline 2014). The clear message is that access seekers and consumer groups consider that it would be better to take longer to get a robust price than to rush a decision. There was also clear suggestion that a rushed decision could be prone to Judicial Review or appeal, and the delays and uncertainty that would create. We agree with all these concerns. It appears that Chorus' interests are being placed ahead of consumers.

8.2. The Supreme Court decision on Vodafone's appeal of the Commission's TSO net cost calculation is germane to this matter. It noted that the Commission is directed by the Telecommunications Act to make "reasonable efforts" to adhere to a specific timetable but "In practice, the complexity of its task has made that quite impossible".[42]

8.3. We share Vodafone's concern that the Commission's process entails a "relatively narrow" consultation, but the Commission will need to make "wider decisions … prior to the commencement of modelling".[43]

8.4. We also agree with Vodafone "that the Commission should issue a consultation document before the draft determination setting out the key assumptions (and the reasons underlying them) which it intends to provide to its expert consultant before the model is built"[44] and "consider whether further consultation steps should be undertaken (including before and after the commencement of the modelling exercise) prior to the release of its draft determination in August".[45] (Telecom's submission made similar recommendations.[46])

8.5. All Commerce Commission precedent of pricing and cost determinations indicate the determination and consultation process should involve multi-steps, paralleling the steps required to develop and apply a TSLRIC model, rather than a single-bundled draft determination consultation.

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[42]Vodafone v Telecom [2011] NZSC 138Vodafone v Telecom [2011] NZSC 138, paragraph [30].
[43] Vodafone, Comments on further consultation papers on issues relating to determining a price for Chorus' UCLL and UBA services under the final pricing principle, 11 April 2014, paragraph A3,
[44] Vodafone, Comments on further consultation papers on issues relating to determining a price for Chorus' UCLL and UBA services under the final pricing principle, 11 April 2014, paragraph B1(c).
[45] Vodafone, Comments on further consultation papers on issues relating to determining a price for Chorus' UCLL and UBA services under the final pricing principle, paragraph B1(g).
[46] Telecom, UCLL and UBA FPP: further consultation and supplementary paper, 11 April 2014, page 3.

8.6. We agree with Telecom's summary that "… a longer period of time is needed to ensure the complexities of the modelling that will be required for these processes, and our assessment of the time we as industry participants will need to digest, consider and respond to drafts of that modelling, extends that timeline considerably beyond 1 December."[47]

8.7. Vodafone highlight some of the dangers of the truncated consultation process and timeline "… a failure to engage properly with persuasive evidence provided during the submissions process would create a substantial risk to its final determination(s). In short, making irrevocable choice without adequate consultation, in circumstances where later consultation confers no practical ability to influence or alter that choice, is unlikely to provide a basis for enduring industry settlement".[48]

8.8. We also agree with Vodafone that "deferring consultation on the Commission's MEA selection decision to the draft determination introduces a significant threat that the Commission would feel itself compelled to properly engage with arguments contained in draft determination submissions, even if this means extending its timeframe and revisiting analysis already completed."[49] (Telecom's submission raised similar concerns.[50])

9. Chorus' submissions make it clear that a proper TSLRIC calculation cannot be completed by 1 December 2014

9.1. While we are sure it wasn't their intention, we consider that Chorus's, and Chapman Tripp's, submissions demonstrate it is not possible to undertake a robust and safe TSLRIC determination by 1 December 2014.

9.2. As InternetNZ observe in their submission "Even Chorus in its submission recognised that the tight timeframes could only be achieved by using its top-down framework and its information modelling its copper network – a solution that is totally unacceptable to all other parties".[51]

9.3. Chapman Tripp point out that "The structure and logic of the two-stage price determination process (using "initial" and "final" principles) provides a statutory assumption that the PRD (using the FPP) will produce a more accurately efficient price for supply of the service regulated under the

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[47] Telecom, UCLL and UBA FPP: further consultation and supplementary paper, 11 April 2014, page 3.
[48] Vodafone, Comments on further consultation papers on issues relating to determining a price for Chorus' UCLL and UBA services under the final pricing principle, paragraph C30.
[49] Vodafone, Comments on further consultation papers on issues relating to determining a price for Chorus' UCLL and UBA services under the final pricing principle, paragraph C31.
[50] Telecom, UCLL and UBA FPP: further consultation and supplementary paper, 11 April 2014, pages 3 - 4.
[51] InternetNZ, Further Consultation on issues relating to determining a price for Chorus' UCLL and UBA services under the Final Pricing Principles, 11 April 2014, page 7.

relevant STD".[52] We question how this would be achievable under a timetable that would deliver a FPP determination in half the time undertaken for the UBA benchmarking IPP determination.

9.4. A sample of the statements Chorus has made which demonstrate why 1 December 2014 is unrealistic, if the TSLRIC modelling is to be done robustly, includes:

> Internationally, there has only been one fibre MEA TSLRIC model completed for UCLL. This means that there is essentially little developed precedent for a fibre MEA …[53]
>
> The suggestion that there may need to be a quality adjustment is completely untested internationally ... any adjustment would need to be cost based – which would suggest that the Commission need to build a copper MEA in parallel …[54]
>
> No regulator in the world has yet set an access network unbundling price based on such a method [adjustment for superior MEA service].[55]

9.5. Chorus' solutions to these issues would simply result in an over-estimate of the TSLRIC prices, using a backward-looking model largely based on Chorus' actual inefficient network.

10. Risk of legal challenge

10.1. Finally, we caution that "a rushed process is more likely to be wrong".[56] We have already seen Chorus's willingness to seek Court review of the Commission's pricing decisions, and to further appeal when the High Court found against Chorus.[57]

10.2. An obvious point of tension is Chorus black and white statements about the obligation of the Commission to model its actual copper network versus Vodafone's successful judicial review against the Commission's TSO

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[52] Chapman Tripp, Memorandum to Chorus, Unbundled Cooper Local Loop (UCLL) and Unbundled Bitstream (UBA) access services – pricing review determination (PRDs) – Legal framework, 11 April 2014, paragraph 12(F).

[53] Chorus, Submission in response to the Commerce Commission's Further consultation on issues relating to determining a price for Chorus' UCLL and UBA services under the final pricing principle – Consultation Paper (14 March 2014) and Supplementary Paper (25 March 2014), 11 April 2014, paragraph 17.

[54] Chorus, Submission in response to the Commerce Commission's Further consultation on issues relating to determining a price for Chorus' UCLL and UBA services under the final pricing principle – Consultation Paper (14 March 2014) and Supplementary Paper (25 March 2014), 11 April 2014, paragraph 84.3.

[55] Chorus, Submission in response to the Commerce Commission's Further consultation on issues relating to determining a price for Chorus' UCLL and UBA services under the final pricing principle – Consultation Paper (14 March 2014) and Supplementary Paper (25 March 2014), 11 April 2014, paragraph 99.

[56] InternetNZ, Further Consultation on issues relating to determining a price for Chorus' UCLL and UBA services under the Final Pricing Principles, 11 April 2014, page 8.

[57] Chorus Ltd v Commerce Commission & Others, CIV-2013-485-9923 [2-14] NZHC 690.

net cost determination, which found that the Commission had made a determination that adhered narrowly to (pre-Chorus split) Telecom's network and did not adequately recognise that other technologies such as wireless could be more efficient/lower cost.

10.3. A poor-rushed decision would make the prospects of litigation more likely still, with much greater prospect of successful challenge.

11. Chorus's financial viability and purported funding gap for fibre

11.1. Chorus's external legal advisors, Chapman Tripp, claim that "While the purpose of the Act is to provide for regulation of certain designated telecommunications services, and the provisions of the Act are paramount, the avoidance of unnecessary and damaging constraints being imposed on an access provider's economic existence is a relevant consideration as a matter of general rule of law factors, as well as being indirectly reflected in the Act's purpose".[58]

11.2. The Act clearly regulates the prices Chorus can charge, based on cost. As the April 2014 appeal decision confirms, the Commission first determines the cost of the service. Only when it gets to a plausible range do s 18 discretions arise. Section 18 expressly is limited solely to efficiencies and s 18(2A) considerations from only a consumer perspective. The access provider's concerns are only relevant to the extent that their interests promote the s 18 objective. For example, an access provider being able to charge a higher price is a consideration that is relevant only if that promotes competition from a consumer welfare perspective. Thus, Parliament has expressly ousted any property right interpretation and application of the Act.

12. No evidence to support claims that Chorus' profitability may be unreasonably impaired, let alone that its economic existence is threatened

12.1. There have been numerous assertions made about the impact of the Commission's UCLL and UBA price determinations on Chorus's financial viability, and this was used as part of the Government justification for its aborted plan to introduce legislation overruling the Commission's copper price determinations.

12.2. If Chorus's economic existence was threatened, or the Commission's pricing determinations would unreasonably impair its profitability, we would expect Chorus to provide evidence to support such serious claims. It has not done so, including in the IPP process when it was invited to do so.

[58] Chapman Tripp, Memorandum to Chorus, Unbundled Cooper Local Loop (UCLL) and Unbundled Bitstream (UBA) access services – pricing review determination (PRDs) – Legal framework, 11 April 2014, paragraph 7(E).

12.3. It is notable that the Chorus Telecommunications Service Obligations (TSO) Deed for TSO network services[59] offers relief to Chorus if its profitability is unduly impacted but that Chorus has to provide evidence to demonstrate this. Chorus has not applied for such relief.

12.4. Clause 7 of the TSO Deed states that "If Chorus considers that the overall profitability of Chorus' fixed business has been, is being or will be unreasonably impaired … and wishes to increase the price for TSO network service ("the TSO network service price") above an amount equivalent to the regulated price (as amended from time to time) for Chorus' unbundled copper low frequency service to remove or avoid that unreasonable impairment, Chorus shall notify the Crown of the desire to increase the TSO network service price for this reason".

12.5. The TSO Deed also provides helpful direction as to the evidence required to demonstrate undue impact on profitability.

12.6. Clause 7.3 requires that "Any such notice shall include … information which Chorus considers justifies the proposed increase".

12.7. Clause 8 states that "When considering its view on Chorus' proposal, the Crown will give full and due consideration to projected forward looking profits of Chorus' fixed business and the recovery and past recovery of a reasonable weighted average cost of capital for that business …"

12.8. Clause 11 then goes on to state that relevant factors include "evidence of the audited accounts prepared for Chorus' fixed business" and "without limitation":

> 11.1 the appropriateness of the methodology used in preparing such accounts, and application of that methodology;
>
> 11.2 the projections of forward looking profits for Chorus' fixed business, the reasonableness of the assumptions made in deriving these projections, and the reasonableness of the period for which the projected recovery is sought; and
>
> 11.3 the projected recovery and past recovery of a reasonable weighted average cost of capital for Chorus' fixed business from [the commencement of the financial year of Chorus immediately preceding the financial year of Chorus in which the notice in clause 7 is given].

12.9. We would expect Chorus to provide the same information as evidence that the Commission's copper price determinations would unreasonably impair Chorus' profitability or threaten its "economic existence".

12.10. We agree with Telecom that "… it seems unlikely that any forward-looking model for these services – no matter what MEA is used – will

[59] 8 November 2011.

[prevent Chorus making a reasonable return on its actual investments] given the heavily-depreciated nature of Chorus' actual assets" and "In that unlikely case, we would expect Chorus to provide evidential proof of this outcome".[60]

12.11. Telecom's observations have parallels with the Part 4 High Court Merit Appeal decision in relation to the asset valuation Input Methodologies (IMs). The High Court decision made it clear regulated suppliers needed to provide proof that the asset valuation IMs would result in Regulated Asset Base valuations below actual historic cost in order to support their claims that the IMs would preclude them from recovering a normal rate of return. The High Court determined that the Commission had "reasonable understanding" that its valuation determinations "were sufficiently high for regulated suppliers to earn at least a normal return on capital for past investments" and that this "had been confirmed by the lack of evidence from suppliers that that would not be the case."[61]

12.12. We agree with Telecom that "the Commission should not concern itself with questions of Chorus' recovery of normal rates of return on its investments unless and until Chorus provides evidence that proves that forward-looking cost-based prices will not enable this."[62]

13. Purported funding gap

13.1. Chorus has claimed the Commission's IPP determination would result in a $1 billion funding gap" for fibre roll-out. But, again, Chorus has provided no evidence of this. A reduction in prices equates to a reduction in revenue and profit (reduction in excessive returns), but this is not the same as a funding gap.

13.2. The Vector analysis of Chorus' ROI based on current and IPP pricing simply suggests Chorus' copper business will go from earning extremely high excessive returns (20% Return on Investment and above over the next 5 years) to lower but also extremely high returns under the IPP. We place weight on Vector's analysis given their Part 4 experience, and the peer review of Network Strategies.

13.3. Tellingly, Chorus has not responded or cross-submitted in response to Vector's repeated submissions, which have been picked up by other submitters.

13.4. We also, again, reiterate the High Court statement in the Part 4 Commerce Act Merit Appeal that "the idea that greater revenues produced

[60] Telecom, UCLL and UBA FPP: further consultation and supplementary paper, 11 April 2014, paragraph 44.
[61] Wellington International Airport Ltd and others v Commerce Commission [2013] NZHC 3289, 11 December 2013., paragraph [638].
[62] Telecom, UCLL and UBA FPP: further consultation and supplementary paper, 11 April 2014, page 3.

by higher allowed earnings on past investments (ie on the initial RAB provide the wherewithal for more future investment is contrary to rational investment choice. Those existing higher earnings, once earned, are a given. The source of funds for future investment does not influence the riskiness of future investments; not, therefore, does it influence their attractiveness, If anything, an abundance of capital is likely to lead to wasteful investment".[63]

13.5. It should be remembered that Chorus entered into the UFB fibre roll-out on a voluntary basis, agreed the subsidy it needed from the Crown for the roll-out, was granted three years regulatory relief from Commerce Commission copper price resets, and knew full well when entering into the UFB roll-out that copper prices would reduce substantially. It is not the role of the Commission to provide further subsidy to Chorus to bankroll its fibre roll-out. The role of the Commission is to set cost-based efficient copper prices, which facilitate competition on multiple platforms. It can be expected that UFB will still be rolled out even if Chorus's financial viability is affected.

14. Concluding remarks

14.1. We consider there is a great deal of alignment amongst access seekers and InternetNZ in the submissions made on the TSLRIC determinations for UCLL and UBA:

14.1.1. The Commission has not yet done sufficient work to determine the appropriate MEA(s).

14.1.2. The Commission needs to undertake modelling of the different options to determine the lowest cost/most efficient MEA.

14.1.3. Subject to the above, a MEA based on FTTH and FWA is most likely to be the most appropriate option.

14.1.4. The timetable for determinations is far too tight, and is liable to advantage Chorus over access seekers and consumer interests.

14.1.5. The timetable does not provide for the Commission to make substantive changes to its draft determination, following receipt of submissions and cross-submissions.

14.1.6. It would be better for the Commission to prioritise making a robust decision over a quick decision.

[63] [Wellington Airport and Others …], paragraph [1480].

14.1.7. If Chorus wants the Commission to take into account financial impact of the pricing determinations on its business the onus is on Chorus to demonstrate it would be unduly impaired by the decisions.

14.2. There was also consensus amongst all parties that commented that the Commission has the option of selecting different MEAs for UCLL and UBA (FTTN and FWA for UCLL and copper for UBA), though disagreement on the merits of this.