

13th August 2015

Stephen Gale
Telecommunications Commissioner
Commerce Commission

Dear Stephen,

InternetNZ Submission on the further draft pricing determination for Chorus' unbundled copper local loop and unbundled bitstream access services.

1. InternetNZ is providing this short submission in addition to the submissions made by Wigley and Company.
2. We make this submission to be clear in why InternetNZ is taking this process so seriously, and to be clear in our opinion on two serious matters in this draft determination process.
3. In terms of our interest in this process, our mission at InternetNZ is to *promote the Internet's benefits and uses and protect its potential*. Simply put, New Zealanders cannot take advantage of those benefits and uses to the same degree if they are over-paying for Internet services due to the Commission over-pricing copper-based services in this determination process.
4. We recognise that the Commission has a challenging task to undertake in completing this determination process, as we have said numerous times both to you privately and in our public statements. We also recognise that it is important that the Commission considers the various interests of parties to this process - to ensure that there is sufficient reward for network investment and to ensure that there is sufficient revenue for, and competition between, service providers.
5. These considerations are however secondary to the primary responsibility of the Commission in this process, as expressed in the test and benchmark set in the Telecommunications Act: to regulate in *the long term benefit of end users in New Zealand*. That benchmark requires the Commission to keep the interests of the New Zealand Internet user community paramount in this process and ensure that Internet users in New Zealand are subject fair and reasonable pricing for copper-based services.
6. In this regard the Commission and InternetNZ are closely aligned. Our interests reflect those of the New Zealand Internet community of users. The Commission's are to deliver to their long-term benefit. In both cases, that requires a consideration of all of the parties and incentives that provide high quality Internet networks and services to New Zealand, whilst still keeping that end user interest paramount.

7. The purpose of this submission is to offer our observations and opinions on how the Commission is delivering to those objectives in these draft determinations. It should be read in conjunction with the Submission by Wigley and Company.

Prices remain too high

8. InternetNZ remains deeply concerned that the prices proposed in these draft determinations are too high.
9. The prices proposed mean that copper network investors are being over compensated by prices being set above cost. Over time this will result in a wealth transfer of many millions of dollars, as New Zealand Internet users pay over what is reasonably required to reward the investments in copper infrastructure.
10. That would be justifiable if the pricing proposed by the Commission in these drafts were clearly necessary to deliver to the legislated benchmark of *the long term benefit of end users in New Zealand*.
11. That benchmark has not been met for us in these draft determinations.
12. Our evidence for this is covered in the Wigley and Company submission, but also in the work of others. Further than that though and perhaps even more relevantly the Commission's proposed prices are out of step with the expectations of the New Zealand Internet users that they purport to serve. Spark's work in gathering over 50,000 signatures shows that there is indeed interest and concern in the outcomes of this process. It also indicates that this process is not meeting the expectations of the end users, New Zealand's Internet users themselves either.
13. We all have an interest in ensuring that prices are fair for all parties. As expressed above, but for clarity again here - we at InternetNZ agree that it is necessary to consider the incentives and rewards to all parties in the Internet ecosystem to truly deliver to *the long term benefit of end users in New Zealand*. It's also necessary to *promote the benefits and uses of the Internet and protect its potential*.
14. That consideration does not however absolve the Commission from keeping that *long term benefit of end users in New Zealand* as its primary consideration. We do not see how an unwarranted, unjustified transfer of millions of dollars over and above reasonable returns is of benefit to New Zealand Internet users.
15. We urge the Commission to consider, carefully, the Submission made by Wigley and Company and the other submissions that we anticipate will also raise concern about these prices being set too high in these draft determinations. There are reasons and evidence that justify this perspective and it is crucially important that the Commission gets this right.

Backdating is not in *the long term benefit of end users in New Zealand*.

16. We also respond to the Commission's split decision in favour of backdating.
17. We believe that the Commission has concluded correctly that backdating will not benefit end users, and thus has sought to remove it from this process. We are concerned again however that this aspect of the Draft Determinations was not universally supported by Commissioners.
18. InternetNZ stands beside the comments we made at the Conference on these matters. To reiterate these here: we see no *long term benefit of end users* in deciding to backdate any price changes forthcoming from this process, regardless of whichever way that backdating decision was to go.
19. All backdating seems to do is increase the uncertainty, unpredictability and impact of any potential price changes. Internet users in New Zealand bear the cost of that uncertainty, unpredictability and impact in every scenario we can contemplate.
20. We understand the logic behind contemplating backdating – that it seeks to fairly compensate the parties for regulatory lag. That again though needs to be balanced against the competing interests at play.
21. No retail service provider has been able to adequately predict the outcome of this process, and therefore set retail prices with a long term view to accommodate any potential backdating expenses. Any miscalculation therefore will need to be borne out through changes to retail pricing. We unfortunately do not have the confidence that retail service providers will “pass through” net gains from this process to consumers, and are very pessimistic that any net losses will quickly and accurately be passed through at retail.
22. Likewise, we do not think that Chorus' investment or pricing decisions have been impacted by this regulatory lag in a manner that requires compensation through backdating.
23. For these reasons we strongly submit to the Commission that backdating is not to the *long term benefits of end users in New Zealand*. We hope that the Commission sticks to its majority decision in these drafts and maintains that opinion in the Final Determinations.

Sincerely,



Jordan Carter
Chief Executive