



APPLICATION FOR PRICING REVIEW DETERMINATION
UNDER SECTION 42
TELECOMMUNICATIONS ACT 2001

Date: 13 December 2013

The Director
Telecommunications Branch
Commerce Commission
PO Box 2351
WELLINGTON

Pursuant to section 42 of the Telecommunications Act 2001 (“the Act”) and section 78 of Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 the notice is hereby given seeking a **pricing review determination** for a designated access service.

We acknowledge that we may be required to meet any additional application costs incurred by the Commerce Commission (“the Commission”). We agree to make periodic payments, as invoiced, to reimburse the Commission for a portion of the costs it incurs in completing the determination requested. Furthermore, we acknowledge that in relation to the application and the determination we may be required to meet some or all the costs that were incurred by the other party to the determination (including costs incurred by the Commission that were invoiced to the other party).

DETERMINATION DETAILS

THE PERSON GIVING NOTICE

Orcon Ltd and related companies

Level 3, 110 Symonds Street

Auckland

Individuals Responsible:

David Clarke, GM Wholesale and Regulatory, Orcon Ltd Tel: +64 27 5720499

PRICE AND SERVICE DESCRIPTION

- 2 The **pricing review determination** is sought as to all prices in the Commission's Final determination ("determination") pursuant to s30R to amend the price payable for the UBA service dated 5 November (Decision [2013] NZCC 20) including the following prices:
 - a. The UBA monthly charges:
 - Basic UBA: \$34.44
 - EUBA 40: \$36.77
 - EUBA 90: \$37.34
 - EUBA 180: \$38.37
 - b. The charges stated in the Standard Terms Determination UBA Price List – Schedule 2 – dated 5 November 2013 and in Attachments F and G in the Determination.

JUSTIFICATION FOR APPLICATION

- 3 On what grounds is a determination being sought?
 - a. The applicant is a party to the determination and is entitled to apply for a review pursuant to s42 of the Act and s78 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011
 - b. The requirements of s43 of the Act, as amended by s78 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011, are met;



- c. The grounds stated in this application and grounds arising later including during scoping and, also, after information is provided by Chorus.

PARTIES TO DISPUTE

- 4 The parties to the dispute are, in accordance with the definition of "party" and "parties" in s5:
 - a. Chorus Ltd (as access provider and supplier of UBA and other services); and
 - b. All access seekers, including the following and their related companies:
 - i. The applicant in this application;
 - ii. CallPlus Ltd;
 - iii. Vodafone New Zealand Ltd;
 - iv. Telecom New Zealand Ltd;
 - v. All respondents named in the appeal filed in the Wellington Registry in the High Court under CIV-2013-485-9923

The access seekers are all telecommunications retail providers acquiring services from Chorus Ltd

REQUIREMENTS FOR APPLICATION

- 5 If an initial determination has not been made and the only term at issue is the discount specified in the applicable initial pricing principle, provide answers to the following questions: Not applicable
 - a. Has the Commission already made a determination relating to the service for which a determination is sought? Yes. It has made the determination referred to above.
 - b. Is there an agreement between the access seeker and all access providers for the supply of the service that provides for any of the matters on which a determination is sought? The terms are stated in the standard terms determination for UBA and certain commercial variations of UBA services.

- c. Have the applicable conditions set out in Schedule 1 of the Act in relation to the service (if any) been met? There are no conditions in the service description.

- 6 If an initial determination has been made, what factors does the applicant consider indicate that the price or prices set in the initial determination were not appropriate? The final pricing methodology, and outcome, under the FPP are different from the pricing methodology and pricing under the IPP. The IPP does not produce the TSLRIC pricing: it is only a proxy of such pricing. Additionally, the price should not be increased to reflect s18 considerations, or, if increased, should not be increased as much. The applicant refers to the other parts of this application, in support.
 - a. Provide a copy of all information available to the applicant that is relevant to assessing the appropriateness of the price or prices set in the initial determination. The Applicant does not have the relevant information as it is held by Chorus. The Applicant is dependent on that information including the cost model to be produced by Chorus. As to s18 the Applicant relies on its submissions to the Commission on the IPP and upon other grounds that emerge on the appeal by Chorus to the High Court, referred to above.
 - b. Attach a copy of any other relevant written material. See (a) above.

TERMS OF DETERMINATION

- 7 Propose the price or prices the applicant considers should be payable for the designated access service, and justify why the price proposed is appropriate.
Reduction of all prices in the determination by at least 50%.

The information supplied should show how the price proposed meets the relevant pricing principles in the Act. Such a reduction meets the final pricing principle, TSLRIC. Although the IPP is a proxy for the FPP, the IPP does not produce actual TSLRIC.

- 8 Propose any determinations the applicant considers are required for other matters relating to price that were included in the initial determination, and justify why the proposed determinations are required.
 - a. The relationship between the UCLL pricing and the UBA pricing including whether the methodology is appropriate on the FPP. A final pricing review requires consideration of that issue in order to comply with the TSLRIC methodology.
 - b. Sections 18 and 19 do not allow the Commission to determine prices other than prices based solely upon TSLRIC.
 - c. Further grounds and changes as emerge during the handling of this application including scoping, and following supply of information by Chorus, to ensure and facilitate correct calculation of TSLRIC.



The information supplied should show how the terms proposed are compatible with the requirements of the Act.

- 9 Propose the terms and conditions on which the applicant considers the determination should be made, and justify for each why each term and condition proposed is required. The applicant will submit on this during scoping and also, following disclosure of relevant information by Chorus. The Applicant considers that the terms and conditions, other than the prices listed above, should be reviewed to fulfil the Sub Part 4 of Sch 2 requirements and the purposes in s18.

The information supplied should show how the terms and conditions proposed are compatible with the requirements of the Act

- 10 Propose the actions (if any) that the applicant considers a party to the determination must do or refrain from doing, and justify why each action proposed is required: The applicant will submit on this during scoping and also, following disclosure of relevant information by Chorus. The Applicant considers that this issue should be reviewed to fulfil the Sub Part 4 of Sch 2 requirements and the purposes in s18.

The information supplied should show how the proposal is compatible with the requirements of the Act.

- 11 In respect of a determination under section 27 of the Act, propose the period of time for which the applicant considers the determination should apply, and justify why the period proposed is appropriate: Not applicable

CONFIDENTIALITY

12. Do you wish to request a confidentiality order for:

12.1. Specific information contained in or attached to the application? No

12.1.1. If so, for how long?

12.1.2. Why?

- 12.2. What information should the Commission exclude under section 6(2) of the Act from any public notice? N/A
- 12.3. Section 100 of the Commerce Act 1986 sets out the details of the Commission's power to make an order prohibiting the publication or communication of any information or documents received by it for up to 20 working days after determination of the matter.
- 12.4. Please frame the request in terms of the criteria for withholding information and provide supporting reasons/information similar to those set out in the Official Information Act 1982.
- 12.5. Where a Confidentiality Order is in place, please identify confidential information as Restricted Information in accordance with the confidentiality Order. Also specify in accordance with the Confidentiality Order where additional protection is sought beyond the protection granted by Restricted Information. Please follow the process specified in the confidentiality Order when an application is made.
- 12.6. If no Confidentiality Order is in place, please submit one copy of the application clearly indicating (e.g. by underlining or highlighting in a way that photocopies legibly) the specific information for which confidentiality is sought.



DECLARATION

THIS application is made by Orcon Ltd and related companies

The company hereby confirms that:

- all information specified by the Commerce Commission ("the Commission") has been supplied;
- all information known to the applicant/s which is relevant to the consideration of this application has been supplied; and
- all information supplied is correct as at the date of this application.

The company undertakes to advise the Commission immediately of any material change in circumstances relating to the application.

Dated this 13th day of December 2013

*Signed by Orcon Ltd and related companies:

A handwritten signature in black ink, appearing to be "G. McAlister", written over a horizontal line.

Greg McAlister CEO

I am an officer of the company and am duly authorised to make this application

