



**Submission in response to
The Commerce Commission's: "Revised draft
determination on the benchmarking review of unbundled
copper local loop service"**

1 June 2012

Public version (there is no confidential version)

I. InternetNZ

- 1.1. This submission is from InternetNZ (Internet New Zealand Inc). InternetNZ is a membership-based not-for-profit organisation with the management responsibility for the administration of the .nz domain name registry, a critical component of the Internet infrastructure in New Zealand.
- 1.2. Our mission is to protect and promote the Internet in New Zealand. We advocate the on-going development of an open and uncaptureable Internet, available to all New Zealanders. The Society is non-partisan and is an advocate for Internet and related telecommunications public and technical policy issues on behalf of the Internet Community in New Zealand – both users and the Industry as a whole.

2. Executive Summary

- 2.1. InternetNZ is concerned that the increasing complexity surrounding the deployment of broadband services; the relative pricing of those services and the Government's different broadband objectives may well result in unintended consequences. We believe that this complexity is not in the best interests of consumers or investors and that the Commerce Commission is in a pivotal position to remove much of the complexity.
- 2.2. Specifically, we consider that the wholesale price of copper based broadband services should be based upon the cost of providing those services. This will remove a layer of complexity and result in reduced wholesale prices which will be passed on to end users.
- 2.3. While we are keen to see the on-going deployment of fibre we do not consider that allowing copper prices to remain at an artificially high level, in order to encourage fibre take up, is in the best interest of consumers. A copper service competing with a fibre service is in the best interests of all consumers be they Chorus' copper customers or LFC's and Chorus' fibre consumers.
- 2.4. We consider that a glide path or any other delay for introducing reduced wholesale prices is inappropriate.

3 Introduction

- 3.1 InternetNZ thanks the Commerce Commission for the opportunity to present this submission. The submission is consistent with InternetNZ's policy principles specifically the principles that Internet markets should be competitive, open and accessible.

4 Submission

Relativity between UCLL and basic fibre services.

- 4.1 An argument that has been put forward by Chorus in response to the Commission's paper is that any decrease in the price of UCLL services, as proposed by the Commission, will be an incentive for residential users in particular to remain on copper and not take up fibre services.
- 4.2 The roll out of the UFB fibre has commenced and the initial government priority target areas are schools, businesses and health premises. On completion of the UFB in 2020 the expectation is that fibre services will reach 75% of New Zealanders and take up will be 50%. Consequently, for the next few years the vast majority of residential users will not have access, or do not intend to take, a fibre service. InternetNZ therefore considers that any regulatory adjustment that will lower the wholesale price of copper broadband services should not take into account the impact such a reduction might have on the take up of fibre services
- 4.3 Those customers who will have a choice between taking a fibre service and retaining a copper service will also benefit from the increased choice and improved competition. A lower copper price will provide incentives for fibre providers to lower their prices and improve the level of service they provide.
- 4.4 We submit that the Commission in reviewing the price of UCLL copper services should in the first instance determine the price that is in the best long term interest of the consumers of those copper services. The Commission should be looking to establish accurate cost based prices that let providers and consumers make efficient decisions.
- 4.5 Furthermore, if copper wholesale prices are held artificially high while the price of fibre services are fixed the net effect will be to provide a subsidy to Chorus but not to other LFCs. If the Government wishes to promote a particular technology such as fibre for wider policy reasons, this is something for

Government to do transparently and equitably between all fibre service suppliers rather than via Chorus.

- 4.6 Finally, one of the key arguments made by the Government for deferring independent regulation of monopoly owned fibre services was that the competition afforded by regulated copper services would serve to moderate the price of unregulated fibre services. In such circumstances the Commission as the independent regulator should be striving to maximise that competition.

The. De-averaged price - glide path.

- 4.7 InternetNZ does not consider that the Commission's draft proposal of a glide path is in the best interests of consumers. The major beneficiary of the glide path will be Chorus. In the Commission's graphs the glide path shows that the rural UCLL wholesale price will drop from \$36.63 to \$19.75 in three even steps (\$36.63 - \$31.00 - \$25.38 - \$19.75) over 2.5 years. The urban price drops from \$19.84 to \$19.75 over the same period.
- 4.8 Without a glide path the benchmarking adjustment would be applied in December 2012 and the averaging adjustment would be applied in December 2014. That would result in the rural price dropping to \$29.19 in Dec 2012 but then staying at that level until Dec 2014 when it would drop to the \$19.75 figure. More importantly the urban price would initially drop considerably to \$15.82 in Dec 2012 and then rise back up in Dec 2014 to the \$19.75 average figure.
- 4.9 The Commission's preliminary view is that the drop in urban wholesale price without the glide path might not be in the best interest of consumers as it might not get passed on by retailers. The Commission's reasoning is that the reduced urban price would only apply for 2 years and that retailers may not pass this on to consumers as they might face an unwelcome consumer backlash once they came to raise the urban price in December 2014.
- 4.10 From a consumer perspective, if competition is working as it is intended InternetNZ believes that some RSPs will pass on the reduction and that there would be a significant customer outcry if it wasn't passed on. If no retail service provider passed on the price reduction it would imply that competition was not working effectively and that the Commission needed to undertake an investigation at the retail level.
- 4.11 From a consumer perspective the end goals InternetNZ would wish to see are reduced retail prices as soon as possible and increased competition. This requires that the glide path approach should be rejected and reduced benchmark prices be implemented as soon as possible. In this regard if the revised benchmark price is available before December 2012 it would be appropriate for it to be applied as and when it became available.

Link between UCLL and UCLFS Prices

- 4.12 We believe that one area of unnecessary complexity that the Commission can avoid and which complicates the issue of the glide path is that under the Act, Telecom isn't allowed to take a UCLL service from Chorus until Dec 2014. Telecom instead has to take a UCLFS service which is tied to the averaged UCLL price. The Commission is indicating that it has reasonable grounds to undertake a schedule 3 investigation into the price of the UCLFS service, presumably to break the link between it and the UCLL service.
- 4.13 Why the Commission would seek to break this link seems strange - the explanation given would seem to benefit only Chorus and largely at Telecom's expense.
- 4.14 The agreement linking the UCLL and UCLFS prices until Dec 2014 was made by the Government as part of the separation agreement with Chorus and Telecom and put into legislation. Changing one element of that agreement without considering the other arrangements is dangerous and potentially overturns what was an agreement made by the Government, Chorus and Telecom to the benefit of one of those parties – namely Chorus.
- 4.15 While the Commission is fully entitled to undertake a schedule 3 investigation and make a recommendation it would still have to be agreed by the Government before it could be implemented. The Government in such circumstances would, we imagine, be reluctant to agree to the recommendation. We will be interested to see the submissions of Chorus and Telecom on the importance of this issue and whether there may be any alternative solutions other than the Commission undertaking a review.
- 4.16 As discussed earlier, the glide path will largely benefit Chorus and RSPs (other than Telecom) if they don't pass on the price reductions. As Telecom will effectively pay the same price to Chorus for UCLFS as other RSPs pay for UCLL it will maintain competition and will improve the likelihood that all RSPs will have to pass on the wholesale price reductions to consumers. If Telecom has to pay a higher price for UCLFS there will be less competition over the short term and other RSPs will be less inclined to pass on the price reductions. For this reason, if no other, InternetNZ considers that the legislated linkage between the UCLL and UCLFS should be maintained.

Initial Price versus Final Price

- 4.17 The discussions above are related to the initial pricing principle set in the legislation. The initial price is set by the Commission benchmarking against prices

in similar overseas jurisdictions and the Commission has outlined in previous papers the difficulties it has had, and the complexity it faces, in undertaking such benchmarking.

- 4.18 The Final pricing principle which is also set in legislation is TSLRIC, based upon the actual costs of Chorus providing the service – this is a much more straightforward and transparent approach and one which would be more beneficial to consumers and investors as it provides more certainty and less risk. InternetNZ believes that it would be in the best interest of all parties to move to the Final Pricing Principle as soon as possible.
- 4.19 In the period before the final pricing principle was applied the revised benchmarked prices should apply and be introduced as soon as possible.
- 4.20 As we have indicated the benchmark prices have been fully consulted on by the Commission. The three areas discussed in the Commission’s paper are: whether certain US States should be included among the benchmark jurisdictions; whether Australia should be included; and whether loop length and population concentration are significant factors. The Commission has concluded that US States and Australia should not be included in the benchmarks - its arguments seem sound. In regard to loop length and population concentration while it is generally agreed that they are relevant it is difficult to ascertain the details of loop length and population distribution in other countries (particularly when loop length is changing due to cabinetisation). The Commission has therefore made an assessment of the point in the benchmark range which will most accurately reflect the shorter loop lengths - this again seems to be reasonable and supported by previous consultation. However, it again raises the issue of why persist with complex assessments to establish an initial price when a more accurate cost based final price would remove many doubts.
- 4.21 The Commission indicates in its report that if a party to the determination wishes to seek a pricing review following the benchmarking exercise it is able to do so. This would appear to be the most sensible approach. InternetNZ therefore recommends that a party to the determination seek a pricing review under the Act to be based on the preferred final pricing principle TSLRIC. The Commission under its information disclosure requirements will have the necessary access to Chorus’ costs of providing the service.

Sub loop UCLL prices

4.22 The Commission's preliminary view is that sub-loop prices (which are currently 60.4% of the UCLL prices) should be updated in a subsequent review and seeks submissions on this point. InternetNZ's understanding is that there is currently little sub-loop unbundling taking place. However, the reduction in the price of wholesale copper services, the improved services that are enabled by sub-loop unbundling and the likely length of time before fibre services become available for many suggests that take-up may improve. Consequently we support the proposal that the Commission review the sub-loop unbundling price. As with our previous comments we consider that it would be appropriate for the review to be based on the final pricing principle rather than the initial pricing principle.

Naked UBA uplift

4.23 The Commission says that changes to the geographically averaged UCLL price now automatically flow through to the naked UBA service, so no amendment is required to reflect the updated UCLL price. However, it has been reported that the naked DSL input price rose 14% per month and it will be three years before the correct naked DSL price will be in place. This seems to imply that the benchmarking prices will not flow through to naked DSL in the same way as averaged prices will. It would be useful for the Commission to clarify this.

Yours Sincerely

A handwritten signature in black ink that reads "Vikram Kumar". The signature is written in a cursive style and is underlined with a single horizontal stroke.

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