



Process and issues paper for determining a TSLRIC UBA price

Cross submission | Commerce Commission

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Introduction

1. Thank you for the opportunity to comment on submission received by the Commission relating to the Issues and Processes paper (**the Commission's paper**). On the face of it, the key issues relate to defining the scope of the UBA service to be modelled and the process to complete the FPP.
2. The overwhelming message from Access Seekers has been that the Commission should focus on determining a robust estimate of cost. Key principles and requirements that underpin the UBA cost model are yet to be finalised and these will determine, in part, whether the timetable is achievable. The Commission should therefore, as the process unfolds, remain open to a more flexible timetable. It certainly has the discretion to do so. All respondents also recognise the strong linkages between the UBA and UCLL FPP processes.
3. Chorus raise a number of issues relating to the model, including the scope of the UBA service and additional costs, and the approach to throughput and treatment of RBI. While these are matters to be considered through this process, we do not believe that the issues raised by Chorus should drive the Commission's timetable or proposed approach.
4. However, we agree that the Commission should consult further on model requirements and principles, and that this could be achieved within the proposed timetable.

The additional costs of the UBA service

5. In its submission Chorus sets out its view as to the proposed scope of the additional costs of providing the UBA service. Chorus asserts that these costs should include the costs of access cabinets and full costs of backhaul from the cabinet to the local exchange [19].
6. However, the UCLL benchmark cost models are full network models and include all access components from the customer premises to the local exchange. In other words, the UCLL IPP price benchmark is inclusive of access cabinet and transport costs to the local exchange.
7. The Commission concluded, in the UCLL benchmarking review decision that

[311] The Commission agrees that the [UCLL] benchmarked prices reflect the full access network in each of the countries. Therefore, the same benchmark set would result whether the Commission was benchmarking a price for the full UCLL network, or non-cabinetised lines only.¹
8. This is consistent with the advice from expert advisors that the benchmark countries' prices for local loop unbundling in each case reflect the costs of providing the entire local access network

¹ Discussed at paragraph 308 to 311 of UCLL benchmarking review NZCC37.

(not a subset of loops post cabinet and/or fibre deployment).² It is also consistent with our own understanding of the benchmark cost models.

9. Therefore Chorus' proposed UBA approach would, in the absence of a countervailing adjustment to the UCLL cost model, result in double recovery of costs contrary to the provisions of clause 4B of Schedule 1 of the Act.
10. In the case where the UCLL service reflects full network costs, the additional costs to be modelled are likely limited to additional electronics and transport from the local exchange to the first data switch. Therefore, the UBA cost model should exclude Chorus' proposed access cabinets and transport costs (para 19.4 of Chorus' submission) and those elements of the transport from the exchange to the first data switch costs that are not additional to the UBA service (para 19.2) and would be assumed under the UCLL cost model. This approach would also ensure that the demarcations between services are applied consistently between the IPP and FPP.
11. The Commission faces a choice in the UCLL FPP process relating to whether or not to disaggregate local network costs. For all the reasons set out in our submission, we don't believe the Commission should follow this path. However, if the Commission were to adopt a disaggregated approach, this would mean that more elements - such as access cabinets and additional costs of transport - could become additional UBA costs. It's unclear what practical effect shifting the demarcation between UCLL and additional UBA costs would have on Chorus revenues. This is because any change in UBA price through shifting the demarcation between UCLL and UBA services, would likely lead to a countervailing adjustment in the UCLL service.
12. We recommend the Commission model UBA costs on the basis of the current demarcation reflected in the IPP determinations. This approach acknowledges that UCLL prices should reflect full network costs (i.e. including access cabinets and transport) and that UBA is additional to those costs. If the Commission decides to subsequently take a different approach in the UCLL, it can then consider what this means for the UBA FPP process. In this instance, it would be appropriate to consult again on this issue.

The service

13. Chorus appears to be suggesting at paragraph 4 of their submission that, in the IPP Determination, the Commission estimated the costs of a minimum specification service and that this approach should be taken to the FPP model. However, this is not the case.
14. The Commission's role in the IPP process was to determine the incremental or additional costs to provide UBA over UCLL. At most, all that could be deduced from the Commission's IPP decision was that there are no material difference in the costs of providing throughput at 200kbps or any other such level above the minimum. Therefore, it was not necessary to make a

² See Analysys Mason report <http://www.comcom.govt.nz/dmsdocument/8539>

determination either way on the impact of throughput. In reality, we think that the Commission more likely placed no weight on the throughput specification metric when benchmarking a price because it wasn't seen as material for the choices facing the Commission and Chorus had made it clear that there were no incremental costs arising from throughput at the current levels.

15. In its letter to Matthew Clark dated 19 July 2013 Chorus notified the Commission that throughput had no bearing on the recovery of UBA costs.

“From a regulatory perspective, Chorus does not consider that the issue of dimensioning EUBA handover connections is relevant to the Commission’s current UBA price review for the following reasons:

- *The primary reason for using the weighted average of speeds in the benchmark countries is to ensure the recovery of common costs (as per CEG’s cost drivers report and as recognised by Analysys Mason). At a minimum the Commission needs to take the weighted average approach recommended by CEG or Chorus would under-recover the costs of providing the UBA service. **Dimensioning EUBA handover connections is irrelevant to this recovery issue.**” [Emphasis added]*
- *A secondary argument relates to use of a weighted average which is based on the higher speeds experienced in New Zealand (the approach recommended by WIK). This would assist in providing for recovery of the significant network investment which has been undertaken in New Zealand in cabinetisation, in order to increase the speed of the network. **Again, the issue of dimensioning EUBA handover connections is irrelevant to the fact that Chorus has made this significant investment and should be entitled to recover it**”[Emphasis added]*

16. Chorus’ view was that dimensioning of throughput may be a legitimate response to deal with technical issues, such as network congestion, for the good of all customer. For that reason, it did not wish to commit to never dimensioning.

“Chorus has made it clear that we have no current plans to dimension EUBA handover connections and Chorus is committed to ensuring that its services meet RSP and end user expectations. However, we are unable to make a definitive commitment that this will never occur. Any such commitment could have unintended consequences such as constraining technical options for dealing with legitimate concerns, for example the fair and equitable treatment of customers under congestion conditions, as the service continues to evolve over time.

For context we note that BUBA handover connections are dimensioned at 75 kbps per end-user in order to fairly distribute the bandwidth that exists, not to try to keep the service close to the wording of the minimum throughput in the UBA STD service description.”

17. The “conceptual risk”³ that was alluded to by RSPs at the UBA conference was that unless the Commission made it clear that the current un-dimensioned throughput provided on EUBA 0

³ UBA Conference transcript – Day 2 page 155

were to remain, there was a chance that Chorus could seek to artificially constrain throughput for the purpose of charging a commercial increment to any regulated price it was dissatisfied with. RSPs did not express any concern or requirements relating to reasonable technical limitations to ensure continuity of service.

18. Chorus has indicated that dimensioning may be necessary for technical reasons. However, RSPs had previously written to the Commission identifying a conceptual concern that Chorus could, in principle, dimension EUBA 0 throughput to the minimum level set out in the UBA Service description and charge a commercial rate for throughput to the current dimensions if they were dissatisfied with the regulated price.⁴ Clearly there is a difference in views and the purpose of the requested order in our FPP application was to clarify the matter, maintaining the status quo while the FPP was being considered.
19. In any case, we do not believe that UBA service performance can be amended in such a way except to reflect known differences in cost drivers and with Commission agreement. For Chorus to constrain the UBA service, under any other circumstances, would be in breach of the UBA STD.

The UBA modelled service

20. Chorus also suggest that RBI is not relevant to the Commission's cost model [28], the cost model should be based on the current copper based service [24].
21. We believe that the relationship to RBI is less clear cut than suggested by Chorus in its submission. The RBI funds wireless infrastructure that provides services to customers outside the UBA coverage areas – and arguably these premises should not fall within the geographic scope of the UBA model.
22. However, there are linkages to the RBI that the Commission will likely need to consider in the UBA cost model:
 - a. First, the RBI also funds fixed network infrastructure over which the UBA service is provided.⁵ The Commission should not include costs recovered from RBI subsidy as part of the monthly charge - the Act prohibits such double recovery. There are different options available to the Commission as to how the subsidy might be reflected in the model.

At this stage, it's unclear how significant RBI funding will be for the UBA cost model. The RIB potentially funds both local access network and UBA components. However, a

⁵ See here for subsidised infrastructure <http://www.med.govt.nz/sectors-industries/technology-communication/communications/broadband-policy/rural-broadband-initiative/rural-broadband-initiative-contracts>

full network UCLL approach would likely result in less impact on the UBA additional costs model (as a significant portion of RBI funding is applied to UCLL cabinets and transport);

- b. Second, there are likely to be areas where RBI wireless coverage overlaps the UBA footprint. In which case, the RBI efficient costs may form part of the UBA costs.
23. Further, we do not agree with Chorus that fixed wireless technologies should be excluded from the UBA cost model. Wireless technologies may well have a role in the determination of an optimised MEA.
 24. As set out in our UCLL submissions, while the Commission is required to assess forward looking costs, there are a number of possible approaches to establishing costs. The Commission has the discretion to identify the nature of costs - the relevant modelled service and MEA - that best provides the efficient cost signals that are at the heart of the TSLRIC pricing principle. To achieve this, in practice, means that the modelled service and MEA should reflect the substitutes available to service providers and consumers. In other words, taking a market perspective that reflects the realistic technology choices available to operators and, by extension to, consumers. This is the only way to consider and determine efficient prices that comply with the Act.
 25. Considering real world technologies and services available to investors and consumers, fixed wireless and DSLAM based technologies are both options for providing a broadband service. Accordingly, the Commission can consider fixed wireless options that may come in to play in rural. Further, the RBI initiative and technologies are likely informative for the UBA cost model. At this stage, however, it's unclear how significant the cost of wireless technologies might be in the final (additional cost) cost model.

Consultation and proposed timetable

26. Access seekers have requested that the Commission focus on determining a robust estimate of cost. Further, Chorus has proposed that the Commission re-considers the steps in the proposed timetable to effectively provide for more up front consultation.
27. In the UCLL process, the Commission request for proposal for expert advisors anticipates further on requirements and principles papers for the cost models. We support that approach and recommend that the Commission take a similar approach to UBA, consulting further on modelling issues prior to the draft report and conference. We believe such consultation is likely to be less extensive than UCLL and unlikely, in itself, to delay the Commission finalising the price review.