

14 June 2019

To those interested:

Notification of decision not to conduct a section 30R review of the UBA STD

1. On 14 March 2017 the Commission released a final determination on a section 30R review of Chorus' Unbundled Bitstream Access (UBA) Standard Terms Determination (STD).¹
2. In the determination we said we would consider a further section 30R review, specifically on the exemption in the 2017 determination of Chorus' asynchronous transfer mode (ATM) and other non-fibre local aggregation paths (LAPs).^{2,3}
3. The Commission has decided not to conduct that further section 30R review of the UBA STD at this time.
4. We explain our reasoning in this note.

Summary of reasons

5. In our 2017 determination we provided an exemption from new capacity standards for Chorus' ATM and other non-fibre LAPs. At that time we were aware that the congestion on many rural LAPs may be addressed by lower cost broadband solutions funded by the Government through the Rural Broadband Initiative (RBI). We said we would consider whether a new section 30R review was required when a final decision regarding phase 2 of the RBI (RBI2) and Mobile Black Spot Fund (MBSF) was made.⁴
6. Unfortunately, the information on the coverage of the RBI2 and MBSF programmes that is needed for us to conduct an effective review is not available at this time. We are unlikely to know the coverage areas of these programmes until they are completed, expected to be in 2023.

¹ For the final s30R UBA review determination, see https://comcom.govt.nz/_data/assets/pdf_file/0034/87757/2017-NZCC-4-UBA-30R-review-Final-determination-14-March-2017.PDF

² Our references to Chorus' ATM and other non-fibre LAPs refer to services provided over ATM and Ethernet over microwave radio.

³ Under section 30R (1) and (2) of the Telecommunications Act 2001 (Act), we can commence a review, at any time, of all or any of the terms specified in a standard terms determination; and we can replace a standard terms determination or vary, add, or delete any of its terms, if we consider it necessary to do so after conducting a review.

⁴ See <https://www.mbie.govt.nz/science-and-technology/it-communications-and-broadband/fast-broadband/broadband-and-mobile-programmes/>, also see Part 4AA of the Act.

7. We have therefore decided not to conduct a section 30R review of the UBA STD at this time. The more appropriate time will be after 2023, on completion of the investigation that is due before the end of 2025.⁵
8. In the meantime, we are satisfied that the number of congested LAPs continues to trend downwards as Chorus is upgrading equipment and as end-users migrate to fibre or the RBI. There are now only 1,700 users on congested LAPs with no current upgrade plan.

Background

9. We released the final determination for our section 30R review of Chorus' UBA STD on 14 March 2017. The 2017 determination was to ensure that the non-price terms for the UBA STD remained fit-for-purpose.⁶
10. In the 2017 determination, we made several changes to the UBA STD. The changes included:
 - 10.1 adding a new LAP utilisation service specification to the UBA service description. This specification requires that the average throughput (in Mbps) over a UBA LAP must not exceed 95% of total throughput capacity available on the LAP, measured over a five-minute period; and
 - 10.2 requiring Chorus to report monthly on the peak utilisation experienced on all LAPs. Where peak utilisation exceeds 80%, Chorus is required to provide additional information including upgrade plans.
11. The changes that we have made to the STD for the regulated UBA service ensure that the service specification evolves in response to changing end-user demand. To meet the service specification, Chorus will only be required to invest in additional capacity on a LAP where utilisation reaches a level that threatens the quality of the UBA service for end-users.
12. Although the number of UBA lines is declining, the UBA service will remain important, particularly in areas beyond the reach of the Government's Ultra Fast Broadband (UFB) initiative.⁷ The UFB footprint is now extended to 87% of the population and is expected to be reached by 2022.
13. We are conscious that the broadband performance for end-users served by ATM and other non-fibre LAPs (where RBI is not yet available) may be well below the average UBA performance. We are monitoring the number of end-users on Chorus' ATM network and its planned upgrades to deal with poor performance.
14. In our 2017 consultations, Chorus noted that it was actively upgrading ATM digital subscriber line access multiplexers (DSLAMs) from a base of approximately 19,000 ATM end-users on the network at that time.

⁵ See section 69AH of the Act.

⁶ Ibid 1.

⁷ See section 5 of the Act for the definition of UFB initiative and UFB2.

15. In our 2017 determination, we decided to exempt Chorus' ATM and other non-fibre LAPs from the LAP utilisation specifications described in paragraph 10. At the time, the Government was about to announce the second phase of its RBI programme and the MBSF. Imposing the new LAP utilisation specification would likely require significant investment by Chorus to upgrade all ATM links that were already congested. We considered this might result in inefficient investment in areas where Government funding could be targeted.
16. We said we would consider whether a further section 30R review focussing on Chorus' ATM and other non-fibre LAPs was required when a final decision regarding RBI2 was made and the coverage of these Government funded programmes was clear.⁸

Updates since our 2017 determination

17. Since we published our 2017 determination, we have been monitoring congestion issues on Chorus' ATM and other non-fibre LAPs and monitoring RBI developments.

Ongoing monitoring of UBA congestion

18. We have been monitoring the Chorus' monthly LAP congestion reporting referred to in paragraph 10.2 above.⁹
19. Chorus regularly provides us with updated information on ATM and other non-fibre LAP congestion and its upgrade plans for congested LAPs. The total number of congested LAPs has been trending down and upgrade plans continue to be scheduled.
20. As at April 2019, Chorus reported that there are fewer than 4,200 end-users on ATM and other non-fibre LAPs (down from 19,000 in 2016). Chorus has scheduled upgrades to several LAPs between now and Q3 2020 which will improve congestion for 900 of those end-users. There are approximately 1,700 end-users on congested LAPs with no current upgrade plans.

RBI2 announcements

21. In August 2017 the Government awarded contracts for the RBI2.¹⁰ The RBI2 provides improved broadband services to more than 70,000 rural households and businesses.
22. At the time, the Government also committed an additional \$150 million for further expansion of RBI2 and the MBSF.
23. In May 2018 the Government announced an accelerated timeline for the completion of the RBI2/MBSF programmes. The builds were due for completion by the end of 2022, however the new schedule aims to have them substantially finished by the end of 2021.¹¹

⁸ Ibid 1.

⁹ Chorus' monthly reports on LAP congestion are available here: <https://sp.chorus.co.nz/report/sla/73>

¹⁰ For the full RBI2 announcement see <https://www.crowninfrastructure.govt.nz/rural/what/>

¹¹ See <https://www.beehive.govt.nz/release/accelerated-timetable-rural-broadband-and-mobile-coverage>

24. On 18 December 2018 the Government announced a further expansion to the RBI2/MBSF contracts. By the end of the expansion programme in 2023, fewer than 4,000 homes are expected to be without access to Government backed broadband (including fibre and fixed wireless solutions).^{12,13} We understand that CIP is continuing to explore options for these remaining households including discussing options with industry.
25. The exact coverage of the RBI2/MBSF will not be known until the end of 2023. While the RBI2 and the MBSF programmes have now been announced, it remains too early to determine the coverage overlap or the exact end-user locations for possible investment. Under the contracts, the coverage is not confirmed and agreed with CIP until each tower is built.

Amendments to the Telecommunications Act 2001

26. Section 69AH of the Act directs us to complete a Schedule 3 investigation into certain copper services¹⁴ (including UBA) no later than 31 December 2025. We need to investigate whether Schedule 1 should be altered in any of the ways set out in section 66 or 67.¹⁵

Our decision

27. We have decided not to commence a section 30R review of the UBA STD on the exemption for Chorus' ATM and other non-fibre LAPs. Our view is that important developments that inform this matter are still being made and it would be premature for us to conduct a further section 30R review at this time.
28. As mentioned earlier, our primary reason to exempt Chorus from maintaining uncongested links on its ATM network was to avoid inefficient investment in areas where Government funding may be targeted. We will not have the necessary information to consider this further until the expanded RBI2 build phase is complete (expected by the end of 2023). Therefore, we are not able to effectively or fully review this exemption at this time.
29. We will continue to monitor the congestion of Chorus' ATM and other non-fibre LAPs. The number of congested LAPs is trending downwards as Chorus is upgrading equipment and as end-users migrate to fibre or RBI.
30. We will continue to work with CIP to monitor RBI2 coverage and identify overlaps with Chorus' ATM network.

¹² See <https://www.beehive.govt.nz/release/broadband-extends-998-population>

¹³ The 4,000 reflects the Government's announcement at the end of 2018 that Government-funded broadband will reach approximately 99.8% of the population. See <https://www.crowninfrastructure.govt.nz/rural/what/>

¹⁴ Chorus's unbundled bitstream access, Chorus's unbundled copper low frequency service, Chorus's unbundled bitstream access backhaul, Chorus's unbundled copper local loop network co-location, and Chorus's unbundled copper local loop network backhaul (telephone exchange to interconnect point).

¹⁵ Under section 69AG(5)(b) of the Act, section 30R does not apply from 16 December 2019 until the 'copper review date', that is the date on which the Commission completes, in relation to the service, the investigation under section 69AH(1)(a).

31. A more appropriate time to consider the ATM and other non-fibre LAPs exemption is after RBI coverage becomes clear and after the copper review required before the end of 2025. By this time, we expect the UBA STD may apply to a much smaller number of end-users. These end-users will be mostly rural, and the price and non-price terms may need to be updated to reflect this change in residual coverage.
32. If you have any questions in regard to this, please contact Sam Norman (sam.norman@comcom.govt.nz).

Yours sincerely

A handwritten signature in black ink, appearing to read 'S. Gale', with a stylized flourish at the end.

Dr Stephen Gale

Telecommunications Commissioner