

Submission on the Commerce Commission's Explanatory Paper on Section 30R reviews of five regulated telecommunications services' standard terms determinations

23 October 2019



Overview

- 1 This submission responds to the Commerce Commission's (**Commission**) Section 30R review of five deregulated telecommunications services' standard terms determinations Explanatory Paper (**Paper**), dated 3 October 2019. We welcome the review of such terms on the basis of recent amendments to the Telecommunications Act 2001 (**Act**).
- 2 We agree that the Standard Terms Determinations (**STDs**) need to reflect the amended ambit of the Act, and in particular the removal of unbundled copper local loop services (**UCLL**). These changes reflect the process of copper deregulation as copper becomes less of a focus due to the transition to fibre as the primary source of connection for an increasing number of New Zealanders. At the same time, it's important to recognise that the STDs for the remaining regulated services must continue to be fit for purpose.
- 3 In particular we agree with the following proposals:
 - 3.1 Removing references to UCLL in the remaining STDs. In addition, UCLL Backhaul and UCLL Co-location effectively are no longer subject to STDs. Sub-loop UCLL (**SLU**) and SLU Backhaul are explicitly deregulated by the changes to the Act (i.e. the deregulation of UCLL and UCLL Backhaul (cabinet to exchange) as designated services), and SLU Co-location is removed effectively in the same way as UCLL Co-location. We note that these services will continue to be supplied (where required) on commercial terms.
 - 3.2 Changing the price adjustment mechanism for the remaining regulated services to the Consumers Price Index (**CPI**) for all prices specified in the relevant STDs, with some existing exceptions such as price on application (**POA**) prices.
 - 3.3 Simplifying reporting clauses in the Service Level Terms (**SLTs**) where reporting is unnecessary. However we think there's value in retaining flexibility to provide nil reports. For instance, when Retail Service Providers (**RSPs**) want to receive them and we can easily produce them.
 - 3.4 Removing transitional provisions relating to cabinetisation processes, as these processes are now complete. In addition, provisions referring to residual term determinations can also be removed, as these too have been removed from the Act.
 - 3.5 Reassigning the Interference Management Plan (**IMP**) to the STD for UCLF.
 - 3.6 Changes to the STDs to take effect from 15 December 2019.
 - 3.7 Standardising the formatting across the STDs.

- 3.8 The Commission’s proposed redlined amendments in general. **Appendix A** identifies minor drafting errors and proposed changes arising from the amendments.
- 4 Where we have a different view to the Commission proposal relates to:
- 4.1 Changing indexation for price adjustments under the STDs from the year to June to the year to September. This is impracticable and gives Chorus insufficient time to process and implement the changes.
- 4.2 Removing provisions relating to the UCLF Implementation Plan (**Plan**). This should be retained. While the Plan hasn’t been implemented due to no orders to date, the Plan may be required if Chorus receives orders in future.
- 5 We address each of the key elements of the Paper below.

Removal of references to UCLL in STDs

- 6 We agree that, when UCLL becomes deregulated on 1 January 2020, the UCLL STD falls away, and no further action in relation to that STD is required. Other STDs will need to be amended to remove references to the UCLL STD. These UCLL, UCLL Backhaul and UCLL Co-location services will be supplied on commercial terms from the date of deregulation.
- 7 We also agree that the STDs that cover both UCLL and UCLF Backhaul, and UCLL and UCLF Co-location respectively, should be amended to remove all references to UCLL Backhaul and Co-location, and become standalone STDs for UCLF Backhaul and UCLF Co-location.
- 8 There is a separate STD for SLU. Unlike the UCLL STD, this is not specifically mentioned in the Paper. This STD also falls away as SLU is deregulated – as it was regulated under the UCLL designated access service, which is removed from Schedule 1 of the Act. The Act also removes UCLL Backhaul (cabinet to exchange, i.e. SLU Backhaul) from Schedule 1 of the Act. This of course means the SLU Backhaul service is also deregulated.

Timing of proposed changes to STDs

- 9 The Commission has noted in the Paper that although UCLL is not removed from Schedule 1 of the Act until 1 January 2020, it proposes to have all changes to the new STDs take effect on the same day, being 16 December 2019. We support this timing.
- 10 This means:
- 10.1 References to UCLL would be removed from the other STDs while UCLL is still a regulated service. This is immaterial for a two week period.

10.2 The IMP would, for two weeks, attach to both the UCLL STD and the UCLF STD (until the UCLL STD falls away). This is also immaterial.

Price adjustment mechanism

- 11 Interpreting section 69AG(3) and (6) as applying to all prices in the remaining STDs, whether currently designated as year 5 prices or not, is an appropriate interpretation of the Act (Option 2 in the Paper).
- 12 As a result, existing price adjustment mechanisms (primarily Labour Cost Index (**LCI**) and the relevant Producer Price Index for power (**PPI**) and service company input costs) will be replaced by CPI.
- 13 As a general principle we support a price adjustment mechanism that appropriately mirrors the relevant pricing inputs (be it CPI or another index). We acknowledge that the Commission is constrained by the Act in this instance.

Removing unnecessary reporting obligations on Chorus

- 14 The Commission has proposed amending the current reporting obligations in each STD so that if no orders have been received in the previous month, we will notify RSPs and the Commission that no performance report is required for the month. As a general principle, we support removing reporting requirements where they're unnecessary. However we understand that RSPs find these reports useful and, unless RSPs request otherwise, we intend to continue providing nil reports to RSPs. We will continue to notify the Commission where no report is required for a specified month.
- 15 To this end, we have proposed a modified exemption in Appendix A. We have also proposed a small change to the UCLF Backhaul STD from monthly to quarterly reporting to the Commission of new unbundled local exchanges, to reflect agreed practice.

Removal of redundant implementation and transitional clauses

- 16 We support the Commission's removal of the cabinetisation provisions in the UCLF and UCLF Co-locations STDs.
- 17 However, the implementation provisions for the UCLF STD Plan should remain. The Plan includes and provides for important lead time to prepare for provisioning. Chorus has not received an order for UCLF but if we did, we would rely on the Plan.
- 18 We have also identified provisions which refer to residual terms determinations. Residual terms determinations have been removed from the Act, which means these provisions are now outdated and should be removed. These provisions are identified in Appendix C.

Interference Management Plan

19 We support the attachment of the IMP to the UCLF STD.

Formatting changes

20 We support the proposed formatting changes to the STDs.

Timing of price adjustments

- 21 We note that the Commission has proposed changing the applicable indexed period for price adjustments under the STDs from the year to June index change to the year to September index change (see clause 4.1.1 of Schedule 2 of each STD).
- 22 We're unclear what the reasoning behind this proposed change is. Which index should be used was the subject of discussion during the last round of amendments to the STDs, and a careful choice was made in favour of the June index as the most practical. In general, the September index is not released by Statistics New Zealand until mid-October (in 2019, it was released on 15 October). This would provide Chorus with only two weeks to conduct all its internal processes for a price change in order to submit it to the Commission by 1 November. Given the large number of price changes involved and the need for appropriate internal stakeholder engagement and compliance, this is insufficient time to run our processes. We think that the existing index date of June should be retained.

Appendix A: Drafting errors and proposed changes

STD	Affected clause	Issue
General	"Service Component" definition in Schedule 2 of each STD	The definition of "Service Component" at footnote 2 in Schedule 2 of each STD has been removed. The term "Service Component" continues to be used in the schedules, so it should continue to be given a definition.
	CI 7.2 of Schedule 3 for UBA and UBA Backhaul; CI 7.3 of Schedule 3 for UCLF, UCLF Backhaul and Co-location	We propose a modification to the Commission's proposed exemption, " <i>If no orders have been received in the preceding month, Chorus will notify the Commission that no performance report is required for that month. Chorus may continue to provide a report to Access Seekers (as a nil report) or notify Access Seekers that no performance report is required for that month.</i> "
	CI 4.3 of each STD's General Terms; CI 7.4.2 of UBA Backhaul, UCLF, UCLF Backhaul General Terms; CI 7.5.2 of UBA General Terms; CI 8.4.2 of UCLF Co-location General Terms	These clauses refer to residual term determinations. Residual term determinations have been removed from the Act, so these clauses should be removed.
IMP	IMP Part 1 (MPF Performance Requirements), cl 8.2.2	Clause 8.2.2 is drafted "[f]or the purposes of... clause 48 of the UCLL General Terms", which sets out the change mechanism for the IMP. The Commission proposes to attach the IMP to the UCLF STD, and transfer the change mechanism clause to clause 45 of the UCLF General Terms. Clause 8.2.2 removes the reference to clause 48 from the UCLL General Terms, but does not

		replace it with a reference to the proposed UCLF clause 45. This should be corrected, because the proposed UCLF clause 45 uses the terms “ <i>Unacceptable Interference</i> ” and “ <i>Basis System</i> ”, and clause 8.2.2 explains when Unacceptable Interference into a Basis System occurs.
UBA	General Terms, pages 9 - 10	The definition of “ <i>UCLF General Terms</i> ” should be immediately above the definition of “ <i>UCLF Service</i> ”.
	Schedule 2, cl 2.11; pages 11 - 15	<p>Clause 2.11 states that Service Components 2.1 – 2.8 (on pages 11 – 14) include the UCLL Uplift Service Component (UBA Service Component 2.16 on page 15). Because the price of UCLL Uplift forms part of the price of those service components, it will be frozen subject to CPI adjustment.</p> <p>Schedule 2 could be redrafted to absorb the year 5 price of UCLL Uplift into the year 5 price of Service Components 2.1 – 2.8, and remove all references to UCLL Uplift. However, we acknowledge that this would be a more extensive redrafting exercise, and the reference to UCLL Uplift is unlikely to create practical issues.</p>
UCLF	Schedule 1, cl 2.8.2	The relevant clause refers to “ <i>Chorus’ Unbundled Copper Local Loop and Chorus’ Sub-Loop Unbundled Copper Local Loop</i> ”. This clause should be removed.
	Schedule 4, page 51	The definition “ <i>Other Service to Sub-loop MPF Transfer Orders</i> ” should be removed, as it refers to the Sub-loop STD.

	General Terms, page 10	This page contains deleted references to the UCLF Implementation Plan in the definitions of "UCLF Standard Terms Determination" and "UCLF Co-location Standard Terms Determination". As noted in our submission, Chorus may need to rely on the Implementation Plan in future and so it remains relevant. We consider that these references should be reinstated.
UCLF Backhaul	Schedule 4, Appendix A, page 35	The definition of "Speed Change Order" in Appendix A, and most references to that term, have been removed. Only the reference to the UCLL Backhaul Service should be removed from the definition, rather than the entire definition.
	Schedule 3, cl 3.3	Clause 3.3 has been amended to read "Chorus will review this SLA 12 months after the Determination Date and thereafter every second year, with each biennial review commencing on <u>7 November 2007</u> ." This should read as "with each biennial review the first review commencing on 7 November 2007", which mirrors the approach taken in the other STDs.
	Schedule 3, cl 9.2	Clause 9.2 should be amended to read "Chorus must provide the information to the Commission under clauses 9.1.1 and 9.1.2 on the last Working Day of each month quarter." This is because Chorus agreed with the Commission (on 23 October 2012) that Chorus should provide information about the exchanges at which Chorus is supplying or proposes to supply the UCLF service quarterly, rather than monthly.

	General Terms, page 5	<p>Under the heading "General Information" on the relevant page, each paragraph beneath the bulletpoints reads "<i>where Chorus' unbundled copper local loop network backhaul (telephone exchange to interconnect point) service or unbundled copper local loop low frequency network backhaul service...</i>"</p> <p>The underlined words should be removed from each paragraph because the STD now only addresses Chorus' UCLF backhaul service. In the second paragraph, the words "<i>subject to the provisions of the Act</i>" should be added to the final sentence.</p>
	Schedule 2, page 18	<p>Example 3 of Appendix B at the relevant page is outdated, because it refers to the UCLL co-location STD and the "<i>regulated UCLL Backhaul Service</i>". However, we acknowledge that redrafting the example would be a more extensive exercise, and because the example is included for illustrative purposes, the references to UCLL co-location and backhaul are unlikely to cause any issues in practice.</p>
	Schedule 5, pages 7 – 8	<p>These pages include diagrams setting out secondary links. The diagrams state whether these links are "<i>available under UCLL and UCLF Backhaul Service</i>". The reference to UCLL backhaul is outdated. However, we acknowledge that repurposing the diagrams to exclude reference to UCLL backhaul may be a more extensive exercise. That reference is unlikely to cause any issues in practice, as on the proposed drafting the paragraph on page 7 expressly states that the diagrams only show the</p>

		secondary links where the UCLF backhaul service must be supplied by Chorus.
UCLF Co-location	General Terms, page 5 and cl 7.6.1; Schedule 1, cl 3.1	The Commission has mistakenly removed the word "UCLF" from the phrase "UCLL and UCLF Co-location Terms" in the affected clauses. It should have only removed the words "UCLL and".
	Schedule 4, cl 12.4.1, cl 15.5.2	The term "UCFS" is used in the affected clauses, which should refer instead to "UCLF".
	Schedule 2, pages 9 to 14	In the price change mechanism column of the price lists on the relevant pages, the phrase "Error! Reference source not found" appears instead of the relevant price change mechanism clause.
UBA Backhaul	Schedule 2, pages 8 - 14	Many of the prices in the price table refer to clause 4.1.2 as the relevant price change mechanism. On the Commission's view that all prices are now subject to CPI adjustment, the price change mechanism referred to should be clause 4.1.1.