



InternetNZ

**Submission on the Commerce Commission's
Consultation Paper:**

**Proposed view on the regulatory framework and
modelling approach for UBA and UCLL services**

Public Version

6th August 2014

1. Thank you for the opportunity to submit.
2. We are relying primarily on the combined submissions by Rob Allen and Michael Wigley, submitted by them.
3. Our primary concern on this matter remains one of process and timing. While we join many others in the industry in wanting these matters to be concluded as quickly and expediently as possible, we have also consistently argued that the desire for a timely outcome cannot be at the expense of the integrity of the process. For this reason, we particularly welcomed the Commission decision to extend the time for delivery of the determination until April 2015, as it allowed for a quality process and relatively timely outcomes. However, this Consultation Paper makes clear that the current proposed timeline for this process is also too tight.
4. Tight timeframes risks process decisions being made for reasons of expediency rather than for soundness of their logic and applicability to the matters being considered. Where such compromises occur, they risk leading to unsatisfactory outcomes. Increased prices for consumers as prices go up because Chorus data is inevitably used more to achieve timelines. Increased prices as the evidence gathering and analysis, that Wigley & Company say needs to be done, is not done. Increased prices as the s 18 efficiency evidence gathering and analysis is done at a less robust level. And extended uncertainty as stakeholders appeal and seek review when that would be avoided.
5. Sometimes, in the long run, it is simply quicker and better to go slower. We think that, if there is too much speed, most if not all stakeholders including the Commission will regret that. The sums involved as between many of the choices are considerable. In this case, we believe that focussing on the speed of the process negatively impacts the interests of end-users in the long term. We would much prefer to see a more reliable outcome over time, but with extended uncertainty, than a quick and much less robust outcome.
6. For example, the implications of the choice of MEA (fibre, copper, mobile and/or FWA and, very importantly, (a) scorched node v scorched earth and (b) the footprint for the MEA (such as in relation to wireless over existing DSL footprints)) are huge for consumers. As Wigley & Company note, the difference could be as much as \$10 per month on the final wholesale prices (probably it will be less but it will still be a large difference even at say a \$5 instead of \$10). This points strongly to doing a financial calculation to support the optimal choice of MEAs, instead of the current relatively minimal

approach. We understand that the cost and time involved in doing that is miniscule relative to what is at stake, and would allow all parties to make informed decisions on the basis of impact and evidence.

7. This Consultation Paper is very welcome and we thank the Commission for adding this step. But it also has the benefit of highlighting for the Commission and for stakeholders that similar more detailed steps, such as a draft Model Reference Paper for consultation, are essential. We think the Commission should take such steps, now it is armed with up to date information.
8. We would strongly support and welcome the Commission pushing out the timelines as being overwhelmingly in the interests of a sound process, which will more appropriately balance the interests of all parties concerned and allow a more defensible and sound outcome from this process.
9. Finally, there is a particular issue about which we are concerned, and which also demonstrates the dangers of speed in this process.
10. At [168] of the FPP framework paper, the Commission agrees with the Chorus submission that the Act requires the UBA MEA to be copper. The only reason given seems to be that UBA is built on the copper network and so the UBA uplift must, under the Act be based on a copper MEA. There is no reason from a legal perspective that is given in the Every-Palmer opinion referenced at [168].
11. At the same time as the Commission has read and accepted the Chorus view, it has failed to deal with the submission against this conclusion, of over one page on our behalf that the UBA uplift MEA can be fibre based, and that the Act squarely permits and requires this.¹ Wigley & Company have identified the legal problems with this failure to deal with submissions, in terms of error of law and review risk; in its decisions, reasons must be given dealing with principal submissions. Failing to address a submission also implies a breach of public law.
12. This error, as to an issue that should be routine for the Commission, implies that the process may be going too fast.
13. But we particularly wish to see analysis of the relative suitability of fibre as the MEA for the UBA uplift, unfettered by perceived legislative constraints. The split MEA construct seems to have, at least, the effect if not purpose of achieving higher prices and relativity, in circumstances where a fibre MEA for UBA would produce low relativity and UBA uplift. The problem for consumers

¹ See Para [16] Wigley & Company Memorandum to Commission of 30 April 2014.

is that this solution to that problem produces far higher UCLL + UBA prices than using a fibre MEA for UBA. That is a very poor outcome for consumers (we think it is also a poor outcome in terms of dynamic efficiency and investment incentives as well).

14. Wigley & Company propose a more principled approach to that conundrum: have the fibre based MEA for the UBA uplift and use the unique s 18 relativity requirement to increase, modestly, the UBA uplift figure and/or reduce the UCLL price.
15. We appreciate that this process is challenging for the Commission, and for all participants. We also appreciate the desire to provide certainty in pricing as soon as possible, to allow all parties to make informed decisions about their purchases, consumption and investment. This cannot however be the rationale for unnecessary speed that compromises the overall integrity of this process.
16. Resolving this concern would be relatively straight forward. We urge the Commission to consider the points raised in the Wigley & Company submissions and consider how this process can be further amended to include more consultation about the model and its parameters, and to gain more consensus from participants about some of the key variables in that model. Undertaking this additional consultation will not lead to a markedly different outcome in terms of overall timeframe, but could indeed save a considerable amount of time in finalising this process once and for all. The addition of a consultation step on a draft Model Reference Paper could achieve just that.

With many thanks for your consideration,

Yours sincerely

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

Jordan Carter
Chief Executive
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For further information or other matters in respect of this submission, please contact:

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