



Section 30R reviews of the copper standard terms determinations

Submission | Commerce Commission  
23 October 2019

## Introduction

1. Thank you for the opportunity to comment on the Commission's draft review of copper Standard Terms Determinations and the Explanatory Paper published on 3 October 2019 (**the draft**).
2. The Commission proposes to make technical amendments that clarify the residual services to which the Standard Terms Determinations (**STDs**) terms and conditions will apply. For example, the draft proposes to delete references to UCLL in the currently combined UCLL and UCLFS arrangements.
3. We support the Commission's proposed approach to amend the UCLL and UCLFS backhaul and co-location STDs so that they become standalone UCLFS STDs going forward. The UCLL and UCLFS services may diverge in their approach over time.
4. The framework recognises that once a service is deregulated Chorus will have incentives to increase prices, reduce quality or remove a service in some areas and, accordingly, it remains appropriate that regulatory safeguards ensure the continued provision of copper services to existing customers in a way that balance the need for certainty, with a commitment to moving forward..
5. In this submission we recommend minor amendments to the draft that:
  - a. Reinforce that the STD terms and conditions are complete and there will not be new charges or service degradation. This reinforces existing requirements that the STDs are complete and mitigates any risk of confusion; and
  - b. Amend the Operations Manual and SLA change process so that the Commission may initiate a change to support any future retail service quality code obligations.

## The STD services continue until the copper review

6. The regulatory framework is transitioning from regulated copper to fibre-based services. The framework built into the Act through the 2018 amendments provide:
  - a. That specific copper services will be deregulated over time as fibre replaces the copper access network:
    - i. UBA and UCLFS would cease to be designated access services in specified fibre areas where regulated fibre services are available to end users; and
    - ii. Chorus' UBA, UCLFS, and UBA backhaul services cannot be s30R reviewed or s59 reconsidered until the copper review has been completed (at most by December 2025) but otherwise those standard terms determinations (**STDs**) remain operative; and
  - b. Key transition protections for end users of impacted copper designated services. Chorus is not be permitted to stop providing the copper services unless a copper withdrawal code (**Code**) had been approved by the Commission and Chorus complies with that Code.

The Code sets out minimum consumer protections, including that the end user must have access to fibre services and can be connected to fibre within a reasonable time frame at no cost to the end user.

7. The framework recognises that Chorus has incentives to increase prices, reduce quality or remove services in some locations and the services need to be locked down until regulated fibre services are a practical alternative for the end user. The framework ensures that, consistent with the deregulation and end user protection purposes of Part 2AA of the Act, STD terms and conditions and price remain in their entirety until Chorus stops providing services in accordance with the Code and the Act.

## **Retaining standard terms in the transition**

8. As noted above, the framework provides for the continuation of copper services on STD terms until certain conditions are met. Therefore, its important that the STDs remain fit for purpose.

## **Removal of Reference to UCLL in the UCLF STD**

9. In the first instance we support the Commission's approach to amend the UCLF STD to ensure that it is fit for purpose as a standalone determination.

## **Retaining protections for end users during the transition**

10. For relevant UBA and UCLF services, the transition provisions ensure that copper regulated terms and conditions continue until fibre services are in place for end users. This means that the terms and conditions (including price) are maintained, and there is no reduction in quality or additional charges. In other words, services providers shouldn't expect to see additional and new charges or a reduction in quality through the frozen period.
11. While the copper STDs are required to be complete and new copper charges unlikely to be possible, there is a risk of new charges being proposed and unnecessary disputes. For example, this is an emerging concern relating to fibre services where RSPs have been notified over the past month of several new charges such as fibre install cancellation, early termination and copper intercept charges.
12. Although the Commission's powers under section 30R will be suspended, the Commission's powers to issue a clarification will remain. In finalising the draft, the Commission should confirm that it will use its clarification powers if Chorus seeks to introduce new charges to relevant services during the transition period.

## **Updated Price Adjustment Mechanism**

13. We further support the pragmatic approach taken by the Commission to applying CPI to all prices in the relevant STD. We recognise that there are also reasonable arguments that only the year 5 prices increase by CPI as the policy development process was heavily focused solely on those core monthly recurring charges. We have not been able to identify any record of the legislature seeking to replace the price change mechanism for non-core charges from a LCI change to a CPI change. Our view is that there is probably a stronger argument that non-core charges are frozen in time as there is no record of those being the subject of future CPI changes.
14. The prices that apply are the year 5 prices subject to CPI. If not a year 5 price, then the prices that apply are the prices in the STD as the STD itself continues on foot. The position is different for UCLL and UCLL backhaul where the UCLL services itself is removed from the Act and therefore no price regulation remains (although Chorus must continue to provide and can only withdraw the UCLL service in accordance with section s 69AD).

## Amending the Operations Manual and SLAs for RSQs

15. Finally, the STDs provide that Chorus and access seekers may propose amendments to the relevant Operations Manual and Service Level Agreements (**SLAs**).
16. The ability to propose and make changes to technical aspects of the service are important with dynamic services and technologies. For example, where UBA volumes are no longer growing the focus of SLAs would logically shift from connection activities to maintaining existing service performance. The current process provides for access providers and seekers to propose changes and, where the parties do not agree, for an independent recommendation maker to be appointed and make a recommendation to the Commission.
17. The Commission is expected to set Retail Service Quality standards at some stage and wholesale inputs will likely need to align or support these standards. RSPs ability to meet any standard relies on the underlying wholesale input. For example, RSPs proposed several amendments in Chorus' 2018 Operations Manual and SLA review that would have improved outcomes for end users.
18. Accordingly, the Commission may wish to broaden the process for requesting Operations Manual and SLA change so that the Commission:
  - a. May initiate the change process; and
  - b. Has the discretion to determine how the independent recommendation maker costs are recovered, i.e. whether the costs are recovered as per clause 9.11 or some other basis.
19. This would facilitate Commission proposals should they be required to support potential RSQ outcomes for end users.

**[End]**