

# **Consultation on setting prices for service transaction charges for UBA and UCLL services**

## **Consultation paper**

Date: 25 September 2014

## **We are consulting on how we should set prices for transaction charges in the FPP determinations**

1. We are currently undertaking a pricing review determination of the UCLL service (including SLU) and the UBA service, applying the final pricing principle (**FPP**) under the Telecommunications Act 2001 (**Act**).
2. This is because, subsequent to determining prices for the UCLL and UBA services under the respective initial pricing principle (**IPP**) determinations,<sup>1</sup> we received applications to undertake pricing review processes applying the FPP. The FPPs are:<sup>2</sup>
  - 2.1 for UCLL, “TSLRIC”; and
  - 2.2 for UBA, “The price for Chorus’s unbundled copper local loop network plus TSLRIC of additional costs incurred in providing the unbundled bitstream access service”.
3. Further background can be found in our paper of 9 July 2014, “Consultation paper outlining our proposed view on regulatory framework and modelling approach for UBA and UCLL services.”
4. In their applications for pricing review determinations, parties have requested that we review the transaction charges for the UCLL and UBA services that we set in the respective IPP determinations.
5. This consultation paper seeks your views on how we should set the prices for those transaction charges in the FPP determinations.

## **We are interested in your views**

6. We would like to know your views on the issues raised in this paper. We have concluded the discussion of each issue with numbered questions. We would appreciate if you could provide your comments under each question but we will consider all submissions.
7. Submissions on this consultation paper are due on 9 October 2014.
8. Cross-submissions are then due on 16 October 2014.
9. Please address responses to: Keston Ruxton (Chief Advisor, Regulation Branch), c/o [telco@comcom.govt.nz](mailto:telco@comcom.govt.nz)

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<sup>1</sup> For UCLL: Commerce Commission “Final determination on the benchmarking review of the unbundled copper local loop service” (3 December 2012), NZCC 37. For UBA: Commerce Commission “Unbundled Bitstream Access Service Price Review, Decision [2013] Final determination to amend the price payable for the regulated service Chorus’ unbundled bitstream access made under s 30R of the Telecommunications Act 2001” (5 November 2013), NZCC 20.

<sup>2</sup> Subpart 1 of Part 2 of Schedule 1 of the Act.

## **In the IPP determinations we only set the price of some of the transaction charges**

10. Each standard terms determination (**STD**) - for UBA, UCLL and SLU - lists multiple different charges for the service. The STDs contain many charges in part because the Act requires us to specify sufficient terms in an STD to allow the service (in this case, UCLL or UBA) to be made available within specified timeframes without the need for the access seeker to enter into an agreement with the access provider (in this case, Chorus).<sup>3</sup>
11. The STDs classify the charges into three numbered categories:
  - 11.1 service transaction charges (numbers beginning with 1);
  - 11.2 service recurring charges (numbers beginning with 2); and
  - 11.3 ancillary services (numbers beginning with 3).<sup>4</sup>
12. In the UCLL IPP determination,<sup>5</sup> we benchmarked 3 of the 9 transaction charges in the UCLL STD. We did not benchmark any of the ancillary charges in the UCLL STD. We only benchmarked prices for the core connection and transfer components.
13. For SLU, we only set the service recurring charges. We did not set any separate transaction charges.
14. In the UBA IPP determination,<sup>6</sup> we benchmarked 10 of the 23 transaction charges in the UBA STD. We did not benchmark any of the ancillary charges in the UBA STD. We only set benchmarked prices for the core components of the UBA service. In the draft determination, we noted that sundry charges are updated annually, and therefore we did not need to re-determine those charges.<sup>7</sup>
15. When applying for a pricing review determination, applicants collectively requested that we review the prices of all of the transaction charges for which we set prices in the IPP determinations (see Question 1 below).

## **Parties have requested that we consult on this topic**

16. In its submission on our regulatory framework and modelling approach consultation paper of 9 July 2014, Chorus noted that we have not yet indicated how we intend to

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<sup>3</sup> Act, section 300(1)(a).

<sup>4</sup> The SLU STD calls this third category “sundry charges”.

<sup>5</sup> Commerce Commission “Final determination on the benchmarking review of the unbundled copper local loop service” (3 December 2012), NZCC 37.

<sup>6</sup> Commerce Commission “Unbundled Bitstream Access Service Price Review, Decision [2013] Final determination to amend the price payable for the regulated service Chorus’ unbundled bitstream access made under s 30R of the Telecommunications Act 2001” (5 November 2013), NZCC 20.

<sup>7</sup> Commerce Commission “Draft determination to amend the price payable for the regulated service Chorus’ unbundled bitstream access made under s 30R of the Telecommunications Act 2001” (3 December 2012), paragraph [154].

deal with transaction charges. Chorus expresses a concern that if these matters are first addressed in our draft determination, along with all of the other issues that the draft determination will cover, there will be insufficient time to work through the issues to the satisfaction of all parties. Accordingly, Chorus has requested that we consult on these charges prior to the release of the draft determination.<sup>8</sup>

17. Vodafone has also requested that we detail how we intend to determine appropriate transaction charge levels in the context of an FPP pricing exercise.<sup>9</sup>
18. Spark does not support a separate consultation of transaction charges divorced from the other elements of the model.<sup>10</sup>

### **Our preliminary view is that we are only setting prices for the charges for which we set prices in the IPP determinations**

19. Our preliminary view is that, in the FPP determinations, we can only set prices for the transaction charges for which we set prices in the IPP determinations.
20. Each of our current pricing review processes (UCLL and UBA), in which we apply the FPP, is a review of the IPP determination. Parties apply for a pricing review determination under section 42(1) of the Act, which states (emphasis added):
 

If a determination is made under section 27 or section 30M regarding the price payable for a designated access service, a party to the determination may apply for a review of that part **of the determination** that relates to the price to be paid for the service.
21. For UBA, the IPP determination was made under section 77 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011, which is deemed to be a determination under section 30M for the purposes of section 42 of the Act.<sup>11</sup> For UCLL and SLU, the IPP determination was made under section 30M of the Act.
22. Accordingly, we cannot set prices for charges for which we did not set prices in the IPP determination.
23. Our further preliminary view is that we must also set prices for all of the transaction charges for which we set prices in the IPP determinations, because parties have collectively applied for a review of all of those charges.
24. A list of the charges we consider we must set prices for is contained in the **Appendix**.

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<sup>8</sup> Chorus "Submission in response to the Commerce Commission's Consultation paper outlining its proposed view on the regulatory framework and modelling approach for UBA and UCLL services (9 July 2014)" 6 August 2014, paragraphs [157]-[159].

<sup>9</sup> Vodafone "Submission to the New Zealand Commerce Commission - Cross-submission on Consultation paper outlining Commission's proposed view on regulatory framework and modelling approach for UBA and UCLL services" 20 August 2014, paragraph [G3.1].

<sup>10</sup> Spark New Zealand "UCLL and UBA FPP: consultation on regulatory framework and modelling approach - Cross-submission Commerce Commission" 20 August 2014, paragraphs [158]-[161].

<sup>11</sup> Telecommunications (TSO, Broadband, and Other Matters) Amendment Act, section 78.

25. Chorus has provided a list of transaction charges that it submits we are required to set.<sup>12</sup> Spark believes Chorus' list is incomplete and that the FPP will need to set prices for a wider range of transaction charges.<sup>13</sup>
26. We consider that Chorus' list:
- 26.1 incorrectly includes the UCLL charge for MPF Relinquishment (1.7), which was not set in the UCLL IPP determination; and
  - 26.2 omits the UBA charge for handover fibre space rental (2.13), which we set in the UBA IPP determination and which parties have requested we review.
27. In the UBA IPP determination we examined some transaction charges and decided not to amend them. We did not use the IPP of international benchmarking to set a different price, but we did make a decision to maintain the same price. Parties have requested we review those charges. We consider that we are able to examine those charges in the current pricing review determination because we did make a decision on them in the IPP determination (being a decision to maintain the same price). Those charges are:
- 27.1 the UBA charge for handover fibre space rental (2.13);<sup>14</sup>
  - 27.2 the UBA charge for additional wiring (1.50), which is charged on a price on application basis;<sup>15</sup>
  - 27.3 the UBA charge for modem installation (1.50);<sup>16</sup>
  - 27.4 UBA service relinquishment (1.39), for which there is no charge;<sup>17</sup> and
  - 27.5 UBA service move address (1.40), which is the same price as for connection charges.<sup>18</sup>
28. We also note that the UBA IPP determination did not set bulk rates for transaction charges, though the UCLL IPP determination did in respect of UCLL. We discuss this further below.

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<sup>12</sup> Chorus "Submission in response to the Commerce Commission's Consultation paper outlining its proposed view on the regulatory framework and modelling approach for UBA and UCLL services (9 July 2014)" 6 August 2014, Appendix 4.

<sup>13</sup> Spark New Zealand "UCLL and UBA FPP: consultation on regulatory framework and modelling approach - Cross-submission Commerce Commission" 20 August 2014, paragraph [157].

<sup>14</sup> Commerce Commission "Unbundled Bitstream Access Service Price Review, Decision [2013] Final determination to amend the price payable for the regulated service Chorus' unbundled bitstream access made under s 30R of the Telecommunications Act 2001" (5 November 2013), NZCC 20, paragraph [332].

<sup>15</sup> Ibid, paragraph [317].

<sup>16</sup> Ibid, paragraph [318].

<sup>17</sup> Ibid, paragraphs [327]-[328].

<sup>18</sup> Ibid, paragraph [329]-[330].

Question 1: Do you agree that in the FPP determinations the Commission can only set prices for the transaction charges for which it set prices in the IPP determinations?

Question 2: Do you agree that the list of charges in the Appendix is the complete list of charges for which the Commission is setting prices in the FPP determinations?

### **Our preliminary view is that we set prices for the charges by applying the FPP**

29. Our preliminary view is that, when we set the prices for the transaction charges in the FPP determinations, we must apply the FPP, which is TSLRIC.
30. This has two particular consequences:
  - 30.1 We are required to move from a benchmarking approach to a cost-modelling approach.
  - 30.2 Instead of taking prices calculated on any forward-looking cost-based pricing method, we are required to apply the TSLRIC method.
31. Furthermore, transaction charges appear not to fit entirely comfortably within a TSLRIC methodology. Although the Commission considers that transaction charges come within the scope of the “price to be paid for the service” in terms of s 42(1) of the Act (and are accordingly under review), they are conceptually different to the access service itself.

Question 3: Do you agree that when the Commission sets the prices for the transaction charges in the FPP determinations, it must apply the FPP of TSLRIC?

Question 4: How would you envisage this occurring?

### **How we could model the costs providing the transactions**

32. Chorus has expressed a concern that the prices set in the IPP determinations may not reflect the activity required to perform a transaction, and that there is nowhere for under recovery of costs to be absorbed.<sup>19</sup>
33. We currently consider there are the following options for determining the costs of providing the transactions:
  - 33.1 Top down - use Chorus’ service company charges and overhead costs as inputs;

<sup>19</sup> Chorus "Submission in response to the Commerce Commission’s Consultation paper outlining its proposed view on the regulatory framework and modelling approach for UBA and UCLL services (9 July 2014)" 6 August 2014, paragraphs [161]-[164].

- 33.2 Bottom up - model the time and materials of the relevant activities and overhead costs; or
- 33.3 Top down with cross checks.

### **Top down**

34. Under this approach, the modelled costs would be based on the costs Chorus faces under the contracts it has with its service companies who deliver the transaction services. We understand that these contracts are the result of a competitive tender process.<sup>20</sup> Chorus has submitted that this approach would be the simplest and most reflective of reality.<sup>21</sup>
35. This approach relies heavily on data obtained from Chorus. We requested data from Chorus in our section 98 notice of 27 August 2014.

### **Bottom up**

36. Under this approach, we would build a bottom-up calculation of costs based on the likely time taken for each activity (as we understand the bulk of the cost is labour),<sup>22</sup> the cost of labour and the cost of materials. This approach is used by the Danish Business Authority.

### **Top down with cross checks**

37. Under this approach, the data provided by Chorus will be the starting point and then similar charges in other countries will be used as cross checks to calculate the costs of providing the transactions.
38. Vodafone has submitted that it would not be reasonable for us to simply accept that Chorus' service company charges are efficient as a basis for setting accurate activity based costs.<sup>23</sup>
39. Spark submitted that:<sup>24</sup>
- 39.1 it is not confident that the service company prices Chorus pays are necessarily efficient;
- 39.2 we should not assume that service company prices match the actual costs incurred for the services performed;

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<sup>20</sup> Ibid, paragraphs [166] and [169].

<sup>21</sup> Ibid, paragraph [168].

<sup>22</sup> Ibid, paragraph [171].

<sup>23</sup> Vodafone "Submission to the New Zealand Commerce Commission - Cross-submission on Consultation paper outlining Commission's proposed view on regulatory framework and modelling approach for UBA and UCLL services" 20 August 2014, paragraph [E1.4].

<sup>24</sup> Spark New Zealand "UCLL and UBA FPP: consultation on regulatory framework and modelling approach - Cross-submission Commerce Commission" 20 August 2014, paragraphs [150]-[151] and [153].

- 39.3 Chorus has a strong incentive to “rebalance” charges between regulated and commercial services; and
- 39.4 if prices are set based on the service company prices Chorus faces, then Chorus would have little interest in challenging those prices.
40. In the case of all three options, a reasonable margin for overheads could either be applied to each service, or be part of the general overhead applied to the network costs. Vodafone has submitted that we should not allow for a service company to recover an overhead cost and for Chorus to also recover an overhead cost.<sup>25</sup>

Question 5: Are there any other options for determining the costs of providing the transactions?

Question 6: Which option should the Commission take?

See also Question 10 below regarding what is involved in providing each transaction and the associated costs.

### **Our preliminary view is that we could merge some transaction charges into other charges**

41. Our preliminary view is that it is open to us to merge some of the transaction charges into other charges for which we are setting prices in the FPP determinations. That is, we consider we are not restricted to simply setting a price for every charge as listed in the Appendix.
42. We have reached this preliminary view on the basis of the following factors:
- 42.1 Section 42(1) of the Act does not instruct us to update the individual prices. Rather, it requires us to review “that part of the determination that relates to the price to be paid for the service.”
- 42.2 While we may only review those charges in respect of which the parties have requested a review, it does not follow that we are limited to updating the price of each of them.
- 42.3 Instead, subject to that limitation, we have been instructed to review the whole ‘part of the determination’ in accordance with the FPP, which is TSLRIC. It is possible that, in the course of that process, we may find that activities in respect of which transaction charges were set individually in the IPPs should not be recovered separately by Chorus.

<sup>25</sup> Vodafone "Submission to the New Zealand Commerce Commission - Cross-submission on Consultation paper outlining Commission's proposed view on regulatory framework and modelling approach for UBA and UCLL services" 20 August 2014, paragraph [E1.6]. See also Network Strategies "Cross-submission for consultation on UCLL and UBA FPP regulatory framework" 20 August 2014, page 35.



- 42.4 In other words, we may find, in applying TSLRIC and taking into account section 18, that some of those transaction charges should not be recovered separately by Chorus and should be recovered as part of the monthly, service recurring charges.
43. For example, we may find that we should:
- 43.1 set bulk rates for UBA service transaction charges;
  - 43.2 keep the UBA service relinquishment charge at no charge; and/or
  - 43.3 not set separate prices for the UBA service transactions where there is no port change at the DSLAM, and allow for the costs of providing those transactions to be recovered as part of the monthly, service recurring charges.
44. However, we acknowledge that any process of merging some of the transaction charges into other charges may be frustrated by the fact that not all charges in the STDs are under consideration in the current pricing review processes. Accordingly, it may be more efficient to revisit transaction charges later, as part of a section 30R review. We welcome submissions on this issue.
45. As mentioned above, the UBA IPP determination did not set bulk rates for transaction charges (though the UCLL IPP determination did in respect of UCLL). Our preliminary view is that we are entitled to set bulk rates for the UBA service transaction charges in the FPP determination, because these do not constitute separate transaction charges but are variants of the charges that were set in the IPP determination.

Question 7: Do you agree that it is open to the Commission to merge some the transaction charges into other charges?

Question 8: Do you agree that the Commission is entitled to set bulk rates for UBA transaction charges?

Question 9: Are there any charges you consider should be merged into the monthly charges or re-classified in some other way? (Please also provide comments in response to paragraph 44 under this question.)

Question 10: Please provide your understanding of what is involved in providing each transaction and the associated costs.

Question 11: Do you have any other comments on the topics discussed in this paper?

## Appendix - charges we consider we must set prices for in the FPP determinations

Charge (with reference to number in the relevant STD)	Price set in the IPP
<b>UBA</b>	
<b>UBA Service Recurring Charges:</b>	
2.1 BUBA monthly charge	\$10.92 + UCLL = \$34.44
2.3 EUBA 40 monthly charge	\$13.25 + UCLL = \$36.77
2.4 EUBA 90 monthly charge	\$13.82 + UCLL = \$37.34
2.5 EUBA 180 monthly charge	\$14.85 + UCLL = \$38.37
<i>With POTS services:</i>	
2.2 BUBA with POTS monthly charge	\$10.92 + UCLL = \$34.44
2.6 EUBA 40 with POTS monthly charge	\$13.25 + UCLL = \$36.77
2.7 EUBA 90 with POTS monthly charge	\$13.82 + UCLL = \$37.34
2.8 EUBA 180 with POTS monthly charge	\$14.85 + UCLL = \$38.37
2.13 Handover fibre space rental charge	\$27.09
<b>UBA Service Transaction Charges:</b>	
1.1 New connection - no site visit required (remote connection)	\$15.85
1.1 New connection - exchange or cabinet visit required	\$73.51
1.1 New connection - site visit required	\$169.73
1.50 Additional charge for wiring	POA (could not benchmark)
1.50 Modem installation	\$38.01 (could not benchmark)
<i>Charges with port change at the DSLAM:</i>	
1.9 Other broadband service to any UBA service change plan	\$73.51
1.10 Any UBA service to any other UBA service change plan	\$73.51
1.31 Transfer of Basic UBA Service from an Access Seeker to a Basic UBA Service with another Access Seeker	\$73.51
1.32 Transfer of Basic UBA Service from an Access Seeker to an Enhanced UBA Service with another Access Seeker	\$73.51

Charge (with reference to number in the relevant STD)		Price set in the IPP
1.33	Transfer of EUBA Service from an Access Seeker to a BUBA Service with another Access Seeker	\$73.51
1.34	Transfer of EUBA Service from an Access Seeker to an EUBA Service with another Access Seeker	\$73.51
1.35	Transfer of other broadband service from an Access Seeker to a Basic UBA Service with another Access Seeker	\$73.51
1.36	Transfer of other broadband service from an Access Seeker to an Enhanced UBA Service with another Access Seeker	\$73.51
<i>Charges with <b>no</b> port change at the DSLAM:</i>		
1.9	Other broadband service to any UBA service change plan	\$15.85
1.10	Any UBA service to any other UBA service change plan	\$15.85
1.31	Transfer of Basic UBA Service from an Access Seeker to a Basic UBA Service with another Access Seeker	\$15.85
1.32	Transfer of Basic UBA Service from an Access Seeker to an Enhanced UBA Service with another Access Seeker	\$15.85
1.33	Transfer of EUBA Service from an Access Seeker to a BUBA Service with another Access Seeker	\$15.85
1.34	Transfer of EUBA Service from an Access Seeker to an EUBA Service with another Access Seeker	\$15.85
1.35	Transfer of other broadband service from an Access Seeker to a Basic UBA Service with another Access Seeker	\$15.85
1.36	Transfer of other broadband service from an Access Seeker to an Enhanced UBA Service with another Access Seeker	\$15.85
1.39	UBA service relinquishment	No charge
1.40	UBA service move address	Aligned with connection charges at 1.1
1.41	Data interleaving toggle	\$15.85

Charge (with reference to number in the relevant STD)	Price set in the IPP
<b>UCLL</b>	
<b>UCLL Service Recurring Charges:</b>	
2.1 Geographically averaged monthly rental	\$23.52 Applies from 1 December 2014
2.1 Urban monthly rental	\$19.08 Applies until 30 November 2014
2.1 Non-urban monthly rental	\$35.20 Applies until 30 November 2014
<b>UCLL Service Transaction Charges:</b>	
<i>Individual rates:</i>	
1.1 MPF new connection - individual new connection where site visit required	\$155.10
1.1 MPF new connection - individual new connection where no site visit required	\$70.46
1.2 MPF transfer - individual transfer	\$70.46
1.3 Other service to MPF transfer - individual transfer	\$70.46
<i>Bulk rates (bulk rate for 20 or more simultaneous new connections at the same exchange):</i>	
1.1 MPF new connection - where no site visit required	\$52.84
1.2 MPF transfer	\$52.84
1.3 Other service to MPF transfer	\$52.84
<b>SLU</b>	
<b>SLU Service Recurring Charges:</b>	
2.1 Geographically averaged monthly rental	\$14.21 Applies from 1 December 2014
2.1 Urban monthly rental	\$11.52 Applies until 30 November 2014
2.1 Non-urban monthly rental	\$21.26 Applies until 30 November 2014