

Section 30R Review of the UBA STD: Process and Issues Paper

**A Submission to the Commerce
Commission**

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1 Summary of Position

2degrees welcomes the opportunity to comment on the Commerce Commission's section 30R review of the UBA Standard Terms Determination ('UBA STD') Draft Determination of 9 November 2016.

As set out in our previous submissions, 2degrees supports this review and the updating of the UBA regulated service in the light of market and industry developments. The UBA regulated service needs to remain fit for purpose to address any market power concerns as well as support industry certainty. It will remain important for some time to come, providing connections to many New Zealanders, who do not currently and/or who will not have access to UFB once the UFB rollouts are complete.

We support the Commerce Commission's position that:

- The regulated service is technology agnostic and the provision of VDSL, where available and requested by an access seeker, is already required under the current STD;
- The regulated UBA service needs to provide an appropriate quality of service to allow access seekers to provide differentiated retail broadband products suitable for a range of general internet requirements;
- The current regulated service levels (which are full speed/full speed) have supported this, and to continue to allow a fit for purpose regulated service that promotes competitive services requires Chorus to maintain an uncongested network;
- A new service specification should be added to the UBA Service Description to support this, obliging Chorus to maintain congestion free links from the DSLAM to Chorus' first data switch (the local aggregation path) that:
 - Set a link percentage utilisation threshold that traffic on a LAP cannot exceed over a 15 minute period;
 - Require Chorus to report on percentage utilisation of each UBA LAP and network plans for links nearing capacity;
 - Include utilisation and planned upgrades for both ATM-links and Ethernet-based links (even if ATM-based link results are more informational).
- A 10GigE handover connection service should be introduced to ensure the regulated UBA service remains 'fit for purpose';
- Additional consultation requirements to the change mechanism in the UBA General Terms should be introduced to improve transparency of Chorus' 24 month review of the Operations Manual;
- There is no need to provide additional incentives for Chorus to develop commercial UBA variants – while Chorus should be free to do this, the introduction of any such variants should not result in the degradation of regulated services.

2degrees' key concerns are:

- The thresholds of 95% (as a maximum link utilisation threshold) and 85% (as the point where plans must be presented) are too high, and will result in significantly

degraded services to consumers. Important for the Commission to recognise is that links over 90% already exhibit degraded service – 100% is not the point where degradation sets in, in practice. Investment and investment planning are required well before these points to prevent this. We consider it would be useful for Chorus to make a portal available where access seekers can access up-to-date link information and potentially daily graphs of network utilisation for each link, as is available on our own network.

- The cost of a 10GigE handover as set out in the December 2015 FPP process is significantly above cost and should not be adopted as appropriate in a regulated price list for this service.

We address these aspects further in sections 2 and 3 below.

In addition, we note:

- We are not clear a decision on potential RBI2 areas should or needs to be deferred: an alternative to exempting the entirety of Chorus' ATM networks from any upgrade requirements and/or requiring another section 30RCommission review in the short term, could be to exempt particular geographic areas, for example those that receive RBI/MBS funding. There are already a large number of ATM-based links that experience congestion and do not deliver to consumer expectations. While we agree Chorus should not be forced to undertake inefficient investment, for example where another party wins and builds out an alternative RBI/MBS network, incentives to invest are still required for areas that fall outside such areas. We support reducing the congestion/upgrading of this network over time.
- RSPs should not be subject to higher costs, nor a party benefit from, the non-provision of a regulated service. Where ATM-based handovers are not provided as required under a regulation, a company should not be able to charge for more expensive BUBA handovers.

2degrees continues to strongly support increased transparency of Chorus' systems for access seekers to enable better consumer service, including in relation to provisioning and fault issues. As such, we:

- Consider that the UBA Terms/UBA operational manual should be changed so that access seekers are able to keep end-users informed of the expected costs and timeframes for provisioning and addressing fault issues.
- Support Chorus sharing of costs (and the resulting improved incentives to address issues/share relevant information on the network affecting customers) where such costs are the direct result of Chorus, for example, the introduction of reciprocal No Fault Found and Abortive Site Visit fees (for when technicians miss scheduled appointments).
- Appreciate the clarification that as a rule, the Commission generally expects Chorus will make any information requested by access seekers available unless Chorus has relevant reasons not to do so.

In relation to the above, whilst we consider a Commerce Commission decision or direction to the TCF would have assisted the industry in achieving this in a timely manner, 2degrees is willing to support a clause 9 process to achieve this.

We also support industry discussions based on the proposals made by Spark at the workshop and updated in its cross submission.

2 LAP Utilisation Reporting

While we welcome Chorus' introduction of reporting and thresholds, and recognise that the 95% threshold is intended to be the maximum utilisation threshold, not the target, we consider that a 95% threshold is too high. This is because if a link is operating at 95% capacity then it will have a significantly degraded service and is likely to be unusable for many applications by the time it reaches this point. As outlined above, 100% is not the point where consumers begin to experience capacity issues with their service.

Similarly, while we support Chorus providing information regarding plans for upgrading each LAP where the report shows peak utilisation is greater than a percentage threshold, we consider an 85% threshold is too high and would be ineffective at disincentivising degradation of service.

To avoid congestion issues and service degradation generally requires that actual capacity utilisation does not exceed 80-85% - not just planning improvements at this point.

In comparison, 2degrees operate on the basis that once a link hits 70% capacity utilisation, investment in additional capacity to meet demand and avoid congestion is required. 80-85% utilisation should be the maximum capacity utilisation, having implemented solutions, not the point by which there should be plans to do such investment in future.

For these reasons, we consider a maximum link utilisation threshold of 85% is appropriate, with plans to be provided for links exceeding 70-75%. We would have concerns if no plans to address capacity were in place at this point.

We are not clear an exemption for 'exceptional circumstances' is required however we understand that there may be some very limited circumstances that this may be appropriate. Our prime concern would be to ensure that any such clause is only used for those very limited circumstances.

3 Cost of a 10GigE handover

As set out previously, we support the introduction of a 10GigE handover connection as necessary to support a 'fit for purpose' UBA regulated service.

We also support the proposed cap on the price for multiple 1GigE handover connections at the 10GigE handover connection price and the proposal not to differentiate installation costs between 1GigE and 10GigE handovers, which should be the same.

However, we do not consider the 2015 FPP TSLRIC prices proposed by the Commission accurately represent the costs of a 10GigE handover, nor that these were fully tested as part of the FPP process. This seems relatively clear given the inaccuracy of these costs and the relationship between a 1GigE handover and 10GigE handover.

Notably, 10GigE handovers were not covered by the regulated UBA service in December 2015 and the cost of these services was not the focus of that FPP determination. 2degrees did not access or comment on these costs or the associated cost model during the FPP investigation, being a new and smaller entrant to the fixed market in 2015.

Whilst we have noted that a cost-based methodology is the supported under the Act, our concern is that the proposed pricing is in fact not cost-based.

Our costs indicate that the costs for Chorus to provide a 10GigE port are much lower, and falling, and we strongly encourage the Commission to seek additional information regarding up to date costs from Chorus on this new regulated service and test this.

[C-I-C].

The inaccuracy of the 10GigE handover price in the FPP model is further reinforced by (but not reliant on) the much lower commercial cost of UFB handover connections.