

Section 30R Review of the UBA STD: Draft Determination

**A Cross Submission to the
Commerce Commission**

telco@comcom.govt.nz

15 December 2016

Contents

1	Summary of Position.....	2
2	Network Utilisation	3
3	ATM coverage	5
4	10GigE handovers	5

1 Summary of Position

Thank you for the opportunity to provide cross-submissions on the Commerce Commission's section 30R review of the UBA Standard Terms Determination (**UBA STD**) Draft Determination of 9 November 2016.

2degrees has read the submissions received by the Commission and notes:

- There is widespread industry support from both Chorus and RSPs on the overall direction of the Commerce Commission's proposals, including that the regulated service is technology agnostic and includes VDSL, and the proposed focus on network utilisation and reporting.¹
- There is support that Chorus should not be forced to invest inefficiently, in particular in network duplication related to the award of RBI2 grants.
- There is support for the introduction of a 10GigE handover connection service.
- There is also widespread acceptance that as a first point of call the industry can utilise the clause 9 process for addressing 'operational' issues, such as those previously presented by Spark as part of this process (and supported by multiple RSPs, including 2degrees).
- There is support for proposed changes to consultation requirements for reviews of the Operational Manual and acceptance clause 10 may not need amendment as part of the current process.

The key issues of divergence are:

- Whether 95% or a lower maximum utilisation threshold is most appropriate, and the appropriate threshold where plans for upgrades should be provided.
- How to address ATM/non-RBI2 customer needs.
- The price of a 10GigE handover, which many RSPs have identified as important and significantly above the current cost of providing this service.

Having considered submissions, 2degrees consider the Commission should:

- Adopt the proposal to set maximum link utilisation thresholds and report on plans for upgrading links near capacity, but:
 - Lower the proposed 95% maximum utilisation threshold to 85%, and the 85% planning threshold to 75%, reflecting the end user service degradation that would be experienced should links be allowed to reach the 95% threshold (and market practice);
 - Introduce a 5 minute (not 15 minute) measurement period for reporting and assessing link utilisation levels;

¹ With the exception of InternetNZ, who notes that key issues for rural consumers include loop length, interference issues and the service specification - with many not currently receiving the minimum 32kbps.

- Introduce an 'Exceptional Utilisation Event' provision, so Chorus does not breach the STD for factors beyond its reasonable control (if it is considered the *force majeure* provisions are not adequate). The scope of what constitutes an exception event would need to be agreed/defined and limited.
- Require reporting on utilisation of ATM-based links as proposed, and reconsider how to ensure the proposals address services for those ATM customers/areas that will not, or do not currently receive, RBI service - recognising that RBI rollouts are expected to extend over multiple years.
- Seek evidence from Chorus on current costs of 10GigE handovers.
- Set out the Commission's clarifying comments in its final determination, including that the regulated service is already technology agnostic and includes VDSL, and expectations that the Commission generally expects Chorus will make any information requested by access seekers available unless Chorus has relevant reasons not to do so.
- Allow the industry to pursue 'operational' changes through the existing Clause 9 process initially. In this regard we acknowledge Chorus has advised (including in its cross submission) that they intend to give notice under clause 9.12 to conduct a review of specific proposals for increased transparency and see merit in using the TCF as the forum for this review. We support this.

The following sections address each of the key outstanding issues.

2 Network Utilisation

Maximum Utilisation threshold

In our submission we stated that a 95% threshold at 15 minute intervals is too high, would allow for significant consumer service degradation and not incentivise maintaining a congestion-free network.

This view is consistent with submissions received from Spark, Vodafone and Vocus. Submissions noted the peaky nature of traffic means that under a 95% utilisation threshold/15 minute period as proposed, there will be extended periods where users have significantly degraded service:

- Spark suggested the Commission impose a requirement for Chorus to provide an uncongested network with the expectation that utilisation not exceed 80% on any LAP *under normal operating conditions*, with a weekly report on utilisation of each link exceeding 70% utilisation (consistent with Chorus' stated planning objective that ensures no link exceeds 70% utilisation under normal operating conditions).
- Vodafone suggested either a decrease to an 85% maximum utilisation threshold, a decrease in the period of measurement to 5 minutes (more in line with industry standards) and/or establishment of clear upfront penalties for breaching thresholds.² Regardless, Vodafone considered that reporting requirements should cover both 5

² InternetNZ also noted a lack of a meaningful sanction for breaching any thresholds set.

and 15 minute periods to better allow the Commission to assess threshold breaches, and that the Commission should commit to conducting assessments within certain timeframes.

- Vocus supported reporting for links reaching 70% utilisation and requiring Chorus to initiate capacity augmentation once link utilisation reaches 70-75%.
- Trustpower preferred the Commission implementing a 5 minute (rather than 15 minute) measurement period for reporting on utilisation thresholds.

Chorus support the proposed 95% threshold noting that it is a 'failsafe' figure that under normal operating conditions customers should never experience. Chorus also noted that currently 99.4% of their Ethernet fibre-based LAPs have utilisation below 50% and none of the almost 8000 LAPs exceeded 80%. In addition, Chorus support an exceptions mechanism for circumstances beyond their control.

2degrees have considered these submissions and consider that:

- We agree Sparks' suggestion of referring to thresholds not exceeding 80% *under normal operating conditions* is likely to reflect the desired outcome, although recognise that the Commission may want a more 'bright line' test for the purposes of the regulation.
- If this is the case, we support a maximum capacity threshold of 85% (which we consider allows some headroom for Chorus) but with a limited exception standard - to ensure Chorus is not in breach of the STD in circumstances outside its reasonable control (for example a natural disaster or DOS attack, if these are not captured by existing *force majeure* provisions). We agree a higher threshold should not be justified to allow for exceptional breaches, and then also a separate allowance for such exceptions. An alternative to this approach would be the Commission regulating the percentage of lines that must fall within specific utilisation thresholds.
- The reporting time interval should be decreased to 5 minutes, which is more in line with industry standards, and better allows the Commission to identify and assess breaches. Such reporting should be on a weekly basis.
- We support Vodafone's suggestion that the Commission should undertake assessments within a certain timeframe. Delays in the Commission making these assessments reduce the effectiveness and credibility of the regulation.

Planning upgrade threshold for reporting

We have previously noted we would be concerned if Chorus do not have plans to address capacity issues for links exceeding 70% utilisation. Chorus itself suggests it starts planning upgrades at around 60% utilisation, although we understand it only wishes to publish approved plans. We consider plans should be approved well before the proposed 85% threshold to support an uncongested network. We therefore support publishing of planned upgrades by 75% utilisation.

3 ATM coverage

Submissions largely recognised and supported that Chorus should not be forced to inefficiently invest in network duplication where RBI2 grants (which are subject to open access provisions) are ultimately awarded as part of the current process being run by Crown Fibre Holdings, but that ATM links should be included in measurement and reporting requirements of the Commission even if they are excluded from implementation requirements.

InternetNZ and Spark further noted that the rural ATM network was not carved out when setting FPP prices for Chorus, and the resulting potential for Chorus subsidisation of RBI contracts. Spark noted that RBI2 investments should build on, not replace, investment in network infrastructure funded by the FPP, and that RBI2 investment will take time - the Commission must address medium term service for customers that have below par/FPP service and do not (yet) have RBI assistance.

The majority of submissions were also clear that once RBI2 decisions are made - anticipated during 2017 - the Commission would need to revisit those ATM links that do not receive RBI2 subsidies to ensure competitive pressures exist on these parts of the ATM network. This indicates a decision to exclude RBI2 from the current decision will result in a further Commission investigation focussed on these areas in the short term. As set out in our previous submission, an alternative to exempting the entirety of Chorus' ATM networks from any upgrade requirements and/or requiring another section 30R Commission review in the short term, could be to exempt particular geographic areas, for example those that have services rolled out using RBI/MBS funding.

4 10GigE handovers

There is widespread support in submissions for the inclusion of 10GigE handovers. However it is clear that many RSPs (including 2degrees, Spark, Vodafone and Vocus) consider the 10GigE price of the FPP model does not correspond to 2016 cost-based prices for this service.

Our previous submission noted that we consider these to be considerably above cost in the current environment and that the Commission should test actual costs with Chorus.

We further agree with Vodafone and Vocus that the equipment used is largely identical to that of UFB handovers. We also agree that the significance of 10GigE handovers has increased since FPP considerations - given significant traffic demand increases (which for 2degrees is a result of both increased per user traffic growth and subscriber growth in fixed).