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Stephen Gale
Telecommunications Commissioner
Commerce Commission
PO Box 2351
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By email: stephen.gale@comcom.govt.nz

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Dear Stephen

New UBA Variants

We are writing to confirm the status of the Boost proposals in order to assist the Commission's assessment under clause 10 of the UBA Standard Terms Determination (STD) as to whether the proposed new UBA variants – Boost HD and Boost VDSL - are materially differentiated.

Chorus is committed to delivering innovative new services that meet the future demand of end users. A number of retail service providers (RSPs) have emphasised the importance of the Commission's views in relation to the Boost services in order to progress these matters commercially. While Chorus is not formally required to wait, Chorus will wait for the Commission's guidance before confirming the Boost offers.

To enable Chorus to proactively deliver better wholesale services to support offers from RSPs that meet future end user demand, everyone needs clarity on whether commercial wholesale offers will be enabled in practice. With these issues unresolved submitters are arguing both ways. On the one hand they have argued for benchmarked pricing for a service based on a minimum specified service. On the other, they are arguing that the regulated service delivered by Chorus must meet a different standard. The consequence is dampening incentives for commercial offers.

Chorus' view is still that the Boost services are materially differentiated, and we would welcome guidance from the Commission on the proposed new commercial variants so that innovation for the benefit of end users can continue.

Background to the Boost offers

On 14 May 2014 Chorus gave notice under clause 10 of the STD (**Notice**) of two new proposed UBA variants – Boost HD and Boost VDSL. This followed discussions with the Commission and RSPs over a number of months about the potential scope and approach to the commercial UBA offers, including end-user demand. In parallel to the Notice, Chorus initiated a 60 day consultation period with customers on the Boost services.

Chorus held an industry workshop for all customers on 29 May 2014. A copy of the pack presented at that workshop was also provided to the Commission. Chorus continued to

hold ongoing one-one customer discussions in the usual way for those customers who were keen to understand more.

On 20 June 2014, the Commission called a workshop on the Boost services with Chorus and selected RSPs. At the workshop, the Commission sought feedback and RSPs and the Commission raised a number of questions.

Chorus combined the feedback and questions from that workshop and from customer consultation into a second detailed Dialogue pack presented to all of our customers on 10 July 2014. The Commission and other parties, such as InternetNZ, attended. Chorus did this presentation as early as possible to ensure that the information customers said they were seeking was available to those submitting as part of the Commission new UBA variant process.

Confirmed current Boost proposal

Chorus wishes to confirm the current proposal, which involves a number of minor amendments to the Boost services (and consequentially the Notice) and which are consistent with the 10 July Dialogue pack. All of these amendments are improvements to the Boost services following feedback to date, and result in further differentiation as compared to the regulated UBA service. In summary, we confirm:

- **Line speed commitment** – the Boost VDSL line speed commitment will be a minimum downstream/upstream line speed of 12/1 Mbps (previously 10/1 Mbps). The consequence of this increase in line speed is a commitment to a higher line speed on qualifying lines, providing end-users with a richer range of service options and service reliability (amongst other things);
- **Throughput commitment** – the Boost VDSL throughput commitment will be a minimum downstream average throughput of 10 Mbps during a 15 minute period (previously 5Mbps). As a commitment, this is a significant shift in the “floor” as compared to the regulated UBA service. As for the improved line speed commitment, the consequence of this increased throughput provides end-users with a richer range of service options and service reliability (amongst other things);
- **Quality of service** – the quality of service for both Boost HD and Boost VDSL will be premium best efforts, which is a prioritised service, superior to internet-grade best efforts, but not real time (previously best efforts). The consequence of this improved quality of service is that it will provide end users with improved performance during times of congestion;
- **Line profile optimisation** – line profile optimisation will be applied to all Boost HD and Boost VDSL lines (previously all Boost VDSL lines but only some Boost HD lines). The consequence of this extended application of line profile optimisation is that both Boost VDSL and Boost HD lines are expected to achieve a higher line speed as compared to today’s service, as illustrated in the graph in the appendix to this letter;
- **Handovers** – customers have the option of either taking Boost on a regulated handover with no service commitment or on a commercial handover with a proportion of lines (up to 20%) nominated as basic bitstream customers (previously separate commercial and regulated handovers required). The 20% limit is based on market data that shows that around 20% of end users use broadband for basic purposes (e.g. emails, browsing and social networking). The consequence of this change is that customers have more choice as to what handovers they take for Boost and regulated services and specifically there is no requirement for new handovers or additional RSP investment to continue to offer a VDSL service;

- **Price** – as the timetable for the final FPP determinations was delayed after the Boost proposals were issued for consultation, Chorus has been asked to produce interim prices for the period from 1 December 2014. The interim commercial prices for Boost HD price from 1 December 2014 will be \$39.99 and the Boost VDSL price will be \$44.99 with backdating once the FPP prices are known.
- **Other enhancements** – we confirm that Chorus still intends to provide other enhancements, including fibre-ready connections for VDSL, no upfront installation fees and network analysis tools.

In the current environment, and pending the Commission's guidance, Chorus remains open to consulting on and discussing Boost proposals (including implementation) with RSPs. We confirm that the Boost services will be differentiated at least to the same extent as described in the Notice and this letter enabling the Commission to proceed with the task before it.

Material differentiation from the regulated service

For the reasons set out in the Notice, it is Chorus' view that the Boost HD and Boost VDSL services are differentiated to a material extent from the regulated UBA STD service in place today and the Commission is able to provide guidance that these offerings fall outside the regulated UBA STD (assuming no practical changes to the UBA STD).

The Commission's guidance in 2010 was that a more onerous throughput obligation is sufficient on its own to differentiate a new UBA variant from the basic regulated service.¹ This guidance has been factored in when developing the new Boost services.

A view that the Boost services are materially differentiated from the regulated UBA service could:

- Provide greater end user choice. Open access means that all RSPs can choose whether to offer their end users a range of regulated UBA and Boost HD or Boost VDSL services. Once available, the market and competition at retail will determine the uptake of these services. For example, the market decided that Telecom Wholesale's VDSL service, with a \$20 price premium was not valued, with low take up. A proactive open access wholesaler is incentivised to hit the appropriate price and quality position. However, if the guidance from the Commission is that the Boost services are not materially differentiated, open access means that no RSP will have the choice to make new offerings to end users using the Boost services.
- Support better broadband in the transition to fibre environment and assist coherency and clarity for the industry in this substantial period of change.
- Provide guidance on other factors considered sufficiently material to differentiate commercial services from the regulated service. This would enable regulatory and commercial matters to be more efficiently and effectively worked through going forwards. In the absence of a clear line of sight to what commercial offerings may be supported in the regulatory framework, there may be a risk of a dampening effect on future improvement proposals.

The regulated UBA service

As a second matter, the Commission has now separately initiated an investigation into the regulated UBA service under s156O of the Telecommunications Act. While we query

¹ Final Decision of the Commerce Commission on the applicability of the UBA STD to Telecom's Wholesale VDSL2 Service, 20 December 2010.

whether there has been a complaint that initiates the s156O process², and how a complaint can be raised about a proposal made for consultation, we will of course engage in that process and welcome guidance from the Commission on:

- The interpretation of the regulated UBA STD service in place today; and
- Chorus proposals for traffic management and the potential to withdraw VDSL technology used to deliver the basic UBA service.

We look forward to further engagement with the Commission on the new UBA variants and request that this letter be published on the Commission's website.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Anna Moodie', with a long horizontal flourish extending to the right.

Anna Moodie
Assistant General Counsel, Regulatory & Competition Policy

² See for example Telecom's comments at <http://www.nbr.co.nz/article/family-fallout-commerce-commission-investigate-telecom-complaint-about-chorus-ck-p-159555>