

1 April 2015

To Interested Parties:

Unbundled Bitstream Access (UBA) Standard Terms Determination (STD) – review under section 30R of the Telecommunications Act 2001 (the Act)

This letter announces the start of a section 30R review of the UBA STD non price terms.

Introduction

1. The Commission has today commenced a review of the non-price terms of the UBA STD under section 30R of the Act. In this review the Commission will consider the UBA STD General Terms and Service Description.
2. The UBA service is regulated under the Telecommunications Act 2001.
3. The Commission released a STD for the UBA service on 12 December 2007 that set the regulated price and non-price terms for the UBA service.

Background

4. UBA is one method of supplying broadband services. It is a service that allows retail telecommunications companies to supply broadband (internet) services over the copper network without the need to install their own DSLAM equipment in the exchange. Further information on UBA can be found on the Commission's website at <http://www.comcom.govt.nz/regulated-industries/telecommunications/regulated-services/standard-terms-determinations/unbundled-bitstream-access-uba-services/unbundled-bitstream-access-uba/>.
5. The UBA STD sets a baseline price, General Terms and Service Description. Chorus must offer the requirements of the service to retail service providers.
6. Under the current UBA STD, Chorus is able to offer commercial UBA services and variants at different prices to the regulated UBA service. However, before doing so, Chorus must provide notice to the Commission under clause 10 of the UBA STD General Terms.
7. On 14 May 2014, Chorus announced that it intended to introduce new commercial UBA services (Boost variants).¹ As part of the introduction of the Boost variants, Chorus also proposed the following changes to the regulated UBA service:

¹ Chorus amended its proposals relating to the commercial variants on 28 July 2014.

- 7.1 capping aggregate throughput at the handover point; and
 - 7.2 withdrawal of VDSL as a regulated UBA service.
8. After receiving a complaint from Telecom (now Spark) that Chorus' proposed changes to the regulated UBA service breached the UBA STD, on 22 July 2014 we commenced an investigation under section 156O of the Act (the Spark complaint investigation).
 9. The Spark complaint investigation was suspended on 16 October 2014 after Chorus put the proposed changes to the regulated UBA service on hold, including in particular, any constraints on the regulated service and the withdrawal of the current regulated VDSL service.
 10. Chorus launched Boost VDSL as a commercial UBA service on 1 December 2014 on the basis that its core features are materially different from the regulated UBA service provided at the time.
 11. Submissions received from the industry during the Spark complaint investigation and the processes under clause 10 of the UBA General Terms (for adding UBA service variants) have highlighted the potential need for greater clarity on Chorus' obligations under the UBA STD.
 12. In addition, during the Spark complaint investigation, external counsel provided the Commission with legal advice that identified a number of areas where the UBA STD would benefit from clarifications.² This legal advice considered whether or not Chorus' proposed changes to the regulated UBA service breached the UBA STD.
 13. As a result of matters coming out of the Spark investigation, in December 2014 we published a consultation paper. That paper sought views from industry on whether we should undertake a section 30R review of the UBA STD, and if so, the scope of a review. We received seven submissions which we have considered. The majority of submissions support a section 30R review. Most submissions asked for certainty regarding the requirements of the regulated UBA service, and the process for launching a new commercial UBA service.
 14. The changes to the industry structure since the UBA STD was first drafted and last amended provide further reasons for conducting a review.
 15. Section 76(a) of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 provides that section 30R of the Act does not apply in relation to Chorus' UBA service (except as provided in sub-Section 73 and 77) for the period

² This legal advice was provided in the Commission consultation paper on issues relating to Chorus' proposed changes to the UBA service dated 4 September 2014. This paper can be viewed on the Commission website - <http://www.comcom.govt.nz/regulated-industries/telecommunications/regulated-services/standard-terms-determinations/unbundled-bitstream-access-uba-services/new-uba-variants/>

ending three years after separation date. This prevented a review of this service until 1 December 2014. As the statutory freeze on reviewing the UBA STD has expired we are now able to conduct a section 30R review of the UBA STD General Terms and Service Description.

16. The Commission has also decided to cease the Spark complaint investigation, effective from 1 April 2015. The Commission has given written notice to Spark and Chorus to this effect (that no further action will be taken on the Spark complaint investigation).

Process

17. The review will focus on considering those aspects of the non-price terms of the UBA STD General Terms and Service Description that relate to whether the service is 'fit for purpose'. This may include consideration of whether requirements for how the regulated UBA service is provided by Chorus are clear and whether it is clear what the regulated service is or should be.
18. It is open to the Commission to conduct a section 30R review at this time and we consider there is merit in reviewing the UBA STD non price terms to assess their workability. For the avoidance of doubt, this is a separate parallel process to the pricing review. The Commission intends to issue a draft decision for this section 30R review after the final pricing review determination is made. The closing date for submissions on the draft decision from interested parties will be four weeks after the draft decision on the review is issued.
19. It is noted that the pricing review proceeds on the basis of the Commission's understanding of the current UBA STD. Although our starting position for this section 30R review is that we do not expect to look at matters that will have any impact on the UBA price, we will consider whether any 'change in circumstances' to the UBA STD should be reflected in a change in price, as required by 30P(1)(a)(ii) of the Act.
20. Further updates on the timeline and process will be provided to interested parties and published on the Commission's website.

Guidelines to the process for reviewing STDs can be found on the Commission's website at <http://www.comcom.govt.nz/review-of-standard-terms-determinations/>.

Yours sincerely



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Telecommunications Commissioner
Commerce Commission