

CLARIFICATION OF THE STANDARD TERMS DETERMINATIONS ON TELECOM'S UNBUNDLED BITSTREAM ACCESS SERVICE

DECISION NO. 679

Clarification under section 58 of the Telecommunications Act 2001 (the 'Act') of Decision 611

The Commission:

Anita Mazzoleni Gowan Pickering

Pat Duignan

Summary of Application and Initiation:

The Commission received applications from Telecom (Wholesale) for amendments to Decision 611 in order to change the rejection reasons in the UBA STD Operations Manual, and to clarify the application of the Modem Installation Service Charge, and the Connection and Wiring Charge in the UBA STD, and the Commission has made further changes to Decision 611 of its own initiative, under section

58 of the Act.

Date of clarification:

23 July 2009

Background

- 1. The Commerce Commission (the 'Commission') is a body corporate established under the Commerce Act 1986 having its head office at Wellington. The Commission has various functions and powers under the Telecommunications Act 2001 (the 'Act').
- 2. On 12 December 2007, the Commission issued a standard terms determination ('STD') under section 30M of the Act in respect of the designated access service of Telecom's unbundled bitstream access ('UBA'). The UBA STD has subsequently been clarified three times.²
- 3. On 9 February 2009 the Telecommunications Carriers' Forum ('TCF') wrote to the Commission, providing Telecom (Wholesale)'s proposed change to the UBA STD regarding the wording of the rejection reasons that Telecom can provide to Access Seekers who place orders under this STD ('Rejection Reasons Clarification'). It is intended that the amendments being sought to the rejection codes will provide additional information to the Access Seeker explaining the reason why its service request has been rejected. The TCF also advised that the proposed change in the rejection reasons clarification was agreed to by Orcon, Telecom, Vodafone and TelstraClear.
- 4. On 25 February 2009, the TCF wrote to the Commission, providing Telecom (Wholesale)'s proposed changes to the UBA STD regarding the Modem Installation Service Charge, and the Connection and Wiring Charge ('the Modem Installation, Connection and Wiring Clarification'). The amendments proposed for the modem charges component are intended to provide additional clarification by distinguishing between instances of: a) connection, b) connection and wiring; and c) connection, wiring and modem installation charges in the price list. The charges are calculated on a retail-minus basis. The TCF advised that the proposed changes in the modem installation, connection and wiring clarification were agreed to by Telecom (Chorus), Orcon, Telecom (Wholesale), Vodafone and TelstraClear.
- 5. The process and charges for Access Seekers to have modems added to the approved Telepermit list is also clarified in this Decision.
- 6. In addition, the Commission has initiated some minor changes to the clarification in order to ensure that the changes are clearly implemented such as clause 3.1 of the UBA Price List Schedule 2.
- 7. Copies of the two TCF letters supporting Telecom (Wholesale)'s proposed changes to the UBA STD are available on the Commission's website.³

¹ Commerce Commission, *Decision 611: Standard Terms Determination for the designated service Telecom's unbundled bitstream access*, 12 December 2007. Decision 611 is available on the Commission's website at: http://www.comcom.govt.nz/IndustryRegulation/Telecommunications/StandardTermsDeterminations/UnbundledLocalLoopService/DecisionsList aspx

dLocalLoopService/DecisionsList.aspx.

² By Decisions 636, 644 and 671, all available on the Commission's website at the link in note 1 above (note – a subsequent clarification is under consideration at the time of this Decision being released, in relation to the early termination charge.).

³ Both letters are available on the Commission's website at the link in note 1 above.

Jurisdiction

- 8. Under section 58 of the Act the Commission may amend a determination for the purpose of making a clarification if:
 - at any time the Commission, on its own initiative or on the application of any person, considers that a determination requires clarification; and
 - no appeal is pending in respect of the determination.
- 9. Under section 19(c) of the Act, the Commission is required to make a decision that best gives, or is likely to best give, effect to the purpose set out in section 18 of the Act.
- 10. The Commission has not called for submissions and has decided to issue a clarification Decision on the basis that there is unanimous acceptance to the clarifications requested by members of the TCF.

Analysis

The Rejection Reasons Clarification

- 11. The Commission has considered:
 - the original request for the Rejection Reasons Clarification made by Telecom (Wholesale) under section 58 by way of a letter from the TCF;
 - the TCF advice that the proposed change in wording of the UBA STD was agreed to by Orcon, Telecom (Wholesale & Chorus), Vodafone and TelstraClear;
 - the purpose set out in section 18 of the Act.
- 12. The Commission has also considered whether any consequential changes need to be made as a result of the request for clarification.
- 13. The Commission notes that in relation to the Rejection Reasons Clarification, Telecom (Wholesale) have stated that:
 - "1.1. Appendix E of the UBA Operations Manual sets out the list of rejection reasons that Telecom can provide to Access Seekers who place orders under this STD. There is a subtle difference between the wording of the rejections reasons in this STD and the rejection reasons Wholesale provides to its customers for all other wholesale services.
 - 1.2. Telecom is seeking changes to the wording of these rejection reasons in order to align with existing industry practice. Telecom is also seeking to add additional rejection reasons that it believes provide customers with a better understanding of why an order has been rejected, and again are consistent with existing industry practice."
- 14. The Commission's view is that the proposed change in the Rejection Reasons Clarification is appropriate in the form proposed by Telecom (Wholesale) and as agreed by members of the TCF.

The modem installation, connection and wiring clarification

15. The Commission has considered the original request for the Modem Installation, Connection and Wiring Clarification made by Telecom (Wholesale) under section 58 by way of a letter from the TCF and takes into account:

- the TCF advice that the proposed change in the Modem Installation, Connection and Wiring Clarification was agreed to by Telecom (Chorus), Orcon, Telecom (Wholesale), Vodafone and TelstraClear;
- the wording of the UBA STD (Decision 611); and
- the purpose set out in section 18 of the Act.

The Commission has also considered whether any consequential changes need to be made as a result of Telecom (Wholesale)'s request for clarification.

- 16. The Commission notes that in relation to this clarification, Telecom (Wholesale) have stated that:⁴
 - "1.1. The UBA Price List contains "Modem Installation" and "Connection and Wiring" charges. The UBA Operations Manual does not adequately define the services corresponding to these charges, and the UBA Service Description explicitly excludes these services.
 - 1.2. Telecom is seeking changes to these Schedules in order to align with the intent of the UBA Determination."
- 17. The Commission's view is that the proposed changes in this clarification are appropriate in the form proposed by Telecom (Wholesale), with:
 - a. drafting changes to clause 3.1 of the UBA Price List;
 - b. the addition of Service Component 1.44 to the changes made to Service Components 1.1 to 1.8;
 - c. the addition of consequential changes to the headings of section 16 and clause 16.1 of the UBA Operations Manual (Schedule 4 of the UBA STD) that defines the installation options available from Telecom; and
 - d. the insertion of a new defined term "Approved Modem List" in clause 1.3, UBA Service Description (Schedule 1 of the UBA STD).
- 18. The Commission considers that it is important that Access Seekers are able to order modem installation, connection and wiring services under the UBA STD and therefore provide these services to the Access Seeker's customers, on a consistent basis to that which is available to customers of Telecom's retail business unit.
- 19. The Commission notes that Telecom (Wholesale) have stated in relation to the price term changes for the modem installation, connection and wiring services that:⁵
 - "3.4. As the UBA STD price is calculated on a "retail minus" basis and the retail price is driven in large part by the scope of the service provided, it is essential that the Wholesale service reflect a similar scope and is updated from time to time to reflect any service or price changes that are made at Retail.
 - 3.5 Telecom believes it is unnecessary for the industry to work through a clarification process every time Telecom Retail makes a change to its modem installation and/or connection and wiring charges. Accordingly, an appropriate update mechanism should be provided for in the UBA STD."

⁵ Paper attached to TCF Letter of 25 February 2009, page 2.

⁴ Paper attached to TCF Letter of 25 February 2009, page 1.

20. The Commission's view is that the new pricing approach, as outlined below, is consistent with the UBA STD⁶, the retail minus initial pricing principle and is likely to best give effect to section 18:

Connection and wiring: the connection and wiring charge published by Telecom's retail business unit less the benchmarked wholesale discount (18%) determined by the Commission in the UBA Standard Terms Determination.

Connection and wiring with modem installation: the connection and wiring with modem installation charge published by Telecom's retail business unit less the benchmarked wholesale discount (18%) determined by the Commission in the UBA Standard Terms Determination.

- 21. The Commission considers that this approach will give Telecom (Wholesale) the flexibility to pass on any changes in Telecom's retail pricing approach through to the wholesale charges under the UBA STD conditional upon notification to, and approval by, the Commission following the process outlined in clause 7 of the UBA Price List Schedule 2. This approach is likely to best give effect to section 18 of the Act and will ensure consistency between Telecom's delivery of services to itself and Access Seekers under standard access principle 3 in Schedule 1 of the Act.⁷
- 22. Access Seekers should also note that a clarification request of the UBA STD (Decision 611) was received by the Commission from Telecom (Wholesale) dated 9 September 2008 in relation to the levying of early termination charges ('Early Termination Charges clarification'). The Early Termination Charges clarification is currently under consideration by the Commission separately⁸.
- 23. In respect of the Early Termination Charges clarification, the Commission's preliminary view is that Telecom (Wholesale) should receive an early termination charge in all circumstances when, during the term of a contract associated with a free installation, the Access Seeker's end-user is relinquishing their UBA Service or transferring to another broadband service that is not based on the UBA Service provided by the same Access Seeker, another unit within Telecom or another Access Seeker. This will provide a clear rule whereby any termination within the free installation period triggers the obligation for the Access Seeker to pay an early termination charge.
- 24. The Commission is also of the preliminary view that a single early termination charge should apply irrespective of whether connection only, connection and wiring, or connection, wiring and modem services were purchased by the Access Seeker at the time that the UBA Service was purchased⁹.
- 25. The Commission's view is that the inclusion of the new charge for Service Component 3.16 Additions to the Approved Modem List is also appropriate, so that Access Seekers can apply to have new modems tested and approved for installation by Telecom (Chorus). The Commission considers that basing this new charge on the current Telecom (Chorus) charge, which covers field force testing, training and implementation, is reasonable and reflects the costs of providing this Service Component. Any change to this price would

⁷ Clause 5(c) of subpart 1 of Part 1 of Schedule 1.

⁶ UBA STD (Decision 611), paragraph 232.

⁸ Copies of all papers relating to this application for clarification are available on the Commission's website at: http://www.comcom.govt.nz/IndustryRegulation/Telecommunications/StandardTermsDeterminations/UnbundledLocalLoopService/DecisionsList.aspx.

⁹ The value of the early termination charge and its method of calculation is outlined in section 4a of the Price List in Schedule 2 of the UBA STD, and was clarified by Commission Decision XXX dated XX June 2009.

- also require notification to, and approval by, the Commission following the process as outlined in clause 3.1.2 of the Price List.
- 26. The Commission notes that there were no objections to this charge in a letter from the TCF in support of the modem installation, connection and wiring clarification.

Further Consideration of the purpose set out in section 18

27. The Commission considers that the clarifications proposed by Telecom (Wholesale) are likely to best give effect to the purpose set out in section 18 by enhancing the efficient delivery of the UBA Service in New Zealand.

Decision

- 28. The Commission considers that the following provisions of the UBA STD set out in column 1 of the attached Schedule 1 ('References') require clarification under section 58 of the Act:
 - a. Clauses 1.3, 3.21 and 4.22, UBA Service Description (Schedule 1 of the UBA STD);
 - b. Service Components 1.1 to 1.8 and 1.44 in the Table of UBA Charges, UBA Price List (Schedule 2 of the UBA STD);
 - c. New clause 3.1.4 in the UBA Price List (Schedule 2 of the UBA STD);
 - d. Service Components 3.16 in the Table of UBA Charges, UBA Price List (Schedule 2 of the UBA STD);
 - e. Heading section 16, UBA Operations Manual (Schedule 4 of the UBA STD);
 - f. Heading clause 16.1, UBA Operations Manual (Schedule 4 of the UBA STD);
 - g. Footnote 1 to Clause 16.1.1, Premises Wiring, UBA Operations Manual (Schedule 4 of the UBA STD);
 - h. Clauses 16.2, Modem Installation, and 16.3, Approved Modem List, UBA Operations Manual (Schedule 4 of the UBA STD); and
 - i. Appendix E of the UBA Operations Manual (Schedule 4 of the UBA STD).
- 29. The Commission notes that no appeal is pending in respect of the determination and, therefore, the requirement set out in section 58(1)(c) of the Act is satisfied.
- 30. The Commission has decided to clarify the References by making the amendments identified in column 2 of the attached Schedule 1 ('Proposed Amendments'). The reasons for the Commission's clarification are set out in this decision and in column 3 of the attached Schedule 1.
- 31. The Commission considers that the clarification set out in Schedule 1 is likely to best give effect to the purpose set out in section 18 of the Act. In particular, in regard to section 18(2), the clarification will promote efficient delivery of the UBA Service.

DATED at Wellington this 23rd day of July 2009

Anita Mazzolen

Commerce Commission

Schedule 1

Reference	Proposed Amendment	Reason
Changes to UBA STD So	Changes to UBA STD Service Description (Schedule 1 of the UBA STD)	
Clause 1.3, UBA Service Description	Add to Definitions list: Approved Modem List means the list of Modems that have been approved for installation by Telecom under clause 16.3 of the UBA Operations Manual, published on a Telecom website accessible by the Access Seeker.	This clarification is a consequential change to provide a definition of "Approved Modem List".
Clauses 3.21 and 4.22, UBA Service Description	Delete: "The Access Seeker or the End User is responsible for providing and installing all required CPE and wiring at the End User's site beyond the ETP, including a service compatible modem. The Access Seeker will ensure that TelePermit and premises wiring requirements are adhered to."	This clarification updates the Service Description to clarify when Telecom is required to provide wiring and/or installation of modem services.
	**Replace with: "The Access Seeker or the End User is responsible for providing and installing all required CPE and wiring at the End User's site beyond the ETP, including a service compatible modem. The Access Seeker will ensure that TelePermit and premises wiring requirements are adhered to. Where requested by the Access Seeker, Telecom will provide wiring at the End User's site beyond the ETP to a single jackpoint and install a service compatible modem provided by the Access Seeker from the Approved Modem List."	
Changes to UBA STD P.	Changes to UBA STD Price List (Schedule 2 of the UBA STD)	
New clause 3.1.4 is inserted in the UBA Price List	Telecom must, subject to the approval of the Commission, pass through changes in the retail price for the items of "connection and wiring" and "connection and wiring with modem installation" by increasing or decreasing the wholesale equivalent of these items as listed in Service Components 1.1 to 1.8 and 1.44. Telecom must calculate the adjustment for "connection and wiring" and the adjustment for "connection and wiring with modem installation" for the purpose of setting the corresponding wholesale prices for these items for the purpose of Service Components 1.1 to 1.8 and 1.44 listed in the table below.	This amendment clarifies the methodology and process that applies to changing the prices for the items of "connection and wiring" and "connection and wiring with modem installation" as set out in Service Components 1.1 to 1.8 and 1.44 of the UBA Price List. As a consequence of this amendment, Telecom must comply with the notice, approval and wash up provisions of

Reference	Proposed Amendment	mendment					Reason
			Þ				clause 7 of the UBA Price List after calculating the adjustment to the items of "connection and wiring" and "connection and wiring with modem installation".
Service Components 1.1–1.8 and 1.44 in the Table of UBA Charges, UBA Price List	"Connection and v Modem installatio Insert: "Connection and business unit less the UBA Standard Connection and vinstallation charge discount (18%) de	"Connection and wiring charge: \$108.60 Modem installation: \$36.44 or \$94.76" Insert: "Connection and wiring: the connection and wiring charge published by Telecom's retail business unit less the benchmarked wholesale discount (18%) determined by the Commission in the UBA Standard Terms Determination (Decision 611). Connection and wiring with modem installation: the connection and wiring with modem installation charge published by Telecom's retail business unit less the benchmarked wholesale discount (18%) determined by the Commission in the UBA Standard Terms Determination."	50 on and wiri olesale disc on (Decisior installatior om's retail b	ng charge publount (18%) det n 611). 1: the connectic usiness unit les the UBA Stanc	ished by Teleco ermined by the on and wiring wi ss the benchmar	m's retail Commission in th modem ked wholesale rmination."	These changes clarify the methodology for calculating the charges for the connection, wiring and installation of modem services. The Commission considers that section 18 is likely to be given effect through charges based on the prices published by Telecom's retail business unit less the benchmarked wholesale discount determined by the Commission in the UBA Standard Terms Determination.
Service Components 3.16 in the Table of UBA Charges, UBA Price List	Service Component 3.16 Additions to the Approved Modem List	Description Charge for field force testing, training and implementation of new Access Seeker modems	Core or Sundry S	Charge Invoiced Following change mechanism process to add modem	Price Change Mechanism Clause 3.1.2	Charge \$1,500 per modem.	This clarification enables Telecom to charge Access Seekers who wish to have a modem tested and added to the Approved Modem List. The charge is based on the current Telecom (Chorus) charge. The Price Change Mechanism allows Telecom to alter this charge where its field service contractors change the contracted price that Telecom is required to pay.
Changes to UBA STD Operations Manual (Schedule 4	perations Manu	ial (Schedule 4 o	of the UBA STD)	A STD)			
Heading section 16, UBA Operations Manual	Insert: after the words "P	Insert: after the words "Premises Wiring", the words ", Modem Installation and Approved Modem List".	words ", N	lodem Installat	ion and Approv	ed Modem List".	This clarification is a consequential heading change to reflect that Telecom is required on request to provide wiring and installation of modem services.

4	F 7 F	
Keierence	Proposed Amendment	Reason
Heading clause 16.1, UBA Operations Manual	Delete: "16.1 Overview" Replace with: "16.1 Premises Wiring"	This clarification is a consequential heading change to reflect that Telecom is required on request to provide wiring and installation of Modem services.
Footnote 1 to Clause 16.1.1, Premises Wiring, UBA Operations Manual	Delete: "From an Access Seeker's point of view, there are three options for installation. Telecom does not provide these installation services under the UBA Terms. The options are:	This clarification updates the Operations Manual to clarify that an Access Seeker can request Telecom to provide any of three installation options.
	(a) Service connection, where a Telepermitted line filter (PTC 280-series) must be fitted on the network side of all POTS CPE (not the DSL modem). This includes any medical or security alarm systems and SKY Digital Decoders (which incorporate a dial-up modem) which are plugged into jack points.	3
	(b) Wiring only, where connection only has been requested and wiring work subsequently needs to be done either to install a splitter or to isolate the premises wiring from the Telecom network. For UBA with POTS the Access Seeker must ensure this option is followed by End Users in all premises where medical or security alarm systems are already connected to the line in Line Break-in Mode', or where more than 5 line filters would be required.	
	(c) Service connection and wiring only, where the Access Seeker requests both the service connection and wiring services together."	
	Insert:	13
	"From an Access Seeker's point of view, there are three installation options they can request from Telecom. The options are:	
	(a) Connection only: a service where Telecom will provide connection to the ETP with no site visit. A TelePermitted line filter (PTC 280-series) must be fitted on the network side of all POTS CPE (not the DSL modem). This includes any medical or security alarm systems and SKY Digital Decoders (which incorporate a dial-up modem) which are plugged into jack points.	
	(b) Connection and wiring: a service where Telecom will provide a connection and install a splitter. Telecom will provide premises wiring to a single jackpoint at the End User's	

Reference	Proposed Amendment	Reason
	premises or isolate the premises wiring from Telecom's Network. For UBA with POTS the Access Seeker must ensure that the connection and wiring option is followed by End Users in all premises where medical or security alarm systems are already connected to the line in 'Line Break-in Mode', or where more than 5 line filters would be required.	DTS End I to
	(c) Connection and wiring with modem installation: a service where Telecom will provide a connection and wiring in accordance with sub-clause (b) and install a service compatible modem provided by the Access Seeker from the Approved Modem List."	ice,
Clauses 16.2, Modem	Insert:	This clarification updates the Operations
Approved Modem List, UBA	16.2 Modem Installation	Manual to provide specifications for Telecom's provided Modem installation
Operations Manual	16.2.1 Telecom will install a Telepermitted, service compatible modem (" Modem ") on behalf of the Access Seeker in their End User's premises. The Access Seeker will ensure that, at the time the Telecom field force representative visits the End User premises, the End User has:	at
	(a) a Modem available from the Approved Modem List; and	
	(b) a single desktop or laptop personal computer with the operating system required to support the Modem e.g. not Local Area Network environments.	l to
28	16.2.2 Subject to clause 16.2.1, Telecom will:	
	(a) connect the Modem to existing power outlet and computer;	
	(b) load the Modem driver software on the computer;	
	(c) enter the user ID and password supplied by the Access Seeker;	
	(d) set up the End User's email account, internet browser and wireless network (if applicable) as specified by the Access Seekers; and	
	(e) if the Modem does not connect Telecom will perform basic fault finding or diagnostic in conjunction with the Access Seeker's helpdesk.	
0	16.2.3 The Modem installation service is only available when the connection and wiring service is also ordered. Charges for connection and wiring with modem installation are set out in the UBA Price List.	arvice out in
	16.2.4 If the Access Seeker does not meet their obligations under clause 16.2.1, the Access Seeker will be charged an Abortive End User Site Visit fee as set out in the UBA Price	ice

Reference	Prop	Proposed Amendment	Reason
		List.	
	16.3 A	16.3 Approved Modem List	
	16.3.1	Telecom will publish an Approved Modem List on a Telecom website accessible by the Access Seeker.	
	16.3.2	Changes to the Approved Modem List by either Telecom or Access Seekers will be made in accordance with section 9 of the General Terms.	
	16.3.3	Access Seekers wanting additional modems added to the Approved Modem List must supply Telecom with the following to allow field force training material to be developed:	
		(a) sample modem;	
		(b) modem installation and technical manuals (including email and internet browser settings);	
×		(c) Access Seeker's helpdesk contact details; and	
	2	(d) Access Seeker's technical or operational specialists to assist with drafting of operational requirements.	
28	16.3.4	Within 5 Working Days of receiving the information set out in clause 16.3.3, Telecom will notify the Access Seeker ("Notification Date") of the date when the modem will be added to the Approved Modem List, ("Expected Approval Date"). Telecom will provide the Access Seeker with written reasons explaining any delay in approving the modem if the Expected Approval Date is greater than 7 Working Days from the Notification Date under this clause 16.3.4.	
	16.3.5	Telecom will notify the Access Seeker when the modem is added to the Approved Modem List ("Approval Date") and the Access Seeker will be able to place orders for UBA variants supported by the Modem 30 Working Days from the Approval Date. Telecom requires this 30 Working Day period to complete dissemination of information and training material to Field Force personnel.	
15	16.3.6	The addition of an Access Seeker Modem to the Approved Modem List requires the development of field force training material, and is therefore subject to a Charge. The Charge for additions to the Approved Modem List is set out in the UBA Price List.	а е
Appendix E, UBA Operations Manual	Delete	Delete: Appendix E	This clarification updates rejection reasons in order to align with existing industry

Reference	Proposed Amendment	Reason
	Replace with: Appendix E attached as Annex One.	practice and adds additional rejection
		reasons, consistent with existing industry
		practice

13

Annex One

APPENDIX E - REJECTION REASONS

Reject Code	Description	Explanation
007	Services not covered.	The request is for the supply of a service that is not covered by existing contracts/Terms with the Service Provider/Access Seeker.
010	Wrong order type.	The request has been provided using the wrong form.
011	Open Service Order.	There is an existing open service order in relation to the relevant service/line/circuit.
014	Invalid Account Number.	The account number provided is incorrect or does not significantly match the information in available records.
015	Invalid line or address	The service identifier or address specified on the form is incorrect or does not match the information in Telecom's records.
018	Not capable of providing service.	There is insufficient capacity on Telecom's network or equipment/plant is temporarily unavailable.
020	Incomplete information	The form does not contain all of the required information.
021	Corrupt or unreadable.	The form is wholly or partially corrupted or unreadable.
023	Other incorrect information.	The form contains other information that is incorrect or that does not match the information in Telecom's records.
034	Customer Cancelled	Service request has been cancelled at the customer request
036	Requested service not present for deactivation to be disconnected.	Unable to process this request as service is not on the line.
037	Requested service already present.	The service which has been requested is already in existence.
038	Outside service area	Service requested is outside of the current service area.
047	Contacts Details	No site contact or contact details.
051	Service unsupportable	The line/connection/circuit/network identified is incapable of supporting the service requested.
099	Not otherwise specified	Rejection does not fit into specific codes above.