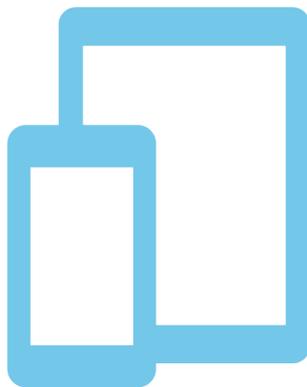


Cross-submission: Section 30R review of the UBA standard terms determination

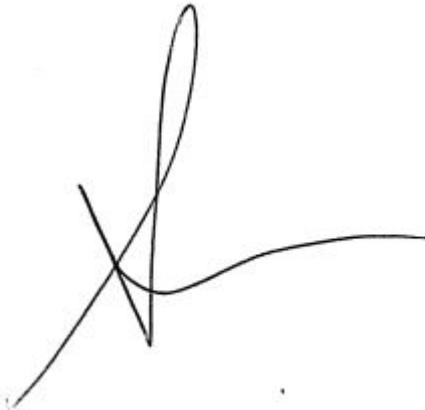
Submission to the Commerce Commission

1 July 2016



1. Introduction

- 1.1. Thank you for the opportunity to cross-submit on the Section 30R review of the Unbundled Bitstream Access (UBA) Standard Terms Determination (STD).
- 1.2. Our Mission at InternetNZ is to promote the Internet's benefits and uses and protect its potential. We care passionately about Internet-based communications and the opportunities that the Internet brings to New Zealand's economy and society.
- 1.3. We are participating in this process because the performance of UBA has direct relevance to how many New Zealanders experience the Internet. We want to add our perspective to these deliberations to help find where the best balance is struck between efficient investment and performance outcomes, with the goal of providing efficient, reasonably performing and reasonably available services to New Zealanders.
- 1.4. We welcome the opportunity to discuss our submission with you. Please contact me at andrew@internetnz.nz or on 021 346 408 for further information.

A handwritten signature in black ink, appearing to be "Andrew Cushen". The signature is fluid and stylized, with a large loop at the top and a long horizontal stroke at the end.

Andrew Cushen
Deputy Chief Executive

2. Executive summary

- 2.1. There are two problems that we believe this process needs to address.
- 2.2. The first problem is that there are a large number of Internet users who cannot obtain a single Full Speed/Full Speed (FS/FS) Basic UBA service, suitable for general Internet use. We highlight that while it is likely we are considering only the 1% - 2% of lines that are unsuitable, that these percentages still equate to a large number of users and households - its 40,000 lines. The tragedy is that this is largely the same 40,000 lines and customers that have always had unsuitable lines and unless the Government or the Commission rectifies the situation it will be perpetuated.
- 2.3. The second problem is that there are a large number of Internet users who cannot change services or get faults fixed without going through unnecessarily expensive and time consuming processes. We are concerned that these service issues have been known and present for quite some time, and exacerbated by available information and processes not being provided to the party with the customer relationship. It is well past time that these service and faults issues were resolved.
- 2.4. The substance of all submissions and commentary at the workshop (including from Chorus) acknowledged these two problems.
- 2.5. Where submissions and commentary at the workshop started to diverge was:
 - a) in accepting what a "single FS/FS Basic UBA service, suitable for general internet use" actually means and how it is defined.
 - b) in accepting whose responsibility it is for fixing the problems and whether that results in the most efficient means of fixing the problems.
 - c) in agreeing whether S3OR was the correct vehicle, or able to incentivise or force the solutions to the problems.
- 2.6. The key requirement of end-users is that these problems are fixed as quickly as possible if not by changes being made to the STD through this S3OR review then via other pragmatic solutions such as binding undertakings. We appreciate that none of the parties wish to consider these matters in the context of reopening the Final Pricing Determination (FPP); regardless, these issues need to be resolved.
- 2.7. Other lesser issues raised in the Commission's process and issues paper are discussed at the end of this submission.

3. What is a single FS/FS basic UBA service, suitable for general internet use?

- 3.1. While there is general agreement among all parties with the sentiment expressed in the term "suitable for general internet use" they have different interpretations of what that means in practice and in particular what it means in terms of a technical standard. It was relatively clear at the workshop that there is general acceptance that the service must be dynamic i.e. growing year by year. What was "general Internet use" in 2007 when the core STD was developed is now a shadow of what end-users in 2016 now regard as "general Internet use."
- 3.2. There are several possible reference points to draw upon, for example, the Government has indicated a 2025 target of 50Mbps peak speed available to 99% of the population with 10Mbps available to the remaining 1%. InternetNZ in its submission on the Government's

¹ Amy Adams media release 6 October 2015

review of the Telecommunications Services Obligation (TSO) review² calculated that a minimum “universal service” of 5 mbps would be required to provide the equivalent of the existing “essential service” TSO. The Government, in purchasing fibre services for rural schools and hospitals, has recognised that both sectors, even in rural areas, require access to fibre levels of bandwidth. Rural communities consistently ask how their children can obtain similar, or even reasonable, levels of bandwidth from home.

- 3.3. At a more personal level in 2007 Internet banking was seen as the ability to pay an account online. Today it is the ability to manage the whole of your accounting system and the interfaces with accountants, tax authorities, suppliers and customers in the cloud. School homework for a 13 year old has moved from preparing an essay and emailing it to the teacher to working with a collaboration of classmates online, in real time, on multimedia presentations.
- 3.4. InternetNZ’s position is that the FS/FS 450kbps service, with throughput increasing by 50% per annum (the end-user throughput standard used in the FPP determination) available on all existing lines is the absolute minimum standard that will provide a UBA service, suitable for general Internet use. We consider that this definition captures the agreed concept that the service is dynamic and will be maintained over time. To be clear, we also consider that it is the absolute minimum level of throughput to the end-user that can be regarded as a service suitable for general Internet use. Even at this level of acceleration the minimum service will only be marginally greater than the 10mbps service the Government has set for the last 1% of the population by 2025.
- 3.5. As the minimum standard of end-user throughput was proposed by Chorus in FPP submissions³ and not subsequently challenged in cross submissions the Commission adopted it to determine the FPP price. We see little reason not to incorporate it within the STD unless parties wish to reopen the FPP in order to see a different price determined.
- 3.6. We have also considered the need for a defined “average” service and whether the full speed/full speed description and incentives on Chorus are sufficient to ensure they will continue to upgrade the whole copper network and not just fall back to meeting the minimum service standard of 450kbps.
- 3.7. We discussed at the workshop the problem with the use of an average without a lower bar such as a guaranteed minimum. At the moment Chorus is incentivised to invest in the low hanging fruit at the high end of the average where it is a relatively low cost/high return investment and where the average can easily be improved while being able to avoid expensive investment at the low end.
- 3.8. At the workshop Chorus discussed specific projects, general averages and certain technical constraints which at face value may address the problem. In the absence of detail that would allow these proposals to be assessed, we cannot yet comment as to how well Chorus’ proposals will address these issues. What we do believe is that any commitments made by Chorus must be enshrined in a committed, actively monitored undertaking framework, OR through amending the STD to require them. Regardless of whichever approach is appropriate, there must be some form of enforcement.
- 3.9. Given the Government has signalled strongly that it intends to rewrite the Telecommunications Act, and change the regulatory regime from 2020 onwards, we consider that binding undertakings could be a pragmatic short/medium term solution.

² InternetNZ TSO submission 8 August 2013

³ Commerce Commission Final UBA Pricing Review Determination para B55 - B58

4. Whose responsibility is it to fix the problem and does that responsibility lead to the most efficient means of fixing the problem?

- 4.1. In the case of the rural Internet users who do not receive an Internet service suitable for general use we believe that the responsibility lies almost entirely with Chorus.
- 4.2. At the workshop Chorus seemed to be saying they were addressing the problem in some cases but denying it was its responsibility. Vodafone seemed to be saying that it was Chorus' responsibility but that any further rural investment by Chorus was inefficient. Spark likewise said that responsibility lay with Chorus but that the incentives were incorrect.
- 4.3. From an end-users perspective the issue of efficient investment is mute. The Commerce Commission has effectively already made the inefficient investment decision by fixing the price of copper broadband at a level that subsidises that inefficient investment.⁴ There are only two clear alternatives available, either Chorus makes the inefficient investment and provides the service or the FPP price is changed to reflect the lower quality service.
- 4.4. We agree with Spark that the current incentives are incorrect but we fail to see how the incentives (i.e. the incentives to make efficient investment) can be corrected without revisiting the FPP price. If that is the case then our default position would be that Chorus is required to make the investment and the Commission should require that investment by a specific date and as early as possible. A requirement to provide a service without a given timeframe is meaningless.
- 4.5. At the workshop InternetNZ suggested a possible compromise, namely that Chorus could choose to make the necessary investments or alternatively reduce the price for those unable to receive a reasonable service. While not a perfect solution (for example Chorus would still continue to receive subsidy from other copper broadband users) it does provide some better incentives.
- 4.6. These incentives may include:
 - a) those end-users getting a relatively poor broadband service would not have to pay the full price
 - b) Chorus could choose whether to reduce the price or provide the defined service
 - c) this might also provide better incentives for mobile and wireless providers to make available better broadband services to rural customers
 - d) Chorus and RSPs may be willing to enter into binding undertakings to avoid reopening the FPP.
- 4.7. We acknowledge that there may also be disadvantages, which may include:
 - a) the incentives on Vodafone and Spark as the major RSPs (and also the major competitors through their mobile networks) to pass through any reduced prices
 - b) the possibility that some form of monitoring regime would need to be implemented
 - c) Chorus or RSPs using the regulatory process to delay any investment or price activity.

⁴ As a result of implementing the FPP under the terms of the Telecommunications Act

5. Is S3OR the correct means of incentivising or forcing the solutions to the problems?

- 5.1. InternetNZ submitted that this was clearly the best option at the time of the FPP and it is regrettable that the option of parallel S3OR and FPP processes was not taken at that time. The delay provides Chorus in particular with the opportunity to now claim that S3OR is not the appropriate vehicle thereby forcing the Commission and others to revisit the FPP price or reach a second best pragmatic compromise.
- 5.2. As above, we would welcome suggestions from Chorus and RSPs as to how the problem could be quickly and easily resolved in favour of end-users, for example by means of undertakings. However, our default position in the case of unnecessary delay would be that Chorus should be required to make significant investment (albeit inefficient investment) in order to provide all broadband users with a minimum service of 450kbps increasing 50% per annum – such a service to be provided immediately.

6. Faults, service problems and transparency of network information

- 6.1. The second major problem discussed in submissions and at the workshop is that there are a large number of Internet users who cannot change services or get faults fixed without going through unnecessarily expensive and time consuming processes.
- 6.2. There are few incentives on Chorus (and in some cases on RSPs) to provide end-users with a cost effective service experience. For most affected end-users the opportunity to change their RSP is limited or to know whether their RSP is working in their best interest. For their part RSPs have to face the brunt of consumer complaints when often the problem and solution are out of their hands.
- 6.3. Issues of service quality should be completely transparent. The end user as well as the RSP should quickly and easily be able to look at data that shows them where in the network a fault, congestion, or probable service deterioration (for example line length) exists.
- 6.4. Excuses provided by RSPs and Chorus such as home wiring and modem speed may well exist but they seem to be used far too often as red herrings to avoid undertaking expensive fault repairs or network upgrading or are only identified after unnecessary and expensive truck-rolls. Likewise, claims of commercial confidentiality of information should not be allowed to prevent end-users or their agents, the RSP, from accessing information that is relevant to them.
- 6.5. The issue of end-users perception (rather than reality) of a service declining over time may also be true – but again full transparency of data would be the best means of identifying such misperception. Besides which, if the service throughput to end-users increases by 50% per annum such misperceptions are likely to be eliminated.
- 6.6. InternetNZ considers that this problem is predominantly an industry wide problem that has existed since before the separation of Telecom and which has not been solved by separation. The industry as a whole should take responsibility for fixing it and the TCF should be tasked with reaching a solution within six months. Inasmuch as the TCF are unable to reach a speedy or satisfactory solution and is not legally required to act in the best interest of end-users we propose that the Commission oversee the process and if necessary impose a solution by March 2017.

7. Other issues

- 7.1. **Monitoring and enforcement:** We agree with Spark's submission that in many cases the incentives in place are skewed or misaligned. In the absence of such incentives the onus then falls upon alternatives such as regulation or binding undertakings. The Commission is best placed to monitor and enforce such alternatives.
- 7.2. **TCF working groups:** Such working groups have been proposed to develop solutions to several industry wide problems. In general, we consider that TCF working groups are most effective when a regulatory body such as the Commission determines the outcome required and in what time frame.
- 7.3. **10 Gig E Handover:** As with a number of other elements of the FPP it is likely that over time and with ever increasing demand the price of a 10 Gig E Handover will fall and capacity will likely increase. As with other aspects of this review the price should be based on cost. If Chorus and RSPs cannot agree on a satisfactory price that clearly benefits end-users the price should be regulated – either by the STD or through a pricing determination. If over time the costs fall and that fall is not reflected in the price then a new regulated price will be required to be determined unless a satisfactory alternative can be agreed.
- 7.4. **Boost:** The workshop discussion indicated that there was general agreement that the Chorus Boost proposal was not permissible under the STD. There was general agreement (including from Chorus) that it won't or shouldn't happen again. Whether the STD is already clear enough or needs to be further clarified and whether there is going to be any reoccurrence before 2020 now seem to be “for the avoidance of doubt” issues which might easily be overcome without recourse to unnecessary amendments that potentially open up other issues.
- 7.5. **Commercial services:** As with ‘Boost’ the overriding concern with ‘commercial services’ is that they actually, or potentially, degrade the regulated service. There seemed to be very little enthusiasm for new commercial services at the wholesale level and there was difficulty in attempting to identify what such a service might be – especially during the next three and a half years. There was also general agreement that if a commercial service was required it would almost certainly be RSPs that generated the request.
- 7.6. We proposed in our submission that if an RSP wanted a commercial service that they should be the ones to request it and it can be decided at that stage whether it needs to be a regulated service. We have seen little in submissions to cause us to change our minds on this.

About InternetNZ

A better world through a better Internet

InternetNZ's vision is for a better world through a better Internet. We promote the Internet's benefits. We protect its potential. And we focus on advancing an open and uncaptureable Internet for our country.

We provide a voice for the Internet in New Zealand and work on behalf of all Internet users across the country.

We are the designated manager for the .nz Internet domain. And through this role we represent New Zealand at a global level.

We provide community funding to promote research and the discovery of ways to improve the Internet. We inform people about the Internet and we ensure it is well understood by those making decisions that help shape it. Every year we bring the Internet community together at events like NetHui to share wisdom and best practice on the state of the Internet.

We are a non-profit and open membership organisation.

Be a member of InternetNZ and be part of the Internet community. You can keep a close watch on the latest tech and telecommunications developments and network with other like-minded people at cool events. Being a member of InternetNZ only costs \$21 per year. Find out more at internetnz.nz/join

For more information about InternetNZ, visit internetnz.nz