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Dear John

COMMISSION REVIEW OF THE STD PRICE LIST FOR UCLFS UNDER SECTION 30R OF THE ACT

This is Chorus' submission on the Commerce Commission's (**the Commission**) consultation paper dated 11 December 2013 and entitled "Review of the standard terms determination price list for Chorus' Unbundled Copper Low Frequency Service (**UCLFS**) under section 30R of the Telecommunications Act 2001" (**the Act**).

The standard terms determination (STD) requirements

This s30R review, initiated by the Commission, proposes to re-set the UCLFS connection charges originally determined by the Commission in November 2011 (**the 2011 UCLFS STD**). The Commission included a clause in the 2011 UCLFS STD that provided for the UCLFS monthly rental charge to automatically change to align with any change to the UCLL monthly rental. This review has arisen because there is no equivalent provision in the UCLFS STD that requires the UCLFS connection charges to automatically change to align with a change in the UCLL connection charges.

When the Commission issued its final determination on the benchmarking review for UCLL on 3 December 2012 (**UCLL re-benchmarking decision**), the UCLFS monthly rental charges automatically changed to align with the new re-benchmarked UCLL charges. However, in line with the 2011 UCLFS STD, the connection charges did not change.

Connection costs

Our preliminary view is that connection costs for UCLL and UCLFS are currently likely to be the same on an actual cost basis. While it may make sense to align the UCLL and UCLFS connection charges that are based on actual costs, there are no good grounds to amend the UCLFS STD to align connection charges based on benchmarked prices.

The connection charges today are as determined by the Commission under the 2011 UCLFS STD for UCLFS, and as determined in the UCLL re-benchmarking decision for UCLL. However, the UCLL connection charges may change as part of the current FPP process.

It is open to the Commission to set additional charges, such as connection charges, based on the actual costs that Chorus incurs where the Commission is satisfied they are a good indication of the efficient level. This is, for example, what the Commission has done in relation to sundry charges. In this case there are actual costs, which have been competitively tendered, that the Commission can use and be confident that they are at an efficient level.

It has been 14 months since the UCLL re-benchmarking decision. Parties have made FPP applications in relation to that decision and the FPP process is underway. This FPP process is a review of the re-benchmarked prices using a TSLRIC methodology. Chorus has provided a proposal to the Commission in submissions on the FPP process today that could allow the Commission to complete the FPP process by 1 December 2014 (i.e. in 9 ½ months). The UCLL FPP process will provide the opportunity for the Commission to calculate the most efficient price using a more sophisticated methodology. Grounds may arise for the Commission to review the 2011 UCLFS STD.

In the interim, there is no evidence that the current difference in connection charges is having any (and certainly not any material) impact on competition in the market or on end users. With the progression of the FPP processes, it is open to the Commission to align the timetable for this review with the pending FPP processes.

The proposal to backdate

The Commission has proposed to backdate the re-set of a price within the initial pricing principle. The potential precedent effect of backdating the re-setting of prices under the same methodology requires careful consideration, including consideration of sections 18 and 19. It will likely send an important signal to the industry for all section 30R reviews in the future.

A section 30R review can be commenced on request or at the Commission's own initiative if the Commission has reasonable grounds to open a review. This is in contrast to a final pricing principle (**FPP**) review of an initial (**IPP**) benchmarked determination which is a statutorily defined sequential two phased process. An FPP application must be made within a statutorily defined deadline of 20 working days after an IPP determination. If an application is made for an FPP, a completely different (and supposedly more sophisticated) methodology is used to determine an efficient price. The Court has specifically opined on backdating in this situation, including the efficiency reasons for backdating. However, those assumed efficiencies for backdating in the FPP context are not present in the context of re-setting initial prices.

The specific circumstances of this case also make backdating less compelling. The vast majority of lines over which Chorus provides UCLFS are used to supply baseband (the commercial variant of UCLFS) to Telecom, with only very small uptake from other Retail Service Providers (**RSPs**). There is very little transparency around how connection charges are dealt with by RSPs, including if or how these charges are passed through to consumers.

Practically, if backdating were mandated in these circumstances prior to the FPP application, this would then likely be reversed following FPP determinations.

If the Commission does choose to continue with this review in advance of the FPP processes, and does decide to backdate any changes to the connection charges, it should be clear that any change as a consequence of the FPP will also be backdated.

Yours faithfully



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