

COMMERCE COMMISSION

**CLARIFICATION OF THE STANDARD TERMS DETERMINATIONS ON  
TELECOM'S UNBUNDLED COPPER LOCAL LOOP NETWORK  
AND  
TELECOM'S UNBUNDLED COPPER LOCAL LOOP NETWORK  
CO-LOCATION**

**DECISION NO. 682**

Clarification under section 58 of the Telecommunications Act 2001  
of Decision 609

**The Commission:**

Dr Ross Patterson  
Anita Mazzoleni  
Gowan Pickering

**Summary of Application and Initiation:** Telecom (Chorus) has proposed amendments to Decision 609 and Decision 610 in order to clarify the UCLL and UCLL Co-location STDs by: (a) introducing more flexibility in the cabinetisation notice provisions; and (b) clarifying the clause relating to who must pay for the costs of transferring customers moving from the Exchange to the Distribution Cabinet..

**Date of clarification:**

12 November 2009

## Decision

1. The Commission has received requests for clarification from Telecom (Chorus) relating to the cabinetisation notification process (**‘Cabinetisation Notification Clarification’**) and the transfer costs payable by parties after cabinetisation (**‘Transfer Costs Clarification’**). Both requests relate to the General Terms of the Unbundled Copper Local Loop Standard Terms Determination (**‘UCLL STD’**) and the Unbundled Copper Local Loop Network Co-location Standard Terms Determination (**‘UCLL Co-location STD’**).
2. Under section 58 of the Telecommunications Act 2001 (“Act”), the Commission has decided to consider both clarification requests simultaneously. Section 58 states: that 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.

### *Transfer Costs Clarification*

3. Telecom (Chorus) has sought a Clarification in relation to who pays the costs associated with transferring the Access Seeker’s customers from the host exchange to the newly installed cabinet.
4. The Commission has previously determined in the STDs that where the cabinet is installed by Telecom (Chorus) and cabinetisation takes place less than 24 months from the date of the Cabinetisation or Initial Notice, Telecom (Chorus) will bear the costs associated with transferring the Access Seeker’s customers who will be served by the cabinet rather than the host exchange. Where cabinetisation takes place after this stipulated period, the Access Seeker pays.
5. The Commission released a Sub-loop Services Standard Terms Determination on 18 June 2009 (Decision 672), which has the effect of reducing the Cabinetisation Notice period from 24 months to 18 months.
6. Telecom (Chorus) seeks clarification that where 18 months’ notice of cabinetisation is given, Access Seekers will be required to pay the transfer costs. This clarification has the unanimous support of the Telecommunications Carriers’ Forum (TCF) Working Party and the Commission agrees that this is what was intended in the STDs.
7. In the Draft Clarification, the Commission considered that the original UCLL and UCLL Co-location STDs in relation to transfer costs did not require clarification in the manner requested by the TCF. The Commission has reconsidered its position in light of submissions received on the transfer costs matter. With the Sub-loop Services STD now in force, Telecom (Chorus) will invariably give at least 18 months’ notice in most cases rather than 24 months’ notice. Accordingly, the Commission has decided to change the references to “24 months” in clause 38.13.2 to “18 months”.
8. Further, in light of the new exception introduced in clause 38.11, the Commission has decided to include a reference to the “Notice” as described in clause 38.11.3(d).

9. This decision means that the “transfer costs rules” for the UCLL and UCLL Co-locations STDs will provide as follows:

If the Access Seeker transfers its Customers to other services available from Telecom:

- (a) Telecom must pay the costs of such transfer if cabinetisation take place less than 18 months from the date the Cabinetisation Notice or the Notice (as referred to in clause 38.11.3(d)) or the Initial Notice, was given, as applicable (regardless of the reason);
- (b) the Access Seeker must pay the costs of such transfer if cabinetisation takes place 18 months or more after the date the Cabinetisation Notice or the Notice (as referred to in clause 38.11.3(d)) or the Initial Notice as applicable, was given.

#### *Cabinetisation Notification Clarification*

10. There are a number of exceptions to the requirement to give a Cabinetisation Notice under clause 38.11 of the STDs. In Chorus’ Cabinetisation Notification Clarification request, Telecom requests the inclusion of a further exception to the requirement to give 24 months’ notice prior to cabinetisation occurring which could cover a range of situations including due to the growth of customers in an area or alternatively where broadband services can not be provided due to network capacity constraints in the locality.
11. The Commission acknowledges that there will be instances where the delivery of services may be impacted by network capacity issues and that the full Cabinetisation notification period may unnecessarily prolong such issues to the detriment of end-users. The installation of a new cabinet subject to the new exception to clause 38.11 will alleviate some current network limitations and allow additional customers to receive broadband services.
12. In its Cabinetisation Notification clarification request Telecom (Chorus) propose an abbreviated process which would allow Telecom to avoid the requirement to comply with a lengthy notification period prior to cabinetisation occurring at a “qualifying exchange” where:
- no Access Seeker is accessing the UCLL Service at the exchange (that is, it is a bundled exchange); and
  - the exchange is not included in any Forecast of the Access Seeker or not included in any of the Access Seeker’s Exchanges of Interest List.
13. Under the proposal, if any Access Seeker supports a cabinetisation request from Telecom (Chorus), or alternatively chooses not to respond to the request within 30 calendar days of the date of the notice<sup>1</sup>, Telecom is not obliged to give at least 18 months’ notice of cabinetisation and in these circumstances may proceed with the cabinetisation in accordance with its original notice under clause 38.11.3 of the UCLL and UCLL Co-locations STDs. In effect, this proposal allows Telecom to give a substantially reduced period of notice in advance of cabinetisation occurring.
14. However, under the proposal the full notification period would be required<sup>2</sup> if, after

---

<sup>1</sup> Clause 38.11.3(d).

<sup>2</sup> Clause 38.11.3(c)

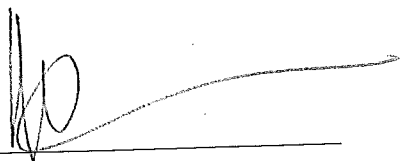
receiving Telecom's notice made under clause 38.11.3 of the General Terms, any Access Seeker chooses to add the exchange to its "Exchanges of Interest" list, or its Forecast, within 30 calendar days of the date of Telecom's notice.

15. Both the TCF and Telecom (Chorus) supported the introduction of this further exception to the requirement to give a Cabinetisation Notice in accordance with the full notification period prior to cabinetisation occurring. Both submitting parties also considered that the 30 calendar day notification period used throughout clause 38.11.3 was adequate.
16. The Commission supports the Clarification request. There is no detriment to Access Seekers by introducing additional flexibility to clause 38.11 of the UCLL and UCLL Co-location STDs as the new exception under clause 38.11.3 will only apply to qualifying exchanges that satisfy the criteria outlined in paragraph 12 of this Decision.

#### *Required amendments*

17. The Commission considers that the following provisions of the UCLL and UCLL Co-location STDs require amendment for the purpose of making a clarification under section 58(1)(a) of the Act:
- Clause 38.9 of the UCLL and UCLL Co-location General Terms by the addition of a new definition of "Exchanges of Interest List" – Schedule 1 to this Decision; and
  - Clause 38.11 of the UCLL and UCLL Co-location General Terms – Schedule 1 to this Decision;
  - Clause 38.13 of the UCLL and UCLL Co-location General Terms – Schedule 1 to this draft Decision; and
  - After clause 38.15, a new clause 38.16 is included.
18. The Commission considers that the proposed amendments set out in Schedule 1 of this decision are likely to best give effect to the purpose set out in section 18 of the Act. In terms of section 18(2), the clarification is likely to promote efficient delivery of the UCLL and UCLL Co-location Services.
19. The Commission notes that no appeal is pending in respect of the Determination satisfying section 58(1)(c) of the Act.

**DATED** at Wellington this 12<sup>th</sup> day of November 2009



Dr Ross Patterson

Telecommunications Commissioner  
COMMERCE COMMISSION

## Schedule 1

### Cabinetisation Notice Clarification

The proposed drafting changes to clauses 38.11 of the UCLL General Terms and the UCLL Co-location General Terms are underlined below.

---

38.11 The Cabinetisation Notice must be given at least 18 months prior to cabinetisation occurring, except where:

38.11.1 any of the following apply to a particular cabinetisation at a particular Exchange:

- (a) it was the subject of the Initial Notice;
- (b) it is necessary in an emergency situation or where Telecom becomes aware of a material risk to the UCLL Service that requires action in order to ensure Network continuity;
- (c) it is necessary to replace the relevant part of the Local Loop Network because it has come to the end of its life, has significantly deteriorated, or has been damaged beyond repair and in each case this was reasonably unprecedented or reasonably unanticipated over and above that which was reasonably anticipated or reasonably foreseeable at the time the applicable General Cabinetisation Notice was given; or
- (d) it is a requirement of any law or government, statutory or regulatory authority, including without limitation the Commission, the Cabinetisation Notice must be given as far in advance of cabinetisation as is reasonably practicable in the circumstances;

38.11.2 any of the events described in clause 38.11.1(b) to (d) occur after a Cabinetisation Notice or Initial Notice for a particular cabinetisation has already been given. In those circumstances, Telecom may vary its original Cabinetisation Notice or Initial Notice, provided that:

- (a) the varied Cabinetisation Notice must be given as far in advance of the cabinetisation as is reasonably practicable in the circumstances; and
- (b) Telecom must immediately give Notice to the Access Seeker and the Commission of the change in date and details of the reason for that change.

References to the Cabinetisation Notice include Cabinetisation Notices as varied under this clause 38.11.2 and 38.11.3.

38.11.3 if the cabinetisation is in respect of an Exchange:

- a. at which no Access Seeker is accessing the UCLL Service (that is, it is a bundled Exchange); and
- b. that is not included in:
  - i. any Forecast (as that term is defined in the UCLL Operations Manual);
  - ii. any Access Seeker's Exchanges of Interest List, as notified to Telecom by an Access Seeker in accordance with clause 38.16;

and Telecom gives Notice to the Access Seeker of the proposed cabinetisation of such Exchange, the Notice to contain the information required by clause 38.10.1(a) to (e) inclusive, then where:

c. Telecom receives a response within 30 calendar days of the date of the Notice from any Access Seeker in which the Access Seeker includes the Exchange in:

i. its Forecast;

ii. its Exchanges of Interest List;

then this clause 38.11.3 shall not apply and Telecom must only proceed with the proposed cabinetisation in accordance with clause 38.11.1 or 38.11.2.

d. either:

i. Telecom does not receive within 30 calendar days of the date of the Notice a response from any Access Seeker; or

ii. Telecom receives responses within 30 calendar days of the date of the Notice from any Access Seeker that supports the proposed cabinetisation;

the Notice shall be deemed a Cabinetisation Notice given in accordance with clause 38.11 and Telecom may proceed with the proposed cabinetisation in accordance with the Notice, without giving any further notice.

**The following new clause 38.16 is inserted after existing clause 38.15 in the UCLL General Terms and the UCLL Co-location General Terms.**

---

**38.16** The Access Seeker may at any time provide to Telecom a list, or updated list, of Exchanges at which the Access Seeker may be interested in receiving the UCLL Service at some future time ("**Exchanges of Interest List**"). The Exchanges of Interest List does not form a part of the Access Seeker's Forecasts as defined in the UCLL Operations Manual. At least once in every 12 month period Telecom will request the Access Seeker to provide its Exchanges of Interest List or its update to that List, as applicable.

**The following new definition of "Exchange of Interest List" is inserted in to clause 38.9 of the UCLL General Terms and the UCLL Co-location General Terms:**

---

**38.9.4** Exchanges of Interest List has the meaning set out in clause 38.16.

**Clause 38.9.3 of the UCLL Co-location General Terms is amended as follows:**

---

**38.9.3** Initial Notice means an initial notice of cabinettisation given under clause 3.1.4 of the Implementation Plan for the UCLL Service.



### Transfer Costs Clarification

The proposed drafting changes to clauses 38.13 of the UCLL General Terms and the UCLL Co-location General Terms are underlined below.

---

38.13 Upon terminating supply of part of the UCLL Service in relation to MPFs that are to be cabinetised:

38.13.1 Telecom must refund to the Access Seeker a pro rata proportion of any Charges which have been paid in advance by the Access Seeker; and

38.13.2 if the Access Seeker transfers its Customers to other services available from Telecom:

- (a) Telecom must pay the costs of such transfer if cabinetisation takes place less than 18 months from the date the Cabinetisation Notice or the Notice (as referred to in clause 38.11.3(d)) or the Initial Notice, was given, as applicable (regardless of the reason);
- (b) the Access Seeker must pay the costs of such transfer if cabinetisation takes place 18 months or more after the date the Cabinetisation Notice or the Notice (as referred to in clause 38.11.3(d)) or the Initial Notice, as applicable, was given.