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## TRUSTPOWER SUBMISSION: Cross Submissions - Issues Paper For New UBA Variants

1. Trustpower Limited (“Trustpower”) welcomes the opportunity to provide a cross submission to the Commerce Commission (“the Commission”) on New UBA Variants as proposed by Chorus (July 2014) issues paper (“the Issues Paper”).
2. Following our review of submissions on the Issues Paper<sup>1</sup> we would like to make three main points regarding Chorus’ proposal for New UBA Variants<sup>2</sup>.
  - a) The mechanism of the Chorus proposal specific to changes to Regulated UBA services is not lawful and furthermore Chorus is not permitted to implement traffic management or withdraw VDSL;
  - b) Chorus’ proposal has not considered the “Day 1” customer impact of traffic management or the ongoing service degradation given the growth forecasts of UBA, and;
  - c) Chorus’ proposal to implement traffic management and degrade regulated UBA will render the Regulated UBA service not fit for purpose for customers and will force RSP’s to consume Commercial UBA at a higher cost. This will likely considerably increase the cost to consumers for a fit for purpose service. This fundamentally goes against the regulatory regime of UBA.
3. **The mechanism of the Chorus proposal specific to changes to Regulated UBA services is not lawful and Chorus is not permitted to implement traffic management or withdraw VDSL**
  - 3.1 Trustpower does not believe that the STD or the Act permits the regulated access provider (Chorus) to define or make assumptions of the regulated service it provides. It is Trustpowers’ view that Chorus is not permitted to traffic manage or degrade the regulated UBA service.
    - 3.1.1 Trustpower supports Telecoms’<sup>3</sup> position on Chorus’ inability to change regulated service and also supports the request for the Commission to rule on the correct interpretation of

<sup>1</sup> Assessing Chorus’ new UBA variants – Boost HD and Boost VDSL - Issues paper. Dated 7 July 2014

<sup>2</sup> Chorus’ confirmed proposal for New UBA Variants – Dated 28 July 2014

<sup>3</sup> Telecom submission on issues paper for New UBA Variants – 18 July 2014 (notes 16 & 17)

the STD to enable all parties, including Chorus, to equally assess Chorus' proposed Boost UBA services.

- 3.2 The regulated UBA service description does not permit traffic management. Trustpower supports Telecoms' submission stating "*The "target" performance standard set in the UBA STD to meet these requirements is described as "FS/FS", or full speed*"<sup>4</sup>.
- 3.2.1 Trustpower has made significant investment in establishing points of presence, with multiple handover links nationwide for the benefit of our customers. With Chorus' obligation to provide "*DSL enabled service which has a **maximum downstream line speed** for data traffic sent to the End User and a **maximum upstream line speed** for data traffic sent from the End User*"<sup>5</sup> [emphasis added], this gives Trustpower the ability to manage aggregation and backhaul costs for the benefit of our customers.
- 3.2.2 Trustpower considers the STD clearly states that Full Speed/Full Speed performance is the target and that "*32kbps during any 15 minute period*"<sup>6</sup> is the performance floor. Telecom supports this point in their submission<sup>7</sup>.
- 3.2.3 In 2013, Chorus decided to include VDSL as a service over the network on which the regulated UBA service is provided. This product was introduced under the STD and it is Trustpower's view that Chorus is not permitted to unilaterally withdraw or constrain the regulated service. This point has also been supported by TUANZ, Telecom, InternetNZ and CallPlus.

#### **4. Chorus' proposal has not considered the "Day 1" customer impact of traffic management or the ongoing service degradation given the growth forecasts of UBA**

- 4.1 Chorus states that of total user connections "*57% are on handovers with an average of less than 250kbps*"<sup>8</sup>. This means that traffic management would impact over 400,000 users. Trustpower does not consider that 250kbps is practicable based on current customer experience and questions whether the "Average" is an appropriate measure.
- 4.2 Chorus' proposal effectively freezes bandwidth allocation. The bandwidth allocation threshold has been calculated based on today's industry average. However there has been no account for growth in demand. Trustpower supports CallPlus' submission stating the following<sup>9</sup> :
  - a) Consumer demand for bandwidth has increased since the inception of the internet, and is currently forecast to double in 12 months.
  - b) Chorus is proposing to 'freeze' the bandwidth allocation of customers at today's "industry average" level – well below the current usage of many RSPs.
  - c) That means that, by design, the regulated service will not keep up with consumer demand.
- 4.3 No RSP consultation or market analysis has been provided to illustrate the demand or driver for a Commercial UBA Service in the absence of artificially constraining the Regulated UBA Service.

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<sup>4</sup> Telecom submission on issues paper for New UBA Variants – 18 July 2014 (Note 78)

<sup>5</sup> Standard Terms Determination (STD) for Chorus' Unbundled Bitstream Access Service (Clause 3.6 of Schedule 1)

<sup>6</sup> Standard Terms Determination (STD) for Chorus' Unbundled Bitstream Access Service (Clause 3.12 of Schedule 1)

<sup>7</sup> Telecom submission on issues paper for New UBA Variants – 18 July 2014 (Notes 19 to 23)

<sup>8</sup> Chorus Boost Update Pack (Slide 30 of 60)

<sup>9</sup> CallPlus submission on issues paper for New UBA Variants – 18 July 2014 (Notes 22 & 23)



5. **Chorus' proposal to implement traffic management and degrade regulated UBA will render the Regulated UBA service not fit for purpose for customers and will force RSP's to consume Commercial UBA at a higher cost. This will likely considerably increase the cost to consumers for a fit for purpose service. This fundamentally goes against the regulatory regime of UBA.**
- 5.1 Trustpower welcomes innovation and differentiation in the industry, however proposing the Commercial UBA alongside of the proposed changes to the Regulated UBA suggests intent to raise prices outside of the regulatory setting.
- 5.2 It is clear the timing of the release of Commercial UBA alongside a proposal for traffic management of Regulated UBA, is to force substitution from a degraded service to a Commercial environment in an attempt to avoid further regulation. This assertion is supported by Chorus offering "Free" migrations from Regulated UBA to Commercial UBA and the introduction of additional costs for regulated UBA. This approach would inevitably lead to Chorus' Commercial UBA variants becoming the default.
- 5.3 Trustpower's customer throughput exceeds 250kbps. Should Chorus be permitted to introduce traffic management, network congestion and degraded customer experience is inevitable and would be immediate
- 5.4 With the introduction of Chorus' Commercial UBA variants, this renders a Regulated UBA variant unfit for purpose and goes against the intention of the Regulatory Regime of UBA.
- 5.5 As Chorus has not provided any indication of Commercial UBA pricing post 1 December 2014, this causes **extreme uncertainty around the Commercial UBA price. It also creates uncertainty around service levels and products** given Chorus may reduce (or change) any service levels to manage traffic depending on:
- the number of RSP's who take a Commercial UBA service over Regulated UBA, and;
  - if traffic management is ruled by the Commission to be not permissible.
- 5.6 The Chorus proposal will not benefit end users from "Day 1" and the longer term implications of the proposed changes to Regulated UBA will have an adverse effect on the industry. The way in which an access provider has an explicit obligation to provide a regulated service in good faith would not be consistent with international best practice.
- 5.7 Chorus has a specific obligation under the Act and STD which specifically does not allow degradation of service quality. Trustpower supports Telecoms'<sup>10</sup> view that "*Under the Act and the STD, Chorus is required to:*
- *carry out its obligations under the STD in good faith and in furtherance of the section 18 purpose;*<sup>11</sup> and;
  - *supply the UBA service to a standard that is consistent with international best practice*<sup>12</sup>.
6. Trustpower respectfully requests the Commission to carefully consider the impact of the proposed changes of Regulated UBA. Specifically the:
- Impact the proposed changes will have to our end users (Customers)
  - Investment required to continue to provide a service fit for purpose

<sup>10</sup> Telecom submission on issues paper for New UBA Variants – 18 July 2014 (Note 92)

<sup>11</sup> UBA STD General Terms at clause 2.2.1'

<sup>12</sup> Telecommunications Act 2001 Schedule 1, clause 5; UBA STD General Terms at clause 2.3.

- Monopolistic approach by Chorus to drive price without alternatives
- Precedence it may set with longer term implications within regulatory environment

7. Thank you for the opportunity to provide this cross submission. For any questions relating to the material in this submission, please contact Peter Gregory on 07 572 9888.

Regards,

A handwritten signature in blue ink, appearing to read "Peter Gregory".

**Peter Gregory**  
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