

14 September 2012

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## ***Unbundled Bitstream Access (UBA) Price Review – Cross-Submission***

### **InternetNZ**

InternetNZ is a membership-based not-for-profit organisation and is the recognised delegated manager for the .nz country code top level domain.

Our mission is to protect and promote the Internet in New Zealand. We advocate the on-going development of an open and uncaptureable Internet, available to all New Zealanders. InternetNZ is non-partisan and is an advocate for Internet and related telecommunications public and technical policy issues on behalf of the Internet Community in New Zealand – both users and the Industry as a whole.

### **Cross- Submission**

Thank you for the opportunity to make this cross-submission. We have read the other submissions made to the Review and would offer the following comments.

### **Consistency between submissions and with previous Unbundled Copper Local Loop (UCLL) pricing review submissions**

Not surprisingly there is a large degree of consistency between many of the UBA pricing submissions. There is also consistency with the earlier submissions on UCLL pricing. We note the following:

All UBA submissions comment upon the importance of UBA pricing for the take up of broadband services. UBA services comprise the majority of broadband services in New Zealand far out-stripping UCLL, Fibre or other services.

All submissions recognise the difficulty of being able to establish an accurate forward looking cost based UBA price based upon the Initial Pricing Principle (IPP) benchmarking method due to the small set of comparable countries and smaller set of comparable services within those countries.

All submissions recognise that maintaining the relativity between UCLL price and the UBA price is critical and that the UCLL price will be the largest contributing factor to the UBA price.

Most submitters, including InternetNZ, agree that the cost of providing copper based services is reducing over time and that the Commission's draft UCLL pricing determination recognised this reduction. Some also note that the move from a retail-minus to a cost-based pricing principle should also result in a reduction in the UBA price.

Most submitters also recognise that the future geographic averaging of the UCLL price will have a significant effect upon cost-based prices.

Many submissions comment on the timing of the review and that cost-based prices for the UBA service cannot take effect before 1 December 2014 yet the Act encourages the Commission to make reasonable efforts to determine the price by 30 November 2012.

### **Additional points from submissions that InternetNZ would agree with.**

Telecom's submission raises the question of how to properly account for the application of the UBA competition test when setting the UBA price. We agree that the costs of providing the UBA service will vary over time as the number of exchange areas where there is competition increases. This is compounded by the Commission being encouraged to set a price by November 2012 that will apply in December 2014. We agree with Telecom that this will not be a simple task and that it is better to get it right than to rush it. We consider that the Commission has already met the requirement to make "reasonable efforts" to determine the price by November 2012.

Telecom's submission also makes lengthy reference to the linking between UCLL and UCLF prices – we note that the Commission has revised its view on this matter.

The Vodafone submission while acknowledging the difficulties in benchmarking the UBA service makes a number of points to the effect that; despite the lack of complete comparability or sufficient similar services; there are sufficient jurisdictions, and/or, that differences can be adjusted for in order to establish a "reasonable benchmark from which to set the cost based price for the service". We agree.

The Vodafone submission says "When considering the long-term benefit of end users, the Commission should consider the extent to which retail-minus pricing for the UBA service has contributed to high access prices for retail broadband. The shift to cost-plus pricing will avoid the continued retention of this monopoly rent and encourage more competition between UBA providers and greater penetration of broadband across New Zealand". We agree.

The TelstraClear submission discusses at some length the option of applying the relevant final pricing principle (FPP) to avoid problems with implementing the IPP. They go on to seek further clarification from the Commission regarding its

interpretation of its powers under section 30R TA01 and, in particular, the circumstances in which it considers the relevant FPP can be used to set the UBA service price. We agree that clarification would be useful and also agree that moving to a FPP may be an alternative means of setting a price for the UBA service. We would note that in its UCLL draft determination the Commission indicated that if a party to the determination wishes to seek a pricing review following the benchmarking exercise it is able to do so.

**Additional points from submissions that InternetNZ would not agree with.**

InternetNZ does not agree with the emphasis that the Chorus submission places upon the UFB. We disagree that the context for this UBA price review is the transition to the UFB network. The context for the review is that the current price-minus IPP is no longer appropriate given that Chorus does not supply a retail UBA service.

InternetNZ and many others covered in some depth the UFB and the new section 18 (2A) during the UCLL review. While we are keen to see the on-going deployment of fibre we do not consider that allowing copper prices to remain at an artificially high level, in order to encourage fibre take up, is in the best interest of consumers. A copper service competing with a fibre service is in the best interest of both copper and fibre customers.

InternetNZ would also disagree with the Chorus submission in regard to its inference that the price of the UCLL services is not falling and that the investment in fibre to the cabinet be recognised. We would note that any investment in fibre to the cabinet took place before Chorus was established and was undertaken by Telecom at the time in return for concessions from the government of the day as part of the operational separation undertakings.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Vikram Kumar', with a horizontal line underneath.

Vikram Kumar  
Chief Executive  
InternetNZ