



14 March 2013

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By Email: Stephen.Gale@comcom.govt.nz

Dear Stephen

Consultation on the timetable for completion of the UBA price review

You have asked for comments on the implications of the Government's proposed review of the policy framework for regulating telecommunications services on the appropriate timetable for completing the UBA price review. We think the Commission should complete the UBA price review determination as soon as practical.

While the Government has launched the wider review, we do not know what the outcome of that review will be and there has not yet been any change to the applicable law. The legal position is still that the Commission is required to make reasonable efforts to complete the review within one year of de-merger (s77 of the Amendment Act). Further, as things stand, it is unclear what the effect, if any, of the Government's review will be on the legal framework for pricing UBA.

The Commission and industry has invested time and effort in this process and the review is now largely complete. The Commission has completed two full rounds of consultation and released a draft decision. Given the stage that we are in the UBA review - together with the legislated obligation to complete this process - it makes sense to complete the review now. There is nothing to be gained from deferring the UBA price review decision further.

The UBA pricing review can be completed independent of the framework review

The Government has only recently initiated the policy review and, at this stage, we do not know what the policy concerns are, let alone whether resolving those concerns will result in amendments to the Act. The terms of reference for the Minister's review (under section 157AA) are wide:

- The Minister must consider whether the existing regulatory framework is the most effective means to promote competition, promote the legitimate commercial interests of access providers and access seekers, encourage efficient investment and support innovation;

- Taking in to account, amongst other things, network coverage and investment across fixed and wireless networks, access provider returns, level of competition and impact of technology change and convergence.

We do not know how the broad scope of section 157AA will be interpreted, what the conclusions of the framework review might be or how the Act could be amended. It is wholly unclear whether there will be any implications for the legal frameworks for pricing either UBA or UCLL and, if so, what those implications might be. Even if the framework review recommends change to the pricing principles, it would take several months to make the necessary changes to the legislation and possibly years to implement through appropriate pricing studies. The situation will remain uncertain for some time and there would be little, if any, benefit deferring the UBA price review for this extended period.

We are aware that some submitters have focussed in the UBA price review on the meaning of section 18 and perceived implications of the cost based UBA price for other telecommunications services and Government policy. However, the current legislative framework gives the Commission a clear instruction on how to price the UBA service. The Commission is required by the Act to set a forward looking benchmarked price. Section 18 considerations have always been a matter for general consideration – no more. Accordingly, much of the commentary has focused on matters that the Commission has little, or no, ability to control for in exercising its duties under the Act.

Completing the UBA pricing review adds certainty to the framework review and to parties

Completing the UBA price review under the current framework may also assist the wider framework review. The framework review is to consider whether the existing regulatory framework is the most effective means to achieve policy objectives. A final UBA pricing decision will provide a useful reference point as to what a cost based price may look like under current regulatory settings. That can only better inform the framework review and submitters to it.

Further, the Government review may result in no changes to UBA pricing considerations and, therefore, completing the UBA pricing review means there will be less moving parts to consider at the time other possible changes to the regulatory framework are implemented. In the interim, access seekers, Chorus and LFCs will be best placed to continue to operate in accordance with the plans they developed on top of the major legislative amendments implemented less than 18 months ago.

Yours sincerely



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