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TRUSTPOWER SUBMISSION: SECTION 30R REVIEW OF THE UBA STANDARD TERMS DETERMINATION

1 Introduction

- 1.1.1 Trustpower Limited (Trustpower) welcomes the opportunity to provide a submission to the Commerce Commission on its *Section 30R review of the UBA Standard Terms Determination* (the review).
- 1.1.2 Trustpower is a renewable generator-retailer in the New Zealand and Australian electricity markets. Trustpower's unique utility retail offering bundles electricity, gas and telecommunications services. Trustpower also provides water storage for irrigation users in the South Island.
- 1.1.3 Head-quartered in Tauranga, Trustpower owns and operates a total of 23 hydroelectric power schemes (comprising 41 stations), five wind farms, and one diesel peaking scheme, across New Zealand and Australia. As the fifth largest generator-retailer in New Zealand, the company's electricity customer base consists of around 252,000 electricity connections, including some of the largest electricity consumers in New Zealand. Around 20,000 of Trustpower's customers are dual fuel, and over 60,000 purchase energy and telecommunication bundles.
- 1.1.4 Trustpower actively pursues innovation as a means to deliver value to consumers. Our success in adding telecommunications and gas services to the company's retail electricity offering demonstrates that 'bundles' are attractive to consumers. Trustpower is currently the only major company that bundles electricity, gas and telecommunications services in New Zealand.
- 1.1.5 Trustpower has grown from small reseller of under 1,000 telecommunications services in 2004 to its current position providing close to 100,000 services to over 50,000 customers. Trustpower provides over 15,000 fibre broadband connections on the Chorus and Ultrafast fibre networks, and over 35,000 xDSL services nationwide. All internet services are delivered on Trustpower's own internet infrastructure, which is duplicated with high availability and resilience across multiple third-party data centres. Trustpower provides full technical support internally from its Tauranga and Oamaru centres. No customer services are outsourced.

- 1.1.6 Trustpower provides PSTN and calling services to over 35,000 customers via wholesale agreements with Spark Wholesale for PSTN and switchless Non Coded Access calling.
- 1.1.7 Trustpower's growth has been largely organic, achieved through its unique ability to bundle telecommunications and energy services, creating unique propositions and a superior service model. We are New Zealand's fourth-largest telco, and potentially the fastest growing.
- 1.1.8 We bring to the New Zealand telecommunications market a unique perspective as a deeply experienced and successful participant in a highly-competitive, regulated market setting – being electricity. We constantly compare and contrast the market rules, structure and competitive behaviour not just between the two markets but between New Zealand and Australia.

2 Overview of our submission

- 2.1.1 Our submission on this review comprises of four main sections.
 - a) Section 3 outlines the concerns we had with Chorus' proposal to offer Boost services and degrade the regulated service.
 - b) Section 4 outlines our concerns with the Commission's current approach to this review, and outlines our initial thinking of an alternative approach that we believe better gives effect to the section 18 purpose statement.
 - c) Section 5 outlines our thoughts on the key factors the Commission intends to consider when undertaking s30R reviews of the Unbundled Bitstream Access Standard Terms Determination (the UBA STD).
 - d) Finally, section 6 outlines our brief thoughts on a number of other matters, including the addition of a 10GigE handover option, Enhanced UBA variants, and greater transparency of Chorus' systems.

3 Chorus' proposal to offer Boost services and degrade the regulated service

- 3.1.1 This review is being undertaken as a result of Chorus' proposal to offer Boost services and degrade the regulated service. Chorus' proposal lead to the realisation that the UBA STD lacked clarity on a number of matters, and that the incentives on Chorus had changed post Telecom's demerger.
- 3.1.2 Our primary concerns with Chorus' proposal were that it sought to degrade the regulated service in order to make its Boost services palatable. The Boost services were not complementary to the existing regulated service, but instead appeared to be an attempt to force access seekers to switch to the Boost services in order to maintain existing service levels. The Boost services offered little marketable improvement above what end-users were already receiving.

4 The regulated UBA service

4.1 We agree that the regulated service should evolve over time

- 4.1.1 We agree with the Commission's view that the regulated service should evolve over time. As the Commission notes, a fibre network is currently being deployed to 75% of New Zealanders under the UFB initiative, however, Chorus' copper network will still be the main infrastructure over which fixed line telecommunications services are provided to New Zealanders. Accordingly, we believe that the Chorus' regulated UBA service should evolve to meet the needs of all New Zealanders.
- 4.1.2 Further, we believe that the UBA STD currently requires this. Chorus has obligations to act in good faith and in line with international best practice. Consistent with the Commission's legal advice

from Dr James Every-Palmer and David Laurenson QC dated 3 September 2014, we believe that these obligations establish a number of important principles, including that:

- a) Chorus must not act in a manner that weakens or undercuts its obligation to provide a regulated UBA service under the UBA STD; and
- b) Chorus must provide a regulated UBA service that evolves over time to meet the needs of end-users. Continued investment in copper networks to meet growing end-user demand is consistent with international best practice.

4.2 We disagree with the Commission's current 'anchor product' approach

- 4.2.1 The Commission considers that the current regulated service is, and should continue to be, an 'anchor' service. It considers that the regulated UBA service is an 'anchor' for the wholesale bitstream market, acting as a constraint on Chorus' ability to offer commercial variants.
- 4.2.2 We disagree. We believe that the regulated UBA service that is currently, and that has historically been, in the market is not an 'anchor' service. It is a full speed/full speed service, with no throughput cap, subject to certain complementary prioritised services.
- 4.2.3 The Commission then outlines three different categories that the anchor service could encompass: Baseline, Average, and Advanced. It considers that an average, mid-specification service would meet the requirements of the 'typical' end-user, and would best give effect to the section 18 purpose statement.
- 4.2.4 We are concerned that the Commission considers that it best gives effect, or is likely to best give effect, to the purpose statement by ensuring that the UBA regulated service meets 'typical' end-users needs. We believe that the section 18 purpose statement requires the Commission to consider the impact on all end-users. We do not believe that it has done so in reaching its current view. We also struggle to define a 'typical' user.
- 4.2.5 We are also concerned about the potential for Chorus to game such a construct. The Commission has noted that it is considering using the throughput modelled in the final pricing principle determination (the FPP) as the required service level for the regulated UBA service. The throughput modelled in the FPP is an average throughput of 450kbps, increasing by 50% per annum. It is unclear how Chorus would demonstrate that it meets this requirement, and we believe that this could be gamed by Chorus in a number of ways, including:
 - a) A service level based on a prescribed throughput level would likely become outdated, even with annual uplifts. Without a clear mechanism for regular review of the required service level, Chorus could throttle the regulated UBA service to that level, and offer commercial services that better meet many end-users' needs.
 - b) Chorus could invest heavily in strategic parts of the network, letting the service levels in other parts degrade, while arguable still meeting an average throughput requirement.

4.3 We believe the Commission should explore a range of different options

- 4.3.1 We believe that the Commission should explore a range of different options, rather than narrowing the discussion to its proposed anchor product concept. We note that the Consultation Paper did not explore alternative options. We are also concerned that the Commission has constrained its current thinking to the anchor product concept as it considers it best aligns with the FPP determination, and the ongoing Telecommunications Act review. We note that these are separate processes, and should be considered as such.
- 4.3.2 We have had limited time to develop an alternative approach, however our initial thoughts are as follows:

- a) All UBA services, including new UBA variants, should be regulated;
- b) The existing regulated UBA service should have a minimum service level, and there should be a process in place to ensure that this evolves to meet end-users needs;
- c) Any new UBA variants should not be materially detrimental to the existing regulated UBA service. That is, new UBA variants should be complementary to the existing regulated UBA service;
- d) Clause 10 of the UBA STD General Terms could be amended to introduce an application process, whereby Chorus can apply to the Commission to offer a new UBA variant;
- e) There should also be a process for withdrawing or amending UBA services.

4.3.3 We believe that this approach aligns with requirements of the Act including the Schedule 1 service description, the good faith and international best practice obligations currently in the UBA STD, international regulatory practice, and would better give effect to the section 18 purpose statement. Regulating all UBA services, with a clear process for the introduction of new variants, appropriately incentivises Chorus to develop a range of complementary UBA services that cater to a variety of end-users needs.

4.4 We believe that UBA variants should be provided over the same handover link as the existing regulated UBA service

4.4.1 We believe that new UBA variants should be able to be provided on the same handover links as the existing regulated UBA service. Having to install different handover links would discourage access seekers from taking up new UBA variants, limiting the services available to end-users. Requiring access seekers to invest in multiple handover links in order to provide different levels of service to their customers would also introduce inefficiencies and cost in the network.

5 Key factors when considering possible amendments to the UBA STD

5.1.1 The Commission has outlined three key factors it proposes to consider when reviewing the UBA STD. These are:

- a) The service is future-proofed – the regulated UBA service improves over time and remains fit for purpose
- b) Incentives to innovate and invest – Chorus has appropriate incentives to invest in upgrading the regulated UBA service over time and develop innovative new commercial UBA variants
- c) FPP considerations – whether, and the extent to which, the regulated UBA service description should be aligned with the technical specifications of the service modelled in the FPP

5.1.2 We discuss each of these factors below.

5.1.3 We also note that these key factors may not be appropriate for future reviews of the UBA STD. That is, this should not comprise an exhaustive list of key factors or principles for the Commission to consider when undertaking future reviews.

5.2 The regulated UBA service is future-proofed

5.2.1 We agree with the Commission that the regulated service should not be static. Rather it should be future-proofed, fit for purpose, and capable of evolving over time. As noted above at 4.1.2, we believe that the Act and the UBA STD already requires this when it prescribes obligations on Chorus to provide the service in good faith and in line with international best practice. The needs

of end-users change over time, and the services available to them should evolve to cater to their needs.

- 5.2.2 We believe that our alternative approach would allow for the introduction of new complementary services where and when required. Chorus should be encouraged to offer services that access seekers and end-users see value in. Accordingly, we believe that the UBA STD should provide an appropriate process to enable Chorus to get new UBA variants to market in a timely fashion when they are complementary to existing services.

5.3 Chorus has appropriate incentives to innovate and invest

- 5.3.1 We agree with the Commission that Chorus should have appropriate incentives to innovate and invest. As outlined above, we believe that there should be a minimum service level that Chorus is required to meet, and that this, and the current service level, should continue to evolve as the needs of end-users change.
- 5.3.2 We are also supportive of Chorus offering complementary UBA variants that would better meet ours and our customer's needs. However, this should not occur at the detriment of the regulated service. Regulating all UBA services would ensure that new UBA variants were complementary to the existing services.

5.4 Relationship with the FPP

- 5.4.1 We believe that it would be inappropriate to set the service description of the regulated UBA service based on what has been modelled in the FPP. We believe that the UBA service description should be considered when setting the price, rather than the price dictating the UBA service description. That is, the UBA service description is a relevant consideration when making modelling decisions in the FPP, but the service modelled in the FPP is not a relevant consideration when reviewing the UBA service description.
- 5.4.2 However, we note that modelling decisions in the FPP may have been made based on information, research, and forecasts. It may be appropriate to consider the same information, research, and forecasts in this review.
- 5.4.3 We remind the Commission of its requirements under Clause 4B of Schedule 1 of the Telecommunications Act, which states that:
- In applying an applicable initial pricing principle or an applicable final pricing principle, the Commission must ensure that an access provider of a designated service does not recover costs that the access provider is recovering in the price of a designated or specified service provided under a determination prepared under section 27 or 30M or a designated or specified service provided on commercial terms.
- 5.4.4 We believe that the Commission will need consider whether it is required to revise its cost allocation decisions in the FPP as a result of this review.

6 Other matters

6.1 10GigE handover option

- 6.1.1 We believe that there should be a regulated 10GigE handover option available all around the country. Consistent with our current thinking, we believe that all handovers should be regulated, should be capable of carrying all UBA traffic, and that the regulated handover link capacity should evolve beyond 10GigE as the service demanded by end-users increases. One possibility would be for Chorus to offer optical interfaces with scalable capacity at Points of Interconnect.

6.2 EUBA variants

- 6.2.1 We believe that a regulated voice-capable UBA service should remain available. Given the Commission's current thinking that the PSTN Homeline obligation on Spark should be deregulated, and assuming that Baseband IP remains unregulated, the EUBA variants would be the only regulated voice-capable UBA service. It is important that there is a regulated voice-capable UBA service to act as a constraint on the prices that can be charged for equivalent commercial services, such as PSTN and Baseband IP.
- 6.2.2 We do note, as the Commission pointed out, that few Retail Service Providers (RSPs) have taken the EUBA variants. This may be an opportunity to amend the EUBA variants, or to design a new regulated voice-capable UBA service that better meets the needs of access seekers.

6.3 Greater transparency of Chorus' systems

- 6.3.1 We agree with Spark that there should be greater transparency of Chorus' systems, and increased visibility of Chorus' management of the network, service orders and individual address information, and transaction and new connection charges. We believe Chorus should provide access to Operations Support Systems (OSS) and that its network records be subject to a minimum accuracy requirement to ensure operational efficiency.
- 6.3.2 For any questions relating to the material in this submission, please contact me on 07 572 9888.

Regards,



JESSICA BEVIN
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