

Section 30R review of the UBA standard terms determination

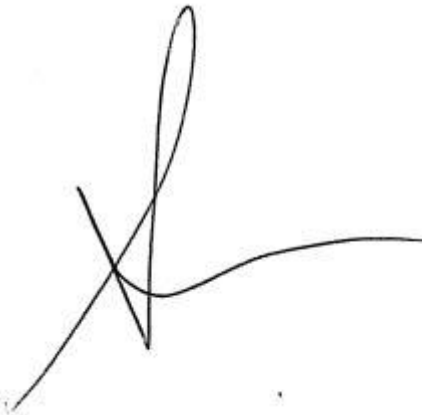
Submission to the Commerce Commission

5 May 2016



1. Introduction

- 1.1. Thank you for the opportunity to comment on the Section 30R review of the UBA standard terms determination
- 1.2. Our Vision at InternetNZ is a better world through a better Internet and our Mission is to promote the Internet's benefits and uses and protect its potential. We care passionately about Internet-based communications and the opportunities that the Internet brings to New Zealand's economy and society. This Section 30R review is fundamental in terms of how many New Zealanders access and experience the Internet; hence our submission.
- 1.3. We welcome the opportunity to discuss our submission with you. Please contact me at andrew@internetnz.nz or on 021 346 408 for further information.



Andrew Cushen
Deputy Chief Executive

2. Submission

- 2.1. Our submission is brief and high level, and focused upon principles and objectives. We will consider whether we need to comment in detail upon any legal or technical issues following the submission and workshop stages, in preparation for the cross-submission stage.
- 2.2. We have not prepared this submission anticipating that the following matters will be raised as part of this process:
 - The New UBA Variants proposed by Chorus and investigated by the Commission;
 - Withdrawal of the regulated VDSL product set;
 - Reconsideration of the dynamic service description modelling decisions made as part of the Final Pricing Principle (FPP) Determinations for Unbundled Bitstream Access (UBA) and Unbundled Copper Local Loop (UCLL) services, as finalised in December 2015.
- 2.3. Should other submissions seek to raise these issues, we will respond in a cross-submission or in future stages of this process. We note that if those issues are not raised, then this particular Section 30R process may conclude in a simpler fashion.

Purpose Statement of the Act

- 2.4. InternetNZ believes that the purpose statement included in the Telecommunications Act is fundamental to our considerations in this process; that is *to promote competition in telecommunications markets for the long-term benefit of end users*.
- 2.5. First and foremost, we believe that the Commission is obliged to consider this purpose statement in the context of this Section 30R process. Specifically, the place of commercial services; technical and functional requirements; VDSL and the visibility of Chorus' systems should include the Commission's assessment of their contribution to the long-term benefit of end-users.

Wholesale versus retail services innovation

- 2.6. We believe that wherever possible, service innovation and differentiation should be left to the competitive Retail Service Providers (RSPs). If RSPs wish to purchase a variation on a regulated wholesale service, they should have the option to request such a service from Chorus. Whether that variation on service can be a commercial service or a regulated service would need to be made on a service by service basis taking into account whether it was in the best long term interests of end-users.

Clarity and future-proofing.

- 2.7. Both clarity and future-proofing are desirable. The Issues paper goes into some detail about the difference between the minimum UBA Standard Terms Determination (STD) service throughput of 32 kbps during any 15 minute period and the UBA FPP modelled throughput of 450 kbps, increasing by 50% per annum from 2016.
- 2.8. We have already submitted during the FPP determination that in our opinion the service is intended to be dynamic. As we have indicated above we are interested to know whether Chorus accepts that is the case. Of perhaps greater interest is whether 450 kbps increasing by 50% is the correct rate of evolution and whether it will continue to be correct until 2020 given that the variable nature of consumer demand is difficult to determine. Providing more clarity and accuracy in this respect might elicit a more valuable discussion.
- 2.9. We also believe that there is a level of confusion between what is considered a guaranteed minimum service (which is more akin to a Telecommunications Service Obligation (TSO)) and the expectations of a "full speed/full speed" "best efforts", "international best

practice” dynamic service. It would seem to us that there may be a place for both – but if so, then with different standards, different prices and different penalties for non-compliance.

Cost based

- 2.10. As a general principle we consider that all services provided by Chorus whether recurring services or one-off services should be cost based wherever practicable.

Transparency

- 2.11. Again, as a general principle we consider that transparency facilitates innovation, improved service and reduced prices which are beneficial to the long-term interest of end users. In the context of this process, all cost elements and system requirements should be transparent.

3. Responses to Questions

Question 1 – Do you agree that an anchor regulation approach should be used for the regulated UBA service?

- 3.1. We have not formed a strong opinion on this issue and will submit further at the cross-submission stage. We are not however opposed to anchor regulation on principle - much depends upon how the anchor service(s) is defined.
- 3.2. For example, we would clearly prefer any anchor product to be dynamic; we would also prefer to see certain levels of guaranteed service which would flow through to retail guaranteed service with appropriate penalties for failure to meet service standards. Under this model, if a retail or wholesale service is not meeting the set standard, the price of that service should be discounted.
- 3.3. It otherwise seems contradictory for Chorus to be compensated through a regulated price to facilitate a specified level of service through to end-users if it is not then obliged to provide that level of service in a timely manner, otherwise there is no incentive for Chorus to invest and innovate.

Question 2 – Should the regulated UBA service be a baseline service, average service, or advanced service?

- 3.4. We have discussed briefly above that there may be a case for two definitions: one of a guaranteed basic/minimum service at a low price to which the service price will default should the average service (at the regulated price) not be fit for purpose.
- 3.5. We agree that an average service definition would be more likely to give effect to the section 18 purpose statement than the other alternatives.

Question 3 – Do you agree that the regulated UBA service should be specified to evolve over the regulatory period to meet the changing needs of end-users?

- 3.6. Yes.

Question 4 – Should the Commerce Commission provide any additional incentives for Chorus to develop UBA variants, in addition to set prices outside the regulated price cap?

- 3.7. No. The incentive for Chorus to develop UBA variants should come from its customers the RSPs. The incentive for the RSPs to demand variants should in turn come from the demands of their end-user customers. Rather the Commission should consider the incentives it has already provided to Chorus to provide improved UBA service by way of an increased regulated price and whether or not Chorus is providing that improved service.

Question 5 – To what extent should the FPP price and underlying modelling assumptions be considered part of this process?

- 3.8. InternetNZ submitted during the FPP process that a Section 30R review was required and we considered that the review should have been conducted in parallel with the FPP determination. That would have avoided revisiting many of these issues now.
- 3.9. Inasmuch as the parties appear to have generally accepted the service specifications in the FPP, at least at the principle level, then the FPP service specifications should be built into this review process. As indicated above, beyond the principle level agreement whether the specific service specifications are accurate and will remain accurate as customer demand changes is difficult to ascertain.

Question 6 – Are there any other key factors we should consider when assessing possible changes to the UBA STD as part of the section 30 R review?

- 3.10. As indicated above, the degree to which any decisions serve the long-term benefit of end-users should always be a consideration; there should be consideration of how failure to meet the specified service standards will be monitored and what penalties should apply.

Question 7 – Should the UBA STD be updated to explicitly recognise that the regulated UBA service is an “average” mid-specification service (or otherwise)?

- 3.11. As indicated above, we are not opposed to the concept of an average service but are more concerned as to how the “average” is determined and how it evolves in a dynamic environment, whether there needs to be a different average outside the UFB coverage area where incentives are different and what occurs when the average is not being met.

Question 8 – Should the line between the regulated UBA service and commercial UBA variants be clarified?

- 3.12. We have indicated earlier that in a dynamic environment where the regulated UBA service is improving annually we have doubts as to the need for Chorus to develop commercial services. Rather we consider that if commercial services or variations to regulated services are required they will be requested by RSPs.
- 3.13. Whether or not such a service will need to be regulated should then be decided on a case by case basis taking into account what is in the best long-term interest of end-users. Predetermining what might constitute a commercial service and what constitutes a regulated service is, in our opinion, likely to produce the wrong incentives.
- 3.14. However, once a new service has been proposed it will be important to ensure that the service specifications are absolutely clear and measurable; that it is clear how they will evolve over time, how the service specifications will be enforced and under what timeframes.

Question 9 – Is Chorus required to provide the regulated UBA service over VDSL where available and requested by an access seeker?

- 3.15. Yes

Question 10 – Should Chorus be able to withdraw the regulated UBA service over VDSL where it has already made it available to access seekers?

- 3.16. No.

Question 11 - Should there be geographic differences in the regulated UBA service specification due to UFB deployment?

Question 12 - Should Chorus be obliged to replace its ATM-based network if it is unable to meet potential changes to the technical specifications of the regulated UBA service as a result of this review?

Question 13 - If not, under what terms should the ATM-based UBA service be provided?

- 3.17. Our response to these questions is tied to the earlier questions regarding the concept of an average service, and how the average service will be defined, and monitored.
- 3.18. Chorus is currently compensated through the regulated UBA price to provide a service that will improve over time. The Government amended legislation in 2011 to ensure that the

price of the regulated service was consistent between urban and rural users (averaged). We therefore have the requirement of an average service at a fixed price and Chorus compensated to provide that service at that price. What appears to be missing is that there is no time frame defined for Chorus to meet the service standard and consequently it is able to receive the compensation without providing the service. This is a major issue for users outside the UFB footprint.

- 3.19. The solutions would appear to be either:
- Chorus deploys a much improved service to rural users in a given time frame; or
 - Chorus provides a lesser defined service to rural users but does not receive the same level of compensation.

Discussion of specific technologies such as ATM-based networks are immaterial; either the service is meeting the service specification or it isn't.

Question 14 – Should Chorus be able to prioritise commercial traffic where performance of the regulated UBA service is not affected?

- 3.20. No. We are concerned that such a measure provides entirely the wrong incentives.
- 3.21. It is also difficult to comprehend how prioritisation of one service will not affect another service or how safeguards might be guaranteed. As previously indicated if RSPs require a service that cannot be provided via the regulated service they should be allowed to request such a service and decisions on whether that different service should be subject to regulation should be made on a case by case basis.
- 3.22. We believe that if prioritisation of one service over another is necessary for other, non-commercial purposes such as the 111 service, that priority should be agreed as part of a regulated process.

Question 15 – Do you agree with the addition of a 10GigE handover option to the UBA STD?

Question 16 - Do you agree that it is appropriate to use the 10GigE price determined in the FPP determination?

- 3.23. In line with the general understanding that the demand for broadband services will increase over time and that the UBA STD is set in a dynamic environment rather than a static environment it is clear to us that the provision of handover will also change. When submitting on this issue during the FPP we indicated that it was likely that at some point in the future a 10GigE handover would likely also be insufficient. It is in keeping with the principle of future-proofing that increasing levels of handover options should be available through the STD.
- 3.24. We assume that if any party disagrees with the price set during the FPP determination then they have a right of appeal. If that assumption is correct the price set during the FPP determination is appropriate.

Question 17 - Are there any other sundry services that we should consider adding to the UBA STD price list as part of this review?

- 3.25. We have previously submitted that it would be in the best interest of end-users if all one-off charges were included in the STD.

Question 18 – Should clause 10 of the UBA General Terms be amended to explicitly set out the key attributes?

- 3.26. As we have indicated earlier, to encourage the correct incentives we consider that the introduction of variants in the UBA service should primarily be at the request of an RSP rather than proactively by Chorus. Decisions on whether the variant should be regulated or commercial (be it from Chorus or an RSP) should be taken on a case by case basis - clause 10 would seem to be an appropriate vehicle.

3.27. As we have also indicated earlier the pre-determination of explicit attributes of a service in a dynamic and changing environment can lead to incorrect incentives. However, once a service is agreed the specifications of that service including: how they will evolve over time; how they will be measured; how they will be monitored and enforced; etc. should be explicit.

Question 19 – Should the EUBA variants be removed from the UBA STD?

3.28. That variants incorporated in 2007 have had little take up confirms our opinion that variants (commercial or regulated) should not be proactively introduced but rather left to RSPs to request.

3.29. We will await the response of RSPs which take the EUBA variants before commenting on whether they should be removed from the UBA STD.

Question 20 – Should the UBA STD be amended to provide greater transparency of Chorus' systems for access seekers?

3.30. Yes we have previously commented in detail on this issue – please refer to our earlier submissions.

About InternetNZ

A better world through a better Internet

InternetNZ's vision is for a better world through a better Internet. We promote the Internet's benefits. We protect its potential. And we focus on advancing an open and uncaptureable Internet for our country.

We provide a voice for the Internet in New Zealand and work on behalf of all Internet users across the country.

We are the designated manager for the .nz Internet domain. And through this role we represent New Zealand at a global level.

We provide community funding to promote research and the discovery of ways to improve the Internet. We inform people about the Internet and we ensure it is well understood by those making decisions that help shape it. Every year we bring the Internet community together at events like NetHui to share wisdom and best practice on the state of the Internet.

We are a non-profit and open membership organisation.

Be a member of InternetNZ and be part of the Internet community. You can keep a close watch on the latest tech and telecommunications developments and network with other like-minded people at cool events. Being a member of InternetNZ only costs \$21 per year. Find out more at internetnz.nz/join

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