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Dear Robert

Thank you for the opportunity to comment on the applications for a pricing review determination of the Commission's determination on the pricing for the unbundled copper local loop (Decision NZCC 37/2012) (**UCLL Final Determination**).

Comment on the applications

Some applicants have requested the Commission to include the Sub-loop UCLL (**SLU**) monthly rental prices within the scope of the UCLL pricing review determination – that is, apply the TSLRIC principle to SLU.

For the Commission to determine a TSLRIC price for SLU, it would first have to determine the initial pricing principle for SLU,¹ and then a party to that determination would need to apply for application of the final pricing principle under section 42 of the Act. This would add a further layer of complexity to what will already be a costly and time consuming process.

The Commission can only undertake a pricing review of an STD that has been made (including being replaced or amended²) under section 30M of the Act if a section 42 application is made within 25 working days of the determination date.³ As the SLU STD was not amended or replaced by the Commission under section 30R, in contrast to the UCLL STD, this timeframe has long expired.

Kordia/Orcon and CallPlus propose that the approach to de-averaging that the Commission has previously used should be addressed as part of the TSLRIC methodology. There has been a clear policy shift to an averaged price for UCLL. In fact, the Act requires the Commission to determine a geographically averaged price in applying the TSLRIC principle to the UCLL Service.⁴

It is for the Commission to decide whether Telecom is a party to the UCLL Final Determination, and therefore whether its application for a UCLL price review is valid. We do note that from a practical

¹ In the SLU UCLL STD, the Commission applied a benchmarked ratio of 60.4% of UCLL lines in order to arrive at the SLU monthly rental.

² The Commission has stated that a section 30M determination that is amended or replaced under section 30R still qualifies as a section 30M determination that is capable of review under section 42 (paragraph 67 of the UCLL Final Determination). While the SLU STD uses the UCLL price as a reference point for calculating the SLU price, the SLU STD has not been amended or replaced by the Commission under section 30R.

³ Section 43(b)(ii) of the Act.

⁴ Clause 4A, Subpart 1, Part 1, Schedule 1 of the Act.

perspective it is possible for Telecom to be an access seeker for the UCLL Service from the end of next year.

Having regard to the Ministerial review

We applied for a UCLL pricing review determination because we believe that application of the TSLRIC final pricing principle would better reflect the TSLRIC of providing the UCLL Service in New Zealand than that determined by the Commission in its UCLL Final Determination. As noted in our UBA submission of 1 February 2013, this was a practical choice given the risks associated with the current regulatory framework.

Since then, the Minister of Communications and Information Technology has announced a review of the policy framework for regulating New Zealand's telecommunications services (**Ministerial Review**). This means we're at a crossroad – either the current regulatory framework will change (in which case the UCLL pricing review process would become irrelevant) or the Government will decide that the current framework will continue (at which point the Commission could continue with the UCLL review process).

Given the intention to start the Ministerial Review immediately, we think that it is open to the Commission to pause the current UCLL pricing review process while the Ministerial Review is completed. We appreciate the Commission may have questions as to whether it can pause the current process, but we consider that this would be a pragmatic and sensible outcome in the circumstances. This approach would allow the immediate focus to be on the future regime, rather than stretching Commission and industry resources to engage in developing a TSLRIC model.

Should the Commission decide to continue with the UCLL pricing review, despite the Ministerial Review, we continue to believe that it will result in a significantly higher UCLL price than that determined in the UCLL Final Determination, and will participate fully in the review process.

Yours faithfully



Anna Moodie
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