

Section 30R Review of the UBA STD: Process and Issues Paper

**A Submission to the Commerce
Commission**

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1 Executive Summary

2degrees welcomes the opportunity to comment on the Commission's section 30R review of the UBA Standard Terms Determination ('UBA STD') Process and Issues Paper.

The market has evolved significantly since the UBA STD minimum requirements were last updated, with substantial structural changes, technological developments and changing consumer and RSP demands: the regulated service is today delivered as a full speed, unconstrained xDSL service; the UBA service is no longer delivered by a vertically integrated RSP subject to non-discrimination obligations, but by a structurally separated monopoly provider with different incentives; issues surrounding Chorus' proposed Boost services have highlighted the case to update and clarify aspects of the UBA STD which have been subject to different interpretations.

As such, 2degrees supports this section 30R review and views it as an important opportunity to update the UBA STD to both ensure that the regulated UBA service remains fit for purpose in addressing Chorus market power in the provision of UBA services, and increase industry certainty.

In our view, key outcomes of this review should be to:

- Update the UBA STD to reflect the current regulated service delivered to RSPs – a full speed unconstrained service;
- Reaffirm that the regulated UBA service is technology agnostic (xDSL);
- Reaffirm that the regulated UBA service is not static, but must evolve over time in line with technological developments/standards and consumer expectations;
- Reaffirm that Chorus is free to develop innovative commercial variants, but that this should not be achieved through degradation of the existing regulated service. Such degradation would be inconsistent with the section 18 purpose statement.
- Reaffirm that Chorus is not able to prioritise commercial traffic over regulated services.

We further support:

- The introduction of a 10GigE handover as standard;
- Phasing out of BUBA, which does not deliver to consumer expectations;
- The introduction of reciprocal No Fault Found and Abortive Site Visit fees;
- Increased transparency of Chorus' systems in terms of provisioning, current network data and congestion, and fault issues. We understand lack of transparency is a common issue among RSPs and as such, this may warrant the establishment of a TCF Working Party to address such concerns and report back to the Commission.

2degrees does not support any proposals that degrade the current regulated service delivered to RSPs. Such proposals are not in the long term interests of end users. That means that if an 'anchor' product approach is adopted going forward, the anchor product must at a minimum deliver to the current standards received by RSPs.

Section 2 sets out our responses to specific questions set out in the consultation document.

2 Response to specific questions

1. Do you agree that an anchor regulation approach should be used for the regulated UBA service? Why/why not?

2degrees would only support the use of an 'anchor' regulation approach provided that the 'anchor' product is set at an appropriate level over the regulatory period, which is at least to the standard of the regulated UBA service levels delivered to RSPs today, and that anticipates developments as technology and end-user demand changes.

The current regulated service RSPs receive is a full speed (FS/FS) xDSL service, with unconstrained backhaul.

While we support Chorus having the ability to introduce innovative commercial variants we do not consider degrading the current regulated service - for which it is a monopoly supplier – and introducing higher 'graded' services that are already received today, but at a premium, is a legitimate means of achieving this. Indeed we consider such actions would be inconsistent with the section 18 purpose statement and could not be supported by the Commission.

2. Should the regulated UBA service be a baseline service, average service, or advanced service? Please explain how your view is consistent with section 18 purpose statement.

As noted above, we do not consider it is appropriate or consistent with the section 18 purpose statement to degrade the current regulated service. We therefore do not consider that a 'baseline' or 'average' consumer needs approach is useful.

The anchor product should be (at a minimum) the regulated service level received today, and evolve over time as technology and best practice advances.

Chorus should be free to offer commercial variants of both higher and lower specification than this 'anchor' service, with the important proviso that these do not impact the regulated service.

Examples of potential commercial variants could include line bonding and/or VDSL vectoring, as well as related upstream products.

While we do not consider an 'average' customer should be specifically defined (and note this would be challenging to do so in any case), we do consider that the UBA STD should be clear to ensure that the regulated UBA service is capable of servicing the majority of consumer UBA demand.

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?

The regulated service needs to evolve over time to ensure it remains relevant and effective in addressing market power issues. We expect technology standards and consumer expectations to progress over the regulatory period, with consequent upgrades in the regulated FS/FS service. This is broadly consistent with the Commission's approach in the FPP, which provides for increased investment.

We note that there has been little innovation in the UBA regulated service to date. For example Chorus has not yet made products such as Annex M (which significantly increases

upload speeds) and reduced dBm noise margins (which allow faster synchronisation speeds) available on the UBA regulated service. In contrast these are implemented by customer-facing RSPs that have unbundled.

4. Should we provide any additional incentives for Chorus to develop commercial UBA variants, in addition to the ability to set prices outside the regulated price cap? If so, why and how?

2degrees supports the continued ability for Chorus to invest in commercial variants outside the regulated price cap, so long as these are not services that are rightly part of the core regulated service and that the development of Chorus commercial variants is not be at the cost of ensuring an effective regulated UBA service that meets RSP and consumer needs – as noted above, we expect Chorus’ regulated service to also develop over time.

That said, we consider the prime source of innovation in fixed broadband markets is likely to be at the RSP level rather than Chorus layer. It is not clear what additional regulatory incentives the Commission might consider outside price setting and more clearly defining the regulated UBA service requirements.

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

While the approach of the STD and FPP should be broadly consistent, for example acknowledging the UBA service will evolve over time and continued investment over the regulatory period, the specific FPP modelling assumptions and parameters should not be used to define the scope/extent of the regulated service.

7. Should the UBA STD be updated to explicitly recognise that the regulated UBA service is an ‘average’ mid-specification service (or otherwise)? Why/why not?

8. Should the line between the regulated UBA service and commercial UBA variants be clarified? If so, why and how?

As noted above, we do not support any degradation of the current regulated service as delivered today, and would be concerned that explicitly defining the regulated service as an ‘average’ mid-specification service would permit this.

It would, however, be helpful for the Commission to clarify that the regulated UBA service is expected to meet the needs of typical end users, that at a minimum it is expected to be delivered to today’s standards, and that it is expected to evolve over time with technology developments and consumer expectations.

As the Commission notes, while the current reference to “consistent with international best practice” implies a certain level of standard or service improvement over time, on its own this is unlikely to be a commonly understood or agreed upon benchmark.

Chorus should not be able to use their market power to deliver a ‘commercial’ variant that should be a default regulated service, for example minor noise modifications that improve end user speeds, nor the removal of current artificial limitations (‘cool downs’) to speed up provisioning times.

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

Yes, the regulated service is a technology agnostic xDSL service.

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

No. VDSL is a regulated access service.

As for all regulated services, Chorus (or any other Access Provider) should not be able to withdraw such services unless the Commission considers this is consistent with the section 18 purpose statement, and has been subject to genuine industry consultation of affected parties. There may be merit in establishing a specific process for consideration of such service withdrawals.

11. Should there be geographic differences in the regulated UBA service specifications due to the UFB deployment?

2degrees offers entry-level UFB services for the same retail price as copper based services. As such, we agree that we are likely to be less reliant on UBA regulation in areas where UFB has been deployed.

However, we note that there are still a proportion of consumers in UFB areas that for various reasons, for example land access issues, are not able to access fibre. As such, we consider it important that the regulated UBA service is available to these customers as a fall back option in these instances.

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?

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

While we support the upgrade of the ATM/BUBA network to EUBA, we understand, especially in areas where DSLAMs are supported by copper backhaul only, that this may be challenging and take time to achieve.

We would support alignment of the pricing of Ethernet handovers for BUBA with EUBA. At present, where Chorus is not able to meet their regulated commitments to provide ATM-based handovers 2degrees is forced to pay for more expensive BUBA Ethernet handovers.

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

We do not support prioritisation of commercial traffic over the regulated service.

Prioritisation of commercial variants over regulated services risks undermining the regulatory service and forcing RSPs to shift to the higher priced commercial service as consumer expectations increase.

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

Yes. 2degrees strongly support the addition of a 10GigE handover option. This is the standard industry option we employ in most cases.

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

No. The costs to provide a 10GigE port are dropping substantially and should be revisited.

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

We would like to see a reciprocal Chorus No Fault Found and Abortive Site Visit fees for when a fault is found within Chorus network which is due to mis-configuration of the Chorus network, and for when Chorus technicians miss scheduled commitments. At present, Chorus charges to recoup costs when there is no fault on their network, but RSPs are not able to recoup costs from Chorus.

19. Should the EUBA variants be removed from the UBA STD? Why/why not?

2degrees does not require EUBA 60/80/180 variants, however would be concerned if any other EUBA variants were removed. As noted in our response for Question 10, we consider it important in principle that industry is consulted before withdrawal of any regulated services.

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

2degrees strongly supports increased transparency of Chorus' systems for access seekers to enable better consumer service provision.

There is currently very limited transparency in terms of each of provisioning, current network data and congestion and fault issues.

We understand lack of transparency is a common issue amongst RSPs. It may be appropriate for this issue to be considered by a TCF Working Party that reports back to the Commerce Commission.