# VODAFONE NEW ZEALAND LIMITED

# SUBMISSION TO THE

# NEW ZEALAND COMMERCE COMMISSION

**Cross-submission on changing the unbundled bitstream access (UBA) service from retail-minus pricing to international benchmarking from jurisdictions using forward-looking cost-based pricing**

**14 September 2012**

## Introduction

1. The UBA and UCLL reviews will have a significant impact on retail broadband competition for the foreseeable future. The Commission's discussion paper and submissions in response raised a number of pertinent issues for transitioning the UBA to a cost-based price.

2. The Commission's decision on UCLL benchmarking will provide the scope of "additional costs" to be considered for the UBA review. Vodafone supports the Commission's recent amendments to the UBA project timeline which recognises the need to independently resolve the UCLL benchmarking process before a cost-based UBA price can be set.

3. Given the government policy for averaging regulated fixed line services, we suggest the Commission undertakes an approach for the UCLL and UBA reviews that is consistent, minimises the impact on dependant retail markets and is in the long term benefit of New Zealand broadband users.

4. We encourage the Commission to first determine the UBA cost based price by applying the initial pricing principle (IPP). There are unique challenges involved with applying the IPP for the UBA. However, a pragmatic approach to benchmarking will provide sufficient data with which to determine the efficient costs of the regulated UBA.

## UCLL benchmarking

5. Vodafone agrees with both Telecom and Chorus that the change to cost-based UBA is inextricably linked with the current UCLL review. We suggest the Commission resolve the review in a manner that has limited impact on the bottom up cost-based UBA price.

6. As Telecom alludes to in its submission, the Commission's current approach in UCLL may require multiple UBA prices (and benchmarks), one for cabinetised lines and another for when it is provided over non-cabinetised lines.

7. Having multiple UBA prices between cabinetised and non-cabinetised lines will cause significant disruption to retail broadband markets. Vodafone and, as far as we are aware, any other ISP does not distinguish their retail offering for cabinetised and non-cabinetised lines. This is a direct consequence of Telecom, and now Chorus, not distinguishing between wholesale UBA prices between cabinets and non-cabinets.

8. Under the previous retail-minus formulation for UBA, Telecom refrained from increasing its retail broadband pricing for customers served from cabinetised lines which meant both retail and wholesale markets were not divided between cabinetised DSL broadband and non-cabinetised DSL broadband.

9. Splitting the UBA between cabinetised and non-cabinetised lines now will be very difficult for ISPs to implement as it will fragment retail markets and split ISP customer bases that have all developed from a uniform UBA. Such an outcome cannot be in the long-term benefit of New Zealand end-users.

10. Telecom suggests such complicating matters do not arise if the Commission "sets a single UCLL price". Vodafone supports such an approach to UCLL averaging. We believe a single price for the UCLL will avoid the complications with setting multiple UBA access prices. Given the designated UCLL service is divided into two standard-terms determinations with urban and non-urban pricing between: the UCLL standard terms determination (STD) and the sub-loop-unbundled (SLU) copper local loop STD, the Commission must apply clause 4A of Schedule 1 in the *Telecommunications Act 2001* (the Act) in a manner consistent

with the policy objective to implement averaging for the unbundled copper local loop network. We submit this approach requires averaging across all four categories of SLU and UCLL, namely urban and non-urban SLU and urban and non-urban UCLL, all within a single average.

11. Retaining the current delineation between SLU and UCLL within the UCLL service designation risks splitting the UBA between geographies that are cabinetised and non-cabinetised. We suggest the Commission avoid such an outcome since the UBA has had a single price to date. This is consistent with the government policy towards "averaged" fixed line telecommunications access pricing. The bottom up costing for a single UBA price will benefit end-users as any reductions in wholesale prices will be very difficult for ISPs to retain given the strong competitiveness of the fixed retail broadband market.

## Competition test

12. Telecom has suggested in its submission the Commission apply the Competition test for the UBA at the same time as conducting the section 77 review under the *Telecommunications Amendment Act 2011 (the Amendment Act)*.

13. We agree with Chorus that the scope of the current review is limited to the implementation of the new IPP for UBA and in all other respects the Commission's power to conduct a section 30R review under the Act is suspended in relation to the UBA STD until December 2014.

14. Chorus's approach is consistent with the Commission's own interpretation of its power to conduct competition reviews. In the Commission's recent consideration of this matter it determined that the power to perform a competition review was empowered by section 30R but that section 76 of the Amendment Act disabled the use of the section 30R power for the next three years. The Commission concluded:

> In the Commission's view, it would be inappropriate to amend the STD to give it the power to continue to carry out competition reviews when Parliament has specifically prohibited the Commission from using the 30R review power for three years.[1]

15. The impact of unwinding the UBA STD is that it will fragment UBA pricing between competitive and non-competitive areas. Such an outcome will be contrary to the Government policy for averaging UBA and UCLL access services.

## Applying the Initial Pricing Principle

16. Vodafone does not consider there to be cause for the Commission to move directly to final pricing principle (FPP) as suggested by TelstraClear. We agree with Chorus that an FPP will be costly and time consuming and so the Commission should set its attention to correctly applying the IPP. We believe this is best achieved by applying benchmarks for the UBA service as a whole from comparable jurisdictions.

17. Given the cost-based price will not apply until 1 December 2014, there is sufficient opportunity for a relevant party to request an FPP should the Commission's IPP price be found to under or over estimate the efficient UBA monthly and connection charges. This is consistent with our understanding of the relationship between the IPP and FPP in the Act.

[11] Commerce Commission, *Final Review of the Standard Terms Determination for the Designated Service Telecom's Unbundled Bitstream Access*, Decision 731, p. 10

## Connection charges

18. Currently the UBA has no connection charge for a standard connection. A standard connection charge that applies without any commensurate changes to the monthly UBA charge will have a substantial bearing on the profitability for continuing to offer the UBA to new customers. The Commission must get the balance right. Given the UBA is the most common input for providing fixed broadband in New Zealand, imposing a new upfront wholesale cost will seriously impede take-up for households wishing to access the internet or obtain a broadband service for the first time.

19. However, not all new UBA connections are without a regulated charge. Where a standard connection involves wiring Chorus currently levies a $145.05 charge and $183.06 for wiring and modem. Accordingly, the standard connection charge will only apply in those instances where wiring for new premises is not required.

20. Under the UCLL STD Chorus will charge $74.83 for a standard connection where no site visit is required and $56.12 for a bulk migration of 20 customers or more. Having a UBA connections charge in excess of the UCLL connection charges would be a perverse outcome given negligible additional work has to be done.

21. The Commission must demonstrate any new charge for a standard connection is indicative of Chorus's processes and costs and is appropriately balanced with the new bottom up cost-based monthly UBA access charge.

## Benchmark adjustments

22. In general Vodafone supports the Commission embracing a broader set of jurisdictions wherever possible and within reason when benchmarking access prices. In this context we believe jurisdictions such as Italy and Cyprus should also be considered by the Commission if they apply FLCB prices for UBA.

23. We understand that Italy has cost based UBA for regions in the country where LLU is unavailable. Given the costs involved with the UBA are "above" the access network, then the inclusion of the Italian cost-based price should be within the Commission's consideration when selecting data points for its international benchmark.

24. Finally, the Vodafone benchmark set included an access price for Sweden included the underlying LLU cost within the cost-stack for the service.[2] We suggest the Commission exclude this cost when benchmarking Swedish UBA prices.

[2] European Commission Decision concerning case SE/2010/1106