

Submission for Chorus in response to
Section 30R review of the UBA standard terms determination
Process and issues paper (7 April 2016)

5 May 2016

INTRODUCTION AND SUMMARY

- 1 We offer our comments on the Commerce Commission's (**Commission**) *Section 30R review of the UBA standard terms determination, Process and Issues Paper (Issues Paper)*, released on 7 April 2016.
- 2 We welcome the principles and thinking that has gone into the Issues Paper and support the pragmatic approach the Commission is taking to this review. It is nearly ten years since UBA was first regulated and New Zealand will continue to be in a major broadband transition for another ten years. We don't think a detailed review of UBA makes sense at this point in time.
- 3 We currently provide a nationwide "one size fits all" best efforts UBA service in accordance with the UBA Standard Terms Determination (**UBA STD**). We inherited the UBA STD at demerger. While the UBA STD has not changed, we have continued to invest in regulated UBA to meet the increasing demand of New Zealanders online.

MEETING DEMAND WITHIN TODAY'S COPPER REGULATORY ENVIRONMENT

- 4 We are committed to bringing New Zealand better broadband on both our fibre and copper networks. While fibre is the future, our copper network will support many broadband consumers for some time yet. Copper broadband connections currently make up 91% of our total broadband connections and 75% of our revenues are from our regulated copper products. That will change over time as more broadband consumers' transition to fibre.
- 5 The broadband habits of New Zealanders are continuing to change. Since Chorus was established as an open access wholesaler, the average broadband connection speed across our network has increased from 10Mbps to 23 Mbps. Data consumption in New Zealand has doubled in the last year, with average throughput per user on the copper network during the busy period now approximately 575kbps. And, broadband waiters have reduced to around 10% of what they were in 2011.
- 6 To ensure we are meeting increasing demand, we are:
 - 6.1 Using a range of technologies to deliver UBA and taking a lifecycle upgrade approach;
 - 6.2 Managing a congestion free network;
 - 6.3 Building fibre to the home, bringing upgraded broadband infrastructure to a large part of the country. As at 31 March 2016, approximately 588,000 broadband consumers can access our ultra-fast broadband network;
 - 6.4 Increasing information for broadband consumers at www.chorus.co.nz. Many New Zealanders are not taking the best broadband that is available to them. More New Zealanders knowing what's available, and greater uptake of better

options, has the potential to improve New Zealand's ranking in international broadband comparisons; and

- 6.5 Seeking a regulatory policy environment that enables business cases to be made to improve and future proof broadband infrastructure and services for all New Zealanders.
- 7 We agree with the principle of service differentiation, though it will be difficult to achieve without significant changes to the UBA STD given the history of regulated copper services (that collapsed differentiation). Line speed and throughput are distinct but related concepts that are fundamental to broadband performance and differentiation. Neither are currently managed in New Zealand's UBA service, in contrast to overseas where line speed is often managed.
- 8 It is almost two years since we discussed with the Commission and RSP customers our intention to launch differentiated commercial UBA services to promote increased choice and competition for broadband consumers. There were different views on those proposals and on what the UBA STD required us to do. The resulting uncertainty meant that we did not proceed with the majority of those proposals.
- 9 Since then, we and the market have moved on, working within the UBA STD environment that is in place:
 - 9.1 Pricing for the regulated UBA service concluded in December after a four year process;
 - 9.2 Average copper connection speeds have continued to increase. Recent changes to the configuration of the frequencies used to transmit VDSL broadband has meant both higher speeds and a wider VDSL footprint. VDSL is an important transition service, especially for those who don't currently have fibre available. There are more than 366,000 New Zealanders who do not have fibre available that could be benefiting from these VDSL improvements;
 - 9.3 Fibre uptake is over 20% and continuing to increase. Around 46% of Chorus' mass market fibre connections are 100Mbps plans or better;
 - 9.4 At a future point in time where it makes sense, we intend to withdraw (on notice) copper services where our fibre service is available; and
 - 9.5 The industry needs to remain focused on consumer experiences as ongoing change continues as well as on the Government's pending regulatory review that is expected to provide a better regulatory model and certainty from 2020.
- 10 The EUBA variants were regulated to provide customers with a dedicated channel for VOIP services, but have had very little uptake. These variants are an example of prescription that has no market relevance or impact. While out of date, there is little to be gained with further engagement on these variants.

CONCLUSION

- 11 We do not favour a lengthy process that debates substantial prescriptive changes to the “best efforts” UBA service. If the Commission wishes to update the UBA STD to reflect our use of VDSL technology and our ongoing investment to meet growing throughput demand (which on average already exceeds 500kbps per user), we are happy to comment on it.
- 12 We note the Commission’s statements that this review is not intended to re-open the pricing process, which the Commission has just concluded after a four year process. Price stability is important to broadband consumers, our RSP customers, Chorus and investors.
- 13 We do not consider there is much to be gained from re-opening old debates or starting new debates on how to re-design the copper regulatory regime. If the Commission considers that updating the UBA STD is necessary we expect that it will be aligned with FPP modelling assumptions to the extent they may be relevant, recognising the limitations of hypothetical modelling.
- 14 We continue to welcome any guidance the Commission can provide on when and if commercial services might be offered alongside an STD.