



CROSS SUBMISSION ON THE FURTHER CONSULTATION ON ISSUES RELATING TO CHORUS UCLL AND UBA SERVICES

PUBLIC VERSION

APRIL 2014

Introduction

1. This cross-submission is made by CallPlus. We thank you for the opportunity to comment.
2. As a general observation there is a stark contrast in the approach of the RSPs and Chorus. Chorus appear to be taking a position which is very focussed on a selective legal interpretation of the Act and STD's with the suggestion that little discretion is available to the Commission. CallPlus, InternetNZ and the other RSP's appear to be considering the impact on competition and consumers interests when considering the Act and STDs.
3. CallPlus would like to make the following comments in response to points from other parties.

Choice of MEA

4. CallPlus does not support a copper based MEA or the assumption that the network is underground as a matter of course. It seems self-evident to us that no operator would deploy a network in this manner. In fact an entrant would consider different technologies undoubtedly using fibre and wireless.
5. Telecom promote a sensible approach that suggests an efficient operator would build a network using the most efficient technologies (not a single technology) and that the use of a 'cap' on the costs is a useful one to incorporate into the modelling.
6. If FTTH in an area (whether that be overhead or underground) is lower cost than FTTN then we agree it is logical that no one would build an FTTN network in that area. So an FTTH cap should be considered if the Commission elects to use an FTTN model (or vice-versa).
7. In New Zealand there are real world examples of deployments using overhead, clearly driven by the fact that this is more efficient. Northpower have extensively used overhead in contrast to Chorus. Any FTTN or FTTH model should incorporate overhead and underground deployments.
8. Similarly a fixed-wireless cap is a concept we would also support. Again it is, in our view, common sense that an efficient operator would use a fixed wireless solution in parts of its network. In our view the assumption that a fixed-wireless solution is only in rural areas is erroneous and too restricted. The Commission should get input from Vodafone and Telecom on fixed wireless capability.
9. Furthermore, as InternetNZ note, a new network opens up the opportunity of new services and revenues. It is unclear how these get factored into a model however to not make some allowance would be to effectively 'gift' Chorus all the upside from these.
10. The conclusion is that ideally the model should look at multiple technologies and adopt a hybrid approach. As InternetNZ said in their submission "*there are significant dangers in*

putting all eggs in one basket of a single MEA". The model is seriously deficient if it is unable to apply a 'reality check' on the deployment alternatives and perform some form of capping. Our concern, which echoes that of others, is that this is being viewed as problematic given the timetable that is being set.

11. Both Vodafone and Telecom have suggested an interim consultation on the model MEA ahead of the Commission's draft determination. CallPlus supports this approach.
12. Chorus' arguments that the Commission has no discretion and must do a MEA for the exact same service that is specified in the STD is likely to produce logical absurdities. The fact is that no-one would build a network to meet the exact services that have evolved today. For example:
 - To accommodate old fax machine you would have to add significant cost into your network. However Chorus didn't spend money on its existing network to accommodate fax. Fax was created by others to leverage the capability of copper voice networks. To effectively 'reward' Chorus by duplicating this kind of service in the MEA would be wrong.
 - To throttle the speed of the services to meet the legacy description in the STD would involve additional cost in order to degrade the user experience. It is absurd to suggest that this should drive decisions in the MEA.
13. The fact that much of Chorus' network was voice centric, much of it built before the internet existed, has created legacy services that the general public do not place sufficient value on. CallPlus supports the notion that the Commission has discretion to make sensible judgements on the MEA.
14. CallPlus agrees with Telecom and others that Chorus' proposed approach, unsurprisingly, will inevitably lead to revaluation gains.
15. The Commission should also account for commercial services when assessing the costs and revenues associated with shared services, or factor this into their price adjustment process.
 - There are commercial variants of BUBA that extract additional revenue for better performance than the base service.
 - CallPlus and RSP's have previously expressed concerns that Chorus may constrain UBA to pave the way for commercial variants which extract revenue above and beyond the regulated service. If commercial variant are to be created these should be factored into the model or a price adjustment applied to account for the legacy low speed service description. If not we risk a catch 22 - an FPP price being determined without factoring in the contribution of these services - only to have Chorus 'effectively increase the prices' and gain revenues that haven't been factored into the model.

Which Services?

16. CallPlus' take out from the submissions is that there is general agreement this should be about setting the price for SLU, NUCLL and UBA.
17. CallPlus & Orcon submitted that the FPP is not about SLU backhaul services. (para 2.6 of the joint submission), although we strongly support a separate s30R review of the SLU backhaul price. In our submission (section 3) we outlined why UCLL and SLU should not bear any of these fibre-to-exchange costs.
18. Chorus agree with CallPlus that if the Commission decides it needs to allocate these costs then UBA is the correct service (Chorus Submission para 22-23) not SLU or UCLL.
19. CallPlus and Orcon also outlined that UCLFS is only relevant to the UCLL & UBA prices in terms of the level of cost and revenue sharing over overlapping paths (para 4.2). Given the nature of UCLFS as a service we would expect any cost associated with it to be negligible (as outlined in CallPlus' submission) as UBA should first and foremost bear the costs. An FPP price for UCLFS was not applied for by any parties and it is worth noting that Chorus barely mentions UCLFS in their submission.
20. There are divergent views on whether SLU and NUCLL should be averaged or set at a similar price, or not. Telecom suggests that this is expedient to avoid issues around shared cost however we do not support this as being a driver for averaging.
21. CallPlus is surprised by Chorus' statements (para 159) that "*the TSLIRC of the SLU STD service (excluding SLU backhaul) may well be equal to or greater than the TSLIRC of the UCLL STD service*". Given the discussions on loop lengths and costs being 80% in the civils this is counter intuitive and raises even more concerns with the Commission using Chorus' information and actual deployment without checking and optimisation.

Relativity

22. CallPlus agrees with Chorus' statement (para 151) we "disagree with the proposition that applying TSLIRC pricing rules to the UBA and UCLL services can be assumed on its own to maintain the relativity consideration."
23. As Chorus point out (Chorus submission para 152.1) that if it were as simple as this the Act would not have specifically included a relativity consideration to UCLL and UBA in the Act. As CallPlus and Orcon pointed out in their submission (para 1.14) the "UCLL & UBA service descriptions are unique in requiring specific s18 focus on relativity", Chorus agrees (para 152.2) that "TSLIRC involves an exercise of judgement on the Commissions part. So relativity should be used, alongside s18, in making those judgements."
24. CallPlus and Orcon outlined in more detail its views in para 10.4 to 10.19 of their joint submission.

25. Chorus asserts in their submission that the “ladder of investment is dead”. Whilst it is clearly in the best interests of a monopoly network provider to restrict wholesale services to layer 2 and above it is premature to declare the ladder of investment is dead - despite Chorus’ best efforts. What is clear is that the outcome of this process will be a significant factor in determining its fate.
26. The fact of the matter is that there are competitors on the ladder whose business models rely heavily on their ability to leverage their unbundled investments in order to create compelling consumer propositions both copper and fibre. Without the ability to refresh, keep current and make a return on those investments the ability of those competitors to transition to the fibre world will be seriously impacted.
27. As CallPlus and Orcon noted in our joint submission (10.13) TUANZ is correct to observe that *“a number of retail ISPs have invested heavily in the fixed line space in line with the well-recognised ladder of investment model. Those ISPs tend to be the ones who have introduced new and innovative pricing strategies (such as roll over data, shared data and so on) and who deliver significantly more value for money”*.
28. Vodafone make the point (Vodafone submission D3 (b)) that Service Providers should be expected to “move across” to a new ladder of investment (i.e. from copper to fibre). We agree with that, however it is a transition over time. If this process changes relativities between UCLL & UBA then without a transition period it is somewhat like unbundlers being expected to “change engines in mid-air”. Copper co-exists with fibre for the foreseeable future – in fact it will likely still be the dominant delivery in 2020. CallPlus’ investment is not just in MSANs it’s in expanded network capacity and coverage. Furthermore our existing MSAN investments need to be refreshed (e.g. VDSL) to avoid a spiral of escalating costs from underutilisation.
29. However in terms of further unbundling of new exchanges or cabinets CallPlus’ is inclined to agree with Telecoms assessment (para 5 of Telecoms submissions executive summary) which presumably includes themselves that *“no-one anticipates an access seeker deploying a further network in New Zealand”*. In CallPlus’ submission (para 105) we outlined many of the other factors that would need to be considered in further deployment other than just price considerations.
30. To again add emphasis to the issue we would like to quote from the application for the merger of Vodafone and TelstraClear the Commerce Commission concluded (emphasis added):
- “ that, post acquisition, Orcon and Slingshot will continue to act as aggressive, price leading competitors in the market. **While they lack the scale of Telecom or the merged entity, they are able to compete effectively, especially in areas where they have unbundled (where Vodafone’s fixed network is largest)**. The Commission considers that, post acquisition, Orcon and Slingshot will provide competitive constraint on*

the merged entity "(Determination 12 Aug 2012 Vodafone New Zealand Limited and TelstraClear Limited [2012] NZCC 33)

31. As CallPlus & Orcon note in their joint submission (para 1.14) *"the overall structure of the regulatory regime is that competition from copper, including competition from unbundlers, is encouraged as a constraint on fibre. This is the opposite of narrowing relativity for the purposes of encouraging migration to fibre."* We consider that the Commission should err on the side of caution (favouring investment) when considering relativity.

Backdating

32. CallPlus, in line with Telecom and Vodafone's position, does not agree with Chorus' view on backdating. CallPlus is of the view that the Commission has the discretion to make a decision based on what is likely to give best effect to s18.
33. The Commission shouldn't, in our view, make this decision until the final FPP pricing is decided. However any early indications on the Commissions thinking and preliminary views on backdating would be useful.
34. In considering backdating CallPlus assume that the Commission will be considering both monthly charges and other one-charges such as connection fees.

Timetable

35. CallPlus & Orcon's joint submission dealt extensively with our many concerns on timing. We regard this as a significant issue
36. We share the concerns of all other parties, except for Chorus, with respect to the apparent 'time-box' nature of the exercise and urge the Commission to reconsider these targets.

Confidentiality

37. Both Vodafone & Telecom express concerns with the approach being proposed on the basis that it will materially increase costs and effectively make it difficult for them to fully participate in the process.
38. It goes without saying that the proposed process will effectively shut out participation from the smaller operators. We would ask that the Commission give consideration to allowing internal staff, with appropriate undertakings, to participate in the process. It may be that different levels of access could be considered to facilitate this.

One-Off Charges

39. As previously stated our application requested that the one-off charges in the UCLL, SLU and UBA have an FPP review, these should be included in the process and consideration be given as to whether any changes should be backdated. CallPlus is concerned that there has been little discussion on these charges, which are not immaterial, and we are working on the basis that these will be included in the modelling and further consultation will occur.

If you have any questions on this submission please direct to the individuals below

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