

3 October 2014

Public

Cross-submission in response to the Commerce
Commission's Consultation Paper on issues
relating to Chorus' proposed changes to the UBA
service

Submission

- 1 This cross-submission responds to submissions on the Commission's Consultation Paper on issues relating to Chorus' proposed changes to the UBA service dated 4 September 2014 (**Consultation Paper**). The Consultation Paper appended the Commission's external legal advice (**Commission Advice**) and sought feedback on that advice.
- 2 Spark, CallPlus and Wigley & Co have submitted external legal advice (**Industry Advice**) in response to the Commission Advice. To some extent, all of the Industry Advice raise questions about the good faith starting point in the Commission Advice. This is unsurprising given the specific and detailed terms in the Standard Terms Determination (**STD**). However, despite this, none of the Industry Advice seems to identify any specific obligation within these detailed terms that would be breached by the proposed changes to the UBA service.
- 3 The Industry Advice does not raise any new issues not already addressed in our previous submissions, including our 18 September 2014 submission which appended advice from Chapman Tripp and Minter Ellison Rudd Watts. For this reason, we have not repeated our views here, and simply refer the Commission to our previous submissions.
- 4 While we continue to believe that the proposals in relation to both the regulated UBA service and Boost services are permitted by the STD, we have listened to feedback from our customers on those proposals. On 1 October 2014, Chorus held a Dialogue session at which it was confirmed that:
 - 4.1 No dimensioning will be applied to the regulated UBA service at this stage (noting that dimensioning is already applied to the BUBA service);
 - 4.2 Chorus has never proposed to degrade or reduce the broadband experience from today's levels. Chorus will continue to use our judgement to invest to support the service and reassess our position again as the FPP outcomes become known. We've previously stated that the current average throughput per user is 230kbps. This has continued to increase and Chorus will invest to take this average up to 300kbps as required by increasing demands;
 - 4.3 Chorus will continue to make the existing VDSL service available, but will rename the service Basic VDSL. For lines connected from 1 December 2014, RSPs choosing to pay an amortised install and wiring (rather than paying for installation and wiring upfront), the uplift will be \$10 per month (reflecting increased charges that will be in place from 1 December (Site visit - \$169.73 and wiring, which is POA in the STD and which Chorus proposes to charge at \$115, consistent with the charge for similar work under the Chorus UFB Services Agreement). For lines connected prior to 1 December 2014, the uplift will remain \$5 per month, resulting in a price drop on 1 December to \$39.44 per month. The service will continue to be available over regulated handovers. No service commitments will apply;

- 4.4 Chorus will introduce Boost VDSL from 1 December 2014. This will have the service commitments (throughput and speed) previously announced and will be available over commercial handovers. The traffic class will be "Best Efforts", not "Premium Best Efforts", i.e. the same traffic class as the EUBA0 service provided in the STD and the Basic VDSL service; and
- 4.5 Boost HD has been put on hold at this stage.
- 5 The upshot of proposals announced at the Dialogue on 1 October 2014 is that there will be no changes to the Basic UBA service provided under the STD as it behaves today and Boost HD is on hold. The only remaining question is then whether the Boost VDSL service is materially differentiated from the regulated service. We believe it is. As we have previously submitted, the Commission concluded in relation to Telecom's Wholesale VDSL (**WVS**) service proposal that a more onerous throughput obligation was sufficient to differentiate the commercial service from the regulated service.¹
- 6 Chorus has sought feedback from the industry on these proposals and expects to formalise them next week. A copy of the Dialogue pack is **attached** to this submission.

¹ Final Decision of the Commerce Commission on the request for a Review/ Clarification of the application of the UBA STD to VDSL technology, 16 April 2010, paragraph 13.