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Simon Thomson
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Commerce Commission
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BY EMAIL ONLY

Dear Simon,

RE: SUBMISSION ON CONSULTATION ON POSSIBLE SECTION 30R REVIEW OF THE UBA STD GENERAL TERMS AND SERVICE DESCRIPTION

1. Vodafone welcomes the opportunity to comment on the Commission's Consultation on possible section 30R review of the UBA STD General Terms and Service Description published on 2 December 2014 ('the Consultation Paper').
2. Vodafone agrees that the Commission should commence a review of the UBA STD General Terms and Service Description ('UBA STD') now pursuant to s 30R of the Telecommunications Act 2001 ('the Act').
3. We also generally support the areas for inclusion in review that the Commission has identified.
4. There are, however, some important additional considerations will arise from conducting a s 30R review contemporaneously with the processes for setting

monthly prices for the UBA and UCLL services that are currently underway. These issues are described below.

5. This letter does not contain any confidential information.

Any s 30R review should commence now

6. We agree that a s 30R review should commence immediately.
7. Chorus' proposed introduction of 'Boost' commercial UBA services, and questions which arose from this proposal regarding the applicability of the UBA STD to these services, illustrated the need for the UBA STD to be revisited. As became apparent during consideration of the Boost services, the UBA STD as currently drafted lacks clarity in some important respects, including the extent of Chorus obligation to provide in excess of the 32kbps minimum service requirement so as to deliver a reasonable end-user expectation. There are also more fundamental questions about how Chorus' ability to develop new bitstream services incorporating features not included in the UBA STD service may be accommodated alongside the need to provision a regulated service of sufficient quality to support competition in downstream retail markets.

Scope of any review

8. We generally agree with the potential areas for inclusion in the scope of a s 30R that are identified in paragraph 14 of the Consultation Paper.
9. It's particularly important that a review seeks to establish a much clearer delineation between regulated and commercial services. This almost certainly requires further elaboration of the criteria listed at clause 10 of the UBA STD General Terms. It will also require a fuller description of technical and functional characteristics of the UBA service than is contained in the current version.
10. Related to need for better delineation between regulated and commercial services is the need for any new commercial services that Chorus' proposes to be introduced to be more completely described, and for engagement with access seekers to have occurred before services are notified to the Commission.
11. Vodafone submits that a review should also seek to replace subjective concepts, including the requirement in clause 2.2.1 of the UBA STD to carry out obligations under the UBA STD in good faith, with objective rules that specify precisely what Chorus must deliver and the service that access seekers can expect. Chorus' counsel noted in submissions made in respect of the Boost services that use of the 'good faith' concept is problematic in a context where services are supplied on

regulated terms¹ - and we tend to agree with this view. It is far preferable for Chorus' obligations under the UBA STD to fully and exclusively be expressed in terms of the technical and functional characteristics of the service it much deliver. Such explicit obligations, rather than any general concept, should also deal with matters such as whether (and to what extent) Chorus can impose network management, prioritise traffic or withdraw the regulated service.

12. We agree that it is appropriate to include a requirement for enhancements to be made to the regulated UBA service to reflect, for example, improvement in underlying technology. For this reason, reference to a requirement to ensure that the service metrics are consistent with international benchmarks (or similar) should be included in the UBA STD. A mechanism for enhancement to the regulated UBA service is necessary if this service is to remain of sufficient quality to support competition in downstream retail markets – however this mechanism must also operate simply so as to avoid dispute as to Chorus' precise obligations. Accordingly, continuing reference to a subjective concept like 'international best practice' is unlikely to be useful.
13. In addition to these points, we submit that a s 30R review should consider whether the UBA STD ought to include reference to additional ancillary services that access seekers typically purchase when consuming the UBA service (e.g. 10GB handover links). More generally, a review should consider the case for a general mechanism to bring ancillary services that would be consumed together with any future enhancement of the UBA service within the scope of the UBA STD – such that the extent of Chorus' requirements to provide these services and the terms on which it must do so are clear in the STD.
14. A s 30R review should also consider whether Chorus ought to be required to provide additional elements such as Line Profile Optimisation/Dynamic Line Management within the regulated UBA service, particularly to the extent that international benchmark services also include such additional elements. At the very least, consideration should be given to the case for a requirement that Chorus provide better service quality and availability information to enable access seekers to support improved service provision.
15. Finally, we note that the Commission has included the following issue within the potential scope of a s 30R review:

*"the extent to which the UBA STD requires, or should require, the evolution of the regulated service to meet the demands of end-users, which may require investment that will be recognised in the FPP:"*²

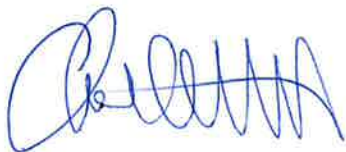
¹ Chapman Tripp memorandum *Chorus: Proposed changes to Unbundled Bitstream Access Service – Review of Commerce Commission Legal Advice* (18 September 2014).

² Paragraph 14.7, Consultation Document.

16. To the extent that any changes to the UBA STD resulting from a s30R review impose additional investment requirements on Chorus, or alter the costs of providing the UBA service, these will be relevant to the price for this service that Chorus may charge pursuant to the FPP (which is currently being determined by the Commission). Given that a s30R review may result in change to the definition and cost of providing the UBA service, it would be unfortunate if the timetable for conducting any such review were not aligned with the process for determining the FPP price for the UBA service. Doing otherwise could result in multiple changes being made to the UBA service price within a relatively short duration, which is unlikely to best service predictability, which we note the Commission has indicated it values in the implementation of FPP prices.
17. A consequence of change to the characteristics of the UBA service arising from a s30R review may be that some modelling choices made by the Commission in determining the TSLRIC of the UBA service are no longer appropriate. Given the Commission's view that regulatory predictability implies minimal change to modelling choices made when setting an initial FPP price,³ it would be unfortunate if the FPP model had to be revisited due to changes flowing from a s30R review of the UBA STD. Vodafone submits that this outcome is best avoided by ensuring a s30R review is completed before the Commission issues a final determination of the FPP for the UBA service.

Please contact me if you have any questions regarding this letter.

Yours sincerely



Chris Abbott
Head of Public Policy
Vodafone New Zealand Limited

³ UBA Draft Determination (2 December 2014), paragraph 103.