

Submission as to consultation on possible s30R review of the UBA STD General Terms and Service Description

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1. Summary

Introduction

1.1 The overarching points underpinning these submissions are:

- (a) Most matters suitable for an s30R review must, or should, be done in the FPP process itself. However, to the extent the Commission has doubt on that, and wishes to reduce risk (for example, risk of appeals), the same outcomes can be reached via s30R, or a combination of the FPP and s30R, in a manner that is relatively seamless and efficient. For example, we submit below that all one-off services must be priced on the FPP. Chorus submits that only some can be priced in this way: essentially they say only the core services where prices have been determined are to be priced. Those different positions raise possible appeal risk on the FPP, wherever the Commission lands. That is de-risked by including the non-core prices under s30R (possibly also under the FPP too). In that way, there can be a relatively seamless and coordinated approach. If the Commission wishes to take a different approach it is suggested that it provide a discussion paper on options.
- (b) Streamline where possible. Therefore, for example, as to the issues specifically raised in the consultation paper (that is, other than any additional issues on which the Commission wants input), it is suggested that scope be limited to terms relating to future expansion of the UBA network. The rest is workable as is.
- (c) The consistent theme is **future proofing**. Boost has illustrated the importance of the UCLL and UBA regulation being future-proofed. Without future proofing industry and consumers will face Boost-like challenges again. We saw the Chorus play book last year and, absent future proofing, it can be used again in differing ways.
- (d) Chorus and RSPs need to know clearly what they will give and receive under the STDs. That allows certainty and reduces gaming opportunities. Therefore, obligations must be set out in a clear and measurable bright-edged way. Broad obligations such as good faith and best international practice are too vague and too easily challenged to resolve primary obligations. They are only secondary and supportive terms.
- (e) While the obligations must be bright-edged (that is, clear cut and readily ascertained), they should also be future proof and applicable to the dynamic environment. For example, as demand increases dynamically, the switches between the DSLAM and the handover point need to cater for that increased demand. Consequently there is a dynamic metric required the effect of which is to trigger investment in more switch capacity (the price of course will reflect that investment).

Learnings from Boost: Scope of UBA STD review

- 1.2 What happened last year with Boost, and its intended degrading impact on regulated UBA, is a valuable real life example to help define the optimal approach in the STD and therefore to help as to s30R scoping.
- 1.3 What the Boost experience shows is that :

- (a) A single FS/FS service remains the optimal and efficient service for the long term benefit of end users, with differential choices left to the RSPs. Nothing has changed on that since the Commission established this in over 8 pages of careful analysis in 2007; indeed, subsequent experience has shown why the Commission was correct in its approach;
- (b) Having a future-proofed UBA service does not preclude genuinely innovative bitstream commercial services. Materially, the STD was future proofed enough as to Boost. It could have been otherwise. Absent future proofing, Boost-type issues will keep re-surfacing;
- (c) Except in one important respect, the UBA service is, in our opinion, future-proofed and does not need change. It is clear enough as it is. That includes as to FS/FS, throttling and prioritisation. That also includes as to VDSL, for that is clearly included in the regulated service despite the Commission's 2010 decisions.
- (d) The STD is clear enough because it expressly and directly states the FS/FS and VDSL obligations. Good faith and best industry practice obligations are secondary to those primary obligations. Addressing them takes the focus to the wrong place. Relying on vague concepts such as good faith is too uncertain for all parties for future regulation, and invites controversy.
- (e) The good faith and best industry practice terms are fine as they are, for the limited but material purpose they serve.
- (f) "If it ain't broke, don't fix it". Therefore, many of the suggested issues put forward in the consultation paper can be taken out of the s30R consultation scope.
- (g) However, there is not enough clarity around the particular issue of expanding the service capacity to meet increasing demand when the status quo network is insufficient to handle that demand. In particular this is problematic when the status quo network from the RSP side of the DSLAM to the handover (fibre and switches) unduly attenuates traffic. This will happen absent network expansion.
- (h) The STD terms should be amended to make clear that Chorus must continue to expand that network to ensure that the regulated service is future-proofed such as in relation to increasing demand. Bright edged and dynamic obligations are needed so there is explicit clarity rather than the implicit nature of terms such as good faith and best practice.
- (i) Without this, Boost-type problems will continue to arise. Regulated UBA potentially would become a ghetto, as would have happened if Chorus had succeeded with its Boost initiative resulting in commercial variants becoming the only viable option as its capacity is superseded. We can see the same thing also playing out with handover connections, where the regulation is not future proofed in explicit terms.
- (j) Chorus investment to expand that network will of course be a factor in the UBA TSLRIC price. So, Chorus does not face irrecoverable cost.
- (k) We outline in this submission how this inter-relates with the FPP process including as to how future required investment in fibre, switches, etc, to

accommodate greater demand is to be priced into the FPP. One conclusion is that this review may be better placed in the FPP process instead of the s30R: that may be simpler. However to de-risk the process the Commission may prefer to do both in parallel. We also conclude that a change to the process for notifying commercial variants is not needed so long as the UBA service is future proofed: if it is not, that process should be revisited.

- 1.4 Therefore, potential amendment of the terms as to future growth needs should be the only UBA service description issue in the s30R. We also recommend some additional UCLL and UBA issues that need to be reviewed in response to the Commission's request. These now follow.

One-off charges (UCLL and UBA)

- 1.5 The primary submission is that all one-off charges, whether currently in or out of the Sch 2 price list, including additional charges such as bulk pricing, are to be decided under the FPP. However, in order to have transparency and to reduce litigation risk, it is proposed that all such charges are reviewed under s30R, concurrently with the FPP review.
- 1.6 Therefore, one-off charges should be in the s 30R scope.
- 1.7 The need to do this is illustrated by the overnight doubling of home installation charges for VDSL from \$5 to \$10 (a highly material figure given the UBA price uplift is in the same order).

Disclosure, Transparency and other efficiencies

- 1.8 There are a number of areas which lead to inefficiencies and higher prices initially for RSPs and subsequently, for end-users. These include:
 - (a) Provision of sufficient information, and on a timely basis, by Chorus to RSPs (to make ordering of services efficient, to reduce erroneous billing, etc);
 - (b) Automating and speeding up communications;
 - (c) Improving OSS;
 - (d) Transparency of approach.
- 1.9 The VDSL \$10 per month charge, noted above, illustrates this. As Chorus does not inform RSPs whether premises are VDSL-ready, the RSP has little choice but to take the expensive service. If given sufficient information RSPs could avoid inefficient truck rolls and consequently charges to end-users could be reduced.
- 1.10 That is an appropriate supplementary term in the FPP decision under s 50 of the Act which makes specific provision for supplementary non-price terms.
- 1.11 But the safest course may be a parallel s30R and FPP approach.
- 1.12 RSPs will outline their concerns first to Chorus and then come back to the Commission to the extent that is required. That seems the most efficient approach in terms of reducing the need for Commission intervention.

UBA handover connections

- 1.13 The maximum sized handover connection in the Sch 2 price list – 1GbE - is well short of what is now needed. In December, Chorus unilaterally increased the price of its larger commercial offering, 10GbE, by 53%. The new charge of \$1,444 per month for 10GbE compares with \$300 per month for the comparable UFB link.
- 1.14 That demonstrates:
- (a) Chorus has market power that should be regulated; and
 - (b) It is a further example of the need to future proof UBA services as the listed service has been superseded. Very likely, 10GbE will in future be superseded too.
- 1.15 The service description in Sch 1 of the STD for handover connections (which is the service between the UBA Handover Point and the RSP side of the OFDF) is not dimensioned at all. That is the service to be priced during the FPP process, and not only the variants stated in the price list. Pricing only the variants in Schedule 2 (the price list) would not meet the requirements of the Act. To be priced are the full range of dimensions up to a dimension that accommodates future FS/FS services without attenuation. This will future-proof handover connections.
- 1.16 While this can (in fact, must) be done in the FPP, an option – to reduce litigation risk - is to undertake a parallel s30R review of handover connections, which in practice can be largely the same process.
- 1.17 Therefore, handover connection pricing above 1GbE should be included in the s30R scope.

SLU Backhaul

- 1.18 SLU Backhaul regulated pricing should be in scope. In order to derive the SLU and NUCLL regulated prices, the Commission is determining the equivalent of an FPP price for SLUBH. But the FPP does not regulate the SLUBH price. It is a simple step to convert that input cost into an FPP-based regulated SLUBH price.

2. Learnings from Boost for future regulation

Impact of Boost on RSPs and consumers

- 2.1 First we outline what happened and then we explain why that provides learnings for the future including for s 30R scope.
- 2.2 Boost, other than in the final Boost VDSL form,¹ would have seen active degradation of the regulated service by:
- (a) Throttling regulated UBA at handover; and
 - (b) De-prioritising regulated UBA behind Boost.

¹ Assuming Chorus does not throttle regulated UBA at handover, or deprioritise regulated UBA: it has not yet clearly stated this.

- 2.3 Critically, Boost was to be based on actively degrading an existing service instead of innovatively providing an additional service.
- 2.4 Additionally, under Boost, VDSL would no longer be a regulated service.
- 2.5 Therefore, Chorus would have constructed its products such that it chose multiple levels of UBA service to be provided at multiple price points.
- 2.6 The result would have been that regulated UBA would largely have become a ghetto as RSPs had little choice but to migrate to the higher priced Boost commercial variants.
- 2.7 That problem would have increased over time, due to the throttling at handover and de-prioritisation, as demand over UBA continued to increase as it is presently. Throttled speeds today may work² but soon, that would not be so.
- 2.8 What this illustrates is the key point that the UBA regulated service should be future-proof, so it does not become an ineffective ghetto, replaced by unregulated commercial services. Further, if a service is not future-proof, there will come a time when another Boost-type scenario arises. The industry and the Commission has seen the Chorus play book on this last year. That is ample warning of the need to cut back these opportunities for the future.
- 2.9 RSPs and consumers have been fortunate – so far - inasmuch as the STD was sufficiently future proof on material aspects to counter the Boost strategy, it could well have been otherwise. The same cannot be said for all services. For example handover connections may not be so fortunate. We would note that revival of the Boost initiative has not been ruled out by Chorus, so this is still not fully ended,
- 2.10 Spark summarise the position well in terms applicable now to regulation under s30R:³

“This situation [as to Boost and degrading regulated UBA] speaks to the very purpose of regulation. The determinative factor in this migration would be a negative action (degradation of the regulated service) not a positive one (innovation). It is arguable that this situation would represent an exercising of the very market power that regulation of the UBA service is intended to address.”

How Boost fits with the Commission’s view on efficiency

- 2.11 Chorus via Boost was trying to achieve multiple service alternatives with different price points, by attenuating services. The choice as to multiple levels of UBA service – whether by Chorus or by RSPs – was a choice that was specifically addressed by the Commission in 2007. The answer was, when rejecting multiple speed options and opting for a single level of service: this is the choice of RSPs not Chorus.⁴ This was established in over 8 pages of

² In fact, according to Spark Boost submissions, Boost would have attenuated their speeds already in 2014 over some paths

³ At Para 47 of the Spark 18 July 2014 Boost submission

⁴ Other than EUBA options but they all are services that are increments on the same single speed service

careful analysis in Decision 611 (the original UBA STD decision). The Commission concluded:⁵

“[A] single internet-grade FS/FS Basic UBA service would best give effect to s 18 ...

[C]ontinuing to limit the upstream line speed of the Basic UBA service to 128 kbps would be unlikely to meet the changing needs of residential and SME broadband end-users where there is increasing use of symmetric web based applications such as social networking websites, video content, and increasing file sizes in general for residential and SME end-users ...

[A] single FS/FS Basic UBA service provides Access Seekers with the maximum flexibility to use bitstream access to differentiate their retail services”

- 2.12 Notable is the specific reference to the sort of high speed services used by Chorus to justify its introduction of Boost and active degrading of regulated UBA. What the Commission said then is contrary to what Chorus were pushing for in 2014 with Boost.
- 2.13 One of the issues raised against a single speed unconstrained service was that it would lead to a lack of differentiated services as between RSPs. The Commission rejected that concern, rightly as it turns out because we now know that the offerings to consumers are marked by multiple different types of service offerings.
- 2.14 A single FS/FS service does not eliminate the opportunity for Chorus to introduce genuinely innovative and improved services in addition to the regulated service (as opposed to the Boost action which was based on actively degrading a service).
- 2.15 While not referred to in that Commission decision, there is one area where an RSP can manage the performance of its services, in a way that produces more money for Chorus as performance improves. That is as to handover connections, for which the RSP pays more for larger connections.

The position now

- 2.16 The same considerations as to the best regulatory approach apply just as much now as they did then. Put another way, no reason has been shown to change such clearly articulated Commission views.
- 2.17 Therefore the position remains that there should be a single FS/FS regulated service that cannot be de-prioritised or throttled. This will need to be future-proofed, particularly to cover increased demand over UBA. For the reasons we develop below, the current STD achieves this, save as to future expanded dimensioning between the exit from the DSLAM and the handover point.

⁵ At Para 59 and 107

3. Does the STD need to change?

The network as it functions today

3.1 On the network as it exists today, the STD achieves an FS/FS service and needs no change. (We deal below with changing needs over time). The reasons are set out in detail in our Boost submissions.⁶ In summary:

- (a) The STD, correctly interpreted, explicitly requires FS/FS with no degradation by throttling or de-prioritising behind commercial UBA variants. We consider that there cannot be any realistic doubt about this when interpreted in simple fashion: for example, the 32kbps is clearly only a floor, and the STD explicitly requires FS/FS.
- (b) The STD, correctly interpreted, requires Chorus to supply the service over VDSL where there is VDSL capability in the DSLAM.⁷ Again, despite a contrary view from the Commission in 2010, there can be no realistic doubt that is so, for the STD is explicit on the point. The point is so clear that a change of the STD is not required. Certainly it is not required legally, as, for the reasons we have explained,⁸ the Commission's 2010 decisions have no legal relevance to application to how Chorus must supply the service. Clearly this must be via VDSL, where available (and suitable for the particular line), on regulated VDSL terms (not the altered terms under which it currently purports to supply VDSL).
- (c) The focus on good faith and international best practice by the Commission's external lawyers and in some submissions is misconceived, for the reasons we have given,⁹ as has Chorus's lawyers.¹⁰ We agree with Chorus that those terms in the STD are only supportive and secondary, in relation to primary obligations. The primary obligations, such as to supply an FS/FS service and to supply VDSL, are clear in themselves.
- (d) Those secondary obligations are a useful addition in the STD, and they do not need change. In any event, for the reasons below, we agree with Chorus¹¹ that the obligations on Chorus should be based on a bright-lined approach that makes it clear what is to be supplied. Good faith and international best practice obligations are too uncertain on their own. They are also too uncertain for RSPs and consumers to rely upon, and they can be gamed and/or open to differing attempts at interpretation.
- (e) We also outline below why the process for handling new commercial services does not need change.

⁶ See in particular the Wigley 2 October 2014 Boost submission, which is not on the Commission's website and so is filed with this submission as a supplementary submission. That submission builds on the Wigley 18 July 2014 FPP Submission (as attachment to same date InternetNZ submission) and the Wigley 15 August 2014, 8 September 2014, and 18 September Boost Submissions

⁷ See the submissions noted in the last footnote

⁸ See for example Para 3.17 of the Wigley 18 September 2014 submissions

⁹ See in particular the Wigley 2 October 2014 Boost submission, which is not on the Commission's website and so is filed with this submission as a supplementary submission. We also deal with the point in more detail at para 3.9 to 3.16 of our 18 September Boost submissions That submission builds on the Wigley 18 July 2014 FPP Submission (as attachment to same date InternetNZ submission) and the Wigley 15 August 2014, 8 September 2014, Boost Submissions

¹⁰ See Chapman Tripp FPP in the Boost matter, dated 19 September 2014, as outlined in Para 2.2 of the Wigley 2 October 2014 Boost submission (filed herewith as it is not on the Commission website)

¹¹ Chorus 19 September 2014 Boost submission

Conclusion

- 3.2 In view of the above, it is submitted that change in those areas does not need to be in the scope of a review. If it doesn't need fixing, don't change it.

4. Future expansion of service, and investment

- 4.1 Where the STD is not clear enough is around the degree to which Chorus must expand its network, from the exit from the DSLAM to handover, as demand increases, leading to a need to invest further in switches etc. For the reasons above, increasing demand will mean that a point arrives where additional investment in that DSLAM-to-handover backhaul network (predominantly made up of fibre and switches) is required.
- 4.2 To future proof the service, the STD should specify the future expansion requirements. Under the regulated service, Chorus must have an obligation to continue to supply an unrestrained service of sufficient speed, expanding to meet needs. The required expansion needs to be dynamic to be future proof. Without that, Chorus may be able to restrain the service, leading to Boost-type opportunities to make regulated UBA a ghetto, replaced by unregulated commercial services.
- 4.3 This may involve more cost being incurred over time by Chorus as it invests in the network. That can and should be recompensed via UBA pricing.¹² We deal with this in our next section, leading to the conclusion that change to UBA STD terms as to future investment should be in scope for the s30R review, subject to our point below about whether that is not needed as the FPP can achieve the same outcome.

The need for bright-edged future investment obligations

- 4.4 It is submitted that the UBA STD should be amended so that there is a bright-edged and easily understood obligation on Chorus around future expansion of the UBA network to accommodate future demand. Broad and uncertain obligations should be avoided. We agree with Chorus on this:
- (a) Both Chorus and RSPs need to clearly know what they will provide and receive respectively, so that both can plan and provision with confidence.
 - (b) Uncertain obligations that are not bright-edged are too difficult (that is, the obligations need to be measurable and can be monitored and confirmed)

Dealing with uncertain future demand

- 4.5 Future expansion obligations of course involve some uncertainty, as future demand and need for investment cannot be certain. That does not mean however that future demand cannot be modelled and estimated. That after all is the very thing that the TSLRIC FPP is doing: modelling and estimating the network and demand over 5 years, and not a network snap-shot only as at today. Modelling increased demand and dimensioning is no different.
- 4.6 One way or another, the regulated service should be provided under terms that are flexible enough to accommodate future investment, without parties having to go back to the Commission and/or without the regulated service becoming superseded.

¹² As explained by Spark at Para 25-27 of their 18 July 2014 FPP submission

- 4.7 Sufficiently bright-edged obligations and metrics can be dynamic enough to cover such changes which are uncertain. One option suggested by Spark is to model and estimate the investment needs over the coming years, TSLRIC cost this, and factor that into the UBA price: if the investment needs materially deviate from the model, the Commission can s30R review the price.
- 4.8 There are also ways to put clear metrics around the level of service that is required (and, therefore, what Chorus will be paid for providing services over its investment). This can be dynamic and flexible. For example, as UFB traffic will increasingly share the same paths, the level of service, and the underlying investment in fibre and switches, the capacity for UBA can equate to the capacity for UFB over the same path (that is, not over the full UFB path but only over the shared path). That is the sort of dynamic metric that the Commission has used in the past to specify bitstream obligations.¹³

S30R relative to the FPP process

- 4.9 There are multiple other ways of achieving a dynamically applicable bright-edged obligation, which can be drawn out during a review; the Spark option is not necessarily the optimal. A key point is that the optimal approach depends also on the approach in the FPP. It is therefore premature to land on the optimal metrics. For example, if the modelling in the FPP includes projected investment requirements over the 5 year period – reflecting a point made by the Commission’s external lawyers in their Boost report¹⁴ - then that investment is paid for via the UBA price anyway.

Does or can the FPP deal with future investment anyway?

- 4.10 Cost associated with future investment can be included in the FPP. The usual TSLRIC principles apply, such as in relation to cost allocation as between UFB, UBA and other services. But that alone would not solve the remaining uncertainty under the STD as to clarity around future investment and service requirements.
- 4.11 The easiest and preferable way to achieve this, which also avoids the double handling entailed in parallel s30R and FPP processes, is to do this in the FPP. There is provision for non-price terms in the FPP final determination. Section 50 provides that the price determination may include, in addition to “the price payable for the designated access service”:
- (d) the terms and conditions (if any) on which the pricing review determination is made; and
- (e) the actions (if any) that a party to the determination must do or refrain from doing; and
- 4.12 Such additional terms, conditions and actions can include non-price obligations.
- 4.13 The approach and outcome can be the same whether via s30R or the FPP, save that the FPP approach is simpler.

¹³ See for example Para 88 in the Spark 18 July 2014 Boost submission, dealing with a comparable position as to Jetstream.

¹⁴ Para 10(e) in their Opinion on Boost dated 3 September 2014

- 4.14 Or, if the Commission wants to de-risk its choice of approach, it can do both in parallel, following exactly the same path on both (just as the UCLL and UBA FPPs are being done in parallel).

5. Process for assessing commercial services is workable

Summary of this submission

- 5.1 The Boost situation, instigated by the clause 10 process, played out over a number of months and involved intense Commission and stakeholder time and input. While that understandably raises questions as to how best to handle such issues in the future, to reduce delay and time/cost input, it is submitted that no change is appropriate, and therefore clause 10 should not be in the 30R scope.
- 5.2 The answer instead lies in getting the regulated service optimally defined, particularly so that it is future proof. Our reasons below are based on the critical assumption that the regulated service is so defined (and, as is submitted above, that only needs amendment as to future expansion issues because the STD is otherwise suitable in its current form). If the service is not future proof in this way, it is submitted that cl 10 will need to be changed to make it workable.

Reasons for that submission

- 5.3 The current position is that Chorus must give notice under clause 10 before introducing services outside the STD. If, as above, the regulated service is optimally defined and future-proof, this largely removes Boost-type activities by Chorus. The problem won't be quite as big as it was with Boost, going forward.
- 5.4 The purpose of that cl 10 notice is to give stakeholders and the Commission an advance chance to decide whether to make the service regulated under s 30R. Plus, as with Boost, it gives more opportunity to deal with the question of whether or not Chorus is acting within its obligations under the STD (eg as to whether the proposed commercial variant is in fact within the regulated service definitions. Those purposes are a good thing.
- 5.5 One option is to have any UBA-like service over the UBA footprint regulated as to that component. While there is much to be said for regulating across the board to reduce problems and for future-proofing, we expect that the Commission will want to leave room for genuine incentives to innovate around bitstream (as opposed to the dumbing down of an existing service via Boost and deprioritisation and throttling of regulated UBA).
- 5.6 The length and complexity of the Boost play last year is concerning, but:
- (a) Tightening the STD will reduce future problems;
 - (b) Boost was the first time the process came under close review: next time is likely to be quicker, given the learnings; and
 - (c) It is hard to see how there can be any improvement on the current STD process, assuming there is to be room for innovative new services beyond a future-proofed regulated service. Some timing problems will exist regardless.

6. Other issues: Introduction

- 6.1 The Commission has asked for submissions on what else might be included in the scope of an s30R review.
- 6.2 Below is an initial listing, based on the present understanding. That is emphasised as:
- (a) The FPP process is likely to throw up other issues that are appropriate to cover (whether because that becomes apparent later as parties and the Commission get into the detail or because some potential FPP decisions drive the need for s30R changes).
 - (b) The shape and scope of potential s30R changes is not yet clear.
 - (c) It may become apparent later to the Commission and others that certain pricing decisions will need s30R-sourced terms to make them work.
- 6.3 Therefore, this is not a finalised list of proposed issues and it may be that parties should make further submissions. The ability to do so is signalled as an important point.
- 6.4 We turn now to additional matters. What is apparent is that the scope should extend beyond the UBA terms to include UCLL.

7. One-off charges for UCLL and UBA

Introduction

- 7.1 Chorus argue that only certain charges, as specified in Schedule 2, are to be reviewed on the UCLL and UBA PRDs. That is so, despite its initial request that all charges be reviewed (a position from which it cannot resile).
- 7.2 The primary submission in this document is that all one-off charges, whether currently in or out of the Sch2 price list, including additional charges such as bulk pricing, are to be decided under the FPP. However, in order to have clarity and to reduce litigation risk, it is proposed that all such charges are reviewed under s30R, in conjunction with the FPP review.

Illustrating the problems: UBA installation charge changes in December

- 7.3 Overnight, at the start of December 2014:¹⁵
- (a) Chorus doubled, from \$145 to \$284, the one-off price for providing the same service, namely, connection and wiring including end user site wiring and splitter. Remarkably, that has a retail minus price (pre 1 December 2014) at around one half of what is supposed to be the cost based price. Yet it is well established that retail minus produces pricing that is generally much higher than cost-based pricing. That implies firmly that Chorus' charges are not cost based. A substantial component of this does not have a price fixed by the Commission.¹⁶

¹⁵ For more detail See Para 3 of 16 October 2014 Wigley submission

¹⁶ A component is stated as POA: for the reasons we have given (Para 3.12 to Para 3.20) Wigley 16 October 2014 FPP submission), the price unilaterally chosen by Chorus is not legally valid.

- (b) Chorus moved from \$5 to \$10 per month, on a commercial amortised basis, its charge for providing the same services for regulated VDSL. That doubling from \$5 to \$10 also represents nearly the same as the underlying recurring charge of \$10.92 (UBA IPP)/\$10.17 (draft FPP). That is a clear sign that transaction charges are highly material. Amortised commercial charges are closely related to underlying one off regulated charges, a point made in this instance by Chorus too,¹⁷ further implying the regulated one off charges markedly exceed cost. (Another issue flowing from the amortised charges is the effect of RSPs not knowing what lines are VDSL capable; we return to that below when dealing with transparency and reporting by Chorus as this is an issue that also contributes to problems)

- 7.4 What this points to is a need to regulate, under s30R and/or the FPP, all relevant charges, and in a future proof manner. We now set out why all relevant one-off charges are to be priced on the PRDs.

All price points in the Schedule 2s to be updated

- 7.5 Chorus has asked for that to happen, as have other parties. As submitted earlier,¹⁸ the Commission must therefore establish the TSLRIC FPP prices for all price points including price points not yet listed in the Schedule 2s. That includes those stated as POA, for the reasons we have identified in earlier submissions.

All price points for the services in Schs 1 and 4 to be priced efficiently

- 7.6 Additionally, and for the reasons we have outlined,¹⁹ the one-off services are all to be priced, in a manner that is efficient (such as aggregating prices, bulk prices, etc). It is the services that are being priced, rather than the price list necessarily being re-priced. Those services, as to one off services, are set out in Sch 1 and 4.

S30R and/or FPP decision?

- 7.7 To reduce litigation risk, it is proposed that the s 30R and FPP are run in parallel, transparently and largely seamlessly, as to all price points identified above.

8. Disclosure, transparency and other efficiencies

Introduction

- 8.1 There are a number of areas leading, for RSPs (and therefore end-users), to inefficiencies and higher prices. Some of these have been outlined in Spark's 9 October 2014 FPP submission, which is relied upon, save as to that submission's guarded support of top down pricing. RSPs inform us that

¹⁷ As outlined at Para 3.9 Wigley 16 October 2014 FPP submissions

¹⁸ See also the effect of s52 of the Act outlined at Para 2.5-2.8, 4.4 (c) of the Wigley 16 October 2014 FPP submission See Para 2 of Wigley 16 October 2014 FPP submission. See also the Telecom 9 October 2014 FPP submission.

¹⁹ See Para 2 of Wigley 16 October 2014 FPP submission. See also the Telecom 9 October 2014 FPP submission.

problems such as lack of reporting by Chorus in sufficient detail is leading to substantial additional and unjustified charges being billed by Chorus.

- 8.2 Client RSPs will contact Chorus to raise some of these issues. If an agreed approach cannot be achieved, it is expected that submissions will be made to have the STDs changed to the extent they are suitable for s30R review (and for FPP review, for the reasons outlined below. It is considered that this is a more pragmatic way of proceeding than seeking detailed changes prior to discussion with Chorus. This will also help reduce the need for Commission involvement so far as possible. At this point the submission simply identifies that such issues are in the scope of the review.
- 8.3 The focus includes, as illustrated by those Telecom submissions, such as the “Intact” issue at Para 37(b) of those submissions and the transparency issues at Attachment 2:
- (a) Provision of sufficient information, and on a timely basis, by Chorus to RSPs;
 - (b) Automating and speeding up communications;
 - (c) Improving OSS;
 - (d) Transparency of approach.

The relevance of the FPP review

- 8.4 While including such matters in the s30R scope is sought, the primary submission is that these changes are best made on the FPP process, given the power of the Commission to implement relevant terms and obligations in addition to the actual price prices. This is provided in s 50 of the Act, quoted above at Para 4.11.
- 8.5 Such supplementary terms, conditions and actions extend to non-price terms, and should include requirements that encourage efficiency. We will next give an example of how such requirements would enhance efficiency, based on an earlier more detailed submission²⁰.
- 8.6 It is again submitted that, to enable streamlining and to reduce litigation risk, these issues might be handled in tandem under both 30R and the FPP review (again, transparently and seamlessly).

Illustrating the issues: VDSL site suitability disclosure by Chorus

- 8.7 Unlike Chorus, RSPs do not have information as to which end user sites have already been upgraded for VDSL suitability. Such upgrades are regarded as essential for VDSL. Chorus can make that available to the RSP, if required to do so by the STD. Currently, Chorus does not provide that information to RSPs.
- 8.8 Without that information, and as all end user sites need to be upgraded at some point if VDSL is to be installed, an RSP decision by which VDSL truck rolls are ordered only for non-VDSL ready end user sites is problematic. The RSP would be reliant on negative customer feedback about performance, and only then order truck rolls (to avoid having 100% truck rolls ordered). That also involves

²⁰ At Para 5 Wigley 16 October 2014 FPP submission

additional management and operational cost. See the CallPlus 16 October 2014 FPP submission in this regard.

- 8.9 This means that RSPs have little choice at present but to take the commercial service which has Chorus doing truck rolls anyway, even though that is not always needed.
- 8.10 Already, around 40% of new UBA connections are to VDSL. For that and other reasons, such as migration of existing RSP customers to VDSL, and churn of VDSL capable customers, the number of VDSL-capable end user sites will escalate. That correspondingly reduces the need for VDSL truck rolls.
- 8.11 The efficient approach is for VDSL truck rolls to be ordered by RSPs only for sites that have not already had VDSL installs.
- 8.12 As noted above, regulated prices drive commercial amortised offerings (and Chorus acknowledges that to be so for these services). Where that offering, as is the case with the \$10 uplift, has Chorus ensuring all sites are VDSL capable, the asymmetric knowledge, as between Chorus and RSPs, in relation to which sites are VDSL-capable, means Chorus can charge inefficiently high commercial prices. The option of acquiring only the regulated one-off install and wiring service is not practically viable.
- 8.13 In turn there is inefficient work done that is unnecessary, some of which is an unnecessary disruption to end users who typically must be at home for the Chorus visit.
- 8.14 Ultimately, it is the end user that pays the unnecessarily higher charges.
- 8.15 It is therefore efficient for Chorus to inform RSPs, on request, whether a site is VDSL capable. In this way, inefficient cost can be avoided.
- 8.16 This is an example of the sort of non-price term that can supplement the price terms as to installation, including modem and house wiring, whether under s30R and/or the FPP.

9. Handover connection monthly charges

The issue

- 9.1 Handover connections are a good example of what happens when an STD is not future proofed. The largest priced handover connection in the UBA Sch 2 price list is the 1GbE connection. Most often used now is the 10GbE connection, which is supplied at unregulated prices. That Chorus could unilaterally increase the charge by 53% as at 1 December demonstrates the need for future proofing of the regulated service.
- 9.2 Additionally, the new charge of \$1,444 per month for 10GbE compares with \$300 per month for the comparable UFB link.²¹

²¹ CallPlus 9 October 2014 FPP submission

- 9.3 It also points to why Chorus's market power means that handover connections need to be regulated. The regulated handover connections have largely become a ghetto, leaving Chorus in practice supplying unregulated handover connections. Therefore handover connection prices going forward should be dynamically set, to increase as the required dimensions increase.

What is the regulated service?

- 9.4 The service being priced on the FPP is not a 1GbE, 10GbE or any other specific size of connection. In the Sch 1 service description of the Handover Connection, the service to be supplied is a handover connection from the Handover Point to the RSP side of the OFDF.²² No dimensions are specified in the service description of what Chorus must supply. Therefore the service being priced under the FPP is not limited to maximum 1GbE connections. As the traffic at the UBA Handover Point (which connects to the Handover Connection) must be FS/FS (ie there is no throttling), the Handover Connection must be capable of sizing up to be capable of carrying future demand over the FS/FS service at the Handover Point. Otherwise the FS/FS obligation (with no throttling) becomes ineffectual.
- 9.5 By having a range of handover connection dimensions priced, up to dimensions that would not attenuate an FS/FS service over time as demand increases, regulated UBA also becomes future-proofed.

Draft FPP determination for handover connections

- 9.6 The Commission is yet to issue its draft determination for handover connection monthly charges and presumably will do so when the one-off charges draft is released. As the service being priced does not have limited dimensions, that draft should include a range of prices, done in a way that is fully future proofed up to sizes able to meet future needs.

Section 30R review?

- 9.7 For the reasons above, solving the problems in this area – illustrated by the unilateral 53% price increase – does not require s30R intervention. But a belt and brace approach would be to run the s30R process on handover connections above 1GbE in parallel, thereby eliminating litigation risk for the Commission. This can be relatively seamlessly achieved.
- 9.8 Therefore it is submitted that pricing handover connections above 1GbE should be in the s30R scope.

10. Regulated price for SLU backhaul

- 10.1 In order to derive the SLU and NUCLL regulated prices, the Commission is determining the equivalent of an FPP price for SLUBH. But that does not make it a regulated price as it is just an input into the FPPs. It is a simple step to set an FPP-based per end user per month SLUBH price on the s30R review as the price is established in any event.
- 10.2 SLUBH pricing should be in the s30R scope.

²² See cl 3.23-3.26 and App F of Sch 1 UBA STD

11. UBA backhaul

What is not yet clear, given, for example, there is no draft pricing yet for monthly handover connection charges, is whether UBA backhaul prices should be reviewed as well. This is only signalled at this point. Therefore, the s30R review ought to address setting the UBA BH price at the price derived in the FPP processes.