

COMMERCE COMMISSION

PUBLIC VERSION
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682293

**CLARIFICATION OF THE STANDARD TERMS DETERMINATION ON
TELECOM'S UNBUNDLED BITSTREAM ACCESS SERVICE**

DECISION NO. 636

Clarification under section 58 of the Telecommunications Act 2001 ('the Act') of Decision 611

The Commission:

Dr Ross Patterson

Summary of Application and Initiation:

The Commission received an application for clarification from Telecom and has made further changes on its own initiative to Decision 611 under section 58 of the Act.

Date of clarification:

11 April 2008

**CONFIDENTIAL MATERIAL IN THIS CLARIFICATION IS CONTAINED IN
SQUARE BRACKETS**

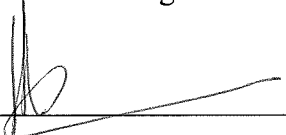
Introduction

1. On 12 December 2007, the Commerce Commission (the '**Commission**') issued a standard terms determination ('**STD**') under section 30M of the Telecommunications Act 2001 (the '**Act**') in respect of the designated access service of Telecom's unbundled bitstream access service ('**UBA**').
2. On 18th of February 2008 Telecom applied under section 58 of the Act for the Commission to clarify the UBA STD.¹ Telecom considered that the suggested changes were non-contentious and should be clarified by the Commission to give certainty to both Telecom and access seekers.
3. The Commission has considered Telecom's letter and the letter of the Telecommunications Carriers' Forum. In accordance with section 58, the Commission amends Decision 611 for the purpose of clarifying the UBA STD. In general terms, the amendments largely change the UBA Price List (Schedule 2 to the UBA STD) and the General Terms (Schedule 1 to the UBA STD).

Jurisdiction

4. Under section 58 of the Act, the Commission may amend a determination for the purpose of making a clarification if:
 - a. at any time the Commission, on its own initiative or on the application of any person, considers that a determination requires clarification; and
 - b. no appeal is pending in respect of the determination.²
5. On 26 March 2008 the Commission invited submissions from interested parties, including the Telecommunications Carriers Forum (TCF), on proposed clarifications to the UBA STD. These included the terms proposed by Telecom in its application and terms developed by the Commission on its own initiative.
6. On 2 April 2008, the TCF provided a submission that agreed to the proposed clarifications, and additional changes outlined in an embedded Telecom letter.³
7. Under section 19(c) the Commission is required to make the decision that best gives, or is likely to best give, effect to the purpose set out in section 18 of the Act. In making this decision the Commission has considered Telecom's submission, the TCF letter and the purpose set out in section 18 of the Act.
8. The Commission hereby clarifies the UBA STD according to the amendments listed in Appendix 1.

DATED at Wellington this 11th day of April 2008



Dr Ross Patterson
Telecommunications Commissioner
Commerce Commission

¹ A copy of the Application is available on the Commission's website at: <http://www.comcom.govt.nz>

² There is no appeal pending in respect of Decisions 609 and 610.

³ Letter from the TCF (Chivers) to the Commission (Patterson), Submission on the UBA draft clarification, 2 April 2008.

APPENDIX 1

DESCRIPTION OF CHANGE	PROPOSED CLARIFICATION	REASON
UBA General Terms		
UBA General Terms Delete clause 10.1 of the UBA General Terms and replace with new clause 10.1 in column two.	<p style="text-align: center;">Adding UBA Service variants</p> <p>10.1 Where Telecom proposes to:</p> <p>10.1.1 offer the Access Seeker with any New UBA Variant; or</p> <p>10.1.2 offer End Users or Customers of Telecom with any service, the provision of which is dependent on a New UBA Variant,</p> <p>Telecom must first:</p> <p>10.1.3 give as much notice as possible, but at least 20 Working Days Notice to the Commission and the Access Seeker of that New UBA Variant; and</p> <p>10.1.4 publish the Notice on a Telecom website accessible by the Commission and all Access Seekers.</p>	Clarification to reflect supply of wholesale UBA service, from which retail services may then be constructed.
Insert new defined term in the UBA General Terms glossary at clause 1.	<p>New UBA Variant Means a digital subscriber line enabled service as described in the description of service for Telecom’s unbundled bitstream access service in Subpart 1 of Part 2 of Schedule 1 of the Act and that is not described in the UBA Service Description</p>	Clarification to add defined term
Remove reference to ‘www.telecom.co.nz’ in General Information section of UBA General Terms	<p>Replace the text ‘Telecom (www.telecom.co.nz);’</p> <p>With the text ‘a Telecom publicly accessible website.’</p>	The relevant Telecom Business Unity will supply the service. This may not be part of the telecom.co.nz domain.
Amend clause 22.1 of the UBA General Terms	Remove reference to “or of a Customer or End User of the Access Seeker or an End User of the Access Seeker” from clause 22.1 of the UBA General Terms.	This change is consistent with the position taken in the UCLL Backhaul and UBA Backhaul Determinations.
UBA Price List – Schedule 2	Adjustment to Enhanced UBA Monthly (with POTS) Charges	
Delete clauses 5.2.1, 5.2.2 and 5.2.3 and replace with the new clauses as shown in column 2.	<p>5.2.1 The 40 kbps Enhanced UBA Service Monthly Charge is calculated as follows:</p> $t = s \times (1 + 20.5\%)$	Calculation is specific to how the ‘imputed retail

DESCRIPTION OF CHANGE	PROPOSED CLARIFICATION	REASON
	<p>Where t = the 40 kbps Enhanced UBA Service Monthly Charge And s = the adjusted Basic UBA Service Monthly Charge</p> <p>5.2.2 The 90 kbps Enhanced UBA Service Monthly Charge is calculated as follows: $u = (t/(1 - 18\%) + 12.1 \times \ln(90/40)) - 18\%$ Where u = the 90 kbps Enhanced UBA Service Monthly Charge</p> <p>5.2.3 The 180 kbps Enhanced UBA Service Monthly Charge is calculated as follows: $w = (t/(1 - 18\%) + 12.1 \times \ln(180/40)) - 18\%$ Where w = the 180 kbps Enhanced UBA Service Monthly Charge</p>	price' is to be derived.
UBA Price List – Schedule 2 - Items 1.1 to 1.8		
<p>Delete the following in Items 1.1 to 1.8 and replace with details shown in column 2:</p> <p>“Connection only</p> <p>No charge; or a charge calculated as follows:</p> $=(12 \text{ months} - a)/12 \times 65.60$ <p>Where a = the number of months completed of a 12 month contract.”</p>	<p>Connection only</p> <p>No charge; or a charge calculated as follows:</p> $= (t \text{ months} - a)/t \times c$ <p>Where a = the number of months completed of the term contract associated with a free installation</p> <p>t = the number of months of the term contract associated with a free installation</p> <p>c = the early termination charge less the benchmarked wholesale discount</p>	Correction to pricing formula.
UBA Price List – Schedule 2 - Items 1.1 to 1.8		
<p>An incorrect GST multiplier was used to calculate these prices, and they require correction.</p> <p>As an example, for the Connection and wiring charge the calculation would be as follows:</p> $(\$149 - 18\%) \times 8/9$ $= 122.18 \times 8/9$ $= \$108.60$	<p>Connection and wiring charge: \$108.60</p> <p>Modem installation: \$36.44 or \$94.76</p>	Clarification to correct GST price calculation.
UBA Price List – Schedule 2 – Items 1.10, 1.12, 1.14 and 1.16 – “Change Plans”	The items corresponding to 1.10, 1.12, 1.14 and 1.16 were inadvertently repeated in the UBA STD and must be removed from the UBA Price List.	Delete charges that were inadvertently repeated in the

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		UBA Price List.
UBA Price List – Schedule 2 – Items 3.12		
Remove the phrase “or fault repair” from the “description” of item 3.12: Handover Fibre Maintenance Charge	The UBA Price List Item 3.12 - Description is modified to be: “Maintenance of the Handover Fibre.”	Clarifies the scope of the charge for the Handover Fibre Maintenance Charge
UBA Price List Item 3.2 and 3.4 – Description of the Charge		
Delete the description of the charge for Item 3.2 – Manual Pre-qualification and Item 3.4 – Abortive Site Visit and replace with items shown in column 2.	<p>Item 3.2 - Charge</p> <p>\$ 83.96 per hour</p> <p>Based on a service company hourly cost of [] TCNZCOI plus [] TNZCOI administration charge and [] TNZCOI to cover the estimated direct front office costs to manage each transaction. [] TNZRI mark up to cover common costs</p> <p>Item 3.4</p> <p>\$ 79.85 per hour</p> <p>Based on a service company hourly cost of [] TCNZCOI plus [] TNZCOI administration charge and [] TNZCOI to cover the estimated direct front office costs to manage each transaction. [] TNZRI mark up to cover common costs</p>	Incorrect service company charges were used to calculate items 3.2 and 3.4.
UBA Service Level Terms: Schedule 3:		
Clarify the Commencement Date for Service Levels of OO & T (Service Level 17) and OFM (Service Level 18)	<p>Insert</p> <p>“Working Days is as defined in the Implementation Plan”</p> <p>at the end of clauses 3.4.1 and 3.4.2 of the UBA Service Level Terms.</p>	To clarify the definition of Working Days is that as defined in the Implementation Plan

