



COMMERCE COMMISSION

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

**DECISION NO. 689**

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

**The Commission:**

Dr Ross Patterson  
Anita Mazzoleni  
Gowan Pickering  
Pat Duignan

**Summary of Application and Initiation:**

The Commission received a letter from Telecom in relation to streamlining the process for implementing Unbundled Bitstream Access (UBA) price adjustments.

**Date of clarification:**

4 March 2010

## Clarification of the Pricing Adjustment Process

### *Background*

1. The Commerce Commission (the '**Commission**') is a body corporate established under the Commerce Act 1986 having its head office at Wellington. The Commission has various functions and powers under the Telecommunications Act 2001 (the '**Act**').
2. On 12 December 2007, the Commission issued a standard terms determination ('**STD**') under section 30M of the Act in respect of the designated access services of Telecom's unbundled bitstream access service ('**UBA**'), which is referred to as the "**UBA Service**".<sup>1</sup> This STD has been clarified a number of times and each clarification decision is located on the Commission's website.

### *Jurisdiction*

3. Under section 58 of the Act the Commission may amend a determination for the purpose of making a clarification if:
  - at any time the Commission, on its own initiative or on the application of any person, considers that a determination requires clarification; and
  - no appeal is pending in respect of the determination.
4. Under section 19(c) of the Act, the Commission is required to make a decision that best gives, or is likely to best give, effect to the purpose set out in section 18 of the Act.

### *The Current Terms of the UBA STD*

5. The UBA STD<sup>2</sup> requires that Telecom must calculate (for the Basic UBA Monthly Charge for Service Component 2.2):
  - a Quarterly Adjustment within one month of the end of June, September, December and March each year<sup>3</sup>; and
  - a Service Adjustment whenever Telecom changes its Xtra retail broadband services by launching any new broadband product, by altering the price of any existing plan, or by changing the data cap on any existing plan<sup>4</sup>.
6. Once an adjustment is approved by the Commission as per clause 7.2 of the UBA Price List, Telecom is required to implement and activate the adjustment in its billing systems within one month of the month end from which data was sourced for calculation, and then apply that, including where required making payments to Access Seekers to backdate the

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<sup>1</sup> Commerce Commission, *Standard Terms Determination for the designated service Telecom's unbundled bitstream access*, Decision 611, 12 December 2007.

<sup>2</sup> Clause 4 of the UBA Price List, Schedule 2 to the UBA General Terms in the UBA STD

<sup>3</sup> This adjustment must use data from a single quarter ending at the end of June, September, December and March each year; and be calculated within one month of the month end of June, September, December and March each year

<sup>4</sup> This adjustment must use data from the first month end that is at least 14 calendar days after the change to Telecom's Xtra retail broadband service, and be calculated within one month from the month end from which the data was sourced for calculation.

effect of the adjustment to the required date. Currently, if the timing of a Service Adjustment does not coincide with a Quarterly Adjustment, Telecom is required to implement each adjustment separately. The STD does not allow Telecom to delay implementing the Service Adjustment so that both the Quarterly and the Service Adjustment can be implemented at the same time, which is referred to as “batch processing” in this clarification.

7. Telecom is also required to implement other adjustments under the UBA STD: the Enhanced UBA Adjustment, the Without POTS Adjustment and adjustments required under clause 3.1 of the UBA Price List.<sup>5</sup> The Enhanced and Without POTS adjustments are required to be made each time a Service Adjustment or a Quarterly Adjustment is made.

#### *Request for Clarification*

8. In a letter dated 8 July 2009<sup>6</sup> Telecom proposed that where possible, adjustments be processed in batches, rather than in a continuous manner, so as to reduce the administrative burden associated with processing these price adjustments. This would have meant that Telecom would:

- submit the calculations as required under the STD, and advise Access Seekers of the changes once they have been approved by the Commission; and
- hold off processing any service adjustments until a quarterly adjustment was being implemented (or if it was anticipated that another service adjustment was to follow fairly quickly and the two could be done together); and,
- only combine processing of adjustments that were close together, such as where they occur one or two months apart.

9. In its request, Telecom noted that the administrative work required to implement a price adjustment is significant. Telecom also submitted that the adjustment process is manual and very time-consuming (taking 6 weeks and requiring 1500 price changes to be made) and it wishes to use its staff in a more streamlined manner. Telecom noted that UBA price adjustments are not regularly spaced (because of the service adjustment process) so there is limited ability to plan allocation of human resources around price adjustments.

10. In addition, Telecom submitted that this proposal would have little or no impact on Access Seekers as all price adjustments are backdated and there are wash-up payments to ensure that the prices take effect from the same time regardless of when they are implemented.

#### *First round of consultation*

11. On 4 December 2009, the Commission released a letter to interested parties noting the receipt of Telecom’s letter and outlining the Commission’s preliminary view that changes needed to be made to the UBA Price List. The proposed change was explained as follows:

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<sup>5</sup> Ibid.

<sup>6</sup> Letter from Sarah Gillies to John Gandy, ‘Unbundled Bitstream Access Standard Terms Determination – calculation of UBA prices’

Adjustments will be processed in batches, rather than in a continuous manner. Over the course of a quarter, a number of service adjustments and a quarterly adjustment can be submitted. As service adjustments are triggered Telecom would continue to submit the calculations required under clause 4.2.4 of Schedule 2 in the UBA STD and advise Access Seekers of the changes once the Commission has approved the adjustments.

The proposal is that Telecom will not be required to implement these service adjustments until the end of the quarter when the quarterly adjustment has been approved. This allows Telecom to process all adjustments for the quarter at once. All service adjustments made during the quarter and the final quarterly adjustment will be backdated (except that the service adjustments (and not the quarterly adjustment) will be backdated if there is any overlap with a quarterly adjustment). Wash-up payments will be employed to ensure that the service adjustments take effect from the same time they were made by Telecom in the retail space.

12. Submissions were received from Vodafone and TelstraClear. Vodafone noted that they were happy with the changes as long as the Commission was satisfied with the backdating process and wash-up payments process. TelstraClear supported the proposed clarification.

#### *Second round of consultation*

13. On 18 February 2010, the Commission invited interested parties to provide submissions on the draft Clarification Decision. The Commission was particularly interested in comments on a new processing issue identified, relating to the adjustment process under the UBA Price List. The UBA Price List requires Telecom to calculate service adjustments within one month from the month end from which data was sourced for the calculation. Similarly, for quarterly adjustments Telecom must calculate an adjustment within one month of the end of the quarter. This calculation timeframe does not give the Commission sufficient time to approve the calculation to enable Telecom to activate the new charge within the required timeframe (the UBA Price List requires that once a calculation has been approved by the Commission, Telecom must activate the new charge in its billing systems within one month of the month end from which data was sourced for calculation, however the Commission does not typically receive the calculation until this time, which is obviously too late).
14. The Commission therefore proposed to change clause 4.1.3 of the UBA Price List so that Telecom must calculate the quarterly adjustment "within ten Working Days of the end of June, September, December and March each year". Similarly, the Commission proposed to change clause 4.2.4 to require Telecom to calculate a service adjustment "within ten Working Days from the month end from which data was sourced for calculation."
15. Submissions were received from Vodafone and Telecom (Wholesale). Vodafone agreed with the Draft Decision and noted that they believe it will help to reduce the administrative process on the Access Provider.
16. Telecom (Wholesale) did not agree with the Commission's proposed clarification to clauses 4.1.3, 4.2.4 and 7.2.2 which would have meant that Telecom would have had to calculate quarterly and service adjustments within 10 Working Days from the month end from which data was sourced for calculation.

17. Telecom (Wholesale) noted that calculating service and quarterly adjustments takes up to one month as they undertake data extraction (this is an automated monthly process), data integrity checks, calculation processing and reviews. They noted that reducing the amount of time that Telecom has to calculate the adjustment may affect the integrity of the calculation. Following this, implementing price changes takes up to six weeks from the date Telecom receives approval of the adjusted price from the Commission, because Telecom's current systems require manual updating and testing – every price list item for each wholesale customer – about 1,500 transactions. The next step is manually calculating the pro-rated credits for each customer and associated checks.
18. Telecom noted that all price adjustments are back-dated to the appropriate date and wash up payments applied to ensure that the prices take effect from the appropriate date regardless of when they are implemented, hence there is no impact on Access Seekers.
19. Telecom's proposal was therefore that there be no changes to clauses 4.1.3 and 4.2.4 and that the new charge arising (or new charges arising if there are one or more service adjustments made during a quarter where a quarterly adjustment is also required) from any adjustment calculation be activated in Telecom's billing systems *within 30 working days* of the date that the adjustment calculation is approved by the Commission.
20. Telecom's proposal extends the timeframe for activation from 'within one month of the month end from which data was sourced for the calculation' to 'within 30 working days of the date that the adjustment calculation is approved by the Commission'. On the face of it, this appears to be an extension of the timeframe for activation by approximately two weeks, however it is unlikely that the timings that are currently in the UBA Price List were ever met, given that (quoting Telecom) 'implementing price changes takes up to six weeks from the date we receive approval of the adjusted price from the Commission'.

#### *Commission's Decision on the UBA Pricing Adjustment Process*

21. The Commission has carefully weighed up the interests of both Telecom and the Access Seekers and has decided to permit batch processing of Service and Quarterly Adjustments for the UBA Service during a quarter.
22. Telecom will not be required to implement the Service Adjustments approved during a quarter until the end of the quarter when the Quarterly Adjustment has been approved. This allows Telecom to process all adjustments for the quarter at once giving Telecom the opportunity to use their resources in the most efficient manner possible. However, rather than the decision to process the adjustments at the end of the quarter being at the discretion of Telecom, the Commission has decided that it would be better if there was certainty about when adjustments were to be processed, and so has made it mandatory that all service adjustments made during a quarter are processed at the end of the quarter with the Quarterly Adjustment.
23. For clarity, the Commission notes that batch processing will not apply to adjustments made under clause 3.1 of the UBA Price List.<sup>7</sup> Clause 3.1 Adjustments are not backdated or subject to the wash-up process specified in the UBA Price List.

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<sup>7</sup> Clause 3.1 of the UBA Price List, Schedule 2 to the UBA General Terms in the UBA STD

24. The only difference between the current process and the proposed process is that all adjustments (both service and quarterly) approved during any quarter will not be activated by Telecom in its billing systems until after the end of the quarter.
25. The Commission has considered Telecom (Wholesale)'s submission with regards to the time required to calculate pricing adjustments and activate them in Telecom's billing systems, and given that changing the activation timeframe will have little impact on Access Seekers, the Commission has decided to amend the UBA Price List to reflect current practice. Hence, the service and quarterly adjustments that are batch processed in the manner outlined in paragraph 22 will be activated in Telecom's systems within 30 working days of the date that the quarterly adjustment calculation is approved by the Commission.
26. All other aspects of the adjustment calculation process will remain unchanged. In particular:
- All Service Adjustments proposed by Telecom during a quarter will continue to be submitted to, and approved by, the Commission during the quarter;
  - All Service Adjustments made during the quarter and the final Quarterly Adjustment will be backdated (except that the Service Adjustments (and not the quarterly adjustment) will be backdated if there is any overlap with a Quarterly Adjustment); and
  - Wash-up payments will be employed to ensure that the Service Adjustments take effect from the same time they were made by Telecom (Retail).
27. The Commission considers that this clarification will reduce unnecessary administrative burden on Telecom whilst ensuring that Access Seekers continue to obtain the benefit of any Service Adjustments and Quarterly Adjustments. The Commission's expectation is that this clarification will free-up some of Telecom's resources to work in other regulatory areas without affecting the efficiency with which the UBA service is currently delivered.

## Decision

28. The Commission considers that clause 7.2 of Schedule 2 of the UBA STD should be amended as follows for the purposes of clarification under section 58 of the Act as follows:
- 7.2 After an Adjustment Calculation has been approved by the Commission (Approval Date), Telecom must:
- 7.2.1 notify Access Seekers of the adjustment; and then
- 7.2.2 activate the new Charge arising from any Adjustment Calculation in its billing systems within 30 Working Days after the Approval Date ~~one month of the month end from which data was sourced for the calculation~~ (**Activation Date**) unless clause 7.2.3 applies. (For example: for the June Quarterly Adjustment the new price will be calculated in July using 30 June data (including connection numbers); and assuming the Commission approved the Adjustment Calculation on 19 August 2010, the

Adjustment Calculation –and must be activated in the billing system by ~~30~~ 1 August September 2010.)

7.2.3 where one or more Service Adjustments are made during a quarter where a Quarterly Adjustment is also required, activate simultaneously in its billing systems all new charges arising from any Adjustment Calculation and applying during a quarter for the relevant period (including any Adjustment Calculation based on a Quarterly Adjustment or Service Adjustment) within 30 Working Days after the Approval Date (Activation Date). (For example: for the March Quarterly Adjustment, where Service Adjustments are made in January and February, the new prices for these adjustments will continue to be calculated in accordance with clause 4.2, but (assuming the Commission approved the March Quarterly Adjustment Calculation and the January and February Service Adjustments by 20 May 2010) all adjustments for the relevant period must be activated in the billing system by 2 July 2010.)

29. The Commission has also made one other consequential change to give effect to batch processing which is included in clause 7.4 (see the Updated UBA Price List in the Appendix).
30. The Commission notes that no appeal is pending in respect of the determination satisfying section 58(1)(c) of the Act.
31. The Commission considers that the clarifications set out in this Decision are likely to best give effect to the purpose set out in section 18 of the Act.

**DATED** at Wellington this 4<sup>th</sup> day of March 2010



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Dr Ross Patterson  
Telecommunications Commissioner  
Commerce Commission

**Appendix 1: Updated Schedule 2 UBA Price List (separate to Decision document)**



**Appendix 2: Example of how the new Batch Processing Rules will work in practice<sup>8</sup>**

Adjustment type	Detail	Date implemented in Telecom (Retail)	Date by which Adjustment Calculation is submitted to the Commission	Date approval is given by the Commission	Date by which new charge will be activated in Telecom's billing systems	Wash-up period
Service Adjustment	Launch of new broadband product	5 January 2010	28 February 2010	18 March 2010	25 June 2010	5 January – 25 June 2010
Service Adjustment	Price changed of existing plan	12 January 2010	28 February 2010	18 March 2010	25 June 2010	12 January – 25 June 2010
Service Adjustment	Data cap changed on existing plan	10 February 2010	31 March 2010	22 April 2010	25 June 2010	10 February – 25 June 2010
Quarterly Adjustment	March quarterly adjustment - 31 March 2010	-	30 April 2010	13 May 2010	25 June 2010	1 April – 25 June 2010

<sup>8</sup> Note that the timings and content of this table are for illustrative purposes only

