



COMMERCE COMMISSION

**CLARIFICATION OF THE STANDARD TERMS DETERMINATIONS ON  
TELECOM'S UNBUNDLED COPPER LOCAL LOOP NETWORK SERVICE,  
UNBUNDLED COPPER LOCAL LOOP NETWORK BACKHAUL SERVICE,  
UNBUNDLED COPPER LOCAL LOOP NETWORK CO-LOCATION SERVICE,  
SUB-LOOP UCLL, SUB-LOOP CO-LOCATION, AND SUB-LOOP BACKHAUL**

**DECISION NO. 690**

Clarification under section 58 of the Telecommunications Act 2001 (the 'Act')  
of Decisions 609, 610, 626, and 672

**The Commission:**

Dr Ross Patterson  
Anita Mazzoleni  
Gowan Pickering  
Pat Duignan

**Summary of Application and Initiation:** The Commission received an application for clarification from Telecom (Chorus) to amend certain provisions across the UCLL and Sub-loop STDs that cover price terms, the annual review date, cabinetisation waivers and Service Level Terms performance reports

**Date of clarification:**

8 April 2010

## Request for Clarification

1. The Commerce Commission acting under the Telecommunications Act 2001 (the ‘Act’) has made the following standard terms determinations:
  - a) Telecom’s unbundled copper local loop network, Decision 609, 7 November 2007 (**‘UCLL STD’**);
  - b) Telecom’s unbundled copper local loop network co-location, Decision 610, 7 November 2007 (**‘UCLL Co-location STD’**);
  - c) Telecom’s unbundled copper local loop network backhaul (telephone exchange to interconnect point), Decision 626, 27 June 2008 (**‘UCLL Backhaul STD’**);
  - d) Telecom’s unbundled copper local loop network service (Sub-loop UCLL), Telecom’s unbundled copper local loop network co-location service (Sub-loop Co-location), and Telecom’s unbundled copper local loop network backhaul service (Sub-loop Backhaul), Decision 672, 18 June 2009 (**‘Sub-loop STD’**).
2. On 24 December 2009 Telecom (Chorus) wrote to the Commission requesting amendments to the UCLL and Sub-loop STDs be made by the Commission under section 58 of the Act.
3. Telecom (Chorus) proposed the following amendments to Commission determinations:
  - a) UCLL Backhaul and UCLL Sub-loop Backhaul STDs – further changes to the Price List (specifically, removal of service components 2.13 and 2.14 from UCLL Backhaul and service component 2.4 from Sub-loop Backhaul);
  - b) UCLL STD and Sub-loop STD – changes to Price Lists (Escorted Access price change mechanisms);
  - c) UCLL Co-location STD – changes to Price List (new service components added and amendment of items 1.1 and 4.1);
  - d) UCLL STD, UCLL Co-location STD, UCLL Backhaul STD, and Sub-loop STD – various changes to Price Lists (standardisation of annual review date across STDs);
  - e) UCLL and UCLL Co-location General Terms (a provision that Telecom only needs to obtain written waivers from Active Access Seekers); and
  - f) Service Level Terms for UCLL Sub-loop, UCLL, UCLL Co-location, and UCLL Backhaul (the introduction of a ‘trigger’ for when monthly performance reports must be produced – i.e. when an order is placed).

## The Commission’s Decision

4. The Commission’s Decision is as follows:
  - a) *Backhaul - removal of recurring charges for handover fibre*: The service components 2.13 and 2.14 from Table 2 in Schedule 2 of the UCLL Backhaul STD and service component 2.4 in the Price List from Table 2 in Schedule 2 of the UCLL Sub-loop Backhaul STD are not applicable and can be removed.
  - b) *Escorted Access price change mechanisms*: The price change mechanism for the Escorted Access service component should be consistent between the UCLL Co-location and UCLL Sub-loop Co-location STDs. The mechanism to be used in both cases to adjust prices will be when there are changes in input costs charged to Telecom.

- c) *Changes to the price list for the UCLL Co-location STD*: Chorus has withdrawn this request and will be undertaking further consultation with Access Seekers.
- d) *Standardisation of Annual Review dates*: The Annual Review Date for the UCLL STD Service, UCLL Co-location STD, UCLL Backhaul STD, and Sub-loop STDs should be 1 November each year.
- e) *Written Waivers*: Clause 38.11.3 of the General Terms of the UCLL and UCLL Co-location STD should be deleted and replaced with a new clause.
- f) *Production of monthly performance reports*: Clause 6.1 of the Service Level Terms for UCLL STD, UCLL Co-location STD, UCLL Backhaul STD, and Sub-Loop STD should be amended so that Telecom is only required to produce monthly performance reports once an order has been placed by the Access Seeker.

## Analysis

### ***A. Backhaul: removal of recurring charges for handover fibre***

5. In Telecom (Chorus)'s recent annual Price Review for the UCLL Backhaul STD, it did not provide an annual price adjustment for the Access Seeker Handover Fibre Monthly Rental Charge – GigaE capacity, and the Access Seeker Handover Fibre Monthly Rental Charge – 100 Mbps capacity, in the UCLL Backhaul Price List because these service components do not actually exist.
6. It was anticipated during the STP process that these two charges would be necessary for UCLL Backhaul for ongoing maintenance and depreciation. However, as subsequently implemented these charges are not required.
7. The Commission had previously asked Telecom (Chorus)<sup>1</sup> to consider the extent to which changes were required to the STDs to address this matter and Telecom (Chorus) has therefore proposed that the service components be removed from their respective STDs. It is not proposed that the service component of handover fibre itself be removed; only the monthly rental charge as a pricing component.
8. Further background to the development of the charging for this service component can be found in the letter from Telecom<sup>2</sup> (Chorus) which is available on the Commission's website.
9. The Commission has decided that these service components are not applicable and consequently the following be removed:
  - Service components 2.13 and 2.14 from Table 2 in Schedule 2 (UCLL Backhaul Price List) of the UCLL Backhaul STD; and,
  - Service component 2.4 from Table 2 in Schedule 2 (Sub-loop Backhaul Price List) of the Sub-loop services STD.

### ***B. Co-location: Addition of Price Change Mechanism to Escorted Access Price Term***

10. The Escorted Access service component in the UCLL Co-location and UCLL Sub-loop Co-location STDs consists of a minimum charge and an hourly rate, which are based on the hourly rate of a standover field services technician and a call out fee.

<sup>1</sup> Letter to Chorus from Osmond Borthwick, 29 October 2009, page 3

<sup>2</sup> Letter from Justin Tighe-Umbers, Chorus, 24 December 2009

11. There are different price change mechanisms between the two STDs for the Escorted Access service component (as shown in the table below). The table also shows the price mechanism proposed by Telecom (Chorus) in the clarification application.

STD	Current Price Change Mechanism	Chorus' Proposed Price Change Mechanism
UCLL Co-location (Escorted Access during business hours and outside business hours – item 1.14 of Table 1 of Schedule 2 of the Co-location Price List)	Clause 4.2.1(a) – Labour Cost Index (Communication Services)	Clause 4.2.1(a) – Labour Cost Index (Communication Services) <u>and</u> Clause 4.2.2 – changes in input costs charged to Telecom pursuant to contractual obligations by its field service company contractors
UCLL Sub-loop Co-location (Escorted Distribution Cabinet access during business hours and outside business hours – item 1.15 of Table 1 Schedule 2 of the Sub-loop Co-location Price List)	Clause 4.1(b) – changes in input costs charged to Telecom pursuant to contractual obligations by its field service company contractors	Clause 4.1 (a) – Labour Cost Index (Communication Services) <u>and</u> Clause 4.1(b) – changes in input costs charged to Telecom pursuant to contractual obligations by its field service company contractors

12. Telecom (Chorus) noted that they would like to provide one price point for the same service in both the UCLL Co-location and UCLL Sub-loop Co-location STDs to reduce customer confusion and minimise billing errors. Telecom (Chorus) suggested that the Escorted Access service component costs are subject to changes driven by both annual inflation and input costs.
13. The Commission agrees that the price change mechanism(s) should be consistent between the UCLL Co-location and UCLL Sub-loop Co-location STDs. However, the Commission does not consider that Telecom (Chorus)'s proposal is appropriate due to the risk that the proposed changes might, in effect, compensate Telecom (Chorus) twice for annual increases in labour costs.
14. The Commission's preliminary view was that only one of the price change mechanisms should be applied and it should be the lesser of the two. The TCF working party and Chorus subsequently proposed that if only one price change mechanism were to be available for both Escorted Access service components, it should be the input costs change mechanism as this would more accurately reflect the costs borne by Chorus in the provision of the service.
15. The Commission's decision is that the price change mechanism for the Escorted Access service component should be consistent between the UCLL Co-location and UCLL Sub-loop Co-location STDs. The mechanism to be used in both cases to adjust prices should be when there are changes in input costs charged to Telecom (pursuant to contractual obligations by its field service company contractors). This will require amendments to item 1.14 in the 'Co-location Transaction Charges' table in the Co-location Price List as follows:

Service component	Description	Core or Sundry	Charge becomes due	Price change mechanism	Charge
1.14 Escorted Access	Escorted Access during business hours	S	At completion of escorted access	Clause 4.2.1 4.2.1(a) 4.2.2	Minimum charge \$130.00 Hourly Rate \$75.00  Based on hourly rate of standover field services technician (\$75.00) plus call out fee of \$55.00
	Escorted Access outside Business Hours  Minimum charge of 4 hours plus call out fee	S	At completion of escorted access	Clause 4.2.1 4.2.1(a) 4.2.2	Minimum charge \$415.00 Hourly rate \$90.00  Based on hourly rate of standover field services technician (\$90.00) outside of business hours plus call out fee of \$55.00

16. There is no change required to item 1.15 in the 'Sub-loop Co-location Service Transaction Charges' table in the Sub-loop Co-location Price List as it already reflects that the only applicable price change mechanism is that relating to input costs.

***C. Addition of new service component transaction charges for UCLL Co-location***

17. As a result of changes to Chorus' Service Company contracts, Chorus proposed that some input costs that were POA, or based on actual time and materials incurred, are now fixed.

Co-location new Tie cable and HDP build in exchange

18. Telecom (Chorus) now has a fixed input cost for the installation of tie cables from the Access Seeker Footprint to the HDP block on the MPF and termination on those blocks, including the blocks themselves. The structure of the proposed charge (reflecting the input cost) is as follows:

- a) a fixed charge for up to 16 pair cables for the first 40 metres;
- b) an additional fixed charge for each additional 16 pairs for the first 40 metres; and
- c) an additional fixed charge per 16 pairs per 5 metres.

19. Telecom (Chorus) proposed that:

- given this charge is currently part of service component 1.1 in the UCLL Co-location Price List, tie cables to MDF and HDP blocks be removed from item 1.1; and,
- a new item 1.18 – Co-location new Tie cable and HDP build in exchange – be added to the Price List (shown in Appendix).

20. The Commission's preliminary view was that if the proposed addition of the following new service component and the deletion of tie cables to MDF and HDP blocks from item 1.1 in the UCLL Co-location Price List better reflect the underlying costs of providing the

service, this will provide increased certainty for Access Seekers around costs for UCLL Backhaul and best give effect to the purposes of section 18 of the Act.

Service Component	Description	Core or Sundry	Charge Becomes Due	Price Change Mechanism	Charge
<b>1.18 Co-location new Tie cable and HDP build in exchange</b>	<p>The set up of additional Tie cables and block at a Co-location site for Access Seeker including the following components:</p> <ul style="list-style-type: none"> <li>- Supply of HDP blocks</li> <li>- Optional supply of tie cables</li> <li>- Installation and termination of cables</li> </ul> <p>(Note this excludes the following items which are covered by item 1.1;</p> <ul style="list-style-type: none"> <li>- Cable tray and rack construction</li> <li>- Footprint construction</li> <li>- Room construction including items such as demolition and reconstruction of rooms; refurbishment of floor, wall and ceiling surfaces; construction of caging; installation of security systems; obtaining necessary permits and approvals; design; project management)</li> </ul>	C	On notification by Telecom of completion of new co-location site set up	Clause 4.2.2	<p>Chorus supplied cable:</p> <p>16 pair cable up to 40 metres \$383.02 then \$369.72 per additional 16 pair multiple</p> <p>then \$37.44 per 16 pair per additional 5 metres</p> <p>Access Seeker supplied cable;</p> <p>16 pair cable up to 40 metres \$225.05 then \$211.75 per additional 16 pair multiple</p> <p>then \$28.79 per 16 pair per additional 5 metres</p> <p>[Based on a service company costs of plus [Chorus COI] administration charge and [Chorus COI] to cover the estimated direct front office costs to manage each transaction plus [Chorus COI] mark up to cover common costs]</p>

21. TelstraClear made a submission on this proposal, noting concern with the structure and quantum of the charges proposed by Telecom (Chorus) and suggesting they do not appropriately reflect the services TelstraClear purchase from Telecom (Chorus)<sup>3</sup>.

<sup>3</sup> TelstraClear letter dated 9 March 2010

22. After further consideration, and as a result of the submission received from TelstraClear, Telecom (Chorus) has decided to explore other options with customers in terms of this proposed new service component transaction charge. Telecom (Chorus)'s intention is to take a re-worked pricing structure to the TCF and has subsequently withdrawn this clarification request<sup>4</sup>.

Installation of power connections within a row

23. Telecom (Chorus) has advised that the input cost for the installation of power connections within a row is now fixed. The proposed fixed charge for the installation of power connections to the Access Seeker Footprint includes the cable from the footprint to the end of the row board and installation of a pair of circuit breakers ('fuses').
24. Clause 4.2.3 of the UCLL Co-location STD Price List provides that Telecom must, when reviewing the annual POA sundry charges, provide a fixed price "where practicable".
25. Telecom (Chorus) proposed that:
- given this charge is currently part of service component 4.1 in the UCLL Co-location Price List, power upgrades be removed from item 4.1; and,
  - a new item 4.2 – Power Feed upgrade – be added to the Price List.
26. This charge excludes End of Row board construction and augmentation of feed to End of Row board.
27. The Commission's preliminary view was that the proposed change is consistent with the purpose of clause 4.2.3 of the UCLL STD, and therefore agreed with the addition of the following new service component and the deletion of power upgrades from item 4.1 in the UCLL Co-location Price List:

Service Component	Description	Core or Sundry	Charge Becomes Due	Price Change Mechanism	Charge
<b>4.2 Power Feed upgrade</b>	Work to upgrade power feed from end of row board to footprint to provide additional capacity	S	On completion of capacity upgrade	Clause 4.2.2	Installation or upgrade of power feed to footprint from end of row board. \$656.00  [Based on a service company cost of [Chorus COI] plus [Chorus COI] administration charge and [Chorus COI] to cover the estimated direct front office costs to manage each transaction. [Chorus COI] mark up to cover common costs, rounded up to nearest dollar]

28. TelstraClear submitted on this proposal, noting concern with the structure and quantum of the charges proposed by Telecom (Chorus), noting that they are substantially higher than pricing supplied by Telecom (Chorus) in the past on a POA basis.
29. After further consideration, and as a result of the TelstraClear submission, Telecom (Chorus) has decided to explore other options with customers in terms of this proposed new service component transaction charge. Telecom (Chorus)'s intention is to take a re-

<sup>4</sup> Letter from Justin Tighe-Umbers, Chorus, Tuesday 30<sup>th</sup> March 2010

worked pricing structure to the TCF and has subsequently withdrawn this clarification request<sup>5</sup>.

#### ***D. Aligning the review dates across UCLL and UCLL Sub-loop STDs***

##### Annual Review Date Alignment

30. In each of the UCLL, UCLL Co-location, UCLL Backhaul, UCLL Sub-loop, UCLL Sub-loop Co-location and UCLL Sub-loop Backhaul Price Lists, there is a clause requiring Telecom to (subject to the Commission's approval) pass through changes in costs by increasing or decreasing certain sundry charges each year on the anniversary of the date the relevant STD came into effect (**Review Date**) by an amount equivalent to the percentage change (up or down) for the previous year Labour Cost Index (Communication Services) as published by Statistics New Zealand. In the case of UCLL and Sub-loop Co-location, certain sundry charges are adjusted according to the Producer Price Index (Electricity Generation and Supply) as published by Statistics New Zealand.
31. The Annual Review dates for the UCLL STD Service, UCLL Co-location STD, UCLL Backhaul STD, and Sub-loop STDs are shown in the table below, along with the price change mechanisms used to adjust prices annually:

<b>STD</b>	<b>Annual Review Date</b>	<b>Price Change Mechanisms used for Annual Review</b>
UCLL Service	7 November	Labour Cost Index (Communication Services)
UCLL Co-location	7 November	Labour Cost Index (Communication Services) Producer Price Index (Electricity Generation and Supply)
UCLL Backhaul	27 June	Labour Cost Index (Communication Services)
UCLL Sub-loop Service	18 June	Labour Cost Index (Communication Services)
UCLL Sub-loop Co-location	18 June	Labour Cost Index (Communication Services) Producer Price Index (Electricity Generation and Supply)
UCLL Sub-loop Backhaul	18 June	Labour Cost Index (Communication Services)

<sup>5</sup> Letter from Justin Tighe-Umbers, Chorus, Tuesday 30<sup>th</sup> March 2010

32. Telecom (Chorus) noted in its letter, that the Commission had asked Telecom (Chorus) to consider a number of date options for an amalgamated STD annual review date. According to Telecom (Chorus), an alignment of the annual review dates will address problems with:
- Price inconsistency;
  - Billing difficulties; and
  - Customers dealing with at least 3 price changes per year.
33. Telecom (Chorus) proposed that the Annual Review Date for the four STDs be adjusted to 1 November each year given that at this time each year, the Producer Price Index (PPI) will be up to date (the PPI is issued in November). Telecom (Chorus) suggest that this will give them the best opportunity to keep those charges that are adjusted according to the PPI as aligned as possible with changes in the market price for power.
34. The Commission sought comment on an annual review of prices in all UCLL and Sub-loop UCLL STDs being 1 November each year. The TCF Working Party supported the Annual Review Date for the four STDs being adjusted to 1 November each year.
35. The Commission has decided therefore that the Annual Review Date for the UCLL STD Service, UCLL Co-location STD, UCLL Backhaul STD, and Sub-loop STDs be 1 November each year. This will require amendments to the STDs as detailed in Appendix 1.
36. For the avoidance of doubt, a change in the Annual Review Date to 1 November, means that the next annual review date for the:
- UCLL Backhaul STD will be 1 November 2010, rather than 27 June 2010; and,
  - UCLL Sub-loop STDs will be on 1 November 2010, rather than 18 June 2010.

#### Price Alignment

37. Telecom (Chorus) suggested that the alignment of the Annual Review date across the STDs will necessitate addressing pricing inconsistency, so proposed to align service component pricing across the STDs using the following methodology:

Where:

- the only pricing change mechanism specified in the STD Price Terms for the service component is the annual change in labour costs index (LCI); and,
- that service component (or its equivalent) exists in more than one STD Price Terms;

the prices will be aligned to the price listed in the Price Terms approved following the Annual Review of the UCLL Service and UCLL Co-location STDs on 7 November 2008.

38. Effectively this would mean that for Sub-loop Unbundling and the UCLL Backhaul STDs, any service components that meet the above criteria will be aligned to the UCLL Service and UCLL Co-location 2008 equivalent service prices.

39. Those service components that are adjusted via the change mechanism for input costs charged by the field services company contractors, will be aligned as a natural consequence of any changes to the underlying service company contract.
40. Telecom (Chorus) suggested that the annual LCI index would then be applied to those charges that are adjusted by the LCI, commencing 1<sup>st</sup> November 2010, and these charges will then remain aligned with the index in perpetuity.
41. Telecom (Chorus) noted that they have foregone the LCI rate increase of 1.9% for the UCLL Service and UCLL Co-location sundry charge price review which was completed on 7 November, (but applied the PPI inflation rate decrease of 2.8%<sup>6</sup>).
42. The Commission does not agree that the LCI adjustment from 2008 can be applied to the service components in the Sub-loop and UCLL Backhaul STDs, as these prices were not set until 2009. However, the Commission notes that Telecom (Chorus) did not envisage any clarification to the STDs at this point with regards to price alignment between the STDs. The Commission understands that once Telecom (Chorus) is clear on how it intends to align the service component prices across the STDs a request will be submitted to the Commission to change the price terms where necessary to the aligned prices.

### ***E. Cabinetisation waivers***

43. On 12 November 2009 the Commission issued a final decision on a clarification concerning cabinetisation waivers which introduced new notice provisions for exchanges that are not unbundled, forecast to be unbundled, or on an 'exchanges of interest' list.
44. Telecom (Chorus) proposed a further amendment to the cabinetisation provisions in the General Terms of the UCLL and UCLL Co-location STDs to include a special waiver provision in clause 38.11 as follows:
- 38.11.4 Telecom obtains a written waiver from all Active Access Seekers. An Active Access Seeker is an Access Seeker who has submitted a Forecast as defined in the UCLL Operations Manual.
45. Telecom (Chorus)'s reason for requesting this change is that it is difficult to obtain waivers from all affected Access Seekers.
46. An example of when obtaining a written waiver under the current STD obligations would be required, is if Telecom (Chorus) wished to forego giving the appropriate notice of a cabinetisation as required by clause 38.11 of the UCLL and UCLL Backhaul General Terms, and the cabinetisation is in respect of an Exchange that is:
- unbundled;
  - included in an Access Seeker's forecast or Exchanges of Interest List; or
  - included in an Access Seeker's forecast or Exchanges of Interest List within 30 days of a notice about the proposed cabinetisation given by Telecom.

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<sup>6</sup> In the case of UCLL Co-location, certain sundry charges are adjusted according to the PPI (Electricity Generation and Supply) rather than the LCI, so for those charges where the price change mechanism is LCI – no change was applied; and for those where the price change mechanism is PPI, the change was applied.

If any of these apply to any Access Seeker, then if Telecom (Chorus) wants to go ahead with the proposed cabinetisation, it must obtain a written waiver from all Access Seekers.

47. The Commission's preliminary view with regards the special waiver provision was that the current waiver obligations serve a significant pro-competitive purpose, and do not impose any undue burden on Telecom. The Commission therefore saw no reason to make any amendments to the provisions.
48. In the TCF submission<sup>7</sup>, Telecom (Chorus) acknowledged that the newly amended cabinetisation notice process has improved flexibility and reduced administrative burden, but suggested that, in those instances where exchanges are declared of interest by an Access Seeker, Telecom (Chorus) must seek waivers from all 12 Access Seekers.
49. The TCF submission<sup>8</sup> supported Telecom (Chorus)'s request and agreed that it would serve to reduce the potential detrimental effect to customers who would be deprived of service improvements due to unsigned waivers from non-active Access Seekers.
50. Telecom (Chorus) also noted in the TCF submission that previously it had been proposed that an Active Access Seeker be defined as one who has submitted a forecast. However, in some instances Access Seekers have placed orders without submitting a forecast. Accordingly, the Commission considers it more accurate to define an Active Access Seeker as one that has either submitted a forecast or placed an order.
51. The Commission's concern is that it is entirely possible that the Exchanges which are of interest to current Access Seekers will be of future interest to other Access Seekers ('non-active' ones, using the definition proposed by Chorus). This therefore raises the question about whether they too, should have a say in whether to waive their notice period rights or not. This concern was put to the TCF working party, and the response from the TCF was that it supported the Commission's efforts to widen the consultation to Access Seekers who do not attend the TCF.
52. Given all Access Seekers are given Notice of a proposed cabinetisation being brought forward, then any Access Seeker who may have a future interest in an affected Exchange has the opportunity to make this known to Telecom (Chorus) within 30 calendar days of the date of the Notice. The Commission has decided therefore that in the case where an Access Seeker responds to such a Notice and puts the relevant Exchange on its Exchanges of Interest List or includes the Exchange in its Forecast, then a written waiver (waiving that Access Seeker's rights to the 18 month notice period prior to cabinetisation occurring) should be obtained from this Access Seeker. This will be in addition to seeking written waivers from those Access Seekers that are considered 'active' at the particular Exchange, i.e. those already accessing the UCLL Service, those that have placed an order; and those that have placed the Exchange on its Forecast or Exchanges of Interest List.
53. Therefore, after consideration of the proposal, and submissions made, the Commission has decided that clause 38.11.3 of the General Terms of the UCLL and UCLL Co-location STD should be deleted and replaced with:

*[38.11 The Cabinetisation Notice must be given at least 18 months prior to cabinetisation occurring, except where:]*

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<sup>7</sup> TCF Submission, paragraph 10

<sup>8</sup> TCF Submission, paragraph 13

38.11.3 Telecom gives Notice of the proposed cabinetisation to all Access Seekers, giving them 30 calendar days to respond, and obtains a written waiver in accordance with clause 45 of the General Terms from:

- a. Any Access Seeker that is accessing the UCLL Service from the Exchange that it is proposed be cabinetised;
- b. Any Access Seeker that has placed an order (as defined in the UCLL Operations Manual) for the UCLL Service from the Exchange that it is proposed be cabinetised;
- c. Any Access Seeker that has included the Exchange that it is proposed be cabinetised in its Forecast or Exchanges of Interest List; and
- d. Any Access Seeker that responds to the Notice and includes the Exchange that it is proposed be cabinetised in its Forecast or Exchanges of Interest List.

For the avoidance of doubt, if an Access Seeker does not respond to the Notice, and neither (a), (b) nor (c) above apply, then the Notice shall be deemed a Cabinetisation Notice given in accordance with clause 38.11 and Telecom may proceed with the proposed cabinetisation in accordance with the Notice, without giving any further notice.

#### ***F. Trigger for Service Level Terms Performance Reports***

54. Clause 6.1 of the Service Level Terms for the UCLL STD, UCLL Co-location STD, UCLL Backhaul STD, and Sub-loop STD, require that Telecom prepare Service Level Terms performance reports each month and deliver them to the Access Seeker within 10 working days of the end of each calendar month in electronic format. Telecom (Chorus) is also required to provide the Commission and Access Seekers with a consolidated performance report as per clause 6.2 of these Service Level Terms.

55. This requirement extends to those situations where there is no data available because Access Seekers are not receiving any services. Telecom (Chorus) have advised that there can be a significant time-lag between the first Access Seeker request for services under section 30S(1) of the Act for relevant services and the customer actually taking those services.

56. Telecom (Chorus) suggested that all of the Service Level Terms of the UCLL and UCLL Sub-loop Services STDs be amended so that Telecom (Chorus) is only required to produce monthly performance reports once the Service Level Terms are triggered. Telecom (Chorus) proposes that this trigger be the placing of an order as per the relevant Operations Manual.

57. The Commission's view is that these proposed changes will have no adverse affect on the Access Seekers, and will remove an unnecessary burden on Telecom (Chorus).

58. Therefore the Commission has decided that clause 6.1 of the Service Level Terms for UCLL STD, UCLL Co-location STD, UCLL Backhaul STD, and Sub-Loop STD, be amended as follows:

- 6.1<sup>9</sup> Once an order has been placed, Telecom will provide the Access Seeker with a performance report each month. The report will be delivered or made available to the Access Seeker within 10 Working Days of the end of each calendar month in electronic format. The report will detail Telecom's performance and compliance with each of the Service Levels over the preceding month. The format and content of the performance report will be proposed by Telecom within 10 Working Days of the Determination Date for approval by the Commission.

### **Decision**

59. No appeal is pending in respect of the determinations proposed to be modified in this draft decision, satisfying section 58(1)(c) of the Act.
60. 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 8<sup>th</sup> day of April 2010

A handwritten signature in dark ink, appearing to be 'Dr Ross Patterson', is written over a horizontal line.

Dr Ross Patterson  
Telecommunications Commissioner  
Commerce Commission

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<sup>9</sup> Note that this clause was previously amended on 30 November 2009, in a letter to Chorus from the Commission

## Appendix 1: Price List amendments as a result of the change in Annual Review Date

### *UCLL Price List*

- 3.1.1 Each year, on 1 November ~~the anniversary of the date the Commission's determination relating to the UCLL Service comes into effect~~ (Review Date), Telecom must adjust the Sundry Charges relating to the ancillary services that are shown in the Price List table below (in the column "Price Change Mechanism" and identified as "clause 3.1.1") by an amount equivalent to the percentage change (up or down) for the previous year in the Labour Cost Index (Communication Services) Series Reference LCIQ.SE49J9 as published by Statistics New Zealand.

For the purpose of this clause 3.1.1, the previous year is the period which commences on the quarterly index date immediately prior to the previous Review Date ~~(or, for the first review, the date of the Commission's determination)~~ and ends on the quarterly index date immediately prior to the Review Date.

### *UCLL Co-location*

- 4.2.1 Each year, on 1 November ~~the anniversary of the date the Commission's determination relating to the Co-location Service comes into effect~~ (Review Date), Telecom must adjust:

- (a) the Sundry Charges relating to the ancillary services that are shown in the Price List table below (in the column "Price Change Mechanism" and identified as "clause 4.2.1 (a)") by an amount equivalent to the percentage change (up or down) for the previous year in the Labour Cost Index (Communication Services) Series Reference LCIQ.SE49J9 as published by Statistics New Zealand.
- (b) the Sundry Charges relating to the ancillary services that are shown in the Price List table below (in the column "Price Change Mechanism" and identified as "clause 4.2.1 (b)") below by an amount equivalent to the percentage change (up or down) for the previous year in the Producer Schedule 2 Co-location Price List Page 2 of 12 Price Index (Electricity Generation and Supply) Series Reference PPIQ.SUD01 as published by Statistics New Zealand.

For the purpose of this clause 4.2.1 the previous year is the period which commences on the quarterly index date immediately prior to the previous Review Date ~~(or, for the first review, the date of the Commission's determination)~~ and ends on the quarterly index date immediately prior to the Review Date.

### *UCLL Backhaul*

- 3.1.1 Each year, on 1 November ~~the anniversary of the date the Commission's UCLL Backhaul Standard Terms Determination came into effect~~, (Review Date), Telecom must adjust the Sundry Charges that are shown in the Price List table below (in the column "Price Change Mechanism" and identified as "clause 3.1.1") by an amount equivalent to the percentage change (up or down) for the previous year in the Labour Cost Index (Communication Services) Series Reference LCIQ.SE49J9 as published by Statistics New Zealand.

For the purpose of this clause 3.1.1, the previous year is the period which commences on the quarterly index date immediately prior to the previous Review Date (~~or, for the first review, the date the UCLL Backhaul Standard Terms Determination came into effect~~) and ends on the quarterly index date immediately prior to the Review Date. For the review on 1 November 2010, the previous year is the period which commences on the quarterly index date immediately prior to 1 November 2009.

#### *UCLL Sub-loop*

3.1 Telecom must, subject to the approval of the Commission, pass through changes in costs by increasing or decreasing Sundry Charges as follows:

- (a) Each year, on 1 November ~~the anniversary of the date the Sub-loop Services Standard Terms Determination came into effect~~ (Review Date), Telecom must adjust the Sundry Charges relating to the ancillary services that are shown in the Price List table below (in the column "Price Change Mechanism" and identified as "clause 3.1(a)") by an amount equivalent to the percentage change (up or down) for the previous year in the Labour Cost Index (Communication Services) Series Reference LCIQ.SE49J9 as published by Statistics New Zealand.

For the purpose of this clause 3.1(a), the previous year is the period which commences on the quarterly index date immediately prior to the previous Review Date (~~or, for the first review, the date of the Commission's determination~~) and ends on the quarterly index date immediately prior to the Review Date. For the review on 1 November 2010, the previous year is the period which commences on the quarterly index date immediately prior to 1 November 2009.

#### *UCLL Sub-loop Co-location*

4.1 Telecom must, subject to the approval of the Commission, pass through changes in costs by increasing or decreasing Sundry Charges as follows:

- (a) Each year, on 1 November ~~the anniversary of the date the Sub-loop Services Standard Terms Determination came into effect~~ (Review Date), Telecom must adjust:
- (i) the Sundry Charges relating to the ancillary services that are shown in the Price List table below (in the column "Price Change Mechanism" and identified as "clause 4.1(a)(i)") by an amount equivalent to the percentage change (up or down) for the previous year in the Labour Cost Index (Communication Services) Series Reference LCIQ.SE49J9 as published by Statistics New Zealand; and
  - (ii) the Sundry Charges relating to the ancillary services that are shown in the Price List table below (in the column "Price Change Mechanism" and identified as "clause 4.1(a)(ii)") below by an amount equivalent to the percentage change (up or down) for the previous year in the Producer Price Index (Electricity Generation and Supply) Series Reference PPIQ.SUD01 as published by Statistics New Zealand.

For the purpose of this clause 4.1(a) the previous year is the period which commences on the quarterly index date immediately prior to the previous Review Date (~~or, for the first review, the date of the Commission's determination~~) and ends on the quarterly

index date immediately prior to the Review Date. For the review on 1 November 2010, the previous year is the period which commences on the quarterly index date immediately prior to 1 November 2009.

*UCLL Sub-loop Backhaul*

3.1 Telecom must, subject to the approval of the Commission, pass through changes in costs by increasing or decreasing Sundry Charges as follows:

- (a) Each year, on 1 November ~~the anniversary of the date the Sub-loop Services Standard Terms Determination came into effect~~ (Review Date), Telecom must adjust the Sundry Charges that are shown in the Price List table below (in the column "Price Change Mechanism" and identified as "clause 3.1(a)") by an amount equivalent to the percentage change (up or down) for the previous year in the Labour Cost Index (Communication Services) Series Reference LCIQ.SE49J9 as published by Statistics New Zealand.

For the purpose of this clause 3.1(a), the previous year is the period which commences on the quarterly index date immediately prior to the previous Review Date ~~(or, for the first review, the date the Subloop Services Standard Terms Determination came into effect)~~ and ends on the quarterly index date immediately prior to the Review Date. For the review on 1 November 2010, the previous year is the period which commences on the quarterly index date immediately prior to 1 November 2009.