



COMMERCE COMMISSION

**CLARIFICATION of the STANDARD TERMS DETERMINATIONS for the
designated services of
TELECOM'S SUB-LOOP UNBUNDLED COPPER LOCAL LOOP NETWORK
SERVICE (Sub-loop UCLL),
TELECOM'S SUB-LOOP UNBUNDLED COPPER LOCAL LOOP NETWORK CO-
LOCATION SERVICE (Sub-loop Co-location), and
TELECOM'S SUB-LOOP UNBUNDLED COPPER LOCAL LOOP NETWORK
BACKHAUL SERVICE (Sub-loop Backhaul)**

DECISION NO. 687

Clarification under section 58 of the Telecommunications Act 2001 (the 'Act')
of Decision 672

The Commission:

Dr Ross Patterson
Anita Mazzoleni
Gowan Pickering
Pat Duignan

Date of clarification:

3rd December 2009

BACKGROUND

1. On 18 June 2009, the Commission issued a standard terms determination (**‘the Sub-loop Services STD’**) under section 30M of the Act in respect of the designated access services of Telecom’s unbundled copper local loop network), UCLL Co-location, and UCLL Backhaul.¹
2. On 26 August 2009 the Commission received a request for clarification from Telecom (Chorus) of the Sub-loop Services STD made under section 58 of the Act in relation to the following matters:
 - a) Distribution Cabinet notifications;
 - b) Fibre used to monitor Cabinet-based Services;
 - c) Market share assessment calculations;
 - d) Space allocation rules – timing of the first assessment; and
 - e) Service Level Terms performance reports.
3. The Commission has decided to consider all five elements of the clarification request simultaneously.
4. Copies of Telecom’s (Chorus) request seeking clarification of the Sub-loop Services STD are available on the Commission’s website.²
5. The proposed amendments as requested by Chorus have the support of all those consulted during the consultation process.
6. The Commission considers that the proposed amendments set out in this clarification are likely to best give effect to the purpose set out in section 18 of the Act. In terms of section 18(2), the clarification is likely to promote efficient delivery of the Sub-loop UCLL, Sub-loop Co-location, and Sub-loop Backhaul Services.
7. The Commission is empowered to consider Chorus’ entire request for clarification under section 58 of the Act given the nature of the requested changes. In particular, it notes that the changes relating to the “market share assessment calculations”, “space allocation rules – timing of the first assessment” and “Service Level Terms performance reports” qualify as minor clarifications.

Distribution Cabinet Notifications – Sub-loop Backhaul Operations Manual

¹ Commerce Commission, *Decision 672: Standard Terms Determination for the designated services of 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)*, 18 June 2009. Decision 672 is available on the Commission’s website at: <http://www.comcom.govt.nz/IndustryRegulation/Telecommunications/StandardTermsDeterminations/SubloopUCLLservice/ContentFiles/Documents/Sub-loop%20Services%20STD%20-%20Decision%20Report%20-%20PUBLIC%20VERSION.pdf>

² All the letters are available on the Commission’s website at the link in note 1 above.

8. Telecom (Chorus) submits that the notification provisions for adding, deleting or moving Distribution Cabinets in the Sub-loop Backhaul Operations Manual are not flexible enough to enable Telecom to adapt to new circumstances. Telecom (Chorus) also sought confirmation that its interpretation and application of the definition of “Distribution Cabinets” (that a DSLAM had to be installed to meet the requirements of the definitions) was correct.

Meaning of “Distribution Cabinet”

9. Distribution Cabinet is defined in the Sub-loop STD General Terms as “a Cabinet and any associated Pedestal or Pedestals in respect of which DSL services are able to be provided to one or more End Users using equipment installed in the Cabinet and/or an associated Pedestal” (p.14).
10. Telecom (Chorus) advised the Commission that it has interpreted the definition of a Distribution Cabinet as requiring a DSLAM to be present in order to meet the definition. While the definition was not intended to be limited to active cabinets, the Commission agrees that it would not be possible to provide DSL services without the existence of a DSLAM in the Cabinet, and the wording in the definition of Distribution Cabinet could be read as referring to cabinets that are capable of delivering DSL services to one or more End Users.
11. The Commission considers that the current definition of a Distribution Cabinet as specified in the General Terms is ambiguous and therefore requires clarification.
12. In the Draft Clarification, the Commission proposed that the definition of a Distribution Cabinet be amended to read “a Cabinet, in respect of which, when equipment is installed in the cabinet and/or associated pedestal, DSL services are able to be provided to one or more End Users”.
13. In its submission³, Chorus raised concerns about whether this definition may be too wide, and may unintentionally capture passive copper cross connect cabinets. Chorus suggested that the definition be further clarified to be cabinets that are equipped with power and other support services.
14. The Commission agrees with the Chorus submission. Accordingly, the Commission considers that the definition of Distribution Cabinet should be changed in the Sub-loop STD General Terms to “a Cabinet that is equipped with power and other support services, in respect of which, when equipment is installed in the cabinet and/or associated pedestal, DSL services are able to be provided to one or more End Users”.
15. In accordance with the Sub-loop Services Implementation Plan, Telecom (Chorus) provided Distribution Cabinet Information to the Commission on 16 July 2009. The Commission requests that Telecom (Chorus) resubmit the information so that it is consistent with the revised definition above.

³ Chorus Submission, 23 November 2009, page 2

12 months' notice requirement

16. Clause 17.3.4 of the Sub-loop Backhaul Operations Manual requires that “Telecom may from time to time as its network evolves add, delete or move Distribution Cabinets and will provide the Access Seeker and the Commission with at least 12 months’ notice of any changes.”
17. Telecom (Chorus) submitted it needs a shorter period of time than the required 12 months’ notice period to modify the Distribution Cabinet in some cases because of network capacity, network maintenance, pockets of greenfields development or technical constraints in the locality of the Cabinet.
18. The Commission acknowledges that there will be instances where the delivery of services may be impacted by network capacity issues and that the full 12 months’ notification period may unnecessarily prolong such issues to the long-term detriment of end-users. The Commission considers that introducing limited exceptions to the requirement to give 12 months’ notice (albeit with defined conditions) provides flexibility to both Telecom (Chorus) and Access Seekers in a manner which is likely to best give effect to section 18 of the Act, and should be approved.
19. The Commission’s view is that clause 17.3.4 of the Sub-loop Backhaul Operations Manual be amended permitting Telecom (Chorus) to make changes to its cabinet-based network without giving 12 months’ notice of a change but subject to the conditions outlined in clause 17.3.4.
20. The Commission considers that clause 17.3.4 should be amended as shown by the underlined text. The proposed exceptions outlined in subparagraphs (a) to (c) are based on the exceptions to the requirement to give 24 months’ notice of a proposed cabinetisation under the UCLL STD to ensure consistency. The exception outlined in subparagraph (d) captures the situation where Telecom (Chorus) has given a Cabinetisation Notice or a similar notice under the cabinetisation provisions of the UCLL STD. It would be unreasonable in that situation to require Telecom (Chorus) to give a further 12 months notice (over and above the notice already given) before making any changes to its Cabinet-based network

17.3.4 Telecom may from time to time as its network evolves add, delete or move Distribution Cabinets and will provide the Access Seeker and the Commission with at least 12 months' notice of any changes, except where any of the following apply to a particular Distribution Cabinet:

- (a) Telecom is not required to give notice of any changes where it is necessary in an emergency situation or where Telecom becomes aware of a material risk to any of the Sub-loop Services that requires action in order to ensure Network continuity;
- (b) Telecom is not required to give notice of any changes where it is necessary to replace the relevant part of the Sub-loop Network because it has come to the end of its life, has significantly deteriorated, or has been damaged beyond repair (and in each case this was reasonably anticipated or reasonably foreseeable at the time the applicable Cabinetisation Notice was given under the UCLL General Terms);
- (c) Telecom must provide the Access Seeker and the Commission with as much notice as is reasonably practical in the circumstances where Telecom is required to add, delete or move a Distribution Cabinet by law or government, statutory or regulatory authority, (including without limitation the Commission); or
- (d) Telecom is not required to give notice where it has given a Cabinetisation Notice under clause 38.11 of the UCLL General Terms or other notice under clause 38.11.3 of the UCLL General Terms and the subject of the Cabinetisation Notice or other notice relates to a proposed cabinetisation for an Exchange which would typically be covered by this clause.

For the avoidance of doubt, Telecom is not required to provide the Access Seeker and the Commission with any notice of the installation or removal of DSLAMs in Distribution Cabinets.

21. The Commission considers that adding a DSLAM to a Distribution Cabinet does not amount to the addition, deletion or moving of a Cabinet, and accordingly Telecom (Chorus) is not required to give 12 months' notice to Access Seekers as specified in clause 17.3.4.

22. Both Chorus⁴ and the Telecommunications Carriers' Forum (TCF)⁵ submitted that it was unclear whether the new drafting proposed by the Commission at clause 17.3.4(d) reflected the revised process contained in Decision 682 dated 12th November 2009, relating to "exchanges of interest". The Commission confirms that the inclusion of the words 'or other Notice' in clause 17.3.4 was intended to cover this situation. The Commission has edited above clause 17.3.4(d) so that Chorus is not required to give any further notice under clause 17.3.4 of any addition, deletion or movement of a Distribution Cabinet where that has been covered off under a separate notice given under clause 38.11 of the General Terms of the UCLL STD.

⁴ Chorus Submission, 23 November 2009, pages 2-3

⁵ TCF Submission, 23 November 2009, page 2

Fibre used to monitor Cabinet-based Services – Sub-loop Backhaul Price List

23. Telecom (Chorus) submits that the monthly charge calculation formula for the Sub-loop Backhaul Service should not take into account any fibres used by Telecom to monitor the Sub-loop Backhaul Service.
24. The monthly recurring charge for the Sub-loop Backhaul Service is calculated in accordance with the formula as set out in the STD. Telecom (Chorus) is seeking a change to component “D” of this formula (which is defined as “the total number of fibres used between the Distribution Cabinet and Local Exchange”) so as to exclude a fibre used by Chorus for the purpose of supporting the Sub-loop Services, provided that no customers will be served off that fibre.
25. The Commission has previously stated in the Sub-loop Services STD that it considers that the primary cost driver for the Sub-loop Backhaul Service is the number of active fibres used between the Distribution Cabinet and the Exchange on the basis that it would be more efficient, and therefore more in line with section 18, to price the service according to the number of active fibres.⁶
26. In the Draft Clarification, the Commission considered that removing the monitoring fibre from the “total number of fibres in use” would result in the backhaul costs for this fibre being recovered exclusively from Access Seekers, and therefore would result in an increase in the price of the Sub-loop Backhaul service.
27. Chorus⁷, Telecom Wholesale⁸ and the TCF⁹ submitted that the monitoring fibre should not be included in the definition of “active fibres” in “D” of the price calculation formula, as it would dis-incent Chorus undertaking enhanced monitoring for the benefit of its customers. Chorus¹⁰ and the TCF¹¹ also submitted that monitoring costs are part of the cost of delivering the service and should therefore not be treated any differently from other costs that Chorus incurs in delivering the Sub-loop Backhaul and Sub-loop Co-location service.
28. Telecom Wholesale¹² submitted that one of the consequences of the Commission’s Draft Clarification would be less effective monitoring by Chorus. The Commission agrees and would not desire such an outcome. It is now understood that this could potentially occur because there would be no incentive to provide improved monitoring through the use of a fibre if it meant a decrease in the price of Sub-loop Backhaul. The Commission also understands that Chorus is not currently using a fibre in this way and so agrees that excluding monitoring fibres from the definition of “active fibres” in “D” in the price calculation formula will not result in a price increase for the Sub-loop Backhaul Service.
29. The Commission has reconsidered its position in light of submissions received on this matter, and the relevant considerations under s18 of the Act, and determines that the monitoring fibre should not be included in the definition of “fibres in use” in component “D” of the price calculation formula.

⁶ Paragraph 405, Sub-loop Services STD, Decision 672.

⁷ Chorus Submission, 23 November 2009, page 5

⁸ Telecom Wholesale Submission, 23 November 2009.

⁹ TCF Submission, 23 November 2009, page 4

¹⁰ Chorus Submission, 23 November 2009, page 5

¹¹ TCF Submission, page 4

¹² Telecom Wholesale Submission, 23 November 2009

30. The Commission considers that the monitoring fibre will improve the service for Chorus' customers, and coupled with the fact that the Sub-loop Backhaul price will not increase as a result, exclusion of the monitoring fibre is likely to best give effect to section 18 of the Act.
31. The Commission considers that Item 2.1 of the Sub-loop Backhaul Price List be amended as indicated by the bold text below:

The monthly charge for the Sub-loop Backhaul Service is calculated on a cabinet-by-cabinet basis, according to the proportion of fibres used by the Access Seeker according to the following formula:

$A = B \times (C/D) + E$, where:

A = the monthly charge paid by the Access Seeker;

B = monthly passive equipment costs for an Urban Distribution Cabinet (\$1,911 per month) or monthly passive equipment costs for a Non-urban Distribution Cabinet (\$3,197 per month);

C = the number of fibres provided to the Access Seeker between the Distribution Cabinet and Local Exchange in respect of the Sub-loop Backhaul Service;

D = the total number fibres used between the Distribution Cabinet and the Local Exchange **(other than any fibre used by Chorus for the purpose of supporting, and monitoring the performance of, the Sub-loop Services provided that no Access Seeker or other customers will be served off that fibre);** and

E = monthly active equipment costs (\$430 per month).

Market share assessment calculations – Sub-loop Co-location Operations Manual

32. Telecom (Chorus) submits that it has insufficient time to perform Market Share Assessments for the purpose of allocating space as required by the Sub-loop Co-location Operations Manual.
33. Where there is insufficient capacity in a New Distribution Cabinet to accommodate all Preliminary Orders received, Telecom (Chorus) is required (under clause 15.2.4(a))¹³ to give notice to the Access Seeker within five Working Days of the First Assessment Date that there is insufficient Capacity in the Sub-loop Co-location Service Area. Under clause 15.2.4(b)¹⁴, within 2 working days of receiving the original notice¹⁵ Access Seekers are required to provide Telecom (Chorus) with additional market share data that will allow Telecom (Chorus) to perform a Market Share Assessment within three Working Days of giving the original notice under clause 15.2.4(a).

¹³ Clause 15.2.4(a) of the Sub-loop Co-location Operations Manual – Service Appendix 2, Schedule 4.

¹⁴ Clause 15.2.4(b) of the Sub-loop Co-location Operations Manual – Service Appendix 2, Schedule 4

¹⁵ Clause 15.2.4(a) of the Sub-loop Co-location Operations Manual – Service Appendix 2, Schedule 4.

34. The timeframes in the current provisions for Telecom (Chorus) to complete the Market Share Assessment does not run from the time of receipt of data from the Access Seeker but from the earlier notice given under clause 15.2.4(a).
35. Telecom (Chorus) submitted that if Access Seekers take the full 2 Working Day timeframe to provide data, Telecom in effect has only one Working Day in which to validate the data and perform the Market Share Assessment calculation under clause 15.2.4(d).¹⁶ Telecom contends that to ensure the data is appropriately validated, it requires three working days in which to complete a Market Share Assessment, and that the combined effect of clauses 15.2.4(b) and 15.2.4(d), gives Telecom only one Working Day to perform the calculation, which was unintended.
36. The Commission considers Telecom's request for more time to conduct the Market Share Assessment calculation to be reasonable given the significance of allocating limited capacity in a Distribution Cabinet. The Commission notes that extending the Market Share Assessment exercise by two working days will have limited effect on Access Seekers.
37. The Commission also considers that amending the timeframe in clause 15.2.4(d) of the Sub-loop Co-location Operations Manual to five working days is likely to best give effect to the purpose set out in section 18 of the Act. Accordingly, the Commission decides that the reference to "three" in clause 15.2.4(d) is deleted and replaced by "five" so that Telecom is required "within five Working Days of giving Notice in accordance with clause 15.2.4(a)" to undertake a Market Share Assessment. .

The timing of the First Assessment Date under the space allocation rules – Sub-loop Co-location Operations Manual

38. Telecom (Chorus) submits that the four months lead-time for Access Seekers to provide equipment to its supplier manufacturing the Distribution Cabinets is insufficient. This is the period before the scheduled installation date of a New Distribution Cabinet and allows parties to place orders well in advance to facilitate planning (including for the purposes of testing and configuring equipment).
39. In its clarification request Telecom (Chorus) submitted that the definition of 'First Assessment Date' in the Sub-loop Co-location Operations Manual should be changed from the four months currently required to six months. Telecom (Chorus) asserted that this is because, "if the maximum time for each stage specified under the Commission's proposed rules (including our suggested amendments) was allowed for, the process of ordering Sub-loop Co-location would potentially take longer than four months"¹⁷ and as a result, Telecom (Chorus) would be unable to comply with its Cabinetisation Notices.
40. Telecom's suggested alternative to "extending the lead-time" was to amend the space allocation process so that if the process in action exceeded a certain number of Working Days from the First Assessment Date, any order would need to be managed through the process for Installed Distribution Cabinets as opposed to New Distribution Cabinets.

¹⁶ Clause 15.2.4(b) of the Sub-loop Co-location Operations Manual – Service Appendix 2, Schedule 4. See also the request for clarification from Telecom (Chorus) dated 26 August 2009, at paragraph 45.

¹⁷ The request for clarification from Telecom (Chorus) dated 26 August 2009 at para 54.

41. The Commission has considered both of Telecom's proposals and considers that Access Seekers would be better off given that Telecom (Chorus) would now be required to give a longer notification period. This will provide additional planning time for the Access Seekers and ensure a greater likelihood of the Distribution Cabinets being installed on time in accordance with the Cabinetisation Notice requirements and the Sub-loop Co-location Operations Manual.
42. The Commission's view is that the 'First Assessment Date' (as defined in the Sub-loop Co-location Operations Manual) be amended from four months to six months before the scheduled installation date of a New Distribution Cabinet. Accordingly, the Commission has decided to amend the definition of 'First Assessment Date' as indicated in the bold text below:

First Assessment Date means the first Working Day that is ~~six~~ months before the scheduled installation date for a New Distribution Cabinet under the Cabinetisation Notice.

43. As a consequence of the change to the definition of "First Assessment Date", the Commission accepts Telecom's (Chorus) submission that the notification period relating to the allocation of space in New Distribution Cabinets (specified at clause 15.2.1 of the Sub-loop Co-lo Operations Manual) needs to be amended from six months to 12 months. Accordingly, the Commission has decided to amend clause 15.2.1 as indicated in the bold text below:

Twelve months before the scheduled Installation Date of a New Distribution Cabinet, Telecom will provide confirmation on a publicly available Telecom website that the New Distribution Cabinet will be installed.

44. The Commission considers that these clarifications would be likely to give best effect to section 18 of the Act as the Access Seeker's will be able to better plan for the installation of New Distribution Cabinets.

Service Level Terms performance reports

45. Telecom (Chorus) submits that it is currently required to prepare Service Level Terms performance reports even where there is no performance data available because Access Seekers are not currently receiving services. The report details Telecom's performance and compliance with each of the Service Levels over the preceding month. Telecom (Chorus) is also required to provide the Commission and Access Seekers with a consolidated performance report.
46. Telecom (Chorus) states that there can often be a significant time-lag between the first Access Seeker request for services under section 30S(1) of the Act for the relevant Sub-loop Services and the customer actually taking those services. However, the reporting requirements in the STD mean that Telecom (Chorus) must provide performance reports on its compliance with the Service Levels to all Access Seekers and the Commission for that service, including unpopulated reports to parties who are not actually taking the services.
47. The Commission agrees that under the current requirements of the STD there may be circumstances where Telecom (Chorus) is required to prepare meaningless performance reports each month for Access Seekers who have requested access to the Sub-loop Services even though Access Seekers are not currently receiving the services.

48. The Commission's view is that all of the Service Level Terms of the Sub-loop Services STD be amended so that Telecom (Chorus) is only required to produce Sub-loop Services monthly performance reports for the Access Seeker and the Commission once the Service Level Terms are triggered (for example, once an Access Seeker receives supply of the Sub-loop Services).
49. Accordingly, the Commission has decided to amend all Service Level Terms of the Sub-loop Services STD as shown by the bold text outlined below:

6. Reporting on Service Levels

- 6.1 Telecom will provide the Access Seeker with a performance report each month, **from the first full month in which the Service Level Terms apply**. The report will be delivered or made available to the Access Seeker within 10 Working Days of the end of each **relevant** 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.
- 6.2 Telecom will provide the Access Seeker and the Commission with an electronic copy of a consolidated performance report within 10 Working Days of the end of each calendar month **in which the Service Level Terms apply**. The report will detail Telecom's performance and compliance with each of the Service Levels over the preceding month for all Access Seekers. 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.
- 6.3 The consolidated version of the performance report provided in accordance with clause 6.2 must be made publicly available on a Telecom website at the same time as it is provided to the Access Seeker and the Commission.
50. The amendments outlined above are made to clauses 6.1 and 6.2 which are found in the Sub-loop UCLL Service Level Terms (Service Appendix 1, Schedule 3), the Sub-loop Co-location Service Level Terms (Service Appendix 2, Schedule 3), the Sub-loop Backhaul Service Level Terms (Service Appendix 3, Schedule 3).

DATED at Wellington this 3rd day of December 2009



Dr Ross Patterson
Telecommunications Commissioner
Commerce Commission