



Telecommunications Act Review:
Post 2020 Regulatory Framework for Fixed Line services

Submission to MBIE

3rd March 2017

ABOUT VOCUS

1. Vocus New Zealand is the third largest fixed line operator employing over 800 staff In New Zealand. Our retail operation includes a number of challenger brands - Slingshot, Orcon, Flip, CallPlus and 2Talk. We are also an active wholesaler of services including access, voice and broadband over both fibre and copper.
2. Vocus has made significant investments in New Zealand. We are the largest copper unbundler with a presence in over 200 exchanges throughout New Zealand. In addition we operate 4,200km fibre optic network transits between virtually all major towns and cities, and connects directly into all major peering exchanges. .
3. Our customers in New Zealand range from government agencies, integrators, large corporate, SME and residential households. We are committed to New Zealand's fibre future.
4. Vocus Group is one of the fastest growing telecommunications companies in Australasia and a major provider of voice, broadband, domestic and international connectivity and data centres throughout New Zealand and Australia.
5. If you would like any further information about the topics in this submission or have any queries about the submission, please contact:

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SUMMARY

6. Vocus New Zealand (**Vocus**) welcomes the opportunity to make this submission to MBIE's Telecommunications Act Review: Post 2020 Regulatory Framework for Fixed Line services Submission paper.
7. The interrelationship between mobile and fixed markets continues to increase, particularly with the growth of FWA. **The absence of a robust, dynamic mobile wholesale market, in contrast to fixed, has a direct bearing on the issues in the fixed line market** as we look at copper withdrawal. We have some concerns that we are submitting on fixed markets without a view on the proposal for mobile markets as the two are intertwined.
8. RSP's have all stated that 100/20 anchor product will be a niche service by 2020. Orcon in the November-January 2017 period had over half the new fibre customers sign up for 1Gb plans. The current thinking around low specified anchor services seems to be in conflict with MBIE's statements that the anchor products are designed to be the "most common" residential services.
9. Vocus is of the view that history shows that allowing monopoly network providers scope to artificially constrain services (whilst attempting to extract artificially high premiums) leads to delays for years in consumers getting access to the full capability of network. Copper history clearly demonstrates this. Consumers have very small price elasticity and the result of network operators looking to extract high 'non-cost based' premiums is NZ consumers and businesses not benefitting from capabilities. VDSL is a classic example, as outlined, where a high premium delayed take-up by 4 years and full speed ADSL was withheld for 6 years.
10. Having low specified anchor products as well as commercial fibre unbundling (which won't be viable by design) compounds the problem. A 'viable' regulated unbundling service creates the incentive to innovate and invest and keeps monopoly network operators honest. Making it commercial will create a 'clayton's' unbundling service.
11. Vocus considers that it is important that the type of fibre unbundling that is adopted in NZ is led by the regulator to ensure we pick the form of unbundling that encourages competition and benefits consumers. LFC's have no incentive to make the decision based on this criteria – in fact they are incentivised to architect unbundling for failure. There is even the prospect of different LFC's adopting different forms.
12. To have different Fibre products offered by different LFC's will drive costs into RSP's and lead to confusion for consumers. The other LFC's should have an obligation to provide anchor products at the very least, in a similar manner to fibre unbundling. If the ministry is concerned that this may

cause issues for LFC's (although we are unsure why this would be the case) then empower the Commission to be able to grant exceptions.

13. Once copper is withdrawn the other LFC's should be regulated in a similar manner to Chorus - it's unclear why this wouldn't be the case as they have the same monopoly characteristics and incentives.
14. Vocus would like to differentiate between copper withdrawal and the withdrawal of unbundling and have each of them dealt with specifically as the latter risks a lessening of competition. They may not occur at the same time, as MBIE have highlighted vectoring is an example of why unbundling copper may need to be removed independent of the copper network being retired. Furthermore Chorus' incentives to retain unbundling versus the copper network are very different as outlined in this submission.
15. There are only a few unbundlers each with a different set of circumstances. Vocus, as the number three fixed line operator (and largest 'fixed line only' operator), has by far the largest percentage of its customer base serviced using UCLL and UCLFS / Baseband Copper. The impact of the 'effective or actual' withdrawal of the unbundling services risks harming competition if left to Chorus alone.
16. MBIE have stated they "*consider that they (RSP's) will have recovered any legacy investments well before 2020.*" (MBIE initial options paper page 52). That misses the point, retiring our unbundled network has very real future direct and opportunity costs.
17. **Vocus would like to make it clear we are not looking to extend the life of copper unbundling, we simply want to ensure that its retirement is not detrimental to competition and that parties are treated fairly taking into account the costs and benefits each party incurs from any 'effective' withdrawal.**
18. Vocus have suggested that MBIE consider the following to minimise the risk of harming competition, ensure a fair and balanced approach, protect consumers and facilitate, rather than prolong, the retirement of copper unbundling:-
 - (a) Ensure relativity of pricing of UCLL to UBA on existing unbundled exchanges is maintained prior to any retirement.
 - (b) Mandate that UCLL and UCLFS continue to be available in any exchange areas that UBA continues to be available, unless an earlier retirement has been agreed by Chorus and the unbundler or approved by the Commission. However preclude any further unbundling of new exchanges to ensure no inefficient investment occurs.
 - (c) Where Chorus wants an early retirement of unbundling the parties are to meet to agree on a bi-lateral basis an early removal of RSP's equipment and retirement of their network. To ensure this is not used by unbundlers to prolong an inefficient situation if parties can't agree the Commission should have the power to review and approve or decline Chorus' proposal.
The reiterate Commission review is to ensure that the proposal is not detrimental to

competition and that parties are treated fairly taking into account the costs and benefits each party incurs from any 'effective' withdrawal.

ANCHOR SERVICES WILL BE NICHE AND RISKS KIWIS NOT BENEFITTING FROM UFB FULL POTENTIAL

19. The paper states “*there will be a basic broadband (100/20Mbps) anchor product...to ensure that the most common residential voice and broadband services are available at reasonable prices on the network*”. RSP’s, including Vocus, submitted that if that is case the majority of residential and businesses will be on commercial services by 2020. The launch of 1GB plans already supports this. Orcon, by way of example, over the November - January 2017 period had over 50% of its UFB sales on the 1Gb plan.
20. The paper doesn’t outline the rationale for continuing to consider 100/20Mbps as being the appropriate specification. In the absence of further information on the reasoning we can only conclude that the Ministry doesn’t agree with RSP’s assessment or we misunderstand the policy? Having created a monopoly fibre provider and consistently stated that there would be regulation post 2020 surely the intent can’t be for regulation to apply niche services only?
21. NZ’s GPON network, thanks to technology innovation, will be able to provide 1GB+ to consumers by 2020 with little extra cost to the network operator. NZ has invested in fibre to the home, in contrast to Australia, and policy should ensure Kiwis get the full benefit of this in a timely manner.
22. Vocus have previously submitted our views on the dangers of allowing artificial constraints to be applied by monopoly network operators [Vocus submission to MBIE 1st October 2016 para 19-41]. To summarise:-
 - (a) **Artificial constraints by network operators have consistently delayed NZ consumers from accessing the benefits of technology innovation.** The past is often the best indicator of the future. The history of copper is full of examples of artificial constraints being applied by network operators, delaying consumers getting access to capabilities for years. Examples include:-
 - (i) The launch in June 1999 of unconstrained ADSL capable of 8Mbps was followed by a hasty withdrawal in January 2000 for consumers (but retained for business) and ‘replaced’ with the introduction of 128Kbps plans (a mere 3 x dial-up). **It was 6 years** before unconstrained ADSL became available again for consumers.
 - (ii) Consumers have a small range of price elasticity. VDSL was made available in April 2009 by Chorus, late by international standards, but at a \$20 per month premium over ADSL – despite little additional actual costs. As RSP’s had consistently submitted there was no take up. **For almost 4 years VDSL capability languished** until Chorus offered a more sensible \$5 per month uplift.
 - (iii) Once VDSL got underway, and was the fastest growing service at 20,000 connections per quarter Chorus attempted to withdraw the regulated VDSL service and introduce Boost VDSL (at a \$10 per month premium) as well as constraining ADSL.
 - (b) **RSP’s investments will be the most critical to ensuring fast, reliable broadband services.** Caching, traffic management, local backhaul and international backhaul are all key determinants of the quality and robustness of broadband. Allowing Chorus, as the ‘last mile’

network operator, to extract artificial premiums for faster services or business users limits RSP's incentives and ability to invest in faster, reliable services at affordable prices.

NICHE ANCHOR SERVICES COMBINED WITH UNREGULATED UNBUNDLING IS A TOXIC COCKTAIL WHICH WILL STIFLE ANY INNOVATION FROM THE MONOPOLY PROVIDER

23. Copper demonstrates that unbundling acts as an incentives for the monopoly network provider to invest and innovate or risk have another party unbundle and provide a superior service.
24. **If low level niche anchor products mean that the majority of users are on commercial services the role of unbundling becomes even more critical.**
25. The proposal to not regulate unbundling, electing instead for a softer approach of an obligation to provide a commercial service, is in Vocus view unlikely to produce a viable unbundling option for reasons discussed later. In reality it would be 2023-4 before the Commission even considers regulation meaning it would be 2026 or later before any regulated unbundling could occur.
26. That is not much of a threat and is unlikely to incentivise Chorus to offer a viable commercial unbundling in the short term or invest in ensuring their UFB service provides the latest capability, upgrades and innovation thereby allowing Kiwis to enjoy the benefits of global technology innovation.

DARK FIBRE [DFAS] SHOULD BE INCLUDED AS A REGULATED ANCHOR PRODUCT

27. Vocus submitted, as did other RSP's, on the Commerce Commissions Section 9A Backhaul Study: Preliminary questions paper [Vocus submission 16th September 2016] on the criticality of DFAS as a service to ensuring the metropolitan backhaul market remains competitive.
28. DFAS is critical to gaining access to business customers, connecting to them to our network nodes, as well as connecting our own local access nodes (e.g. inter exchange) to our point of presence.
29. Chorus' offers national and regional backhaul services, as a competitor to Vocus and other companies and Chorus is a monopoly UFB provider, often being the only option for connecting a lot of metropolitan sites. Accordingly Vocus would like to see DFAS regulated anchor product, rather than leaving this to commercial whims.
30. If Chorus were able to extract an artificial premium from DFAS this could create flow on distortions in both the national backhaul market and the data centre market.

OTHER LFC'S SHOULD HAVE OBLIGATIONS TO PROVIDE ANCHOR PRODUCTS

31. Vocus acknowledges that Chorus' copper provides a competitive constraint on other LFC's UFB network. The proposal to subject other LFC's to 'information disclosure only' requirements with regulatory oversight and backstop should be qualified with some obligations imposed on LFC's.

32. Vocus is concerned there is no obligation, as we understand the document, on the other LFC's to provide the anchor products, although we understand there will be an obligation to provide layer 1 unbundling.
33. Inconsistencies between the LFC's drives operational costs into RSP's, causes marketing complexity **and confusion for consumers**. It is hard to see how this aligns with policy objectives.
34. **At very least other LFC's post 2020 should have an obligation to provide equivalent anchor product products**, including DFAS, (on both price and non-price terms).
35. If MBIE has concerns with this approach then these may be alleviated by providing the Commission with the power to approve variations in anchor service where justified but retain equivalence as the default position.

ONCE COPPER IS WITHDRAWN OTHER LFC'S SHOULD BE REGULATED

36. If Chorus copper withdrawal commences in the LFC's areas then there is no effective constraint. At that point leaving a monopoly fibre provider unregulated is concerning and also inconsistent with the conditions in the paper [page 7] that copper withdrawal is conditional on: -
 - (a) The ability to install standard and non-standard UFB connections at no cost
 - (b) Anchor products or suitable commercial services are available. - It is unclear what 'suitable commercial' means but in Vocus' view they should be equivalent and regulated.
37. **In Vocus' view once copper is withdrawn LFC's should be regulated.** It's hard to justify the differentiation. Why Chorus would be regulated but local LFC's with similar dominant market power would not be. Surely there is no intervention test required, they have de facto natural monopoly characteristics.

UNBUNDLING FIBRE: THE OPTIMAL FORM FOR COMPETITION AND CONSUMERS CANT BE LEFT TO RELUCTANT UNBUNDLERS

38. Vocus and other RSP's are of the view that commercial unbundling WILL NOT WORK.
39. As we have submitted there are no incentives for a monopoly network provider to offer viable commercial unbundling – unbundling is "*like garlic to a vampire*" to a network operator which is why it is a strong driver of investment and innovation in the network, improved efficiency and better layer 2+ services.
40. The proposal that the Commission review the situation and have the power to regulate a layer 1 anchor product, with cost oriented pricing, is likely to be a long drawn out process over an extended number of years. That does not create sufficient incentive for LFC's to offer viable unbundling in the short term.
41. Probably the most compelling reason for regulating, rather than leaving to a commercial offering, is the decision around what form of unbundling should occur. As MBIE have identified unbundling comes in several forms, physical and wavelength.

42. **The type of unbundling chosen could have a profound effect on the level of competition however often the monopoly network operator's incentives and preferred form of unbundling are not aligned with what is best for consumers and competition.** The network operator is, in fact, incentivised to architect the network to make unbundling difficult. Furthermore we could have the ludicrous situation of different LFC's offering different types of unbundling.
43. The Minister needs to ensure that viable unbundling is an option and that the form of the unbundling is in line with the long term benefit of competition and consumers.
44. Developments in unbundling are occurring at a fast rate. Vocus suggest that MBIE task the Commission with studying unbundling developments in mid-2018 with a view to recommending whether to regulate unbundling and the form of unbundling across the LFC's rather than leaving it to a commercial obligation and the strong possibility of failing an intervention test in by 2024 and being regulated in 2026 or later by which time LFC's may have made technology choices that make this more complex.

COPPER WITHDRAWAL

COPPER NETWORK WITHDRAWAL AND COPPER SERVICE WITHDRAWAL ARE VERY DIFFERENT SCENARIOS

45. Vocus submit that copper network withdrawal and copper service withdrawal are very different scenarios, particularly for unbundlers, with very different risks with respect to significant distortions to the competitive landscape.
46. The key differences between a copper withdrawal scenario and withdrawal (or effective withdrawal through grandfathering or price ups) to the services underpinning existing copper unbundling investments (UCLL and UCLFS) are: -
 - (a) Copper network withdrawal impacts ALL RSP's however UCLL/UCLFS 'withdrawal', or effective withdrawal, significantly impacts only the #3 fixed line competitor, along with some smaller RSP's such as Compass.
 - (b) Effective 'Withdrawal' of UCLL results in a material Chorus cost increase for unbundlers (migrating to either to UFB or Baseband IP + UBA) in contrast to UBA+UCLFS migrations to UFB.
 - (c) 'Withdrawal' of UCLL strands equipment in hundreds of exchanges and impacts network assets, such as local and regional backhaul, which is not the case for UBA with its small number of handovers. Even if MBIE considers that legacy investments have been recovered it drives real and significant cost moving forward to retire the network, which other RSP's will not face.
 - (d) Chorus have **NO** incentives to retain UCLL or not price up (thereby collapsing relativity) unlike UBA. Effectively a migration of an RSP's infrastructure onto Chorus' infrastructure simply attracts more revenue and margin for Chorus.

47. In terms of copper network withdrawal Vocus supports the industry, under the TCF, drafting a code in the first instance with approval required from the Commission to adopt this as the regulated code. However in the case of the withdrawal, or effective withdrawal, of UCLL services this is inherently a bi-lateral discussion.

AVOID LESSENING OF COMPETITION DURING TRANSITION BY MAINTAINING RELATIVITY OF COPPER SERVICES

48. Vocus, as the largest investor in copper unbundling, is concerned that changes to the copper access service underpinning RSP's unbundling investment (UCLL/UCLFS) could distort the competitive landscape by impacting the #3 fixed line competitor by:-
- (a) stranding assets
 - (b) driving a retrenchment of network reach or making investments sub-scale
 - (c) driving cost into the unbundlers business and
 - (d) tying up resources (with associated opportunity costs) at a critical time for fibre migrations.
49. **Vocus is not unbundling any new exchanges** however Vocus' investment in unbundling includes deploying its own equipment into over 200 exchanges across New Zealand with the ability to service 55% of the lines in NZ, building out its network reach including co-locating equipment in exchanges, deploying equipment in regional nodes and procuring backhaul to service its MSAN deployment.
50. MBIE have stated they "*consider that they (RSP's) will have recovered any legacy investments well before 2020.*" (MBIE initial options paper page 52). That misses the point, retiring our unbundled investment has very real future costs, direct and opportunity costs. We are looking to ensure that parties are treated fairly taking into account the costs and benefits each party (Chorus and ourselves) incurs from any 'effective' withdrawal. That is unlikely to occur if left to Chorus' sole unfettered discretion.
51. To put this in context Vocus continues to be an active promoter of fibre and **we are not seeking to delay the move away from our copper unbundling network** where it is inefficient to continue to operate it.
52. Vocus is open to discussions on retiring our unbundled network to enable the introduction of vectoring by Chorus if this becomes a reality (which was one of the issues MBIE raised in the initial options paper page 52). This emphasises that unbundling withdrawal is a different consideration. Vocus would welcome these discussions sooner, not later.
53. However to ensure that during a transition the impact of any 'effective withdrawal' does not lessen competition Vocus would like to see the Act provide some protection for existing unbundlers during the transition period. To address concerns Vocus suggest the following, which would **only apply to**

exchanges where there is existing unbundling by the RSP to avoid inefficient investment in further unbundling.

54. To ensure a fair and balanced approach to retirement of unbundling Vocus suggests : -
- (a) Ensure relativity of pricing of copper services is maintained during a transition period. Specify that post 2020 in any area where a party has unbundled an exchange and is consuming UCLL and UCLFS the commercial UCLL price charged by Chorus should be less than the current commercial UBA+UCLFS price by at least the UBA price uplift (i.e. the uplift over and above UCLL for UBA) as at the end of 2019.
 - (b) Mandate that UCLL and UCLFS continue to be available in any exchange areas that UBA continues to be available, unless an earlier retirement has been agreed, however preclude any further unbundling of new exchanges.
 - (c) In the case of any early retirement parties are to meet to agree an earlier transition. If parties can't agree the Commission should have the power to review and approve or decline Chorus' proposal. **The Commission review is to ensure that the proposal is not detrimental to competition and that parties are treated fairly taking into account the costs and benefits each party incurs from any 'effective' withdrawal.**

CHANGES TO COPPER SERVICES UNDERPINNING UNBUNDLING IS NOT AN INDUSTRY WIDE ISSUE – WHICH IS WHY IT RISKS CREATING COMPETITIVE DISTORTIONS

55. **In line with policy objectives Vocus would welcome some predictability and certainty** with respect to retirement of copper unbundling. This cannot be achieved by leaving the nature and timing of changes to services to Chorus alone.
56. This is not an industry wide question - which is the root cause of the risk of competitive distortions. Vocus therefore acknowledges that discussions need to be bi-lateral as there are only a few unbundlers and each unbundler's situation and incentives are markedly different, so migration plans may differ significantly. Vocus' brands range from 25% to over 50% of their residential customers being serviced from our unbundled network. This would be very different for Vodafone, the next largest unbundler. Smaller unbundlers, such as Compass, will have different concerns and considerations.
57. This is not without precedent as the Government has previously recognised and regulated unbundling specifically to ensure that there is no substantial lessening of competition when it prevented Telecom from unbundling for three years when structural separation occurred.
58. Given the investments unbundlers have made Vocus' aim is to ensure that Chorus engage early with unbundlers on a bilateral basis to agree a plan for any changes well in advance. Clearly

unbundlers need more notice of change than a non-unbundler given the investment in co-location, backhaul equipment etc.

59. As noted negotiations shouldn't be used as a delay and in the event that parties can't agree a plan we suggest as a backstop that Chorus' plan is subject to review and approval from the Commerce Commission.

RURAL 'NON UFB' COPPER AND THE RAB

60. Vocus' support the proposal that outside of areas where UFB or other fibre is available that Chorus should be required to continue supplying copper services at regulated prices. Vocus supports the continued regulation of those services.
61. Vocus supports the approach that the opening value of each regulated suppliers RAB will be based on "historic unrecovered costs if efficiently incurred".