



GOVERNMENT & INDUSTRY RELATIONS

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28 June 2006

Douglas Webb
Telecommunications Commissioner
Commerce Commission
PO Box 2351
WELLINGTON



Cross Submission mark up by Econet Wireless NZ Ltd of Telecoms , submission dated 28 June 2006

(Econet comments are in bold italics Telecom comments are in normal Font)

Douglas Webb
Telecommunications Commissioner
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PO Box 2351
WELLINGTON

Econet position : Econet objects to Telecom referring to the Commissioner as “Douglas”. Econet believes it is appropriate to de-personalize such a communication and refer to the “Commissioner” or “Commissioner Webb”.

Dear Douglas

REVIEW OF DESIGNATED AND SPECIFIED SERVICES UNDER THE TELECOMMUNICATIONS ACT 2001: SUBMISSIONS ON DRAFT REPORT

1. The Commission has invited submissions on its draft report regarding the Schedule 3 investigation into extending regulation of the designated and specified services under the Telecommunications Act 2001, dated 30 May 2006 (“**Draft Report**”). The Draft Report recommends extending the expiry date of 10 designated and specified services (“**the services**”), which are due to expire on 19 December 2006, for a further two years.

Econet position: This is nonsense. The extension breathes fresh air to new entrants and respectfully illustrates the gravity of the problem]

The current telecommunications environment is one of considerable regulatory change and uncertainty. Significant regulatory changes have been proposed by the Government, which the Minister of Communications has acknowledged will take some time to implement. As such, it is likely that this state of regulatory flux will remain for a good part of the next two years. During this time of uncertainty, Telecom acknowledges that regulatory continuity would be advantageous to the industry and customers generally

Econet Position :v Econet disagrees. There can be no scaling back. Arguably, it should be increased to include behavior.

2. Accordingly, Telecom does not oppose the extension of the services for a further two year period. However, Telecom does consider that, over the next two years, with the significant industry changes much of the existing regulation will need to be questioned and tested. In our view it is likely that material parts of the existing regulation will become unnecessary or could be scaled back.
3. Outside the unusual circumstances of this review, Telecom would expect the Commission to follow the processes set out in the Telecommunications Act for extending regulation, in particular, a full cost benefit analysis for each service (of the type the Commission generally undertakes) and careful consideration of the state of competition in each market.
4. Against this background, Telecom would like to comment on a few matters that it considers will be particularly important when the Commission carries out a substantive review of the services in the next two years.
5. In respect of the services 'national roaming' and 'co-location on cellular mobile transmission sites', the Commission's draft report has made a number of assumptions in relation to these services. While we are commenting more broadly on these issues as part of the Mobile Services Review we have included some commentary on the assumptions in the draft report for your information. These comments are set out in the Appendix to this letter.

Matters for consideration going forward

6. The telecommunications competitive and regulatory landscape is at the beginning of a period of radical transformation.
7. Telecom considers that the competitive impact of the legislation proposed in the Minister's stocktake this year will have a substantial impact on the degree of competition in retail services in the New Zealand market. The changes proposed by the stocktake are specifically intended to address barriers to entry in the market for retail services and accordingly will have a direct impact on opportunities for new entrants in this market. In particular, Telecom would like to make the following comments:
 - (a) Local Loop Unbundling (LLU): In Telecom's view the opportunity for access seekers to bypass Telecom's wholesale bitstream and calling service through the provision of competitor access equipment, combined with a cost-based leased line rental price, significantly reduces the need for wholesale regulation. As a result of implementation of the proposed legislation, competitors will have the opportunity to provide a range of services using their own equipment on lines leased at relatively low cost.
 - (b) Bitstream Access: Telecom considers that the opportunity for access seekers to obtain DSL without an accompanying PSTN service ("naked" DSL), and at unconstrained speeds, will provide still further incentive for access seekers to compete aggressively in the retail market for broadband services. Telecom also considers that naked DSL will accelerate substitution for Telecom's current suite of retail and access services, creating further competitive pressure on the price and non-price terms of these services.
8. Importantly, also in the near to medium term, Telecom expects:
 - (a) greater fixed/mobile convergence;
 - (b) telecommunication/IT/media convergence; and
 - (c) the emergence of credible, cost-effective disruptive wireless technologies to re-shape today's telecommunications markets.
9. These and other developments have the potential to create conditions in which regulated access to Telecom's network, or specific forms of regulated access, are no longer necessary or could be scaled back.
10. I would be happy to clarify or expand on any of the matters set out in this letter if you would consider it useful.

Yours sincerely



Bruce Parkes General Manager, Government & Industry Relations

Appendix

Comments on Mobile Co-location

Telecom would like to offer the following comments on certain assumptions made by the Commission in its Draft

Econet position : Econet's view is that Telecom is not a real mobile operator. It has lost 66% market share in a seven-year period. It does not offer connection in GSM. Telecom prevented co-location with BellSouth. As a consequence, it should be held responsible for the environment damage done to NZ.

Report:

The assumption that mobile co-location is the cheapest and 'best' option is not correct in many (if not the majority of) cases. For example, it has been Telecom's experience that Resource Management Act and community issues often mean that it is cheaper to build a new site near to an existing site than it is to collocate. Further, as the Commission notes, in some (but not all) instances, the configuration of a network may mean that co-location will result in inferior network performance

- a. The Commission has identified that the number of non-mobile sites on which a carrier can co-locate are limited by a number of factors. These same factors mean that co-location on mobile sites is not always possible or desirable. For example:
 - i. Tenure – Out of over 850 sites, Telecom only has freehold over 170 sites. For the majority of the sites that Telecom does not own, landowner permission is required before another carrier can collocate. This is not a factor controlled by the access provider, and therefore limits co-location;

Econet position: This is a technique used to delay new entrants. The Commerce Commission needs to investigate.]

Econet position: Of course they will but targets must be set by the commerce Commission at 70% plus.

- ii. Because of the factors that limit a carrier's ability to co-locate, it will mean that access seekers would still need to build some of their own sites; Site space – a large number of cell sites are simply sites on buildings. On these sites, there is no infrastructure that is 'co-locatable', and an agreement would have to be reached with the building owner themselves if an access seeker wishes to use the same site.
- b. As a result of capacity issues in some areas, Telecom has had to utilise more sites with smaller coverage areas.
- c. Power poles are in fact suitable as cellsites and are often in suitable locations. The only difficulty encountered to date has been negotiating access with electricity lines companies.
- d. The Commission's assumption is that broadcast sites are not valuable as co-location sites because they lack nationwide coverage. However, the Commission acknowledges that carriers may wish to enter the mobile market on a regional basis – in which case such sites would be very valuable. Further, for the reasons set out above, it is likely that access seekers would need to do a combination of co-location and site build in order to offer a nation wide network.
- e. In many cases (i.e. building sites), sites are controlled by the building owners, and in other cases the landowner controls the tenure rather than the incumbent. Further, the Resource Management Act, rather than the

incumbent is the primary controlling factor.

Econet position: Econet believes the Commerce Commission should consider raiding the Telecom offices to capture all the files surrounding the bottleneck facility of co-location, and seize documents that incriminate Telecom with their disgraceful behaviour on co-location over the past 15 years.]

Econet Position=Econet respects Telecom's investment in its network, and its right to an economic return on equity. Econet respects the careers of Telecom employees. Econet does not accept that Telecom has a property right to a monopoly rent because it built a network with a monopoly property assets.

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