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Anna Moodie
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Kate Saunders
Investigator
Network Access Group
Commerce Commission
44-52 The Terrace
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Dear Kate

REVIEW OF DESIGNATED AND SPECIFIED SERVICES UNDER THE TELECOMMUNICATIONS ACT 2001: REQUEST FOR COMMENT ON AMENDMENT TO SERVICES

1. I refer to the Commission's Decision to Investigate in relation to the review of the expiry dates of designated and specified services under the Telecommunications Act 2001 ("**Act**"), dated 16 November 2005.
2. The Commission has again sought comment on whether amendments should be made to any of the ten services ("**the services**") that the Commission has decided to investigate. The Commission has previously sought comment on whether there should be amendments to any services, and received submissions from a number of parties. It is not clear why the Commission is seeking further comment.
3. Telecom has previously provided detailed submissions on why it is inappropriate for the Commission to investigate amendments to any of the services at the same time as investigating to extend their expiry date, and the inherent risks that would result from doing so. Telecom refers the Commission to its submissions of 19 August 2005 (**attached**) in this respect.
4. In its Decision to Investigate, the Commission states that "*...it intends to first initiate investigations into whether to extend regulation of the services subject to review and then consider any requests for amendments*".¹ It is not clear exactly what process the Commission intends to follow. However, Telecom's view is that the Commission should first finalise its review of the services before investigating whether to amend the services.
5. If the Commission intends to run investigations into the extension of the expiry date and amendments to the services concurrently, Telecom reiterates the concerns in its 19 August 2005 submissions. In summary, Telecom's concerns with a concurrent process are:

¹ Paragraph 39, Commission's Decision to Investigate, dated 16 November 2005.

(a) *Resource constraints* – Investigations under Schedule 3 of the Act require significant resources – for both the parties and the Commission. Investigations into whether to extend the expiry date of 10 services will itself create a significant amount of work, and stretch the Commission's and the parties' resources. Additional investigations into amendments to the services (as well as other proceedings that are afoot) are unlikely to be feasible. There is a significant risk of poor decision making and regulatory error where the Commission does not have sufficient resource, as well as a risk that other proceedings will be delayed.

(b) *Purpose of review of expiry dates* – The purpose of the review of the expiry dates of designated and specified services and an investigation into whether to amend a service have very different focuses, and do not sit logically together. In each case, the counterfactual that the Commission must consider is very different. If the Commission were to carry out the two types of investigation concurrently there is a serious risk that the Commission will attribute the benefits of extension (i.e. having regulation at all) to any proposed amendment.

(c) *Regulatory uncertainty* - Numerous investigations into possible amendments to designated and specified services would create significant regulatory uncertainty. Such uncertainty acts as a disincentive to investment and a signal that policy can be substantially altered at any time means commercial returns on investment become more unpredictable. This is not in the long-term interests of end-users.

5. It is logical that the Commission should first determine whether there is ongoing benefit of continued regulation of a designated or specified service. If there is ongoing benefit, and the expiry date of a service is extended, it may then be appropriate for the Commission to consider whether there are reasonable grounds to amend the service description.

6. If the Commission is minded to investigate amendments to any of the services (now or after the review of the extension of expiry dates), Telecom seeks an opportunity to submit any recommendations for amendments to the service descriptions that it might have and/or respond to any requests for amendments to services made by other parties prior to a decision being made to investigate.

7. Telecom notes the Commission has not provided an indicative timeframe for review of the services, nor any indication of the likely order in which it intends to look at each of the services. Given the resources that the review of the services will require, Telecom reiterates its request for an indicative timeframe as well as an indication of the order in which the Commission intends to review the services. Telecom acknowledges that it has been difficult for the Commission to adhere to indicative timeframes in the past. However, some indication of process going forward will allow parties to manage and allocate resources accordingly.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Anna Moodie', with a long horizontal flourish extending to the right.

Anna Moodie
Regulatory and Competition Counsel