

BCL Submission to Commerce Commission Thursday 13

November 2003

1. Good afternoon Commissioners. My name is Susie Stone, of Stone Consulting. I am contracted to BCL as an external consultant.
2. It is BCL's submission that the operation of BCL's EXTEND network as a wholesale open access platform will provide workable and effective competition to Telecom through the introduction of competition at the retail service provider level over an alternative access network.
3. BCL's EXTEND network provides its retail service provider customers today with the ability to offer a full range of services.
4. BCL's Extend network has coverage of some 600k subscriber locations and offers the retail service providers with the opportunity to completely by-pass the Telecom network.
5. BCL provides both voice and data services, including support for fax services. BCL's network can offer a range of data services, including VoIP, with quality of service. BCL's model is to develop its service offerings in conjunction with its retail service providers to support their innovations.

6. A key component of BCL's model is that it is a wholesale only operator and does not compete at the retail level with its retail service provider customers. BCL, as Geoff has mentioned before, has extended its broadcasting model into the telecommunications arena.
7. BCL is an open access provider that sells services as opposed to the lease of network elements to customers. BCL's network is not under the control of any retail service provider.

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8. As Commissioner Webb noted yesterday, historically when Telecom has faced competition, particularly from competing networks, it has lowered prices. This is seen in the mobile market and has also been seen in the wireline access market where Telecom differentiated its pricing in response to TelstraClear's (Saturn as it was then) offering in Kapiti and the wider Wellington region
9. BCL expects that Telecom will respond with price decreases where retail service providers using BCL's Extend network compete with Telecom for customers.
10. BCL, as a consequence of this anticipated competition, expects to face pressure from its retail service provider

customers to lower prices or improve service offerings. This is the effect of the competitive market and BCL has allowed for it in its business models.

11. BCL believes that it can enable its RSPs to be innovative and compete with DSL, in particular with differentiated service offerings that are not currently offer on DSL.
12. BCL anticipates that the initial focus of its RSPs will be on business customers and high value residential customers, in particular those consumers that value service levels over a best endeavours service such as DSL or those that are looking for integrated nomadic devices.
13. BCL also notes that the Government's PROJECT PROBE initiative has resulted in the selection of alternative infrastructure providers to Telecom to provide services to schools and communities by December 2004.
14. BCL also understands that the selection panels have been attracted by the alternative and differentiated services that are available.
15. PROBE is not required to support BCL's 28-site network rollout, but will bring forward deployment to additional sites as service is requested by end 2004.

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16. BCL considers that competition concerns should be around the conduct of vertically integrated companies, not regarding the conduct of wholesale only operators, such as BCL, that do not compete with retail service providers.
17. BCL will face pressure from its customers to lower prices and improve service offerings so that BCL's Retail service providers can continue to compete for end users and deliver benefits to consumers.
18. BCL believes that it has a pricing structure that, coupled with service provider innovations, will enable effective competition to Telecom from BCL's RSPs customers and that new RSP entry on competing infrastructure will bring innovation benefits to consumers.
19. BCL is of the view that the proposed regulatory regime as outlined in the Commission Draft report could act as a constraint on new entrant activity or investment in the new technologies if there is not sufficient producer surplus to fund that investment.
20. Wireless future developments (3G, 4G, 802.16, 802.20) are indicating functionality that copper physically will not provide –

for example in the area of mobility where voice and videophones are being released.

21. An environment that promotes investment in the copper loops over new technologies cannot be in the long term interests of consumers if the consumers are denied benefits such as portability, mobility, higher data transfer speeds etc.
22. We consider that functionality should be considered as well as price. And that with regard to price a view should be taken of the long term prices that consumers are likely to pay, rather than just a short term.
23. One question I wish to address is if we are anticipating price competition why would we fear local loop unbundling.
24. My answer to that is that we consider the proposed regulatory environment will create uncertainty. We are uncertain as to the final price that would be determined and the consequent impacts on investment incentives if the price is too low. It is essentially a risk and uncertainty argument.
25. I also think that our shareholders would be unlikely to support further investment during the time from designation to the determination of the final price. And this would have an effect on our current investment strategies.

26. We also believe that alternative networks need both business and consumer customers to be successful - and this is particularly true with regard to BCL's network which has a reach of up to 50km and therefore can cover a lot of subscriber locations. BCL's business plan assumes a mix of business and residential services.
27. We are concerned that LLU will distort the market so that access seekers just go after the business customers that would justify a DSLAM investment, leaving only the residential customers to the network infrastructure investors.
28. BCL also notes that bitstream by itself will not increase the reach of broadband services – if you do not have access to DSL today, then unless Telecom invests in DSLAMS in new areas, consumers without broadband will not get access to broadband.
29. So we need to ensure that we are clear about the objective of LLU unbundling – is it to improve access to broadband as BCL has done with regard to its rural and provincial rollout strategy where it is offering coverage to 100k subscribers that do not have access to DSL today or is the objective of LLU unbundling to improve take-up of broadband services where broadband exists today. I think that this is an important point.

30. I would also like to note that new technologies come with a cost wave that dissipates over time - this is part of the product lifecycle - the mobile investment in New Zealand is an example, where two competing networks exist, with on entry initial prices being high falling over time as scale economies were achieved and infrastructure costs fell.

31. BCL is of the view that the Commission should allow the alternative technologies being deployed at present to operate in a non-LLU environment for a period of time sufficient to observe the operation of the competitive market and the constraint on Telecom. The Commission will also be able to assess the value to consumers that is delivered.

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32. BCL has responded to the signals from the market and has invested some 25 million to deploy an alternative access network.

33. BCL's business case does not require the long-term continued existence of the current DSL prices to support its business case. BCL has modelled price decreases over time.
34. BCL considers that if the Commission interferes in the operation of the wholesale market by providing for LLU eg bitstream on a cost plus basis, then RSPs will choose to purchase the bitstream service as opposed to services from new network operators such as BCL and Woosh.
35. Under an unbundling environment, BCL will be facing competition to attract RSPs onto its network from the newly unbundled Telecom network – in effect the market that BCL is competing in has to be shared amongst more companies, threatening the scale economies for the new entrants that are expected to drive prices down.
36. BCL considers that unbundling Telecom's network where there is competing network infrastructure, and in particular where BCL is operating with its open access model, is sending the wrong signal re incentives to invest and is artificially invigorating the copper network.
37. BCL agrees that if a service is worth a premium to consumers, then they will pay a premium for it. However BCL

thinks that this argument only holds up if the pricing is still able to remain relatively close.

38. If for example the introduction of ULL causes the price of Telecom's network to fall significantly below that which BCL or Whoosh could offer services at, then I think there is the potential that the price differential could become too great and despite marketing and salesmanship, alternative network operators may not be able to maintain the scale economies they need to deliver lower prices and ROIs.

39. Our concern is that the introduction of ULL is such an artificial mechanism that it will distort the operation of the market.

40. I do not have a view on what the sustainable gap should be, but would respectively suggest that it should be looked at.

41. BCL is also concerned that the Commission intends to include BCL's network in the definition of PDN. Mr Jamieson will address this point later in some depth, but I would like to note now that this would be a regulatory intervention that we believe would have significant negative impacts on BCL's telecommunications investment.

42. We are concerned that the inclusion of our network in the unbundling of Telecom's would create the perverse situation

where access seekers could buy a service from Telecom off BCL's network for less than BCL currently sells it (assuming we are not pricing at the TSLRIC assessed price for Telecom's network). Therefore it would mean that other retail service providers of BCL's network would be more likely to purchase at regulated price from Telecom, rather than direct from BCL.

43. We are concerned that the Commission considers that this is an acceptable outcome because BCL is a wholesale only network providing services to Telecom, amongst other RSPs.

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44. Whilst I am not an economist and nor am I an expert on Cost benefit analysis, I do have some comments to make on the counterfactual used in the CBA.

45. In particular BCL considers it is not correct to assume that there is no infrastructure investment occurring today or that could be in place inside 5 years.

46. BCL is of the view that competing network competition acts as a constraint on Telecom pricing today and in the future - BCL, Counties Power, Pacificnet.com and Woosh network

rollouts exist today and we would argue provide a constraint on Telecom's pricing to consumers.

47. BCL therefore considers that the counterfactual should have included, in a five year view, the BCL wholesale model and the fact that BCL's wholesale open access model brings in the potential for multiple competitors to Telecom at a retail level.

48. BCL also considers that the counterfactual should have included, in a five year view, the existence of other network infrastructure operators and the competitive environment that they stimulate.

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49. The existence of BCL's wholesale only network with coverage of 600k subscriber locations changes the competitive landscape in New Zealand.

50. We would also remind the Commission that regulation distorts markets and LLU in its many forms is a deliberate market invention.

51. Unbundling Telecom's network has the potential to lock New Zealand into a copper age versus the potential of a wireless or glass age. We do not believe that this is in the long term interests of consumers.

52. We consider that the proposed regulatory interventions have the potential to lock out the introduction of technologies that leap-frog DSL because of the lack of incentives to introduce new technologies if the investor cannot recover the bow wave of cost and achieve ROI.
53. To interfere in the operation of the wholesale market at this stage is we suggest premature and we think that the Commission should recommend that there be no unbundling at this stage and continue to monitor the competitive environment and the delivery of long term benefits to consumers.
54. Thank-you for the opportunity to present to you today and we would be happy to take any questions.