



29 October 2003

Alex Cheetham
Unbundling Draft Report
Network Access Group
Commerce Commission
PO Box 2351
Wellington

Dear sir,

CallPlus submission to the draft local loop unbundling report dated October 2003

Summary:

In general principal CallPlus supports the draft recommendation to designate unbundling of the local loop network and public data network, and the application of pricing principals. We believe that the benefits of enabling services providers to develop and take to market their competing services has the potential to create a substantial benefit for end users within the 5 year time horizon that the Commission has considered. Given that the benefits will build over time we estimate that the ultimate benefits will substantially exceed those set out in the draft report within a 10 year time horizon. We believe therefore that taking a 5 year time horizon, a substantial allowance to cover indirect costs and regulatory error, and the incorrect elimination of metropolitan areas materially understates the value of an unbundled local loop.

However those benefits will only be realised if Local Loop Unbundling is implemented in a manner that gives practical effect to the theoretical benefits. The dynamic efficiency that the Commission quite rightly regards as key to improving efficiency will only occur if it results in a commercially viable market opportunity supporting the introduction of new competitors, new services and new investment.

Our primary concern is therefore regarding the definition of markets, which, if not dealt with in an effective manner by the Commission, will not make such investment attractive to enable the full realisation of the expected benefits to end users of telecommunications services.

General

The purpose of the Act is to provide long term benefits to end users. This will not be achieved simply by implementing policies that encourage one additional large player to invest in the market. The Commissioner must resist any temptation to “oil the squeaky wheel” and provide a structure purely suited to their purposes. Additionally the Commissioner must be wary of any agreed terms between the two largest players and the impact that such agreements may have on the competitive environment taken as a whole. We have already seen the creation of a very unnatural national toll bypass market structure brought about by the collusion of the two largest carriers arriving at such a deal between themselves.

For true long term benefits to flow through to end users, we must first create an environment where the industry can flourish and a number of competitors can develop services in their respective areas of expertise. The Australian marketplace is a local example of how this can be established, with a competitive environment of second tier carriers, third tier carriers and a whole marketplace of service providers selling services to end users.

The failure to create this environment will result in the ultimate failure of the current legislation.

Question 4.3 - Definition of Markets

The key area where our view differs from the Commission is that we believe that there is only one wholesale market for local loops and PDN services. We think the approach of trying to determine which exchanges already have sufficient competition is flawed for a number of reasons which we outline below:

1. A new entrant will quite likely want to roll out a national service based on the deployment of a single backbone infrastructure (such as an xDSL variant). This is not possible if that potential entrant is unable to make use of local loop unbundling in some of the key areas. Therefore the potential for this type of new entrant would be limited. A practical example of this is that you cannot sell a solution to a customer with several sites of which only a portion are subject to local loop unbundling. A customer will also not be attracted to a service provider who places restraints on future locations to which that customer may expand.
2. A niche entrant may consider deploying an xDSL service in specified areas but would then be faced with the prospect of losing customers who move from a designated ULL exchange to a non-designated exchange. In all likelihood the alternative ‘competing’ services in the non-designated

- exchange may not be suitable for the niche operator's service. Similarly, since none of the areas identified have ubiquitous competitive coverage, many of the residents and businesses in the ESA will not be able to switch to a competing service.
3. A current service provider will not wish to put at risk a current customer base by offering those customers a new range of services that the service provider cannot provide on a ubiquitous basis. The risk to that service provider is the total loss of those customers as they move and their requirements change.
 4. One example for CallPlus is the deployment of our small business VOIP/Internet/Data service in the Auckland CBD area – an area the draft report has flagged as not having limited competition. While there are certainly a number of competitors offering services in this area, none of them are offering an access service that is comparable with a solution delivered by an ULL deployment. Because our market is small business – often spending only a few hundred dollars per month or less, there are only 50 or so buildings that we have been able to cost-effectively deploy our services in (large buildings with many small tenants). None of the other alternative technologies in the area are offering a cost point low enough to deploy a business-quality, high availability service. So when a client moves to a different building we are often faced with the loss of that customer. We therefore believe that there is in fact limited competition in this market in these areas.
 5. Following on from the above point, we believe the assessment that competition is not limited in these areas is flawed because an ULL service is not a replacement service for the existing competing services. Our fibre network enables our customers to access services at up to 1Gig/second speeds which is necessary for LAN type services. An xDSL service based on ULL does not compete in this market. Wireless services are all unsuitable for high availability, high quality business voice services, so again do not compete with an xDSL service. There is no alternative service being offered in these areas which allow a single small business to be connected to our VOIP service.
 6. In the Auckland CBD area we also have more than 900 residential dial ISP customers on our Slingshot service. Without access to a broadband service we are faced with the ultimate loss of this customer base as they move to broadband services. In addition, the strong potential exists to offer a residential telephony replacement service by deploying an xDSL service in the area. The Commission has determined that in this market, Telecom faces limited competition. Therefore it would be inconsistent to not designate local loop unbundling in the related wholesale market that is required to introduce competition.
 7. The lack of an across-the-board designation of ULL will significantly reduce the attractiveness of the business opportunity to compete in this market. We do not see where this reduced attractiveness has been correctly taken into account in the Commission's economic models.

8. The existence of a competing infrastructure does not mean that that infrastructure is available to competitors on a commercially viable basis.
9. It is important that the Commission has cognisance of the strong possibility that competition and technology in the future may not exactly follow the developments over the past few years, but rather be a further development and enhancement to it. While DSL technology does appear to be a primary focus in deploying broadband, there are now emerging for example, low cost DSL end-user modems that incorporate LAN and analogue telephone ports. With IP-Telephony now emerging as a logical replacement for 'POTS' telephony services, it is very likely that a forward-looking competitive xDSL deployment in New Zealand would be a combined voice/data and video type of service. Already we are seeing the competing DSL networks in Australia 'retro-fitting' voice services to the broadband internet DSL service. There is no foreseeable substitute technology that could be viably deployed down to the residential household level. Because this type of deployment would be very specific to an xDSL service based on access to the local loop, it would be unrealistic to deprive some ESA's from the service simply because in another market (business broadband internet) there is sufficient competition.

Responses to Section 3 of the Commerce Commission Draft report into the unbundling of the Local Loop Network

Question 3.1: The Commission requests comments on its interpretation of the local loop network
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As previously stated in the draft document, CallPlus agrees with the Acts definition of the LLN, which incorporates the terms 'network', 'line', 'telecommunication', telecommunications link', and 'telecommunications service'.

Item 167 discusses different examples of unbundling, for traffic to be taken from anything but the access providers local exchange would render any unbundling of the local loop network commercially unviable. Access seekers would be required to install suitable infrastructure in Remote Line Unit (RLU) locations which they would be unable to maintain without considerable interaction with the access provider.

As discussed in item 168, CallPlus believes that 'Exclusive bitstream access' would allow access seekers to supply high-speed services to a wide range of end-customers covering a wide geographical area. However as this method of unbundling is a form of wholesaling the Commission would need to be heavily involved in the pricing structure of such services.

CallPlus disagrees with the statements made by Telecom in items 186 & 187. For the unbundling of the LLN to be commercially viable the local loop must encompass from the BDF to the MDF or OFDF, anything less would render the unbundling of the LLN unworkable.

Question 3.2 The Commission seeks the views of respondents on whether hybrid loops should be covered by the unbundling of the local loop.

CallPlus agrees wholeheartedly with the point made in item 215 by TelstraClear, 'limiting the definition of the LLN to copper only would reduce the usefulness of unbundling over time as more fibre is deployed in the access network'.

As stated in item 217, should the boundary for hybrid loops be demarcated at the remote cabinet/ RLU the economics of unbundling the LLN will be lost. It is quite simply uneconomical for access seekers to install equipment in these units, likewise the physical size of these unit would mean that only limited numbers of access seekers could install their equipment.

Question 3.3 Where Telecom adds a fibre overlay to its existing copper local loop network, the Commission seeks views on whether Telecom should be required to retain the copper in the network and provide access to the copper.

CallPlus considers that where Telecom adds a fibre overlay to its existing network copper that the overlaid network becomes an integral part of the LLN and is therefore automatically included into the unbundled LLN. Telecom would be required under the Act to maintain all elements of the network (Fibre, Copper or any other overlaid network infrastructure) as part of the unbundled local loop network.

Question 3.4 The Commission request comments on its definition of bitstream access.

CallPlus agrees with all the Commission definitions of Bitstream.

CallPlus disagrees with Telecom's statement that bitstream access would require equipment outside the definition of the LLN. Should bitstream access be introduced it would be a wholesale based pricing system and the maximum extent of the local loop would be the access seekers side of the DSLAM collocated in the local exchange.

CallPlus also agrees with TelstraClears' points in item number 231, that even if bitstream is not included in the unbundling of the LLN then it would most certainly be included in the unbundling of the PDN.

CallPlus notes that bitstream does limit access seekers' access to the copper local loop and may restrict the range of services which might otherwise be possible if direct access was available. However bitstream does provide the benefits of not requiring access seekers to invest in DSLAMs and other related equipment in all of Telecoms' local exchanges. Therefore it is CallPlus' view that Bitstream does not allow for true local loop unbundling as there are only a limited number of local exchanges where access seekers would have significant numbers of customers to make the service commercially viable.

Question 3.7 The Commission seeks respondents' views on this definition of OSS. In addition the Commission seeks views on whether OSS is essential to access for LLU and PDN, and whether OSS should be viewed as part of the standard access principles for services, or whether OSS should be a designated or specified service.

CallPlus agrees with the Commission's definition of OSS and believes that it forms an essential part of the access to the LLN and PDN. CallPlus also believes that OSS should be viewed as part of the standard access principles for service.

Question 3.9 The Commission seeks submission from interested parties as to whether it is appropriate to include fixed wireless technologies as being within the definition of the fixed PDN.

CallPlus agrees with both the Commission and TelstraClear that the definition of fixed PDN should include fixed wireless technologies. As TelstraClear points out 'in certain areas, the only Telecom local network is a radio based network'. Likewise CallPlus is of the strong belief that the word 'fixed' is more likely to describe mobile networks such as CDMA or broadcasting technologies.

Question 3.10 The Commission seeks submission from interested parties on the appropriateness of including third party network elements where Telecom leases, or exerts control over, those network elements, to the extent they form a part of the PDN.

CallPlus agrees with the Commission's definition of a network as that which means 'a system comprising telecommunications links to permit telecommunications'. To permit telecommunications a network must have end-to-end transfer of information. Therefore Telecom's fixed PDN must include Telecom owned network and any part of the network that Telecom leases or exerts control over. Without these conditions an access provider could manipulate its ownership of network infrastructure and thereby exclude elements that would otherwise be part of the local loop.

Question 3.11 The Commission seeks submission from interested parties as to whether an end-user requires both access and control of a network to be 'public' for the purposes of the Act.

Question 3.12 The Commission seeks submission from interested parties as to those networks which are Private Data Networks as defined by the Commission.

CallPlus agrees with the Commission's definition of a 'Network' as being a 'system comprising telecommunications links to permit telecommunications' and also if 'Telecom is able to offer a service to more than one customer using any given data network' that is classified as 'Public'.

Question 3.13 The Commission seeks submission from interested parties as to whether a network must have been originally designed to carry data traffic to be a data network under the Act.

CallPlus agrees with TelstraClear's submission that the convergence of data and voice will eventually lead towards a single IP-based network. It was never envisaged that data would be carried over copper wire networks. However with the development of high speed broadband technology, such as DSL, this is now a reality. Therefore a 'data network' must be viewed as any network that can be used in whole or in part by the public and that the network can be used in whole or in part for the transmission of data. It should not be a requirement that the network be currently used for data.

Question 4.8 and 4.11 – Local Loop and PDN Backhaul services

CallPlus supports the draft recommendation to designate these services. We have seen no evidence of any meaningful competing backhaul service that would enable a competitor to roll out a service based on access to the local loop. Therefore by omitting to designate this service could frustrate the overall objective of designating local loop services.

In summary, CallPlus concurs with the Commission's recommendation to:

- Designate unbundling of Telecom's local loop network
- Designate unbundling of Telecom's fixed Public Data Network
- Designate access to co-location and backhaul services
- Apply benchmarking as the Initial Pricing Principle
- Apply TSLRIC as the Final Pricing Principle
- Apply full unbundling rather than partial unbundling

But we strongly disagree with the Commission's view that there should be restraint by region to implementation of local loop unbundling as this will materially reduce the long run benefits that would be available to end users in New Zealand.

Yours faithfully,

Malcolm Dick
CEO
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