



COMMERCE COMMISSION

**SECTION 64 REVIEWS INTO UNBUNDLING THE LOCAL LOOP
NETWORK AND THE FIXED PUBLIC DATA NETWORK UNDER PART 2
OF THE
TELECOMMUNICATIONS ACT 2001**

**Order made by the Commerce Commission
under section 15(i) of the Telecommunications Act 2001
and section 100 of the Commerce Act 1986 and section 9(6) of the
Telecommunications Act 2001**

Order made by: Douglas Webb, Telecommunications Commissioner

Date of Order: 14 May 2003

- 1 Section 64 of the Telecommunications Act 2001 (the “Act”) requires the Commerce Commission (the “Commission”) to undertake a mandatory review into whether or not access to the unbundled elements of Telecom local loop network and access to the unbundled elements of, and interconnection with, Telecom’s fixed Public Data Network should be regulated, (the “Review”).
- 2 The Commission makes this order (the “Order”) in relation to the Review to prohibit the disclosure of any Information (including Information which contains argument or comment on the issues arising out of the Review) provided to the Commission and identified by any Interested Person or the Commission as being confidential on and from the date of commencement of the Review Proceeding. This Order deals with one category of Information in relation to the Review, namely “Restricted Information”.
- 3 Where any Interested Person requires additional protection for any Information over and above what is already provided for in this Order, the Interested Person must write to the Commission, setting out the details of the Information in question, the reasons why the Information should be subject to greater protection and the type of protection required by the Interested Person.

- 4 For the purposes of this Order:

“Deed of Undertaking” means the deed of undertaking in the form prescribed in Schedule 1 of this Order;

“Information” means information, documents, and evidence (including email and any other electronic communications) arising from, or in connection with, the Review Proceeding;

“Interested Person” means:

- (a) any Person listed in Schedule 3 of this Order as at the date of this Order; and
- (b) any Person participating in the Review Proceeding that applies in writing (including reasons explaining why such Person has a material interest in the Review) to the Commission to become, and is accepted by the Commission as, a Person listed in Schedule 3 of this Order for the purpose of receiving Restricted Information under this Order. In making its decision under this subclause, the Commission will consider whether it is appropriate for the Person’s application to be dealt with as a request for access to certain Restricted Information under clause 8 of this Order (as opposed to this subclause). The Commission will update Schedule 3 on its website where practicable.

“Nominated Counsel” means the lead counsel for any Interested Person;

“Person” includes a corporation sole, a body corporate, and an unincorporated body;

“Review Proceeding” means the process established by the Commission for the Review including the process prescribed under Schedule 3 of the Act;

“Supplying Person” means any Interested Person who supplies Restricted Information to the Commission; and

“Restricted Information” means Information which is claimed by any Supplying Person as confidential and/or Information which is designated by the Commission as restricted.

Provision of Information

5 Where any Interested Person is providing Information to the Commission, the Commission orders that:

- (a) The Interested Person must provide the Information to the Commission (including all Restricted Information) no later than 5 pm on the due date or at such other time specified by the Commission. The Interested Person must clearly identify Information that is to be regarded as Restricted Information;
- (b) Subject to clause 6 of this Order, the Interested Person must provide to the other Interested Persons a copy of the Information including the Restricted Information (and copy to the Commission) no later than 5 pm (or at such other time specified by the Commission) on the same working day as the Information is provided to the Commission under clause 5(a) of this Order; and
- (c) The Interested Person must provide to the Commission a public version of the Information (excluding all Restricted Information), which is suitable for disclosure on the Commission’s website, two working days after the Information is provided to the Commission under clause 5(a) of this Order.

Access to, and use and disclosure of, Information

6 The Commission orders that:

- (a) No Person may obtain access to, or publish, or communicate, or give evidence in relation to any Restricted Information except as provided for in this Order;
- (b) The Nominated Counsel who wishes to gain access to Restricted Information must sign and deliver to the Commission a Deed of Undertaking. The Nominated Counsel may disclose Restricted Information only to the following provided disclosure is reasonably necessary to render professional services in relation to the Review:

- (i) Other instructed counsel including internal counsel who are actively engaged on behalf of the Interested Person in relation to the Review;
- (ii) Partners, associates, secretaries, assistants, and employees of instructed counsel; and
- (iii) External consultants or external experts under the supervision of the instructed counsel retained to render professional services in relation to the Review,

provided that any such person has first signed and delivered to the Commission a Deed of Undertaking prior to receiving any Restricted Information. Such person becomes entitled to receive Restricted Information either:

- (i) Where the person's entitlement is unchallenged, three working days after the date on which the other Interested Person receives a copy of the Deed of Undertaking; or
 - (ii) Where the person's entitlement is challenged, on the day upon which the Commission makes a decision in support of their entitlement to receive Restricted Information.
- (c) The Commission will provide a copy of each Deed of Undertaking it receives in relation to the Review Proceeding to the other Interested Persons within two working days of receipt of the Deed of Undertaking. The Commission will update Schedule 2 of the Order on its website where practicable;
- (d) Any challenge by the Supplying Person to a person's entitlement to receive Restricted Information under clause 6(b) must be made in writing to the Commission (and copied to the Nominated Counsel) within two working days of receipt of the Deed of Undertaking. The Nominated Counsel must deliver written submissions in support of access to the Commission within two working days of receipt of the challenge. The Commission will make a decision on the person's entitlement to receive Restricted Information within three working days of receipt of submissions from the Nominated Counsel;
- (e) Where the Nominated Counsel wishes to disclose Restricted Information (as claimed by the Supplying Person) to persons other than those specified in clause 6(b) of this Order (that is internal employees, officers, experts and/or regulatory analysts of the relevant Interested Person), the Nominated Counsel must apply to the Supplying Person for approval of the terms of access (including the period and scope of access to Restricted Information). The Nominated Counsel and the Supplying Person will endeavour in good faith to reach agreement on the terms of access within two working days. Where the Nominated Counsel and the Supplying Person agree on the terms of access, the Nominated Counsel will advise the Commission in writing of the agreement. Where the Interested Persons cannot agree on the terms of access to Restricted Information within two working days, the

Nominated Counsel must submit an application to the Commission (and copied to the Supplying Person) in writing requesting that certain persons must obtain access to Restricted Information and setting out the details of any Restricted Information to be accessed and why access should be granted. The Commission will make a decision on the person's entitlement to receive Restricted Information within three working days of receipt of the application;

- (f) Where the Nominated Counsel wishes to disclose Restricted Information (as designated by the Commission) to persons other than those specified in clause 6(b) (that is, internal employees, officers, experts and/or regulatory analysts of the relevant Interested Person) the Nominated Counsel must submit an application to the Commission in writing requesting that certain persons are entitled to access Restricted Information and setting out the details of any Restricted Information to be accessed and why access should be granted. The Commission will make a decision on the person's entitlement to receive Restricted Information within three working days of receipt of the application;
- (g) The Restricted Information may be disclosed to Commission members and Commission employees involved in the Review Proceeding, and to any Person designated by the Commission on terms the Commission considers appropriate;
- (h) Any person who receives the Restricted Information pursuant to this Order:
 - (i) must use the Restricted Information only in the conduct of the Review Proceeding and any judicial proceeding arising therefrom;
 - (ii) must not use the Restricted Information for any other purpose, including business, governmental, commercial, or other administrative or judicial proceedings; and
 - (iii) will return or destroy all copies of the Restricted Information, except Restricted Information belonging to them, on the expiry of the later of:
 - (aa) this Order (or any order revoking or varying this Order);
 - or
 - (bb) any judicial proceedings resulting from the Review;
- (i) Any person who receives the Restricted Information under the terms of this Order may disclose, describe, or discuss the Restricted Information in any written material submitted to the Commission in relation to the Review, provided that the written material is stamped "RESTRICTED INFORMATION" and submitted in a sealed envelope, and provided that a separate public version is submitted in which all Restricted Information is redacted within two working days of submission of the Restricted Information. For the avoidance of doubt, the written

material which is stamped “Restricted Information” must also be delivered to other Interested Parties under clause 5(b) of this Order;

- (j) Any Information which is not designated as Restricted Information is deemed to be Information which the Commission may disclose to the public (including via its website); and
- (k) For the avoidance of doubt, any Interested Person supplying Information to the Commission in relation to the Review may use and disclose its own Information (including Restricted Information) at its discretion.

Commission review of designations

- 7 The Commission may review of its own motion the status of confidentiality claimed by any Supplying Person for Information, the terms of access to Information and any designation of Restricted Information. Upon review, the Commission may determine that all or part of the Information claimed to be Restricted Information should not be entitled to such treatment, the terms of access to Restricted Information or the relevant designation of the Information. Where the Commission makes such a determination, it will notify the Supplying Person of its preliminary decision and the reasons therefore, and allow the Supplying Person to respond within five working days of notice of the Commission’s preliminary decision. The Commission will then make a final decision on the designation of the Information. Any Information subject to a review under this clause may not be disclosed to any person (other than at the discretion of the Supplying Person) until the Commission has made a final decision on the matter in question in accordance with this Order.

Other challenges to designations and requests for access

- 8 Any Interested Person, or other Person, may challenge the confidentiality status of certain Information and/or the terms of access to Information, or seek access to certain Information. Such an application for challenge or a request for access must:
- (a) be submitted, in writing, to the Commission;
 - (b) set out the details and/or the terms of access to the Information which the Interested Person (or other Person) is challenging, or the details of any Information which should be made available to them (whatever the case may be); and
 - (c) set out the reasons in support of their application.
- 9 The Interested Person, or other Person, must provide a copy of the application, which satisfies the requirements of clause 8, to the Supplying Person except where the Restricted Information is designated by the Commission. For the avoidance of doubt, any Information subject to an application under clause 8 may not be disclosed to any person (other than at the discretion of the

Supplying Person) until the Commission has made a final decision on the application submitted under clause 8 of this Order.

- 10 The Supplying Person must make submissions, in writing, to the Commission within two working days of receipt of the application submitted under clause 8. The Commission will make a decision on the application within three working days of receipt of the Supplying Person's submissions or three working days of receipt of the application where the Restricted Information is designated by the Commission. Where the Commission determines that any Person is entitled to access the Restricted Information, the Commission will determine the applicable requirements of clause 6 of this Order.

Other matters

- 11 The Commission may, at any time, modify, vary or revoke this Order.
- 12 For the avoidance of doubt, Information not designated as Restricted Information and provided to the Commission by the Interested Persons during the course of the Review and in the Commission's possession may be made available by the Commission to the public (including via the Commission's website) as if the Commission had received a request for disclosure of such information under the Official Information Act 1982 and no grounds for withholding the information exist under that Act.
- 13 This Order has effect until 20 working days following the date on which the Commission issues a final report of recommendation under clause 4 of Schedule 3 and section 64 of the Act.

DATED this 14 day of May 2003



Douglas Webb
Telecommunications Commissioner
Commerce Commission

Schedule 1

DEED OF UNDERTAKING AS TO THE RETURN OF DOCUMENTS

1. This Deed of Undertaking (“Deed”) is made in relation to an Order (the “Order”) issued by the Commerce Commission (the “Commission”) pursuant to section 15(i) of the Telecommunications Act 2001 (the “Act”) and section 100 of the Commerce Act 1986 (the “Commerce Act”) on 14 May 2003, a copy of which is annexed marked Schedule 1. This Deed adopts the terms defined in the Order.
2. I, _____

of, _____
hereby irrevocably undertake to the Commission and to every person supplying the Restricted Information to the Commission as follows:
 - (a) not to use or refer to the Restricted Information in any way except in relation to the Commission’s proceedings in relation to the Review; and
 - (b) not to disclose the Restricted Information or any part thereof to, or discuss it with, any person other than a person who has been provided with the Restricted Information and has given an undertaking to the Commission in the same terms as this undertaking (a list of whom is attached in Schedule 2 to this Deed); and
 - (c) not to make notes, summaries, copies, or record in any other form, the Restricted Information except as is necessary for me to prepare for and present submissions to the Commission or in any subsequent judicial proceeding in respect of Review.
3. I understand that the list of people set out in Schedule 2 of this Deed may be varied from time to time and that the Commission will endeavour to update me of changes to this list where practicable.
4. On, or before, the expiry of the later of:
 - (a) the Order; or
 - (b) 20 working days following the date on which the Commission issues a final report of recommendation under clause 4 of Schedule 3 and section 64 of the Act; or
 - (c) any judicial proceedings resulting from the Review to which the Order relates,I undertake to:
 - (d) return; or

SCHEDULE 2
PERSONS WHO HAVE SIGNED THE DEED OF UNDERTAKING AS TO
CONFIDENTIALITY

Telecom Corporation of New Zealand Limited

[]

Telecom New Zealand Limited

[]

TelstraClear Limited

[]

Vodafone New Zealand Limited

[]

CallPlus Limited

[]

WorldxChange Communications Limited

[]

Equant New Zealand Ltd

[]

The Internet Group Ltd (IHUG)

[]

Compass Communications Ltd

[]

TeamTalk Limited

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Additional Persons

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