



Unbundling Draft Report  
Network Access Group  
Commerce Commission  
PO Box 2351  
**WELLINGTON**

**Telecommunications Act**

**SECTION 64 REVIEW INTO  
UNBUNDLING**

**SUBMISSION IN RESPONSE TO THE  
DRAFT REPORT from**

**TELECOMMUNICATIONS USERS  
ASSOCIATION OF NEW ZEALAND INC**

**29 October 2003**

## **INTRODUCTION**

TUANZ warmly welcomes the Draft Report. It embraces a number of the arguments we put to the Commission in our Submission on the Issues Paper. We are pleased that these have fallen on fertile ground and we are impressed with the scope of the Commission's investigation.

In responding TUANZ sees little value in reiterating material and arguments that we had already put forward. Nor do we see that we can add value through answering line by line the various questions posed by the Commission – these are mainly of a technical nature and better answered by carriers including those likely to take up the opportunities afforded by unbundling. Instead we are confining this further round of input to five brief high-level principles and updated information.

### 1 Unbundling Changes the Power Balance Within the Industry

TUANZ submits that internationally even where the number of lines actually unbundled has been minimal, the existence of unbundling provisions causes a levelling of market power between incumbents and new entrants that works to the long term benefit of end users. Unbundling does not live as a policy in isolation – it is but one element of a policy package that includes the independent setting of interconnection charges and the imposition of a wholesaling regime. In negotiations between incumbents and new entrants both parties are aware that unbundling is there as a backstop for the new entrant if negotiations for wholesaling falter. This leads the incumbents to become more responsive wholesalers as a means to avoid unbundling.

Consequently we believe that new entrants need the mandating of unbundling not only for the opportunity to avail themselves of the unbundled lines, but also to redress the imbalance of negotiating strength in the wholesale market arising from the local loop monopoly.

### 2 It is Too Early to Rely on Wireless to Resolve the Competition Problem

TUANZ is delighted to see Woosh Wireless having launched its service, and Vodafone's announcement that it is to invest in a 3G network in New Zealand. We have high expectations of both services and wish them every success.

However, we caution strongly against any complacency. The Woosh technology has undoubtedly been well researched, but has yet to prove itself under large scale service conditions, nor can we be certain how it will perform over the long term. Wireless broadband is in its infancy compared to the tried and proven DSL technology. It is far too early for the Commission to assume that the emergence of Woosh in any way reduces the need for Telecom's copper wires to be opened to

allow the emergence of competitive DSL services. Similarly although Vodafone has announced a 3G investment the impact of this will be some time off and initially at least will be confined to the main centres. Existing cellular broadband services using Vodafone's GPRS service are good quality but far more expensive than DSL – this is a luxury service rather than an everyday one.

TUANZ continues to believe that DSL is a market in its own right and requires unbundling as a means to stimulate competition.

### 3 New Zealand's Broadband Performance is Abysmal and Declining

In our submission on the Issues Paper TUANZ drew the attention of the Commission to OECD figures showing New Zealand as 21<sup>st</sup> in the OECD for broadband penetration, at 0.72% penetration.

Since then our position has declined. Updated figures released by the OECD on 2 October (ICCP Broadband Update; DSTI/ICCP/RD(2003)2) show New Zealand as slipping to 22<sup>nd</sup> position, having been overtaken by Luxembourg. The only OECD countries remaining behind New Zealand are Hungary, Ireland, the Czech Republic, Mexico, Poland, Turkey, Greece and the Slovak Republic.

Moreover the definition of "Broadband" in the figures supplied to the OECD is now in some doubt following publication of the breakdown between Telecom's broadband "Jetstream" service and its narrowband "Jetstart" service. By Telecom's own definition "Jetstart" is not broadband, yet it is included in these figures. It appears from the publicity that three quarters of Telecom's residential broadband connections included in the OECD figures are "Jetstart" and therefore not broadband at all.

Similarly, figures published by the International Telecommunications Union bear out New Zealand's poor standing. In the ITU Internet Report: "Birth of Broadband," (September 2003), thirty countries are ranked by broadband subscribers per capita, and also by the percentage of Internet subscribers who use broadband. New Zealand's position out of the thirty countries measured is:

- Broadband subscribers per capita: 30<sup>th</sup> (last)
- Percentage of Internet subscribers using broadband: 28th

Some selected examples from the ITU report of countries with which we compete are:

<u>Country</u>	<u>B/band subs as % of Internet Subs</u>	<u>Ranking/30</u>
Korea	93.9	1

Belgium	51.3	2
Canada	50.4	3
Austria	45.0	4
Hong Kong	42.5	5
Japan	30.8	9
Taiwan	28.2	10
UK	10.5	22
Australia	6.2	24
New Zealand	2.6	28

We believe these figures and others we have tabled previously show that the unsatisfactory rollout of broadband has become a serious drag on New Zealand's embracing of the Internet, computers and eCommerce. In turn it is now a serious threat to the government's economic objective of raising New Zealand's standard of living back to the top half of the OECD.

There are also issues in relation to speeds. In many countries DSL speeds are increasing rapidly. For example, TUANZ has earlier drawn to the attention of the Commission the speeds of 10Mbps now being offered routinely in Japan where an unbundled local loop is effective; more recently British Telecom has announced a 1Mbps residential package to supplement the 512Kbps service already in place. This service will be also made available through BT's reseller network. By contrast Telecom NZ appears to be working to lower, rather than raise expectations of higher speeds. For example a Telecom spokesman was quoted in "Computerworld" as saying that many users are satisfied with just the "always on" element of DSL and, by implication, do not care about speeds. TUANZ disagrees strongly with this assessment. Only by removing Telecom's DSL monopoly can users be given choice and the point be proven in the market.

#### 4 Despite the Problems the OECD Remains Committed to LLU

On 7 August 2003 the OECD released its updated paper "Developments in Local Loop Unbundling." The paper's key conclusions included:

- *The majority of countries consider that LLU has the potential to enhance local competition and assist in the development of competition for broadband services as well as in its diffusion. From this perspective, implementation of LLU is expected to benefit consumers by reducing not only local telephony but also broadband Internet access costs and accelerating the supply of new services.*
- *Continued regulatory intervention would be necessary where the implementation of LLU has not yet been successful because of the imbalance in negotiating power between the incumbents and new entrants.*

- *LLU requires operational co-ordination between the incumbent and new entrants regarding such processes as ordering, provisioning, billing, fault handling and service-level agreements. Agreement is also required in areas such as pricing, collocation and spectrum management on broadband local loops. Operational co-ordination and other agreements can be facilitated through self-regulatory frameworks or detailed intervention by regulators. The role of the regulator in arbitration remains essential.*

TUANZ shares the OECD's optimism and confidence about the value of LLU as a key policy plank. We are pleased that the Commission has endorsed that view also, and look forward to early government endorsement of the Commission's recommendations.

## 5 Cost Benefit Analysis

In our earlier submission TUANZ noted our concern at the weight given in the Issues Paper to the role of cost benefit analysis in this decision. We are aware that the Draft Report was amended due to corrections to the figures and wish to restate our view that the CBA is but one of the inputs to this decision and should not be over-emphasised.

It has been well demonstrated that New Zealand is a long way behind in the uptake of broadband services. Further, the linkage between unbundling, DSL availability, and broadband uptake is widely recognised by leading authorities such as the OECD. While we recognise the need for this analysis we caution against taking an overly-mathematical approach to a complex topic in which many of the benefits will arise from a change of dynamics and industry culture.

We appreciate the opportunity to make this submission and look forward to presenting it to the Commission at the industry conference.