

Submission to
The New Zealand Commerce Commission
Regarding
Local Loop Unbundling
By



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ThePacific.net is a broadband provider based in Richmond, Nelson. 100% New Zealand owned, independent and non-proprietary, ThePacific.net competes head to head with the incumbent Telco and others utilizing the last mile copper network.

Much of the unbundling debate is about whether credible competitors to the copper local loop will emerge over the next five years. We were disappointed to see the Commerce Commission take what seemed to be a very cautious approach as to the abilities of other networks to provide a credible, viable alternative to the Telecom network. While the Commission acknowledged it should take a five-year perspective, in reality the Commission seems to have decided unless the technology is working today, it should be heavily discounted. The right question is whether new networks will develop over the next five years. The answer is, undoubtedly, yes. Not only that, it is happening at a pace. In the ThePacific.net area it has happened. Our data network provides data services that can match the Telecom network and we expect within a period of months to be offering a voice service. We have, in fact, started discussions on interconnect arrangements with Telecom for voice services. Our

network will therefore be a complete, viable substitute for the Telecom network - both voice and data. There is no case at all for unbundling in this situation.

In respect of wireless, there is no doubt in our mind that wireless technologies are now at a stage where there is no room for argument that they will be a viable and complete substitute for the copper network. We have tested VOIP via a PABX in the USA with no QOS and found the results commercially viable. The fact that the Govt has invested significant money into PROBE and that the successful PROBE Tenderers are wireless providers (Woosh, Telecom/BCL and ThePacific.net) demonstrates that the Government and local communities have already made the call that wireless has come of age.

A key part of the Commission's view of the future is what will happen to price without unbundling. In our view, alternative networks such as ours will create plenty of competition for Telecom. Our current prices are more than competitive and the services offered are superior. We are growing in areas already covered by Telecom's DSL service. We would therefore seriously question the Commission's counterfactual that there will be limited price declines without unbundling.

In many areas we operate and are about to operate in customers are not demanding price decline but service improvement. To give rural communities a similar standard of service requires a profit margin. With unbundling there will be no incentive to roll out improved services as costs will come down as competitors strive to gain market share. Short term gain, long term pain.

It is also important for the Commission to understand exactly what ThePacific.net intentions are. On the back of our Probe contract we will be offering competitive services to both business and residential customers. Our business plan is not about cherry picking high value business customers. Though these are the first to join our network it then causes excess capacity outside of business hours. We will then be able to target the marginally profitable residential customers as well. Once we have our voice service operating it is our intention to target even those residential customers with the simplest requirements. There are many customers in our area who only require a simple voice service. Once we have network coverage in an area it will be economic to service these customers on a marginal basis. They will not of course be our most profitable customers but they will be economic to target.

One of the effects of unbundling would be to provide network elements at cost. It seems very obvious that those using unbundling would cherry pick the high value customers. This in turn would make it more difficult for ThePacific.net to justify providing the service to lower value residential customers.

ThePacific.net has worked hard to build its business. We are rightly proud of our achievements to date and in particular the vote of confidence from the local community and the Government in winning the Tasman – Nelson -Marlborough region Probe tender. Our business is evidence that with hard work and focus that it is possible to construct a successful business that will compete with Telecom.

It is hard to not see those who want regulated access to Telecom's network as wanting an easy ride. If the Commission says yes to unbundling common sense says that you will encourage those who might have been considering doing the hard work of building a network to instead look at an easier lower risk approach through unbundling. From an industry perspective the overall result would have to be a risk that energy and focus gets diverted into unbundling and not building real competitors.

ThePacific.net is confident that a trial of unbundling in any localised area (not ours please) will show a small drop in subscriber rental follow by years of inactivity in that region and a gradual decline in services whilst other regions blossom with affordable, very high speed, data and video infrastructure. One is a progressive pathway to the future the other a decline into mediocrity.

The market segment deserving of attention by the Commerce Commission is in the area of wholesale services. As long as a level playing field exists at the supplier level then this will naturally be reflected to the consumer. E.g. If the large players get together to bundle services then the competition will be frozen out. SKY, Telecom and Microsoft could easily create a mediocre package that achieved market dominance that would harm competitors and in the long run, the consumer.

In summary, as long as ThePacific.net has fair access to wholesale services provided by Telecom then unbundling the local loop has no benefit for either ourselves or our customers in the mainly rural area we service.