

TELECOMMUNICATIONS ACT 2001
SECTION 64 REVIEW INTO UNBUNDLING THE LOCAL LOOP
NETWORK AND THE FIXED PUBLIC DATA NETWORK

SUBMISSIONS IN RESPONSE TO THE ISSUES PAPER FROM
BROADCAST COMMUNICATIONS LIMITED

26 May 2003

BCL's Submission

1. Broadcast Communications Limited ("BCL") is a company engaged in the provision of a wide range of services to the broadcasting and telecommunications industry.
2. While historically BCL has concentrated on broadcasting, in recent years the company has established a position as a service provider to the telecommunications industry, or a wholesale operator.
3. As such, BCL would like to specifically respond to the Issue Paper as follows:

Local Loop Network

Question 2.3 (b) - Is backhaul also necessary to accompany any form of unbundling?

4. BCL is concerned that when considering the provision of backhaul services along with unbundling of the loop, "*backhaul*" should not include the access providers' backbone or core network.
5. BCL's view is that this would not come within the definition of "*local loop network*" in the Telecommunications Act 2001 ("Act").
6. Section 5 of the Act limits "*local loop network*" to the network between the "*user's distribution point and the local telephone exchange distribution frame or equivalent facility*".
7. BCL considers that there is already significant competition to Telecom's backbone or core network services being provided by both BCL's own national Digital Microwave Radio (DMR) network and TelstraClear's fibre network.
8. Accordingly access to services beyond the "*local*" exchange should not accompany any unbundling.

Public Data Network

Question 2.4 – The Commission welcomes comments in relation to the definition of Telecom's Fixed PDN

9. As a wholesale network operator that provides data network capacity to Telecom, BCL is very concerned that BCL's wholesale elements are not indirectly made accessible to other telecommunications service providers, if access is given to unbundled elements of, and interconnection with, Telecom's fixed PDN.
10. Access to such wholesale elements should only be obtained directly from BCL.
11. BCL agrees with the Commission's interpretation of "*public*" in terms of the statutory interpretation of "*Public Data Network*", as taking "*public*" to cover services that are offered to the public (see paragraph 71 of the issues paper).
12. As BCL's data network is not, at present, offered to the public, BCL's network should not be considered a PDN.
13. BCL submits that it would be inappropriate to interpret the definition of "*PDN*" so that by BCL providing wholesale telecommunication services over its data network for the likes of Telecom and TelstraClear (who do operate PDNs), BCL's network is deemed to be being used "*in part*" by the public.

14. BCL is in the business of providing wholesale telecommunication linking capacity to other network operators.
15. Paragraph 69 of the Issue Paper states:

"The review is limited to the fixed elements of the PDN and therefore does not cover any wireless elements of Telecom's PDN".
16. Under the Act "telecommunication link" means "..... any line, radio frequency, or other medium used for telecommunication".
17. BCL may provide a fixed wireless link to Telecom. If that link connects to the end user's subscriber terminating unit (or "STU") BCL is concerned that there maybe ambiguity as to whether such a link would come within the definition of "fixed PDN".
18. Under the Act "fixed PDN" means:

"(a) ... a PDN, or that part of a PDN, that connects an end-users building (or, in the case of commercial buildings, that a building distribution frames) to a data switch or equivalent facility".
19. It is arguable that BCL's link could be "that part of" Telecom's PDN "that connects an end-users building" to a "data switch".
20. BCL submits that the critical wording under s.64 of the Act is that the Commission can only report on access to "the unbundled elements of, and interconnection with Telecom's fixed PDN". BCL's position, is that the Commission should recognize that, with respect to any telecommunications link that BCL wholesales to Telecom or any other network operator, while that link may physically comprise part of the other operator's "network" (refer to definition in s.5 of the Act), that link cannot be said to be Telecom's nor any other network operators, as the case may be.
21. BCL suggests that the reference to "Telecom's fixed PDN" specifically refers only to network elements that are owned or leased by Telecom, and excludes network operators that are supplying a service to Telecom.
22. Accordingly, by giving any access to interconnection with Telecom's fixed PDN it should be clear that access is not given to any wholesale elements provided by BCL.

Nature of competition in telecommunications markets

Question 3.2 – What developments in telecommunications markets do respondents think the Commission needs to be aware of in the Section 64 investigations?

23. BCL is in the process of building a national wholesale Broadband Wireless Access (BWA) network. The first stage of the BWA network is due for completion in the 4th quarter of this year. This network will be made available to Telco's and ISP's on a 'wholesale only' basis. BCL does not currently intend to compete in the retail market.
24. BCL's BWA network will target rural and regional area of New Zealand, will support data, voice over IP and switched voice services and will be available to all retailers on a rate card basis.

25. BCL considers that the network will enable competition to areas that are at present only serviced by Telecom, in a manner that will promote products that are not easily supported by copper wire technology.

BCL is happy to provide any further information the Commission requires and looks forward to making further submissions through the investigation process.

Yours faithfully

Broadcast Communications Limited