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Commerce Commission
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Unbundling the Local Loop

Please excuse the lateness of this submission. I have been overseas for the past two months and have only just reviewed the current progress of events.

I am concerned that the indications that have been made to date is that you need further justification before you would consider taking any action under the Act to proceed with unbundling the local loop.

I have had extensive hands-on telecommunications experience in the secondary carrier market in Australia and New Zealand over the past 14 years and believe my submission adds a practical dimension to the overall determination which otherwise has been lacking. I have a real concern that the whole process has been hijacked by lawyers and economists with no real sense of reality of the NZ marketplace.

A review of Key Commissioner-led decisions to date.

Whilst we appreciate that the commissioner is working on a number of activities, we believe that it is important that there be a focus on the key activities that are aimed at producing the outcome for which the Telecommunications Act was created – to provide long term benefits to end users.

To achieve this, firstly New Zealand must have a vibrant, competitive local telecommunications market with a number of successful players actively investing and developing the market. **The purpose of the Telecommunications Act can never be achieved without this.**

Secondly, the monopoly-hold by Telecom on core services must be broken, and they must be forced to provide these services to its competitors at cost. **Without this, a competitive market can never develop.**

There are only really a few key elements that the commissioner needs to concentrate on which will achieve this:

1. Interconnect rates for traditional services need to be cost based
2. Telecom must be forced to provide wholesale services to its competitors



3. Telecom must be forced to provide local loop access to its competitors, to enable and accelerate the development of future services.

While there are many other things that will ease the path, without these three, they are irrelevant.

To date, in the final and draft determinations for items 1 and 2, we have seen decisions that can be described as pro-Telecom and will almost certainly cause the commissioner to fail to deliver the fundamental purpose that was intended. Let me explain.

1. The interconnect determination for local access is positive insofar as it is an interim step, and presumably the final step will bring the local rate down to true cost. However, by forcing a pure Bill & Keep arrangement (neither party pays each other for terminating calls), new carriers who generally have a high imbalance of traffic due to Internet Access face some critical issues:-
 - a. They have a much higher cost of operation than Telecom
 - b. It lets Telecom retain the monetary benefit they have enjoyed in the past from this situation
 - c. It inhibits the new carriers from helping develop the wholesale ISP market as their cost base is too high to compete for this business.

Even worse, in its draft determination with CallPlus, the commissioner has been unable to determine rates for non-local interconnect. This has created a high cost barrier for any potential new entrants as they would have observed Telecom immediately increasing its charge for non-local interconnect. Not only this, but they will be aware that they are likely to pay a massive contribution to the TSO which will wipe out most of the benefit of the lower local access rate in any case. This decision on long distance interconnect has destroyed any chance of new carriers entering the market, and the current trend of carrier consolidation and exit is most likely to continue in the manner it has for the past few years. **A duopoly will not achieve the purpose of the Act.**

2. The wholesale decisions and draft decisions to date are so limited in their application as to be almost useless. By limiting access to wholesale rates only to places where the TelstraClear network does not cover, in reality closes the wholesale market to all other carriers in New Zealand, and only seems to enable TelstraClear to offer services in areas where presumably, they had previously decided not to operate. Again, in the CallPlus draft determination, limiting the services to just a few line items (local calls, lines, DDS) makes it completely unworkable. By way of comparison, in Australia we were operating full, unlimited wholesale rebilling on all Telstra services as early as 1993.



So to date, all the indications are that this round of deregulation is going to fail. There will be no stimulation of the marketplace and no new entrants to provide innovation and cost reductions. New Zealand will probably have the fate of another decade of dominance by Telecom. (It seems to take around 10 years for a government to watch and measure the effects of its actions, and then to pass more legislation to fix it).

Local Loop Unbundling

This brings us to the point of this submission, which is the 3rd key item of unbundling the local loop. The public indications are that you have not been persuaded that it is beneficial to do this.

To me, this is a sign of capitulation. You have been ‘captured’ by Telecom. Why else would you effectively grant them exclusive access to the new emerging market of broadband internet? This grant that you are proposing to give them is worth billions of dollars and once given, will be irretrievable as by the time the government realises the extent of the disaster, Telecom will have gained the customer base and will dominate the market in a similar manner as it has in its traditional markets.

It seems to me that no-one has taken into account the commercial reality of New Zealand’s situation. It is becoming plainly obvious to the entrepreneurs and business people working in the secondary market that they are not going to get any relief from the past decade of restrictive Telecom practices.

This submission may seem to you to be overly negative, but I am one of the few (if only) players outside TelstraClear and Vodafone who have been investing to any significant degree in Telecommunications in New Zealand over the past few years, and for carriers such as CallPlus and ihug, it is now far more lucrative to invest in the other market we know really well – Australia. Even with its regulatory issues, Australia has at least succeeded in creating a vibrant growing secondary market which is essential for real benefits to flow through to end users.

Malcolm Dick
CallPlus Ltd



About Malcolm Dick

Malcolm Dick was founding CEO of Netway Communications Ltd – a 50/50 joint venture between Freightways Group Ltd and Telecom NZ Ltd from 1989 – 1992. Netway specialised in enhanced data and voice solutions.

Following his departure from Netway, Malcolm worked in a telecommunications consulting role for Mayne Nickless Group (a 25% founding partner in Optus Communications Pty Ltd) for a period a six months, and then established one of the first switchless resellers in Australia, Call Australia Pty Ltd. Call Australia was also one of the first companies to enter into a wholesale services agreement with Telstra. A number of other significant companies were also established by Malcolm and his partner, such as DigiPlus Pty Ltd, which specialized in International calls for niche market segments. Call Australia also offered wholesale services to about a dozen or so smaller switchless resellers. Call Australia was sold in 1997 and over that period grew its business from 2 staff/zero revenue to 200 staff and in excess of AU\$100 mill revenue pa.

Following the sale of Call Australia, Malcolm and his partner returned to New Zealand and have developed CallPlus, i4free and Slingshot. Malcolm also is a director and shareholder in Ihug.