



27 October 2005

Chris Abbott
Commerce Commission
PO Box 2351
Wellington

Dear Chris

TelstraClear Bitstream Application

Response to Statement for Consultation

1. Introduction

- 1.1. I am writing in response to the Commission's Statement for Consultation of 12 October 2005, seeking comment on the proposed technical specification, pricing, OSS and implementation of the proposed bitstream access service.
- 1.2. ihug welcomes this opportunity to comment and endorses the position taken by the Commission. We are please to see a return to something close to the initial draft determination and hope that this will be carried forward substantially unchanged to the final determination.
- 1.3. We believe that the consultation leading to this point has been exhaustive and that progress needs to be made soon for the benefit of consumers frustrated by the limitations of the current regime.
- 1.4. We do have a couple of significant concerns with the expected outcome, as defined by the Commission's statement, but as this is a bilateral determination, bounded by current regulation, we recognize that these concerns will have to be dealt with post-determination. These concerns relate to the upstream speed and to the proposed method of determining the downstream SIR.

2. Downstream Peak Information Rate (PIR)

- 2.1. ihug strongly agrees with the Commission's statement that the downstream PIR should be unconstrained, at the maximum technical capacity of the DSLAM. This is the view we have consistently promoted throughout this process.

- 2.2. We have not seen any substantiated evidence from Telecom that this approach will have any significant effect on customers at the furthest reach of the service, and even if that were the case we believe that the benefits of the Commission's proposal outweigh any such short-term detriment. As has been noted, Telecom continue to provide full-speed service to business customers, as well as "grandfathered" residential customers.
- 2.3. We believe it important that this determination is future-proofed by the inclusion of future technology improvements, such as ADSL2 which may lead to an increase in maximum PIR.

3. Downstream Sustained Information Rate (SIR)

- 3.1. Ihug is concerned that the Commission has little choice but to accept TelstraClear's proposed weighted average SIR approach. However we remain adamant that this will not suit other access seekers such as ihug.
- 3.2. We are not keen to sell a low grade product that suffers significantly from degraded performance at busy times. It may be that TelstraClear's customer base are predominantly light users who will cope with an SIR determined on this basis. But we know that our customers are more discerning and heavier users who would suffer degraded performance under the proposed SIR methodology.
- 3.3. Our preference is for the SIR to be defined as Telecom do today for their current retail and wholesale products, as a 50:1 ratio to the PIR. If it has to be a fixed number then even the 32kbps defined in the access principle is inadequate for a service with unconstrained PIR. The SIR has to be greater than the SIR of Telecom's current 2Mbps product (40kbps).
- 3.4. We are pleased to note the Commission's comments in paragraph 17, and intend to negotiate with Telecom for an improved SIR, with this as a backstop.
- 3.5. We believe that the Commission also needs to address the provisioning rules to be used dimensioning the shared virtual path from the DSLAM to the LAC. We recommend that the Commission required Telecom to ensure that this virtual path is never congested above a certain utilisation percentage for a specified period of time. Based on 5-minute average measurement intervals, we propose a choice from the following options:
 - 3.5.1. Traffic on the shared VP is not above 95% of the shared VP PIR for longer than any 2 hour period.
 - 3.5.2. Traffic on the shared VP is not above 90% of the shared VP PIR for longer than any 4 hour period.
 - 3.5.3. Traffic on the shared VP is not above 80% of the shared VP PIR for longer than any 6 hour period.
- 3.6. The concept of SIR and the mechanisms Telecom uses to restrict traffic flows to this level should only apply to the shared virtual path from the DSLAM to the L2TP Access Concentrator (LAC). It should be the access seeker's choice how the backhaul is

dimensioned from the LAC into their own network, given that they will be paying for this backhaul directly.

4. Upstream Speed

- 4.1. Ihug continues to maintain that the 128 kbps upstream speed should be re-interpreted as a minimum not maximum speed. This element of the bitstream service definition was a mistake that the Commission needs to take the earliest opportunity to rectify. 128 kbps is a significant inhibitor to the value of UBS to business customers and Telecom have non-restricted retail products available to the business market.

5. Pricing

- 5.1. ihug is pleased to see the Commission has returned to the view that there must be a single uniform wholesale price for the unconstrained service. However while the proposed price is an improvement over the current commercial offering, it does not leave any substantive margin to retail a broadband product at the Minister's much touted "dollar a day".
- 5.2. It is important that the final price is adjusted quarterly as proposed by the Commission, in line with movement in Telecom's retail price.
- 5.3. We were pleased to see Telecom voluntarily reduce their initial unreasonable churn fee, but we believe even the current reduced charge is too high. We look forward to a further reduction in line with the Commission's benchmarking comments.

6. Operational Support Systems

- 6.1. Ihug is happy with the progress we are seeing with Telecom's OSS development (including the B2B component) and support the Commission's further comments.
- 6.2. We support TelstraClear's view that, to ensure consistency, periodic reporting by an independent auditor would be needed on:
 - 6.2.1. % of wholesale vs. retail customers on each DSLAM type (by type of service); and
 - 6.2.2. % of wholesale vs. retail customers on any VP with a utilisation above an agreed level (by type of service); and
 - 6.2.3. average allocated throughput per end user achieved by Telecom for its own retail services.

7. Implementation Timeframe

- 7.1. ihug welcomes the Commission's proposed 4 week implementation timeframe as recognition that this regulated bitstream service needs to get to market for the benefit of consumers as soon as possible. We hope that there are no further delays in the process.

Please contact me if you would like to discuss any aspect of this submission further.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'David Diprose', written in a cursive style.

David Diprose
General Manager – Regulatory
ihug Limited