



**GOVERNMENT & INDUSTRY RELATIONS**

**Telecom New Zealand Limited**

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Douglas Webb  
Telecommunications Commissioner  
Commerce Commission  
PO Box 2351  
WELLINGTON

Dear Douglas

**Commercial and regulated bitstream service**

Thank you for your letter of 10 March 2006. We have considered the contents carefully.

We have been negotiating with ihug, CallPlus and a number of other operators over the last few weeks. We have concluded commercial arrangements with some operators and are still in discussions with others. As you know, we have been unable to reach arrangements with ihug and CallPlus and they have made applications for a regulated bitstream service.

To be quite specific, we are offering our CUBS as an alternative to the RUBS and a condition of acceptance is that the ISP contracts out of applying for any RUBS service. In reference to the statement made in paragraph 3 of your letter, our view of the Telecommunications Act is that Telecom and other operators are free to enter into commercial negotiations and arrangements on whatever terms they might agree between them. If they are unable to reach agreement, then they can make an application to the regulator. We are not aware of any provision in the Telecommunications Act that seeks to constrain the terms on which commercial negotiations (which occur first) are discussed or agreed. As set out in our previous letter, we believe that the Act in fact expressly acknowledges that commercial arrangements are left to the industry, unfettered by the Act. We would welcome you outlining your reasoning on how the Act can be interpreted in the way you state in paragraph 3 of your letter.

The industry are aware that they are able to take up the 3.5/512 bitstream commercial offer separately from the 128 uplink offerings. Ihug has confirmed publicly that it is considering signing up for this service. The 128 uplink offerings are an alternative to the regulated service you have determined. Operators have a clear and well informed choice as outlined in my previous letter. Such commercial choice is evidenced by TelstraClear's choice to take up a commercial arrangement instead of the regulated bitstream service for the term of that commercial arrangement.

Having said that, we acknowledge that we now need to consider how we will proceed with wholesale bitstream offerings in the future bearing in mind that regulatory applications are pending. Our commercial offer may need to be revisited with a regulated unconstrained/128 service if the Commission is minded to determine such a service in the pending applications. We are now considering this position both for the purpose of informing the regulatory proceedings and for the purpose of assessing our commercial offers going forward.

I am concerned that you would view Telecom's position on this issue with concern. We see our position as one that presents ISPs with a clear choice which they are able to make in an informed way. The dynamic interplay between the regulatory and commercial worlds is producing outcomes that better suit ISPs and Telecom but which are clearly significantly influenced by the regulatory process. Moreover, our commercial offers will undoubtedly continue to be influenced by any further regulatory determination.

As always, we are happy to discuss these issues further.

Yours sincerely



**Bruce Parkes**  
**General Manager**  
**Government & Industry Relations**