



Telecom New Zealand Limited

Submission in respect of the

**Commerce Commission's Draft Reconsideration of
Decision 582**

Public Version

13 March 2007

CONTENTS

A. Introduction	3
B. Backdating	5
C. Pricing Methodology	7
D. Additional Requirements	14
E. Amendment of Decision 582	19

A INTRODUCTION

- 1 Telecom welcomes the opportunity to make submissions on the Draft Reconsideration of Decision 582 dated 21 February 2007 (**Draft Reconsideration**). We consider that the pricing methodology goes a long way to addressing the concerns expressed by the parties about the methodology in Decision 582. Subject to the comments in this submission, which are relatively minor, the methodology is transparent, robust and, as far as we can see, future proof.
- 2 We do not propose to make submissions about the Introduction, the Applications, or the Framework for the Determination. It is slightly unclear whether the applicable legislation is the Telecommunications Act 2001 before or after its amendment, but on balance we do not think it is material in this case. The Commission has not relied on section 59(1)(b), which has now been revoked, so it does not make a significant difference. It is also clear that the service description and the pricing principle remain unaffected (section 65 Telecommunications Amendment Act (No 2) 2006). However we reserve the right to make cross-submissions on these sections of the Draft Reconsideration if necessary.
- 3 Section B of these submissions deals with the backdating of the Draft Reconsideration. We consider that the Commission should backdate the Reconsideration to the date of the material change in circumstances relied on (namely changes to Telecom's retail broadband plans on 26 October 2006). To do otherwise would appear to be an acknowledgement that the methodology in Decision 582 was never correct. This would be inconsistent with the Commission's finding in the Draft Reconsideration that change is required because there has been a material change in circumstances.¹
- 4 Section C contains specific comments about the pricing methodology. We repeat our view that the Commission should take into account the overage component of pricing on retail plans. We also set out what we believe is the correct approach to VP capacity issues. We comment on comparable services and reiterate our view of the correct approach to removing ISP charges and the treatment of homeline in the bundle price. We also comment on removal of data costs. Finally we set out a worked example.
- 5 Section D responds to the Commission's concern that it is not feasible to envisage all future changes and that when the access provider is not

¹ Paragraph 35 Draft Reconsideration.

restricted in making changes to its retail products there is a risk that the regulatory pricing model could be gamed.²

- 6 We believe that the revised methodology in the Draft Reconsideration (subject to the specific comments in these submissions) addresses these concerns and that a separate margin analysis is unnecessary in the context of the determined UBS service. Further, there are a number of practical issues that mean the proposed analysis is not appropriate in the context of the determination. We also note that a separate margin analysis would result in significant jurisdiction and implementation issues.
- 7 We consider that the methodology in the Draft Reconsideration is a robust way to set the price. We propose some minor amendments to the price adjustment process that ensure the determined price is even more closely linked to, and responsive to, retail changes.
- 8 This submission contains no confidential information. The worked example on pages 12 and 13 uses made up numbers for the sake of illustration. Accordingly, the result produced does not represent the result that would be produced by applying the final method to the actual numbers. Telecom's intention in providing this worked example is to allow the access seekers to see and understand the proposed methodology, without divulging to them data that is highly commercially sensitive.

² Draft reconsideration, paragraph 121

B BACKDATING

- 9 The Commission relies on the decision of the Court of Appeal in *Telecom v Commerce Commission and TelstraClear* (CA, 25 May 2006, unreported) to support the backdating of the Reconsideration to the commencement date of Decision 582. Telecom accepts that backdating to the date of the material change in circumstances relied on is available in appropriate circumstances. However, we do not consider that it is correct to backdate the Reconsideration to the commencement date of Decision 582 (22 June 2006).
- 10 If the Draft Reconsideration is backdated to the date of the material change, rather than the commencement date, there will be no practical effect in terms of the amount of money that Telecom will be required to pay to the access seekers in accordance with paragraphs 119 and 120. This is because the implementation date of the bitstream access service, 26 October 2006, was the same date as the release of Telecom's new retail broadband plans (the material change in circumstances relied on by the Commission). However, we consider that this is the correct approach in law and the final Reconsideration should reflect that.
- 11 *Telecom v Commerce Commission and TelstraClear* related to an entirely different process under the Unamended Act, namely a Pricing Review under Subpart 4. The substance of that decision is summarised in paragraph 44:

"In our view Harrison J was right to uphold the contention by the Commission and TelstraClear that a price review determination relates back to the date of the initial determination. That is consistent with the substitutionary nature of reviewing or appellate decisions which vary an original decision."

- 12 The Commission's jurisdiction for the Reconsideration is section 59(1)(a). In the Commission's view, the need for the Reconsideration arises because *"the bitstream access price calculation methodology under Decision 582 no longer is capable of meeting the Commission's objectives of reflecting an efficient wholesale price."*³ (Emphasis added).
- 13 Unlike a pricing review determination, the Commission is not substituting the price calculated using the Final Pricing Principle for the price using the

³ Paragraph 34, Draft Reconsideration.

Initial Pricing Principle. Rather, it is changing the pricing mechanism to ensure that it is appropriate given the new market conditions.

- 14 If the Commission backdates the Reconsideration to the commencement date of Decision 582, this would appear to be an acknowledgement that the pricing methodology in Decision 582 was never correct. Instead, the point is that the methodology is no longer correct, in light of market changes. The backdating mechanism should reflect this.

C PRICING METHODOLOGY

Introduction

15 In general terms, Telecom considers that the Commission's proposed pricing methodology is much more robust and future-proof than the original Decision 582 methodology and comes closer to fulfilling the requirements of the Initial Pricing Principle. The points made in this section deal only with the areas where we disagree with the Draft Reconsideration.

Overage on the Basic plan

16 In our 20 December submission, we said that a "Callander adjustment" should be made to account for the overage component of retail pricing in relation to plans (just the Basic plan at present) that do not have a throttle on cap.⁴ The Commission disagreed with this on the grounds that overage is a charge for national and international transmission. This misunderstands the plan's price structure.

17 The retail plans and the facilities to provide them have price components and cost components. However there is no one-for-one correspondence between the two. The sum of the revenues across plan types and charge components covers the sum of the cost components, but the pricing does not and is not intended to precisely reflect the structure of costs. If Basic plan overage related directly and solely to transmission, other plans (for which Telecom also incurs transmission costs) would also have overage charges.

18 All of the retail plans provide national and international transmission and the price of the various plans changes to account for the allocated data cap of each. Plans with a higher data cap are charged at a higher price. All of these different plans however are taken account of when evaluating the weighted average retail price. So the fact that one plan recovers the costs associated with this by way of an overage charge, rather than a higher data cap, is not reason in itself to exclude the revenue associated with that. It is true that access seekers must purchase and supply their own national and international data transmission, however this just means that the costs of this should be subtracted out of the calculation as the Commission recommends be done.

⁴ Paragraphs 18 and 19, Telecom comments in respect of the application by CallPlus Limited for reconsideration of Decision 582 dated 20 December 2006.

- 19 The inconsistency of the Commission's approach can be seen by considering two hypothetical examples. Telecom could launch a plan (let's call it BasicB) which was similar to the Basic plan but provided a data cap of 0.4 GBytes of data in addition to the Basic plan with its 0.2 Gbytes. This plan would be at a higher price than the Basic plan, but would be cheaper than the Go plan. Some of the existing customers on Basic who currently are paying overage fees regularly would be incented to purchase the BasicB plan, trading off the higher rental for the reduced overage charges. The Commission's calculation method would say that the rental revenues from BasicB should be accounted for in the WARP calculation, and Telecom would agree with this. However there has been no real change in customer usage behaviour, simply a change in the way plans are presented. A consistent WARP calculation method should show very similar values between the two approaches, but the Commission's will not.
- 20 As a further hypothetical example, Telecom could change some of the existing plans to offer an unused GByte rebate for those customers on a plan who do not use their monthly allocation. Telecom could "buy back" the Gbytes that the customer didn't use at some appropriate rate. Clearly the effect of this would be to make these plans on average cheaper for customers, as not all customers reach their monthly cap. The Commission's advocated method of only looking at monthly rentals would mean that the variable rebate would be ignored in the WARP calculation and therefore the calculated WARP would overstate the actual imputed retail price.

VP capacity issues

- 21 The Commission appears to misunderstand the way Telecom provisions the VPs associated with DSLAMs providing retail broadband and UBS services. This appears to have led the Commission to underestimate the importance of some of our submissions on this matter.
- 22 The Commission is correct that all customers on a VP share the capacity collectively, however it is not correct that VPs are sized based on an allocated peak-time bandwidth per user multiplied by the number of users. Rather, VPs are dimensioned to a target customer service performance. This means that VPs associated with a high proportion of high use customers will have greater capacity per end user than those associated with a high proportion of low use customers. An end user in both of these cases might experience the same level of performance despite the different per-user capacity.
- 23 If the Commission were correct about the VP dimensioning rule, then high volume users would impose congestion costs on other users, which would be inefficient, but would not impose costs on Telecom. This would imply

that no price adjustment was required to compensate Telecom, although a price adjustment would still be the optimal way to internalise the congestion externality.

- 24 Given however that VPs are dimensioned to an outcome, then as well as the congestion externality from high volume users there is also a real cost imposed on Telecom as it needs to dimension a VP proportionately larger the more high volume users are attached to it. Our proposed methodology more closely aligns the determined price with our retail price signals whereby high volume users pay a price premium. This is the best way to maximise allocative efficiency.
- 25 If the Commission considers that opportunities for service differentiation could exist and would be facilitated by a simpler UBS price, it would need to satisfy itself that any such dynamic efficiency benefits outweighed the allocative efficiency costs from an inaccurate price mechanism.

Comparable services

- 26 We agree that all Internet-grade plans with an upstream speed of 128 kbps should be used as comparable services. This means that where there are observations of customers purchasing without-tolls broadband plans, and therefore not receiving the \$10 tolls discount, that those observations should be included at the appropriate (low) weight.

Removing ISP charges

- 27 The Commission continues to maintain that using an historical value of \$8.89 to allow for the non-retail costs of providing ISP services has enduring relevance to the estimation of current and ongoing ISP costs. We agree that this figure would have accurately reflected costs in relation to the time period when that charge was being applied. However to maintain that it still represents an accurate reflection is to assume that there have been no changes in ISP costs since the time that charge was originally applied. This is not correct.
- 28 There have been substantial changes in ISP business models over that time. Costs of IT inputs have reduced, while per-hour labour costs will have increased. Volumes have increased substantially meaning that fixed cost components can now be spread over a much greater number of end users. Accordingly it seems extremely unlikely that the Commission's implicit assumption of no cost change could be correct.
- 29 Telecom refers to steps Four and Five in our 20 December submission as to the appropriate approach to take here.

Homeline in the bundle price

- 30 We consider, as we have consistently submitted, that an allowance for Homeline revenue should be included in the tolls discount bundle imputation calculation. The Commission maintains that efficient access seekers cannot provide a stand alone Homeline service and that this fact is relevant to their decision to exclude the allowance.
- 31 We presented new information on market behaviour in our 20 December submission. This demonstrated that, even if the Commission had previously been right, a change in market circumstances means that it is no longer correct.⁵ The Draft Reconsideration continues to exclude Homeline, without addressing the new evidence. As we submitted in the High Court in the appeal of Decision 582⁶, failure by the Commission to acknowledge or address a submission does not necessarily mean that the submission has been ignored, but it does make it difficult for the parties to understand the Commission's reasoning.
- 32 We further note that ihug now offers a home phone product in Zone 1 as well as Zone 2. Ihug would be unlikely to offer such a product if it were unprofitable for it to do so.

Removal of data costs

- 33 We agree that an allowance for data costs should be provided for in the calculation. The majority of this cost will be represented by the costs of international bandwidth purchased by ISPs. The other part of the calculation will be the costs of national bandwidth, and the conversion between \$/Mbps/month in which the bandwidth is sold and purchased and the \$/Gbyte which is how it is provided to end users of retail plans.
- 34 The actual usage measured should reflect the downloaded data only. There is a significant difference across all plans between the volume of data uploaded and the volume downloaded. As transmission capacity is bought by the Mbit/s and is symmetric, the cost is driven solely by the volume of downloaded data – uploaded data is effectively free.

⁵ Paragraphs 14-17, Telecom comments in respect of the application by CallPlus Limited for reconsideration of Decision 582 dated 20 December 2006.

⁶ iHug Limited and Callplus Limited v Telecom (CIV 2006-485-1578)

- 35 The reference to "cost" in the draft determination should be to the costs incurred by the ISP in providing bandwidth, rather than the costs incurred by the various providers of international or national bandwidth. Determining the cost of international bandwidth would be a difficult exercise as there are a number of different routes and potential termination points. Potentially the cost to every other country would need to be evaluated and then a traffic-weighted average taken. As Telecom has submitted, a much more convenient, yet still objective, method is to use the price of international bandwidth. The prices provided for this service average over all of the cost components making the calculation considerably simpler. This approach also avoids potential confidentiality issues in relation to Telecom's cost structure.
- 36 The international bandwidth market is extremely competitive. There are a number of providers who have either built or have long term leases on bandwidth in and out of New Zealand. This competition means that the prices at which the service is sold are unlikely to be significantly in excess of cost. Even if prices were materially in excess of cost, using the lowest observed price will produce a conservative result for UBS pricing.
- 37 CallPlus has recently approached potential suppliers for its international bandwidth requirements. Telecom bid for this business and lost on price, showing how competitive the market is. As a provider of international capacity, Telecom does not purchase international capacity on the market for its own use. Therefore, we think that the Commission should obtain information, with appropriate confidentiality protection, from the access seekers on what the current prevailing best international bandwidth prices are, and use these values to adjust for data costs embedded in retail plans.
- 38 For the national bandwidth component, Telecom Wholesale's current standard price for high volume purchase (>300 Mbps) can be used. This is \$80 per Mbps per month. A weighted average between this and international bandwidth should be applied. We think that 86% international and 14% national is representative of New Zealand's current traffic split, but a more up-to-date figure should be measured close to the time the determination is finalised.
- 39 The conversion from \$/Mbps/month to \$/Gbyte can be done by recognition that the links used are normally run at full capacity the whole time. This causes congestion during peak periods, but provisioning bandwidth to cope with peak loads would add significantly to internet retail prices. A 1 Mbps link run at full capacity for one month (on average 30.42 days) can deliver $60 \times 60 \times 24 \times 30.42 / 8 / 1024 = 320.84$ Gbytes per month.

40 This means that the weighted average monthly \$/Mbps/month price can be divided by 320.84 to derive the \$/Gbyte per month figure to be applied to the downloaded data usage measured by plan.

Worked example

41 Telecom presents here a worked example to illustrate how the various advocated methodologies would work. There has been some difficulty with making the methodology understandable as using the actual values raises confidentiality issues. The method presented here uses made up numbers for the sake of illustration. Accordingly the final result produced does not represent the result that would be produced by applying the final method to the actual numbers. This worked example can illustrate the effect of potential changes in the methodology, but will not indicate the quantum of any such change. We can make available an Excel version of this to any party who wishes to test a methodology.

42 We have followed the Commission's three table approach from the draft determination.

Table 1: Telecom's retail broadband plans with an upstream speed of 128 kbps

Retail Plan	Retail Price (no calling)		Data Cap	Actual Usage		Customer connections		Overage	Revenue incl. overage
	incl. GST	excl. GST	GB	GB	Connections	%			
Basic	39.95	35.51	0.2	0.3	100	10.0%	2c/MB	37.33	
Go	49.95	44.40	1	1.2	220	22.0%	ToC	44.40	
Explorer	59.95	53.29	5	4.0	170	17.0%	ToC	53.29	
Adventure	69.95	62.18	10	9.0	250	25.0%	ToC	62.18	
Large	59.95	53.29	AYCE	8.0	150	15.0%	N/A	53.29	
Basic, no tolls	39.95	35.51	0.2	0.2	10	1.0%	2c/MB	35.51	
Go, no tolls	49.95	44.40	1	1.1	20	2.0%	ToC	44.40	
Explorer, no tolls	59.95	53.29	5	5.0	30	3.0%	ToC	53.29	
Adventure, no tolls	69.95	62.18	10	8.0	40	4.0%	ToC	62.18	
Large, no tolls	59.95	53.29	AYCE	9.0	10	1.0%	N/A	53.29	
					1,000	100.0%			

43 The first table shows our current set of comparable retail plans. The actual prices and data caps for those plans are shown, but the usage and customer count values are invented. The actual usage measured would be the download usage only as this is the driver of the cost. This example shows the effect of including the overage revenue adjustment.

Table 2: Allocation of bundled discount

Retail Plan	Retail Price	Standalone Prices				Total standalone price	Bundled price (total standalone less toll discount)	Imputed retail price
	excl. GST	Broadband (retail less ISP)	ISP	Homeline	Tolls			
Basic	37.33	28.44	8.89	40.00	50.00	127.33	118.44	26.46
Go	44.40	35.51	8.89	40.00	50.00	134.40	125.51	33.16
Explorer	53.29	44.40	8.89	40.00	50.00	143.29	134.40	41.65
Adventure	62.18	53.29	8.89	40.00	50.00	152.18	143.29	50.18
Large	53.29	44.40	8.89	40.00	50.00	143.29	134.40	41.65
Basic, no tolls	35.51	26.62	8.89	40.00	40.00			26.62
Go, no tolls	44.40	35.51	8.89	40.00	40.00			35.51
Explorer, no tolls	53.29	44.40	8.89	40.00	40.00			44.40
Adventure, no tolls	62.18	53.29	8.89	40.00	40.00			53.29
Large, no tolls	53.29	44.40	8.89	40.00	40.00			44.40

44 This table shows how the tolls imputation process would work with the inclusion of the Homeline adjustment. We have used the Commission's \$8.89 for ISP costs figure; although as noted we do not agree with this.

The broadband services which are purchased without a tolls component do not have the imputation adjustment applied to them.

Table 3: Removal of avoided costs

Retail Plan	Imputed retail price	Data Costs		Retail costs @ 16%	Bitstream Access Price	Customer connections		Weighted Average Bitstream Access Price
		Actual usage (GB)	Data Costs (@\$1.50/GB)			Connection	%	
Basic	26.46	0.3	0.45	4.16	21.85	100	10.0%	2.18
Go	33.16	1.2	1.80	5.02	26.34	220	22.0%	5.80
Explorer	41.65	4.0	6.00	5.70	29.94	170	17.0%	5.09
Adventure	50.18	9.0	13.50	5.87	30.81	250	25.0%	7.70
Large	41.65	8.0	12.00	4.74	24.90	150	15.0%	3.74
Basic, no tolls	26.62	0.2	0.30	4.21	22.11	10	1.0%	0.22
Go, no tolls	35.51	1.1	1.65	5.42	28.44	20	2.0%	0.57
Explorer, no tolls	44.40	5.0	7.50	5.90	31.00	30	3.0%	0.93
Adventure, no tolls	53.29	8.0	12.00	6.61	34.68	40	4.0%	1.39
Large, no tolls	44.40	9.0	13.50	4.94	25.96	10	1.0%	0.26
						1,000	100.0%	27.87

- 45 The final table subtracts off data costs using the Commission's placeholder number, removes the retail cost adjustment, and then weights by customer connection count.

D ADDITIONAL REQUIREMENTS

- 46 The Commission has expressed the concern that it is not feasible to envisage all future changes and that when the access provider is not restricted in making changes to its retail products there is a risk that the regulatory pricing model could be gamed.⁷ The Commission has proposed that Telecom perform an additional margin analysis that would, in practice, replace the determined price.
- 47 We believe that the proposed revised methodology in the Draft Reconsideration addresses the Commission's concerns and that a separate margin analysis is unnecessary in the context of the determined UBS service. Further, there are a number of practical, jurisdiction and implementation issues that mean the proposed margin analysis is not appropriate in the context of the determination.

The revised methodology addresses the Commission's concerns

- 48 Telecom has thought very carefully about how to meet the Commission's concerns, which appear to be (i) that changes to retail plans will not flow through to the UBS price in a timely fashion and (ii) that an unforeseen change could unfairly reduce the gap between Telecom's retail prices and the UBS price. We suggest some minor enhancements to the Commission's revised methodology below, particularly with regard to the timing of adjustments, to ensure that the UBS price is sufficiently responsive to retail changes to address the Commission's concerns.
- 49 Non-price changes are unlikely to be an issue going forward because (i) the new methodology captures non-price changes in the retail product such as higher use of international bandwidth and (ii) the UBS parameters tend to have been maximised in retail markets (such as line speed).
- 50 If a retail change unexpectedly has the consequence of materially reducing the margin between retail prices and the UBS price, then the access seekers can apply for a Reconsideration and Telecom will participate in the further Reconsideration process.
- 51 The Reconsideration procedure is already provided for in section 59(1)(a) of the Act and we have already willingly participated in a Reconsideration. Further, we recognise that it is in everyone's interests to make the UBS price work and we have shown ourselves willing to work proactively to

⁷ Draft reconsideration, paragraph 121

achieve this, for example with the Commercial UBS upgrade incentive offer made in November 2006. We do not think it is necessary to impose an uncertain extra-jurisdictional requirement on Telecom, when there is a process in the Act which would enable the pricing methodology to be revisited, if necessary, if there is a material change of circumstances.

- 52 Accordingly, the revised pricing methodology is a robust way to set the UBS price that ensures the UBS price is appropriately linked to Telecom's retail broadband plans both on the date of the determination and going forward. Price changes will quickly result in changes to the UBS price.

The determination process is not an appropriate vehicle for additional margin analysis

- 53 Telecom has a number of issues with the adjustment process proposed by the Commission in the Draft Reconsideration:
- i. Both process and test are outside the Commission's jurisdiction;
 - ii. Telecom's confidential information would not be protected in any way;
 - iii. Telecom is likely to be unfairly disadvantaged with respect to its competitors, who would potentially have an opportunity to misuse the information that Telecom would be required to provide.

Jurisdiction

- 54 The Commission's jurisdiction with regard to the price of the bitstream service is set out in the Initial Pricing Principle (**IPP**) for bitstream, namely:

"Retail price as imputed by the commission having regard to any comparable service) less a discount benchmarked against discounts in comparable countries that apply retail minus avoided costs saved pricing in respect of the service, in a case where Telecom faces limited, or is likely to face lessened competition in a market for that service."

- 55 It is unclear what model the Commission proposes be used as the basis for the analysis at paragraph 122 of the Draft Reconsideration. Under the proposal, Telecom would be required to show that an equally efficient access seeker could compete using the regulated service. Does the Commission intend Telecom to use the revised 582 methodology or something else? If the calculation was undertaken by reference to the

existing methodology developed through the Commission's processes to date, then this simply replicates the revised pricing methodology. However, if the calculation was undertaken with a different methodology, then this creates significant jurisdiction and implementation issues. An alternative methodology, not founded on the IPP as required by the Act, would have to be separately developed and this would effectively replace the determined price. It is not within the Commission's jurisdiction to set the price, nor to require Telecom to set the price, in accordance with anything other than the Initial Pricing Principle.

- 56 The process is also unworkable. In view of the number of parties involved and their incentives not to agree it is almost inevitable that the parties would have to return to the Commission, in which case the Commission would rightly be limited to setting the price in accordance with the Initial Pricing Principle. It is difficult therefore to see any merit in the intermediate step proposed by the Commission.
- 57 As a final point, Telecom does question the Commission's ability to reserve to itself the ability to adjust the price after it has issued its final Reconsideration Determination (save in the limited circumstances set out in section 59). In reconsidering a determination the Commission must follow the same process as for the initial determination (section 59(3)). A determination (and therefore a reconsideration) must include the terms on which the service must be supplied (section 30(1)(a)). In issuing a reconsideration, it is implicit that the Commission may not reserve to itself the ability to "adjust" determined terms such as price, according to an unspecified methodology, to address what it perceives to be the relevant issues raised by the Determination and reconsideration. Yet this appears to be what is contemplated at paragraphs 121 to 125 of the Draft Reconsideration.

Confidentiality

- 58 It is of significant concern that Telecom's confidential information would not be protected under the process proposed by the Commission. In order to determine whether it is necessary to modify the UBS price, it will be necessary to run the Commission's methodology again and to do an additional price squeeze test. Both would require the use of highly confidential customer connection information, which has previously been designated Commission Only Information under the Commission's confidentiality regime. The Commission's Draft Reconsideration would require this information to be given to Telecom's retail competitors.

59 We appreciate the approach that the Commission has taken to protecting our confidential information in the context of the Reconsideration process.⁸ However, the adjustment mechanism proposed in the Draft Reconsideration does not address the protection of that information outside the Reconsideration process.

60 The process will not be subject to the Commission's confidentiality order, which expires 20 working days after the final Reconsideration Determination. In addition, the process would require information to be given to the access seekers themselves, whereas previously it has only ever been given to external parties signed up to confidentiality undertakings and only then in limited circumstances. It would be unacceptable to Telecom if we were required to provide such highly confidential information to the access seekers.

Details of proposed adjustment mechanism

61 We believe that minor changes to the adjustment mechanism can mitigate much of the Commission's concern. In particular, clarification of the frequency of the review and the lead time for the price adjustment.

62 Decision 582 contained a quarterly review. It is unclear whether the Commission considers that there should no longer be a quarterly review, or whether the Commission considers that the review referred to at paragraphs 205-208 should still take place. We think that it is important to have a quarterly review. Further, we propose that for reasons of administrative efficiency future quarterly adjustments take place at the end of the month rather than on the 22nd (as is the practice currently). Month end would allow Telecom to make the adjustments at the same time as it currently makes adjustments to the commercial UBS price and updates the Designated Services Price List. The quarterly adjustment on the 22nd has been for purely historical reasons (namely the commencement of Decision 582 on 22nd June 2006).

63 An adjustment should also be made whenever we change our retail prices or launch a new retail product. This should involve a recalculation of the UBS price following the methodology finally decided by the Commission.⁹ The adjustment should be undertaken 30 days after the change triggering the adjustment and any change backdated to the date of the change. The

⁸ Refer the Commission's letter to Telecom dated 9th March 2007.

⁹ Refer paragraph 31, Telecom comments in respect of the application by CallPlus Limited for reconsideration of Decision 582 dated 20 December 2006.

reason for this is that this will ensure that the adjustment adequately reflects the effect of plan migration and subsequent take up in the short term. Longer term take up would be taken into account with the quarterly adjustment.

- 64 The quarterly review, together with amendment to the timing of the retail product/ price change adjustment, should address any concern that there is a lag between a retail change and a change to the UBS price.
- 65 We consider that the review should be a mechanical exercise, involving plugging numbers into the agreed model. Decision 582 made this adjustment subject to the Commission's prior approval. This prior approval has proved to be relatively problematic, with the access seekers wishing to be involved in the process. Once the methodology has been determined, we do not consider consultation is appropriate nor necessary; the access seekers can be satisfied that any mathematical or data entry errors are picked up through the Commission's review. They cannot test the data that underlies the calculation, so Telecom can see no point in involving them in the process. Consulting on the quarterly adjustment has caused significant delays with the approval of the adjustment. Also, there have been significant problems regarding the protection of Telecom's confidential customer information. The access seekers in fact chose not to participate in the quarterly review that took place in December 2006, possibly acknowledging that there was little input that they could meaningfully provide.
- 66 We submit that the Commission should have confidence in the quality of whatever pricing method it may finally determine at the conclusion of this reconsideration process and the industry should be able to have confidence in that method. We consider that the process set out here covers all reasonably foreseeable changes to retail broadband pricing and non-price terms that can be taken into account by the Commission as it makes this decision. To any extent that this process proves to be deficient in the future as a result of material and unexpected changes, that would represent sufficient grounds to undertake a further Reconsideration. The access seekers would not be disadvantaged by such a process as Telecom has submitted that any price change required should be backdated to the date of the material change.

E AMENDMENT OF DECISION 582

- 67 In the interests of clarity and to ensure that there is no subsequent dispute, we consider that the Commission should expressly list the paragraphs of Decision 582 which will be revoked when the Commission makes its final determination. Telecom considers that the paragraphs 136 – 204 of Decision 582 should be revoked.
- 68 The Draft Reconsideration does not specifically mention a quarterly review. Assuming that the Commission follows Telecom's recommendation regarding the quarterly review, paragraphs 205-208 of Decision 582 should also be revoked and the review should be expressly dealt with in the Reconsideration Determination.
- 69 The Draft Reconsideration does not contain a commencement or an expiry date. We believe that the commencement date should be the date of the final Reconsideration Determination. The expiry date should be the expiry date of Decision 582.