



Daniel Vincent
Analyst, Regulation Branch
Commerce Commission
44-52 The Terrace
Wellington

9 July 2010

Dear Daniel

Re: UCLL Backhaul and UBA Backhaul STD – request for information for review of links subject to the UCLL Backhaul and UBA Backhaul STDs under section 30R of the Telecommunications Act 2001

Thank you for your email of 17 June 2010 and the Commission's letter of 2 June letter, both relating to the Commission's section 30R of the Telecommunications Act (No2) 2006 of the links subject to the UCLL Backhaul and UBA Backhaul STD's.

We think it is positive that the Commission is reviewing market conditions for the UCLL Backhaul and UBA Backhaul services as backhaul markets are evolving rapidly. Our response should be read in conjunction with Telecom's response (attached) to the Commission's March consultation on this matter where we set out in detail our views on several of the issues raised.

Accuracy of Commission data

The Commission invited Telecom to confirm the accuracy of information contained in its letter and subsequent email and we also note the Commission's recent communication adding to the number of UCLL primary backhaul links. We note Chorus has provided a response in regard to UCLL Backhaul, in the attachment to this letter we provide a table showing the state of competition for UBA Backhaul Primary links (i.e. where Wholesale has deployed a FDS part way along a UCLL Backhaul link).

Where the link is deemed by the Commission to be competitive for UCLL Backhaul we assume the same to be true for UBA Backhaul.

We do not include the list of UBA Secondary Backhaul links which are identical to the list of UCLL secondary links. Our view, as set out in our prior submission and summarised below, is that most or all of these links are competitive. By disregarding the competitive pressure imposed by TelstraClear the Commission has underestimated the level of competition and may be retaining regulation unnecessarily.

We would be happy to provide a briefing to the Commission on material provided in the attachment if that would be of assistance.

Changes to the current classification and supporting evidence

We note the Commission's intention to apply the same test methodology for determining whether UCLL and UBA Backhaul links are competitive.

In our response to the Commission's March consultation we identified our concerns with the methodology and in particular we noted:

1. Where a vertically integrated operator is present on a link that it imposes a competitive constraint on Telecom (regardless of whether the operator is currently active in the market for wholesale backhaul services);
2. Near entrants (time and proximity) do impose a competitive constraint on Telecom. We do not agree that an operator must be connected to an exchange/FDS in order to impose a competitive constraint; and
3. That the presence of regulation on a given link may act as a deterrent to investment by prospective competitors.

We encourage the Commission to take account of these views.

Evidence of competition

As to specific evidence of competitive pressures for UBA Backhaul services it is difficult to provide strong evidence of competition for this service because:

- (i) There is relatively little adoption of UBA;
- (ii) Most of the UBA adoption to date has been by Telecom Retail; and
- (iii) Customers appear to prefer commercial managed services over the regulated backhaul service for UBA.

However, as evidenced by the recent adjustments Chorus has made to its UCLL Backhaul pricing, there are widespread competitive pressures in the backhaul markets. From Telecom's perspective, a party will still *have the choice* to take a service from another provider wherever competing fibre is present. The lack of evidence in the UBA market may change as UBA adoption increases over coming months and supply and demand side factors shape the evolution of the offerings in the market.

As set out in our previous submission we note that there is a significant, and increasing, number of regional and national backhaul operators and that investment and competition in this market is likely to increase as the Government's UFB initiative is implemented.

Telecom does not have visibility, other than is publicly available, of other operators' actual and planned backhaul networks and therefore is unfortunately unable to apply the Commission's framework meaningfully.

Further matters for the Commission's consideration

At a first principle level, Telecom has consistently maintained that removing regulation at the earliest feasible point in time is as important – if not more so – as introducing regulation in advancing the s18 purposes.

There has been very limited take-up of the regulated UBA Backhaul Services since the STD was finalised. Our expectation is that UBA customers will continue to prefer commercial backhaul variants going forward in preference to the regulated service. In this light, it is worthwhile questioning the purpose, and continuing need for, continued regulation of this service. Put another way, if regulation were removed, what effect would that have in the market? In our view, the answer is it would have no effect.

We would encourage the Commission to consider this question in the course of its investigation.

We would be happy to provide further assistance should the Commission have any further questions.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'JWS', is enclosed in a light gray rectangular box.

John Wesley-Smith
General Manager
Industry & Regulatory Affairs

Attachment

Table 1: UBA primary links

The table shows the state of competition for UCLL Backhaul links between Exchange (column A) and Parent POIs (column C) where Wholesale has deployed a FDS beyond (29 NAPOI) tier 2 exchanges. That is to say: where Wholesale has deployed a FDS part way along a UCLL Backhaul link (Column B). If the link is competitive for UCLL Backhaul, the same follows for UBA Backhaul (column D).

A Exchange	B Parent FDS	C Parent POI	D UCLL Regulated (or date deemed competitive)
MT EDEN	AIREDALE STREET		27/06/2008
PONSONBY	AIREDALE STREET		27/06/2008
MILTON	BALCLUTHA	DUNEDIN	Yes
PICTON	BLLENHEIM	WELLINGTON	Yes
RENWICK	BLLENHEIM	WELLINGTON	Yes
SPRING CREEK	BLLENHEIM	WELLINGTON	Yes
WHITIANGA	COROMANDEL	HAMILTON	Yes
HANMER SPRINGS	CULVERDEN	CHRISTCHURCH	Yes
METHVEN	DARFIELD	RICCARTON	Yes
OXFORD	DARFIELD	RICCARTON	Yes
MARTINBOROUGH	FEATHERSTON	NAENAE	Yes
LYTTON WEST	GISBORNE	NAPIER	Yes
MATAURA	GORE	INVERCARGILL	Yes
TAPANUI	GORE	INVERCARGILL	Yes
FLAXMERE	HASTINGS	NAPIER	Yes
HAVELOCK NORTH	HASTINGS	NAPIER	Yes
ELTHAM	HAWERA	NEW PLYMOUTH	Yes
MANAIA	HAWERA	NEW PLYMOUTH	Yes
OPUNAKE	HAWERA	NEW PLYMOUTH	Yes
PATEA	HAWERA	NEW PLYMOUTH	Yes
STRATFORD	HAWERA	NEW PLYMOUTH	Yes
MANGONUI	KAITAIA	KERIKERI	Yes
AKAROA	LITTLE RIVER	CHRISTCHURCH	Yes
CARTERTON	MASTERTON	NAENAE	Yes
GREYTOWN	MASTERTON	NAENAE	Yes
PUTARURU	MATAMATA	HAMILTON	Yes
TIRAU	MATAMATA	HAMILTON	Yes
TOKOROA	MATAMATA	HAMILTON	Yes
MAPUA	MOTUEKA	NELSON	Yes
PACIFIC VIEW	MT MAUNGANUI	TAURANGA	Yes
PAPAMOA	MT MAUNGANUI	TAURANGA	Yes
OAMARU NORTH	OAMARU	TIMARU	Yes
		PALMERSTON	
WOODVILLE	PAHIATUA	NORTH	Yes
WAIKOUAITI	PALMERSTON	DUNEDIN	Yes
PAEKAKARIKI	PARAPARAUMU	PORIRUA	Yes
RAUMATI	PARAPARAUMU	PORIRUA	Yes
WAIKANAE	PARAPARAUMU	PORIRUA	Yes

ARROWTOWN	QUEENSTOWN	CROMWELL	Yes
WAKATIPU	QUEENSTOWN	CROMWELL	Yes
WOODEND	RANGIORA	RICCARTON	Yes
HIBISCUS COAST	RED BEACH	TORBAY	3/12/2009
WHANGAMATA	TAIRUA	HAMILTON	Yes
HUNTLY	TE KAUWHATA	HAMILTON	Yes
OTOROHANGA	TE KUITI	HAMILTON	Yes
NGATEA	THAMES	HAMILTON	Yes
PAEROA	THAMES	HAMILTON	Yes
OTAUTAU	TUATAPERU	INVERCARGILL	Yes
UPPER HUTT NORTH	UPPER HUTT	NAENAE	Yes
WAIPAWA	WAIPUKURAU	NAPIER	Yes
GONVILLE	WANGANUI	PALMERSTON NORTH	Yes
WANGANUI EAST	WANGANUI	PALMERSTON NORTH	Yes
WANGANUI GIRLS COLLEGE	WANGANUI	PALMERSTON NORTH	Yes
WAVERLEY	WANGANUI	PALMERSTON NORTH	Yes
LEIGH	WARKWORTH	TORBAY	Yes
MAHURANGI	WARKWORTH	TORBAY	Yes
MANGAWHAI	WELLSFORD	TORBAY	Yes
MAUNGATUROTO	WELLSFORD	TORBAY	Yes
EDGECEMBE	WHAKATANE	TAURANGA	Yes
KAWERAU	WHAKATANE	TAURANGA	Yes
OHOPE	WHAKATANE	TAURANGA	Yes
OPOTIKI	WHAKATANE	TAURANGA	Yes