



COMMERCE COMMISSION

**Draft Review of the Standard Terms Determination for the designated service
Telecom's unbundled copper local loop network backhaul (telephone exchange to
interconnection point)**

DECISION NO. XXX

Draft Review Decision under section 30R of the Telecommunications Act 2001 of Decision
XXX

The Commission:

Dr Ross Patterson
Anita Mazzoleni
Gowan Pickering
Pat Duignan

Date of Review Decision: XXX

Background

1. On 27 June 2008, the Commerce Commission (the **Commission**) issued a standard terms determination (**STD**) under section 30M of the Telecommunications Act 2001 (the **Act**) in respect of the designated access service of Telecom's unbundled copper local loop network backhaul (telephone exchange to interconnect point) (**UCLL Backhaul Service**).¹
2. The conditions for the UCLL Backhaul Service require the Commission to identify the markets in which the UCLL Backhaul Service is supplied and to assess whether Telecom faces limited, or is likely to face lessened, competition in those markets. For the purposes of the UCLL Backhaul STD, this involves the Commission assessing whether Telecom faces limited, or is likely to face lessened, competition in the markets for transmission capacity between Telecom's local exchanges and the access seeker's nearest available points of interconnection (**ASNAPOI**). For the purposes of this assessment the Commission considers the wholesale markets for transmission capacity on each Primary Link² of the UCLL Backhaul Service and the wholesale markets for transmission capacity on each Secondary Link.³
3. Previous UCLL Backhaul Service s30R reviews were published by the Commission on 30 April 2009⁴ and 3 December 2009.⁵
4. On 30 March 2010⁶, the Commission issued a letter to interested parties consulting on the approach to defining the market and assessing competition for this third UCLL Backhaul competition review.⁷
5. On 2 June 2010, the Commission gave public notice⁸ of its decision to commence a review under section 30R of the UCLL Backhaul STD (this **Review**). The public notice stated that:

“In particular, the section 30R review will review the application of condition (b) of the UCLL Backhaul Service in relation to:

¹ Commerce Commission, *Standard Terms Determination for the designated service Telecom's unbundled copper local loop network backhaul (telephone exchange to interconnect point)*, 27 June 2008 (**UCLL Backhaul STD**).

² A Primary Link refers to that part of the UCLL Backhaul Service between Telecom's local exchange in which the Access Seeker has co-located its equipment, and the Parent Point of Interconnection (**POI**) Site. A POI Site is a point in Telecom's network at which the Access Seeker may interconnect for the purposes of the UCLL Backhaul Service.

³ A Secondary Link refers to that part of the UCLL Backhaul Service between the Parent POI Site and the ASNAPOI Handover Point. The ASNAPOI Handover Point means the Access Seeker's side of the OFDF in the ASNAPOI.

⁴ Commerce Commission, *Review of the Standard Terms Determination for the designated service Telecom's unbundled copper local loop network backhaul (telephone exchange to interconnection point)*, 30 April 2009 (**Decision 667**).

⁵ Commerce Commission, *Review of the Standard Terms Determination for the designated service Telecom's unbundled copper local loop network backhaul (telephone exchange to interconnection point)*, 3 December 2009 (**Decision 686**).

⁶ Commerce Commission, *Unbundled Copper Local Loop Backhaul and Unbundled Bitstream Access Backhaul Standard Terms Determinations – Consultation over the market definition and competition assessment*, 30 March 2010 (the **30 March 2010 letter**).

⁷ The Commission received six submissions on the 30 March 2010 letter. Public versions of these submissions are available at <http://www.comcom.govt.nz/competition-reviews-for-uba-backhaul-and-ucll-backhaul-services/>.

⁸ New Zealand Gazette, No. 61, 3 June 2010, page 1787.

- Primary and Secondary Links assessed in the previous section 30R review of UCLL Backhaul competition (Decision 686); and
 - as part of the Commission's letter to interested parties dated 2 June 2010, the Commission will ask parties to provide new information about Primary and Secondary Links as part of the section 30R review."
6. On 2 June 2010 the Commission also wrote to interested parties⁹, noting that no changes to the framework used in the two previous reviews was required as all of the issues raised in submissions on the market definition and competition assessment as a result of the 30 March 2010 consultation letter were sufficiently addressed under that framework. In addition, the Commission noted that the pricing issue raised by Chorus was outside the scope of this Review.¹⁰ The Commission also acknowledged that it may, in the future, be appropriate to carry out a further review of the framework for conducting UCLL Backhaul competition reviews when more information about the outcomes of the Government's ultra fast broadband (UFB) and regional fibre initiative (RBI) projects are known.¹¹
 7. In previous reviews the Commission has supplied parties with a list of links that were to be assessed, and requested information from parties regarding the overlap of their network footprint and the listed links. In this Review, the Commission requested that parties provide specific reasons and supporting evidence as to why Telecom does not face limited, or is unlikely to face lessened, competition in relation to any currently regulated UCLL Backhaul links, or vice versa. A list of those links that had previously been assessed under Decision 686 was attached to the information request. Where parties had previously provided the Commission with information on their network, the Commission provided parties with this information and asked that they update it where necessary. Much of the information provided by fibre-based network providers as part of this Review was consistent with the information provided under the previous reviews.
 8. Shortly after commencing this Review the Commission became aware that a number of links relating to exchanges that are forecast to be unbundled had not been listed in the Appendix of the 2 June 2010 letter which outlined the links assessed by the Commission in the previous review. The Commission was concerned that the focus of parties' submissions might be influenced by this Appendix. In order to avoid this, on 8 July 2010¹² the Commission sought the views of interested parties on the classification of a mix of links including the newly forecast to be unbundled exchanges and additional links that were not forecast to be unbundled.¹³ No information was received regarding these additional links.
 9. Information in response to the 2 June 2010 letter was received from Telecom (Group), Telecom (Chorus), Vodafone, TelstraClear, FX Networks, Vector Communications, Network Tasman, Alpine Energy, CountiesPower, NorthPower and Enable Networks.

⁹ Commerce Commission, *Unbundled Copper Local Loop Backhaul (UCLL Backhaul) and Unbundled Bitstream Access Backhaul (UBA Backhaul) Standard Terms Determinations (STD) – request for information for review of links subject to the UCLL Backhaul and UBA STDs under section 30R of the Telecommunications Act 2001*, 2 June 2010 (the **2 June 2010 letter**).

¹⁰ The 2 June 2010 letter, page 2, para 9.

¹¹ The 2 June 2010 letter, page 2, para 10.

¹² Commerce Commission, *Unbundled Copper Local Loop Backhaul (UCLL Backhaul) and Unbundled Bitstream Access Backhaul (UBA Backhaul) Standard Terms Determinations (STD) – request for information for review of links subject to the UCLL Backhaul and UBA STDs under section 30R of the Telecommunications Act 2001*, 8 July 2010 (the **8 July 2010 letter**).

¹³ The additional links were added in order to protect the confidentiality of the forecast to be unbundled exchanges.

This information has informed the Commission's views in this Decision.¹⁴ All public information provided is available on the Commission's website.¹⁵

10. The Commission also contacted the following organisations, but received no information from them: CityLink, Orcon, Smartlinx3, Velocity Networks, Aurora Energy, Eastland Group, Electra, Electricity Ashburton, PowerNet, Unison and Waipa Networks.

The Commission's Decision

11. In completing this Review, the Commission has applied the conditions (b) for the UCLL Backhaul Service set out in Part 2 of Schedule 1 of the Act. The Commission has followed the methodology applied in the previous review in order to assess the levels of competition on particular links.

12. In summary, the factors applied by the Commission to assess competition on UCLL Backhaul links are as follows:¹⁶

- Telecom does not face limited competition on Primary Links or Secondary Links where there is one other wholesale-only backhaul provider;
- for Primary Links or Secondary Links where there is only Telecom or Telecom and one vertically-integrated competitor, the Commission considers that Telecom faces limited competition;
- where a nearby fibre-based network is within 1km-2 km of a Telecom exchange, the Commission endeavoured to collect actual, or estimated, build costs of connecting to the exchange in order to assess the competitive constraint exerted by that network on Telecom (and other backhaul providers that are directly connected to that exchange);
- where information was not provided/available regarding build costs, the Commission assumes an average build cost of \$150,000 per km;
- the competitive constraint posed by 'near entrant' networks is considered on a local exchange by local exchange basis, based upon information about the proximity, the likely costs, the likely revenues and the intentions of the networks to connect to specific local exchanges, in order to determine if the network is likely to exert a competitive constraint; and
- for those markets found to be markets in which Telecom does not face limited competition, Telecom is not likely to face lessened competition.¹⁷

13. The Commission received confidential information from TelstraClear outlining their involvement in wholesale backhaul markets. The Commission does not consider this information changes its view that TelstraClear, as a vertically integrated operator, is not

¹⁴ The Commission also consulted the National Broadband Map (<http://www.broadbandmap.govt.nz/map>) to inform itself of potential market competitors.

¹⁵ <http://www.comcom.govt.nz/competition-reviews-for-uba-backhaul-and-ucll-backhaul-services/>.

¹⁶ This summary is based on the competition assessment framework in the UCLL Backhaul STD, as modified by Decision 667 and Decision 686.

¹⁷ As discussed in paragraphs 135, 136 and 185 of the UCLL Backhaul STD, the Commission considers that competition in the markets defined is likely to strengthen rather than diminish over time, and as a consequence the Commission considers that Telecom is not likely to face lessened competition on those links where Telecom does not face limited competition.

currently a competitive constraint on Telecom in relation to the UCLL Backhaul market.¹⁸

Primary Links

14. Following the gathering and analysis of data submitted in response to this Review, the Commission's preliminary view is that Telecom does not face limited, and is unlikely to face lessened, competition on the following two UCLL Backhaul Primary Links. As a result, the regulated UCLL Backhaul Service is not available on these links:

Local Exchange	Parent POI Site
Red Beach	Torbay
Te Atatu	Henderson

15. In this Review, 25 Primary Links were assessed for the first time.¹⁹ The Commission received no information that indicated Telecom faced a competitive constraint in the supply of the UCLL Backhaul Service along these links. The Commission's preliminary view is that Telecom faces limited competition on these UCLL Backhaul Service Primary Links and, as a result, the regulated UCLL Backhaul Service is available on these links.
16. The classification of all UCLL Backhaul Service Primary Links, which also reflects the Commission's preliminary views in paragraphs 14 and 15, is shown in Schedule 1.

Secondary Links

17. In this Review, the Commission has applied the Framework above to all UCLL Backhaul Secondary Links.
18. The Commission's preliminary view is that there is no evidence of fibre network development, or other market developments, that justifies a change in competition status for any UCLL Backhaul Service Secondary Links covered by this Review. As a result, the Secondary Links on which the UCLL Backhaul Service must be supplied by Telecom at the request of the Access Seeker remains unchanged.

Additional matters considered in this Review

19. In its letter of 30 March 2010, the Commission asked interested parties to comment on whether the Commission should, in addition to conducting a review of all links annually, undertake competition reviews on a link-by-link basis (either in response to requests from interested parties, or on the Commission's own initiative) of whether Telecom faces limited competition on a particular link, in light of competition developments. All submissions on this issue favoured an approach whereby additional reviews could occur on a link-by-link basis, in addition to the annual review.

¹⁸ See the UCLL Backhaul STD pages 40-41, paras 153-156 for the Commission's conclusions on why TelstraClear did not (and does not) act as a competitive constraint on Telecom in relation to the UCLL Backhaul market.

¹⁹ The 25 Primary Links that were assessed for the first time under this review are listed in Appendix 1 of the 8 July 2010 letter. One Primary Link (Melville – Hamilton) which had already been assessed under the UCLL Backhaul STD, Decision 667 and Decision 686 was inadvertently included in that list.

20. The Commission's preliminary view is that it is appropriate for a review of all UCLL Backhaul links to be conducted annually taking into account competition developments, and for this Review to be supplemented where necessary by competition reviews on a link-by-link basis (either in response to requests from interested parties, or on the Commission's own initiative).

Conclusions of this Review

21. As a result of the Commission's decisions on the issues set out above, the Commission's preliminary conclusions are:
- i) the competitive constraint posed by a 'near entrant' network should be considered on a local exchange by local exchange basis, based upon information about the proximity, the likely costs, the intentions of the network to connect to specific local exchanges, other market concerns and any other relevant evidence provided by interested parties, in order to determine if the network is likely to exert a competitive constraint;
 - ii) while TelstraClear provided confidential information outlining their involvement in wholesale backhaul markets, the Commission does not consider this information changes its view that TelstraClear, as a vertically integrated operator, is not currently a competitive constraint on Telecom in relation to the UCLL Backhaul market;
 - iii) two changes are needed to the competition status of previously assessed UCLL Backhaul Service Primary Links, as set out in paragraph 14 of this draft Review Determination.
 - iv) Telecom faces limited competition on the 25 UCLL Backhaul Service Primary Links assessed for the first time in this draft Review Determination and, as a result, the regulated UCLL Backhaul Service should be available on all 25 of these links.²⁰
 - v) no changes are needed to the competition status of previously assessed UCLL Backhaul Service Secondary Links;
 - vi) Appendix B in Schedule 5 "UCLL Backhaul POI Site Related Information" of the UCLL Backhaul STD is replaced with the new Appendix B attached as Schedule 2 to this draft Review Determination. Schedule 2 specifies the Primary and Secondary Links on which Telecom will be required to supply the UCLL Backhaul Service on, at the request of an Access Seeker; and
 - vii) the Commission intends to complete a review all UCLL Backhaul links annually taking into account competition developments, with the annual review being supplemented by competition reviews on a link-by-link basis (either in response to requests from interested parties, or on the Commission's own initiative).

²⁰ A complete list of the Primary Links assessed under this draft Review Determination and the Commission's conclusions on their status is attached as Schedule 1.

Consultation questions:

22. Submissions are invited on the Commission's preliminary conclusions in paragraph 21 of the draft review decision. In particular, interested parties are requested to identify any backhaul links where they consider the Commission's classification of the link is incorrect and to provide evidence to support that view.

DATED at Wellington this 5 August 2010

Dr Ross Patterson
Telecommunications Commissioner
Commerce Commission

DRAFT

Schedule 1 - List of Primary Links considered under this draft Review Determination, and the Commission's preliminary updated view on competition

Parent POI	Local Exchange	Assessment of competition status²¹
Whangarei	Kamo	limited
Whangarei	Kensington	limited
Torbay	Albany	not limited
Torbay	Browns Bay	not limited
Torbay	Forrest Hill	not limited
Torbay	Red Beach	not limited
Torbay	Greenhithe	limited
Torbay	Hibiscus Coast	limited
Torbay	Matakana	limited
Torbay	Warkworth	limited
Glenfield	Birkdale	not limited
Glenfield	Birkenhead	not limited
Glenfield	Devonport	not limited
Glenfield	Takapuna	not limited
Henderson	Glen Eden	not limited
Henderson	Massey	not limited
Henderson	Te Atatu	not limited
Henderson	Titirangi	not limited
Henderson	Waiatarua	limited
Henderson	Whenuapai	limited
Remuera	Ellerslie	not limited
Remuera	Glendowie	not limited
Remuera	St Heliers	not limited
Remuera	Tamaki	not limited
Airedale Street	Mount Eden	not limited
Airedale Street	Ponsonby	not limited
Auckland Central	Airedale Street	not limited
Auckland Central	Mayoral Drive	not limited
Mt Albert	Avondale	not limited
Mt Albert	Blockhouse Bay	not limited
Mt Albert	Mount Roskill	not limited

²¹ The reference to "limited" means that Telecom faces limited competition in the relevant markets. The reference to "not limited" means that Telecom does not face limited, and is unlikely to face lessened, competition in the relevant markets. The regulated backhaul service is only available on those links where the Commission has found that Telecom faces limited competition. The regulated backhaul service is not available on those links where the Commission has found that Telecom faces not limited competition. These links are shaded in the above table.

Parent POI	Local Exchange	Assessment of competition status²¹
Mt Albert	New Lynn	not limited
Mt Albert	Three Kings	not limited
Howick	Pakuranga	not limited
Howick	Whitford	limited
Papakura	Manurewa	not limited
Papakura	Pukekohe	not limited
Papakura	Tuakau	not limited
Papakura	Waiau Pa	limited
Papakura	Waiuku	limited
Papatoetoe	East Tamaki	not limited
Papatoetoe	Mangere	not limited
Papatoetoe	Manukau City	not limited
Papatoetoe	Onehunga	not limited
Papatoetoe	Otahuhu	not limited
Papatoetoe	Otara	not limited
Hamilton	Claudelands	not limited
Hamilton	Frankton	not limited
Hamilton	Hamilton East	not limited
Hamilton	Melville	not limited
Hamilton	Brymer	limited
Hamilton	Cambridge	limited
Hamilton	Flagstaff	limited
Hamilton	Raglan	limited
Hamilton	Te Awamutu	limited
Hamilton	Te Rapa	limited
Hamilton	Whatawhata	limited
Tauranga	Bethlehem	limited
Tauranga	Maungatapu	limited
Tauranga	Mount Manganui	limited
Tauranga	Otumoetai	limited
Tauranga	Papamoa	limited
Tauranga	Te Puke	limited
Tauranga	Te Ranga	limited
Tauranga	Waihi Beach	limited
Tauranga	Welcome Bay	limited
Tauranga	Whakatane	limited
Napier	Bay View	limited
Napier	Clive	limited
Napier	Dannevirke	limited

Parent POI	Local Exchange	Assessment of competition status²¹
Napier	Flaxmere	limited
Napier	Gisborne	limited
Napier	Hastings	limited
Napier	Haumoana	limited
Napier	Havelock North	limited
Napier	Marewa	limited
Napier	Matawai	limited
Napier	Otamauri	limited
Napier	Taradale	limited
Napier	Waimarama	limited
Napier	Waipukurau	limited
Napier	Wairoa	limited
Palmerston North	Bunnythorpe	limited
Palmerston North	Wanganui	limited
Porirua	Tawa	not limited
Porirua	Waikanae	limited
Naenae	Lower Hutt	not limited
Naenae	Eastbourne	limited
Naenae	Petone	limited
Wellington	Blenheim	not limited
Wellington	Courtenay Place	not limited
Wellington	Hataitai	not limited
Wellington	Island Bay	not limited
Wellington	Kelburn	not limited
Wellington	Wellington South	not limited
Wellington	Johnsonville	limited
Wellington	Khandallah	limited
Nelson	Richmond	not limited
Nelson	Stoke	not limited
Nelson	Upper Moutere	limited
Riccarton	Avonhead	not limited
Riccarton	Memorial Ave	not limited
Riccarton	Canterbury Technology Park	limited
Riccarton	Fendalton	limited
Riccarton	Hillmorton	limited
Riccarton	Lincoln	limited
Riccarton	Rangiora	limited
Riccarton	Woodend	limited
Christchurch	Linwood	not limited

Parent POI	Local Exchange	Assessment of competition status²¹
Christchurch	Papanui	not limited
Christchurch	St Albans	not limited
Christchurch	Ashburton	limited
Christchurch	Beckenham	limited
Christchurch	Burwood	limited
Christchurch	Kaiapoi	limited
Christchurch	Mount Pleasant	limited
Christchurch	New Brighton	limited
Christchurch	Shirley	limited
Christchurch	Sumner	limited
Timaru	Oamaru	limited
Cromwell	Queenstown	limited
Dunedin	Mosgiel	limited
Dunedin	South Dunedin	limited

Schedule 2 – Replacement Appendix B for Schedule 5 “UCLL Backhaul POI Site Related Information” of the UCLL Backhaul STD

Primary Links

Subject to the terms of the UCLL Backhaul Service Description, the table below shows the Primary Links on which Telecom must supply the UCLL Backhaul Service at the request of the Access Seeker:

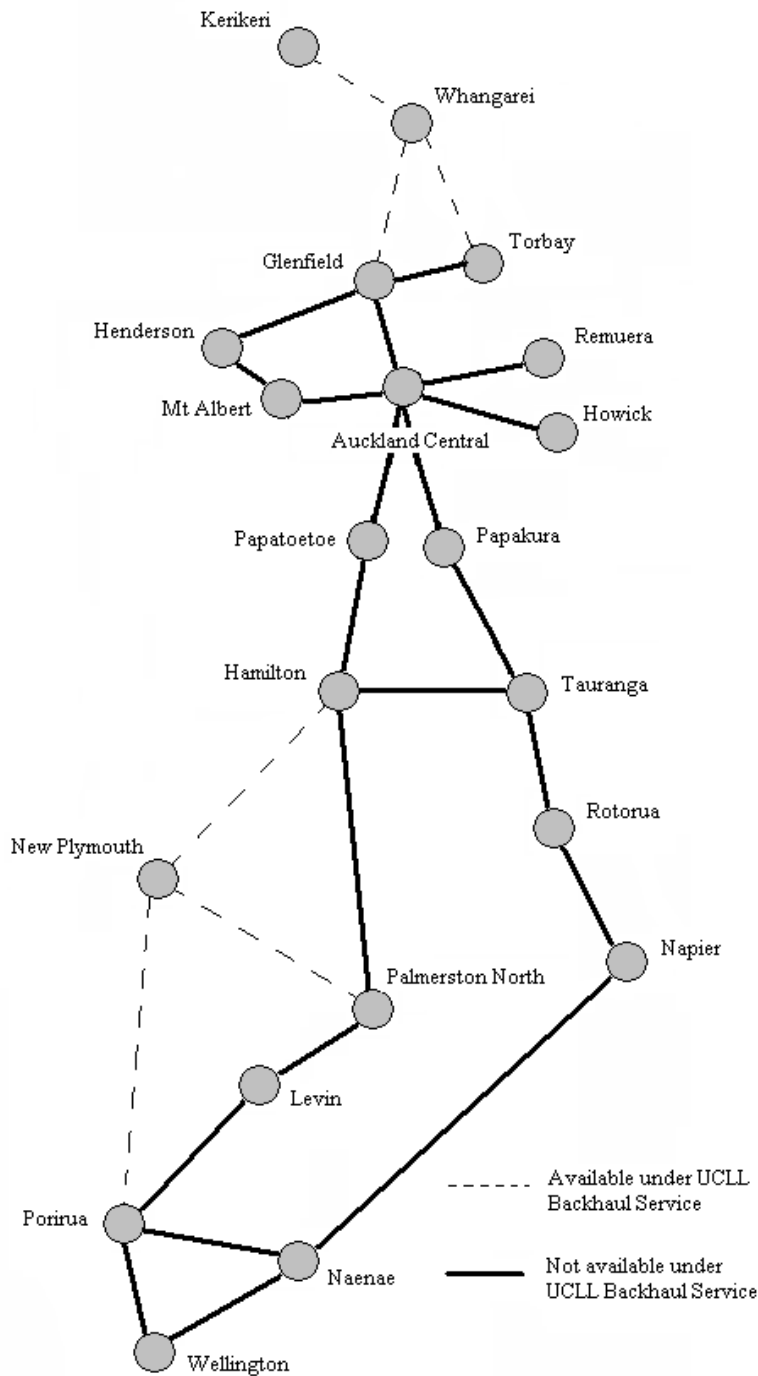
Parent POI	Local Exchange
Whangarei	Kamo
Whangarei	Kensington
Torbay	Greenhithe
Torbay	Hibiscus Coast
Torbay	Matakana
Torbay	Warkworth
Henderson	Waiatarua
Henderson	Whenuapai
Howick	Whitford
Papakura	Waiau Pa
Papakura	Waiuku
Hamilton	Brymer
Hamilton	Cambridge
Hamilton	Flagstaff
Hamilton	Raglan
Hamilton	Te Awamutu
Hamilton	Te Rapa
Hamilton	Whatawhata
Tauranga	Bethlehem
Tauranga	Maungatapu
Tauranga	Mount Manganui
Tauranga	Otumoetai
Tauranga	Papamoa
Tauranga	Te Puke
Tauranga	Te Ranga
Tauranga	Waihi Beach
Tauranga	Welcome Bay
Tauranga	Whakatane
Napier	Bay View
Napier	Clive
Napier	Dannevirke
Napier	Flaxmere
Napier	Gisborne

Parent POI	Local Exchange
Napier	Hastings
Napier	Haumoana
Napier	Havelock North
Napier	Marewa
Napier	Matawai
Napier	Otamauri
Napier	Taradale
Napier	Waimarama
Napier	Waipukurau
Napier	Wairoa
Palmerston North	Bunnythorpe
Palmerston North	Wanganui
Porirua	Waikanae
Naenae	Eastbourne
Naenae	Petone
Wellington	Johnsonville
Wellington	Khandallah
Nelson	Upper Moutere
Riccarton	Canterbury Technology Park
Riccarton	Fendalton
Riccarton	Hillmorton
Riccarton	Lincoln
Riccarton	Rangiora
Riccarton	Woodend
Christchurch	Ashburton
Christchurch	Beckenham
Christchurch	Burwood
Christchurch	Kaiapoi
Christchurch	Mount Pleasant
Christchurch	New Brighton
Christchurch	Shirley
Christchurch	Sumner
Timaru	Oamaru
Cromwell	Queenstown
Dunedin	Mosgiel
Dunedin	South Dunedin

Secondary Links

Subject to the terms of the UCLL Backhaul Service Description, the diagrams below show the Secondary Links where the UCLL Backhaul Service must be supplied by Telecom on the request of the Access Seeker and where Telecom is not required to supply the UCLL Backhaul Service:

North Island:



South Island:

