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Group on Basic Telecommunications

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COMMUNICATION FROM NEW ZEALAND

Draft Final Schedule of Specific Commitments on Basic Telecommunications

The attached communication is circulated at the request of New Zealand to members of the Group on Basic Telecommunications.

Taking into account the convergence of views arrived at during the course of this extended period of negotiations on certain matters related to scheduling, this New Zealand draft final Schedule of Specific Commitments sees the removal of the previous reservations concerning reserve powers, the availability of radio spectrum and the reference to Telecom Corporation of New Zealand as the designated signatory to the Intelsat and Inmarsat Operating Agreements. The Schedule also follows the technology neutral approach envisaged in the Chair's note on the scheduling of basic telecommunications services commitments (document S/GBT/W/2/Rev.1). The footnote concerning the scope of the Reference Paper has been modified to make clearer the distinction between suppliers and users of basic telecommunication services by use of the term "end-users".

This draft final Schedule is conditional. New Zealand reserves the right to supplement or modify it, as provided for under the terms of the Decision on Commitments in Basic Telecommunications, depending, inter alia, on the number of offers by other parties; on the degree to which these offers are equivalent and mutually acceptable, on the extent and significance of any exemptions from the MFN discipline sought by other parties under the Annex on Article II Exemptions and on satisfactory outcomes regarding any additional matters that may arise in this context.

All commitments made in this Schedule are subject to the horizontal commitments contained in New Zealand's GATS Schedule.

NEW ZEALAND - DRAFT FINAL SCHEDULE

Modes of supply:		1) Cross-border supply	2) Consumption abroad	3) Commercial presence	4) Presence of natural persons
Sector or subsector		Limitations on Market Access	Limitations on National Treatment	Additional Commitments	
2. COMMUNICATION SERVICES					
C. <u>Telecommunication services</u>					
a.	Voice telephone services (7521)	(1) None	(1) None	The principles set forth in the attached reference paper are incorporated in this schedule to the extent they are commitments additional to the obligations flowing from Part I and II, Article XXVIII and the Annex on Telecommunications of the General Agreement on Trade in Services in respect of the Article XVI and XVII commitments on telecommunication services contained herein.	
b.	Packet-switched data transmission services (7523**)	(2) None	(2) None		
c.	Circuit-switched data transmission services (7523**)	(3) None	(3) None, other than: The Articles of Association of the Telecom Corporation of New Zealand Limited limit the shareholding by any single overseas entity to 49.9%. At least half of Board directors are required to be New Zealand citizens.		
d.	Telex services (7523**)				
e.	Telegraph services (7522)				
f.	Facsimile services (7521**, 7529**)	(4) Unbound except as indicated in the horizontal section	(4) Unbound except as indicated in the horizontal section		
g.	Private leased circuit services (7522**, 7523**)				

Modes of supply: 1) Cross-border supply 2) Consumption abroad 3) Commercial presence 4) Presence of natural persons				
Sector or subsector	Limitations on Market Access	Limitations on National Treatment	Additional Commitments	
o. Other Paging services (75291) Teleconferencing services (75292) Personal Communications Services (75213*) Cellular services (75213*) Trunked radio system services (7523**, 75213*) Mobile data services (7523**)				

REFERENCE PAPER

Scope

The following are definitions and principles on the regulatory framework for the basic telecommunications services¹.

Definitions

Users mean service consumers and service suppliers.

Essential facilities² mean facilities of a public telecommunications transport network or service that

- (a) are exclusively or predominantly provided by a single or limited number of suppliers; and
- (b) cannot feasibly be economically or technically substituted in order to provide a service.

A major supplier is a supplier which has the ability to materially affect the terms of participation (having regard to price and supply) in the relevant market for basic telecommunications services as a result of:

- (a) control over essential facilities; or
- (b) use of its position in the market.

1. Competitive safeguards

1.1 Prevention of anti-competitive practices in telecommunications

Appropriate measures shall be maintained for the purpose of preventing suppliers who, alone or together, are a major supplier from engaging in or continuing anti-competitive practices.

1.2 Safeguards

The anti-competitive practices referred to above shall include in particular:

- (a) engaging in anti-competitive cross-subsidization;
- (b) using information obtained from competitors with anti-competitive results; and
- (c) not making available to other services suppliers on a timely basis technical information about essential facilities and commercially relevant information which are necessary for them to provide services.

¹This applies only to suppliers of basic telecommunications services and not to end-users of such services.

²The definition of "essential facilities" will be applied only to the extent consistent with New Zealand's competition policy regime, which regulates the activities of "dominant suppliers".

2. Interconnection

2.1 This section applies to linking with suppliers providing public telecommunications transport networks or services in order to allow the users of one supplier to communicate with users of another supplier and to access services provided by another supplier.

2.2 Interconnection to be ensured

Interconnection with a major supplier will be ensured at any technically feasible point in the network. Such interconnection is provided:

- (a) under non-discriminatory terms, conditions (including technical standards and specifications) and rates and of a quality no less favourable than that provided for its own like services or for like services of non-affiliated service suppliers or for its subsidiaries or other affiliates;
- (b) in a timely fashion, on terms, conditions (including technical standards and specifications) and cost-oriented rates that are transparent, reasonable, having regard to economic feasibility, and sufficiently unbundled so that the supplier need not pay for network components or facilities that it does not require for the service to be provided; and
- (c) upon request, at points in addition to the network termination points offered to the majority of users, subject to charges that reflect the cost of construction of necessary additional facilities.

2.3 Public availability of the procedures for interconnection negotiations

The procedures applicable for interconnection to a major supplier will be made publicly available.

2.4 Transparency of interconnection arrangements

It is ensured that a major supplier will make publicly available either its interconnection agreements or a reference interconnection offer.

2.5 Interconnection: dispute settlement

A service supplier requesting interconnection with a major supplier will have recourse, either:

- (a) at any time or
- (b) after a reasonable period of time which has been made publicly known

to an independent domestic body, which may be a regulatory body as referred to in paragraph 5 below, to resolve disputes regarding appropriate terms, conditions and rates for interconnection within a reasonable period of time, to the extent that these have not been established previously.

3. Universal service

Any Member has the right to define the kind of universal service obligation it wishes to maintain. Such obligations will not be regarded as anti-competitive *per se*, provided they are administered in a transparent, non-discriminatory and competitively neutral manner and are not more burdensome than necessary for the kind of universal service defined by the Member.

4. Public availability of licensing criteria

Where a licence is required, the following will be made publicly available:

- (a) all the licensing criteria and the period of time normally required to reach a decision concerning an application for a licence; and
- (b) the terms and conditions of individual licences.

The reasons for the denial of a licence will be made known to the applicant upon request.

5. Independent regulators

The regulatory body is separate from, and not accountable to, any supplier of basic telecommunications services. The decisions of and the procedures used by regulators shall be impartial with respect to all market participants.

6. Allocation and use of scarce resources

Any procedures³ for the allocation and use of scarce resources, including frequencies, numbers and rights of way, will be carried out in an objective, timely, transparent and non-discriminatory manner. The current state of allocated frequency bands will be made publicly available, but detailed identification of frequencies allocated for specific government uses is not required.

³Such procedures may be administered by means of a variety of mechanisms, including laws and regulations, public tendering processes and consultative processes.