

# WORLD TRADE ORGANIZATION

RESTRICTED

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**Negotiating Group on Basic Telecommunications**

Original: English

## COMMUNICATION FROM NEW ZEALAND

### Draft Offer on Basic Telecommunications

#### Revision

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

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This offer is conditional. New Zealand reserves the right to supplement or modify this offer, 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.

NEW ZEALAND - REVISED DRAFT OFFER

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),(2),(3) None, except for:		(1) None					
b.	Packet-switched data transmission services (7523**)	Reserve powers to prevent the misuse of market power by a service supplier in a territory outside New Zealand to the harm of consumers or competition in New Zealand.		(2) None					
c.	Circuit-switched data transmission services (7523**)								
d.	Telex services (7523**)								
e.	Telegraph services (7522)	(3) The number of service suppliers may be limited by the availability of radio spectrum.		(3) None other than: The Articles of Association of the Telecom Corporation of New Zealand					
f.	Facsimile services (7521**, 7529**)	(3) Telecom Corporation of New Zealand Limited is designated as the New Zealand signatory to the Intelsat and Inmarsat Operating Agreements		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.					
g.	Private leased circuit services (7522**, 7523**)								
o.	Other								
	Paging services (75291)	(4) Unbound except as indicated in the horizontal section		(4) Unbound except as indicated in the horizontal section					
	Teleconferencing services (75292)								
	Personal Communications Services (75213*)								
	Cellular services (75213*)								

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
Trunked radio system services (7523**, 75213*) Mobile data services (7523**) Satellite services International switching and other international gateway activities			

## REFERENCE PAPER

### Scope

The following are definitions and principles on the regulatory framework for the basic telecommunications services<sup>1</sup>.

### Definitions

Users mean service consumers and service suppliers.

Essential facilities<sup>2</sup> 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.

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<sup>1</sup>This applies only to suppliers of basic telecommunications services and not to users of such services.

<sup>2</sup>The 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 procedures<sup>3</sup> 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.

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