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01 May 2009

**Vector Communications' submission on Telecom's proposed variation of its Separation Undertakings**

Dear Brian,

1. Vector Communications welcomes the opportunity to reply to the Minister for Communications and Information Technology's (the Minister) request for submissions on Telecom's proposed variation of its Operational Separation Undertakings. Our interest in this consultation is as competitor to Telecom in the provision of managed fibre-based backhaul services in the Auckland region.
2. It is our understanding that the proposed variation in Telecom's Operational Separation Undertakings (the "proposed variation") more generally relates to Telecom's ability to facilitate more efficient delivery of services to its wholesale customers. Of particular interest to Vector Communications is Telecom's request to delay its equivalence of inputs ("EOI") deadlines to consume UBA, and backhaul and data services, by 6 months and 12 months, respectively. Given that Vector Communications provides similar backhaul services that form the basis of some of our customers' telecommunication services, we would want to be sure that both our customers and ourselves are not being discriminated against by these extensions.

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3. The Minister has specifically requested views on whether the proposed variation meets the purposes set out in part 2A of the Telecommunications Act 2001 (the "Act"), which are:

"The purposes of this Part are—

- (a) to promote competition in telecommunications markets for the long-term benefit of end-users of telecommunications services in New Zealand; and
- (b) to require transparency, non-discrimination, and equivalence of supply in relation to certain telecommunications services; and
- (c) to facilitate efficient investment in telecommunications infrastructure and services."

4. We have provided our opinion on whether the proposed variation meets each of the three purpose statements, below.

5. Regarding purpose (a), we remain unsure of the degree to which the proposed variations will "...promote competition in telecommunications markets for the long-term benefit of end-users..." but we suspect that they should at least not discourage competition in the long-term. We are of the view that any allowable slippage in Telecom meeting the separation undertakings is a benefit to them (i.e. \$15m in capital efficiency savings and any other additional ongoing operational efficiencies). If these efficiency savings are passed on to wholesale customers then it should result in a net benefit to end-users and comply with the purposes. However, if efficiency benefits are not passed on then this may give Telecom a competitive advantage and could limit competition in the future. Vector Communications does not have any current reason to suspect that the proposed variations will materially impact competition so can not argue against the proposed variation not meeting purpose (a). However, we would be disappointed if further slippage in the separation undertakings was to occur that potentially gave Telecom further advantages.

6. We are interested in purpose (b) particularly as to whether the proposed variations will *discriminate* against Vector Communications, or our customers, now or in the future. From an operational point of view, we are comfortable that Telecom Wholesale's delay of its operational consumption of UBA, and Backhaul and data services, will not materially discriminate. More importantly, Telecom has indicated that financial consumption of UCLL Backhaul services commenced in December 2008<sup>1</sup>. Therefore, from a financial point of view, Telecom Wholesale should not receive any financially advantageous price-terms from Chorus from delaying operational consumption. However, we would like assurances from Telecom Wholesale

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<sup>1</sup> Page 2, Telecom proposal presented to Ministry of Economic Development, variation of Telecom Separation Undertakings dated 25 March 2008, proposal dated 31 March 2009.


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that this is the case. On the basis of such assurances, Vector Communications would be comfortable that the proposed variations meet purpose (b).

7. Vector Communications' comfort is also predicated on the more broad assumption that Telecom Wholesale's consumption of the UCLL Backhaul service is subject to the same conditions and restrictions that are imposed on competitors. As an example, if Telecom Wholesale consumes UCLL Backhaul as an input to its own Point-to-Point (P2P) Backhaul Service (which allows its customers to aggregate both their UCLL and Telecom Wholesale access services over the same backhaul connection), Vector Communications would argue that competition is not being promoted. This is based on Vector Communications being restricted from integrating any Telecom Wholesale access service with any UCLL Backhaul service it purchases from Chorus, with the intention of offering a competing service to P2P Backhaul Service. Vector Communications is concerned, therefore, about potential competitive discrimination arising from any non-equivalent application of conditions or restrictions relating to its consumption of UCLL Backhaul services that may prevail. We would be more generally reassured if Telecom confirmed that Telecom Wholesale's consumption of UCLL Backhaul services is subject to the same conditions and restrictions imposed on other Service Providers' consumption of these services.
8. From the information supplied by Telecom, it also seems likely that the proposed variation will support efficient investment in Telecommunications infrastructure and services (circa \$15m in capital efficiency savings). Specifically in relation to the particular variations requested by Telecom, Vector Communications is comfortable that Telecom's proposal adequately meets purpose (c).
9. Notwithstanding the specific concerns raised and assurances sought, per the above points, Vector Communications is comfortable that the proposed variations meet the purposes set out in Part 2A of the Act.
10. We are happy to discuss our submission in more detail if helpful. If you have any queries please contact Aaron Webb in the first instance, at [aaron.webb@vector.co.nz](mailto:aaron.webb@vector.co.nz) or on 09-978-8288, or myself at [maxine.elliott@vector.co.nz](mailto:maxine.elliott@vector.co.nz) or on 09-978-8224.

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Kind regards,

A handwritten signature in black ink that reads "M. R. Elliott". The signature is written in a cursive style with a large, stylized 'E' at the end.

**Maxine Elliott**

General Manager

Vector Communications