



# Telecommunications (Fixed Public Data Network) Order 2004

Silvia Cartwright, Governor-General

## Order in Council

At Wellington this 2nd day of August 2004

Present:

Her Excellency the Governor-General in Council

Pursuant to section 66 of the Telecommunications Act 2001, Her Excellency the Governor-General, acting on the advice and with the consent of the Executive Council and on the recommendation of the Minister of Communications made in accordance with section 19 of that Act (after accepting, in accordance with section 68 of that Act, the Commerce Commission's recommendation made in accordance with sections 19 and 68 of that Act), makes the following order.

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### Order

#### 1 Title

This order is the Telecommunications (Fixed Public Data Network) Order 2004.

**2 Commencement**

This order comes into force on 2 September 2004.

**3 Schedule 1 amended**

Subpart 1 of Part 2 of Schedule 1 of the Telecommunications Act 2001 is amended by adding the items set out in the Schedule.

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**Schedule  
Amendment to Schedule 1 of Telecommunications  
Act 2001**

**Access to, and interconnection with, Telecom's fixed PDN**

*Description of service:*

An asymmetric digital subscriber line enabled service (and its associated functions, including the associated functions of Telecom's operational support systems) that enables access to, and interconnection with, that part of Telecom's fixed PDN that connects an end-user's building (or, in the case of commercial buildings, the building distribution frames) to Telecom's first asynchronous transfer mode (ATM) data switch or equivalent facility other than a digital subscriber line access multiplexer (DSLAM)

*Conditions:*

That either—

- (a) Telecom faces limited, or is likely to face lessened, competition in a market for the service; or
- (b) Telecom does not face limited, or is not likely to face lessened, competition in a market for the service, and the Commission has decided to require that service to be wholesaled in that market

*Access provider:*

Telecom

*Access seeker:*

A service provider who seeks access to the service

*Access principles:*

The standard access principles set out in clause 5

*Limits on access principles:*

The limits set out in clause 6 and the following additional limits:

- (a) the service requires a maximum upstream throughput rate of 128 kbps for data traffic sent from the end-user; and
- (b) the service requires a downstream throughput rate for data traffic sent to the end-user that must—
  - (i) not be less than 32 kbps; and
  - (ii) have an average of not less than 256 kbps; and

- (c) the service is not required to support any function that relies on real time network capability; and
- (d) Telecom is only required to provide access to the trunk side of Telecom's first ATM data switch or equivalent facility (for which purpose a DSLAM is not an equivalent facility)
- Initial pricing principle:* Either—
- (a) retail price (as imputed by the Commission having regard to any comparable service) less a discount benchmarked against discounts in comparable countries that apply retail price minus avoided costs saved pricing in respect of the service, in a case where Telecom faces limited, or is likely to face lessened, competition in a market for that service; or
- (b) retail price (as imputed by the Commission having regard to any comparable service) less a discount benchmarked against discounts in comparable countries that apply retail price minus actual costs saved pricing in respect of the service, in a case where Telecom does not face limited, or lessened, competition for that service
- Final pricing principle:* Either—
- (a) retail price (as imputed by the Commission having regard to any comparable service) minus a discount comprising avoided costs saved pricing, in a case where Telecom faces limited, or is likely to face lessened, competition in a market for the service; or
- (b) retail price (as imputed by the Commission having regard to any comparable service) minus a discount comprising actual costs saved, in a case where Telecom does not face limited, or lessened, competition for the service
- Requirement referred to in section 45 for final pricing principle:* Nil
- Additional matters that must be considered regarding application of section 18:* Nil

### Telecom's fixed PDN backhaul

- Description of service:* A service (and its associated functions, including the associated functions of Telecom's operational support systems) that provides transmission capacity in Telecom's fixed PDN from the trunk side of Telecom's first asynchronous transfer mode data switch or equivalent facility, other than a digital subscriber line access multiplexer, connected with the end-user's building (or, in the case of commercial buildings, the building distribution frames) to the access seeker's nearest available point of interconnection
- Conditions:* Both of the following:
- (a) one of the following:

- (i) an application for a determination by the access seeker of the service is pending in respect of access to, and interconnection with, Telecom's fixed PDN; or
  - (ii) there must be a determination that has not expired in respect of access to, and interconnection with, Telecom's fixed PDN by the access seeker of the service; or
  - (iii) the access seeker of the service and Telecom have an agreement relating to access to, and interconnection with, Telecom's fixed PDN:
- (b) either—
- (i) Telecom faces limited, or is likely to face lessened, competition in a market for Telecom's fixed PDN backhaul; or
  - (ii) Telecom does not face limited, or is not likely to face lessened, competition in a market for Telecom's fixed PDN backhaul, and the Commission has decided to require that service to be wholesaled in that market

<i>Access provider:</i>	Telecom
<i>Access seeker:</i>	Any person who seeks access to the service
<i>Access principles:</i>	The standard access principles set out in clause 5
<i>Limits on access principles:</i>	The limits set out in clause 6
<i>Initial pricing principle:</i>	Benchmarking against prices for similar services in comparable countries that result from the application to networks that are similar to Telecom's fixed PDN of a forward-looking cost-based pricing method
<i>Final pricing principle:</i>	TSLRIC
<i>Requirement referred to in section 45 for final pricing principle:</i>	Nil
<i>Additional matters that must be considered regarding application of section 18:</i>	Nil

Diane Morcom,  
Clerk of the Executive Council.

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### Explanatory note

*This note is not part of the order, but is intended to indicate its general effect.*

This order, which comes into force on 2 September 2004, inserts 2 new designated access services in subpart 1 of Part 2 of Schedule 1 of the Telecommunications Act 2001.

The effect of this amendment is that access to unbundled elements of, and interconnection with, Telecom Corporation of New Zealand Limited's fixed public data network service (in the form of access to an internet grade xDSL bitstream service), and a complementary backhaul transmission service also provided by Telecom, are regulated by the Telecommunications Act 2001.

In accordance with that Act, the amendment is made on the recommendation of the Minister of Communications after accepting the recommendation of the Commerce Commission in its *Telecommunications Act 2001—Section 64 Review and Schedule 3 Investigation into Unbundling the Local Loop Network and the Fixed Public Data Network—Final Report* dated 22 December 2003 and its subsequent letter to the Minister dated 24 June 2004.

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This order is administered in the Ministry of Economic Development.

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