

**VODAFONE NEW ZEALAND LIMITED
SUBMISSION TO THE COMMERCE
COMMISSION**



**Submission on the draft Report on Numbering
Management in New Zealand dated 28 August 2008.**

19 September 2008

Introduction

1. Vodafone welcomes the opportunity to comment on the Commerce Commission's (**Commission's**) Draft Report on Numbering Management in New Zealand ("**the Numbering Report**")
2. Vodafone is fully supportive of the proposals developed by the joint TCF/NAD Working Party for the overhaul of the number management regime in New Zealand and will work closely with our industry colleagues to develop a new regime. That regime will inevitably lead to a much greater role for the Commission in number management.
3. Having said that, Vodafone has a number of issues with the Numbering Report and wishes to highlight these and to correct certain errors of fact contained in the Numbering Report.
4. Vodafone is concerned that the Numbering Report fails to adequately take account of the unique way in which the New Zealand number management regime has developed and the circumstances that led to that development. While New Zealand is unique in that numbering has traditionally been industry managed, to suggest that that factor alone is indicative of a departure from world best practice is unjustified. In other jurisdictions with a stronger regulatory tradition, number management was vested in the regulatory authority at the time the government owned public telephony monopoly provider was privatised. This did not happen in New Zealand and a different path has been followed.
5. The Numbering Report identifies ten key elements for number management. Vodafone has no issue with these *per se* but has considerable issue with the Commission's assessment of how those elements are delivered under the present New Zealand regime.
6. Section 8 of the Numbering Report presents the Commission's conclusions on whether each of the elements meets best practice under the current New Zealand regime.

Numbering is a key National Resource

7. New Zealand regulators, for a variety of reasons, chose not to place

administration of numbering in the hands of a regulator but initially left it in the hands of Telecom. The Numbering Administration Deed (“**NAD**” – **the body formed under the Deed being referred to as the NAD and the document itself being referred to the Deed**) was a response to perceived competition and market power issues and consequently has had a promotion of competition focus rather than a pure key national resource focus.

8. Having said that, it is not correct to suggest that the NAD has not had protection of numbering as a national resource as a key objective. Indeed, elements of the NAD governance documents implicitly recognise this. In particular, General Principle 1 and Numbering Principle 2 have been consistently interpreted by the NAD Management Committee and Numbering Sub-committee as requiring decision making that expressly seeks to protect numbering as a national resource.
9. In addition, considerable effort has gone into seeking to close the loophole that allowed Skype access to New Zealand geographic numbers and to ensure that the numbering resource remains available for the long term benefit of New Zealand end-users. This issue arose because the focus of the Deed and the NAD has been to ensure non-discriminatory access to numbering resources as a means of promoting competition with the New Zealand telecommunications market. A party meeting the eligibility criteria is entitled to an allocation of numbers and in this case once the numbers were allocated there has been no way to reclaim them. This is not a failure to recognise that numbers are a key national resource but rather a conflict between the non-discriminatory access to numbers that the NAD fosters competitive market entry and protection of a natural resource.

Numbering Plan must remain relevant in light of changing market conditions

10. The Numbering Report suggests that the current numbering regime is deficient in that it does not have specific policy or rules for VoIP services. This view fails to take account of the fact that there exists a vibrant VoIP market in New Zealand where participants have been able to access numbers in accordance with the existing number allocation rules. The Deed and Rules Sub-committee recently addressed the issue of whether more specific rules needed to be developed for VoIP type services but came to the conclusion that the non-prescriptive nature of the existing

Geographic Number Allocation Rules allowed for greater flexibility for the introduction of new services than a more prescriptive approach.

11. The Numbering Report suggests that end users are potentially left confused by the lack of VoIP rules. This is disputed. NAD General Principle 3 recognises the importance of numbering information to end users while the personal numbering, non-geographic and nationwide numbering categories all provide alternatives to the geographic numbering category for services that have nomadic characteristics. To include specific rules around VoIP is to move from the principle of technology neutrality that is implicit in the NAD Principles and Rules.

Access to emergency services

12. The TCF is currently finalising, in consultation with officials, a Code for Emergency Service Calling. This is unrelated to numbering and does not need to form part of the number management regime.

Public consultation

13. While the deliberations of the NAD management Committee are not generally open to the public, those elements of discussion that are to be treated as confidential are identified and the minutes, minus that portion, are available upon request. The NAD website provides contact details for the Number Administrator should anyone wish to have access to the minutes of the meetings. To date there have been no known requests to view the minutes. It is fair to say that number administration does not appear to excite significant public interest and anyone having an interest in numbering is generally a member of the NAD and able to take an equal part in the deliberations.

Reporting requirements

14. The Numbering Report states that “numbers are a scarce resource”. In the context of the New Zealand environment that is not correct. While numbers are a valuable national resource, the small size of the New Zealand market means that there is relatively little scarcity compared with much larger markets. The total volume of numbers available in any market is essentially the same, governed by the laws of mathematics. In a small market where there is relatively low demand for numbers, they are by and large not a scarce resource. This is the case in New Zealand.

15. The Numbering Sub-committee of the NAD constantly reviews the Number Plan to assess whether there are potential shortages and the Sub-committee has made provision for number range expansion in geographic and non-geographic codes, the most utilised number ranges, should that be required in the future. The relatively low level of utilisation means that any forecasting by carriers of future number requirements is largely meaningless. To impose frequent forecasting obligations on number users will have the effect of increasing compliance costs and thereby raising costs to consumers without any readily identifiable off-setting gain.
16. The Number Allocation Rules contain adequate protections to ensure that numbers are used efficiently and that allocations under the NAD have not lead to number hoarding. Hoarding issues that have arisen are in relation to pre-NAD allocations that were grandfathered when the NAD was created. Reporting alone will not address this issue.

Withdrawal of unused numbers

17. The NAD does not *per se* have the ability to withdraw unused numbers. However, the NAD Number Allocation Rules allow for numbers that have been allocated as reserved to be allocated to another party if they have not moved from Reserved to Allocated status within the reservation period. The reservation period is 6 months for special service codes and 3 years for geographic numbers.
18. With the exception of non-geographic codes, there is no current or foreseeable scarcity that dictates that a mandatory withdrawal mechanism is required for the management of numbers to be effective. Past practice indicates that voluntary surrender of numbers and inter-party swaps have been effective means of managing this issue.
19. The pre-NAD allocations remain an issue and are the subject of on-going debate within the NAD. In this regard, Telecom have undertaken to return the 025 code block and TelstraClear have indicated a willingness to make the un-used portion of the 029 code block available. These outcomes have been achieved by industry consultation rather than external regulation. Reclaiming numbers from parties that cease to be NAD members is set out in the Number Allocation Rules and the NAD has been largely successful in reclaiming numbers allocated pre-NAD to

entities that have ceased to operate.

Timeframe for activation of numbers

20. The Commission's Numbering Report is incorrect in its assertion that there is no timeframe for number activation. The Number Allocation Rules provide that if numbers that have Reserved status have not moved to Allocated status within defined timeframes, then those numbers are subject to reallocation to another carrier. The NAD Number Allocation Rules go further by restricting further allocations until certain usage thresholds have been achieved. As previously stated, there are no apparent number hoarding issues with NAD allocations.

Transparency

21. Number management is an esoteric technical subject that appears to generate little interest in the public at large. While the NAD may not appear to be completely transparent to the public at large, all parties with an interest in numbering are members of the NAD and can participate fully in all decision making processes.

Market based allocation methods

22. NAD Numbering Principle 1 requires that number allocation be "non-discriminatory". Market based allocation methods are incompatible with that principle. Given that the primary focus of the NAD at its inception was, and continues to be, to ensure non-discriminatory access to numbers, market allocation methods have not been pursued. A move to market based allocations is likely to lead to increased costs for consumers. In addition, large carriers are more likely to be able to take advantage of such opportunities to the detriment of smaller carriers and new entrants. It is hard to see how the absence of such a mechanism from the New Zealand number management regime is a departure from international best practice.

Enforcement

23. The Numbering Rules make provision for enforcement. As far as Vodafone is aware, there has only ever been one allegation of breach

(that lodged by TelstraClear against Telecom and Vodafone over the allocation of network short codes). This was resolved by negotiation between the parties and the compromise rule change adopted by the NAD Management Committee. This is evidence of the industry's ability to self-regulate numbering without the need for intervention.

24. The issue around the acquisition of numbers by Skype has proved rather more problematic in that the lack of an external regulatory mechanism has made it impossible so far to reclaim the numbers. The NAD has however, taken stringent measures to seek to prevent such an occurrence happening again.
25. Enforcement powers that effectively limit access to the numbering system or result in customer use of numbers being impacted in some way are not favoured as they are likely to be to the detriment of the customer rather than the offending carrier.

Conclusion

26. While the New Zealand number management regime may not be perfect, it is not fundamentally flawed. To suggest that because the regime does not precisely mirror the practice adopted in other jurisdictions it does not meet international best practice is one thing. To suggest that therefore the New Zealand regime must be changed to replicate those regimes is quite another. This is to ignore the factors that led to the creation of the NAD and the factors that have informed its development over time.
27. The blind implementation of processes used in other jurisdictions will not necessarily lead to improvements that are for the benefit of end-users, the guiding principle of the Telecommunications Act and of the NAD.
28. Vodafone reaffirms its willingness to participate in the reform of the numbering management regime in New Zealand