

19 September 2008

Dr Ross Patterson
Telecommunications Commissioner
Commerce Commission
PO Box 2351
Wellington

Dear Dr Patterson

Draft Report on Numbering Management in New Zealand

The Number Administration Deed (NAD) Management Committee has reviewed the Commerce Commission (Commission) Draft Report on Numbering Management in New Zealand (Report) and submits the following comments.

Section 8 of the Report states that it identifies a number of areas where number administration in New Zealand departs from international best practice. However, the information in the Report does not support these conclusions. The Report presents a review of 'common practice' in other jurisdictions but does not analyse whether they are 'best practice'.

My comments are included as follows, with reference to the same numbering conclusions in the Report:

1. Numbering is a Key National Resource

The NAD clearly recognises that numbering is a key national resource. This 'fundamental element' is not synonymous with ownership. While it is true that ownership of numbers has been parked, it does not necessarily follow that the recognition of numbering as a key national resource is missing. When read in conjunction with the provisions of clause 3.7 of the NAD, the General Principles and Numbering Principles emphasise the need for this resource to be centrally managed in the interests of customers.

2. Numbering Plan must remain relevant in light of changing market conditions

As the Report acknowledges, the needs of VoIP service providers are being tested in many countries including New Zealand. The NAD recognises the possibility of new service requirements for numbers, and has changed the provisions of the Deed in the last two years to enable this evolution to occur.

The NAD has reviewed whether a specific number range should be set aside for VoIP services but members have indicated that as the use of numbers is 'technology non-specific', a specific VoIP range is not currently required. The Telecommunications Carriers' Forum (TCF) is presently discussing the particular VoIP needs with potential service providers thereby obviating the need for the NAD to do so.

Acknowledging that in a fast moving telecommunications environment a need might arise for new number range, the NAD has proactively identified a range that could be used for a new service or to extend an existing service. The 040 code range has been set aside for this purpose and is recorded as a spare service category in the code register.

3. Access to emergency services

While the comments in this Report may be correct, the reality is that the NAD does have the structure to react to any needs in this sector. A very recent example is one involving the NZ Police and their needs. The NAD has responded rapidly and positively to finding a solution to their request. At the request of the Police, the details of this issue have been kept confidential.

4. Public consultation

Decisions on the numbering plan are not submitted to public consultation. However, it is incorrect to conclude that the NAD is not subjected to public scrutiny at all. The NAD maintains a website for interested members of the public and numbering information is readily available. In addition, the larger users, mostly in the business community, have a permanent member of the Management Committee of the NAD in the form of TUANZ, and are very vocal in expressing their views and their needs.

5. Reporting Requirements

The Report does not deal with this topic adequately. In our assessment of contributions to funding the activities of the NAD we use information provided by the industry members as to the active numbers being utilised. This information has so far provided comfort that there is no medium term shortage of number resource in the New Zealand market.

The current position is that there is no evidence of any resource shortfall and therefore the NAD has not needed to take any steps to manage that possibility.

The NAD does frequently review the resource and does have strategies that can be implemented to manage any shortfall that is reasonably foreseeable.

In addition, parties must provide information when requesting new code blocks on their demand and current and expected number utilisation. This information is reviewed before a decision is made on whether to allocate the code blocks.

6. Withdrawal of unused numbers

To date the industry has been fortunate enough not to require a mandated management of the return of unused numbers. In spite of this, Telecom has recently returned the 025 number range, and we have had discussions with TelstraClear for them to return one of the number ranges they substantively have as well.

In the event that a country of this size might perceive that there is a resource issue, the members of the NAD have been willing to discuss the return of unused numbers and to agree to further control and management of these when needed.

Historically, there were some allocations made to parties that pre-dated the NAD. These are most likely to become the target of these discussions. It is very likely that discussions with the relevant companies will deliver the preferred outcomes without the need for a regulator to intervene.

The membership of the NAD includes those parties that were allocated numbers pre-NAD and that continue to operate. The result of this is all parties that hold numbers are bound by the NAD and Rules. The Rules do allow parties to continue their existing use of their pre-NAD allocated code blocks but any change in their use requires the party to comply with the Rules (see rule 1.1.4). The NAD has successfully reclaimed all code blocks allocated to parties pre-NAD and that have ceased to operate.

NAD is currently focused on reclaiming the remaining five code blocks that are allocated to companies that were NAD parties but have since ceased to exist.

TeamTalk is the only currently operating company that holds numbers but is not also a NAD Party. As a former NAD Party, TeamTalk's use of these code blocks must comply with the NAD and the Rules.

7. Timeframe for activation of numbers.

As set out above, this issue is not a particular issue for a very small market like New Zealand. In other jurisdictions where the population numbers are significantly larger, the regulation and management of the resource need to be a lot more than is appropriate in this market.

8. Transparency

While it may be true that the 'numbering administration mechanism under the NAD largely still operates within its circle of members', this is not necessarily wrong. It does so because they are the ones who are interested in it. The public who have an interest do have access to the information, should they want it.

9. Market based allocation methods

The idea that customers, either directly or indirectly will have to pay for numbers is fundamentally flawed, and there is no remit for that proposal within the report. It is currently common practice in many regimes that numbers are allocated on a first come first served basis. New Zealand is not on its own in this regard, by any means.

I draw your attention to page 27 of your Report which states:

*"In most countries, all number types are assigned via an administrative assignment procedure, where typically the first applicant to apply for the particular number is assigned that number range. Increasingly legislative frameworks allow for electronic assignment based on the **first come first serve principle**". [note: bolding included for emphasis]*

10. Enforcement

The proposition that withdrawal of numbering services is a remedy that is necessary for managing this resource is not necessarily appropriate. In fact, when analysed, the real penalty in such an event would fall on the customers of the NAD party, as well as the party. Given that customers are entitled to be protected by the management process, this would be of dubious merit.

The NAD is bound by its General Principles and Numbering Principles. General Principle One states that the administration of numbering is to be for the long-term benefit of end-users in New Zealand. The withdrawal of numbering services would go against this Principle due to the detrimental impact on end-users.

Please contact me if you require any further information regarding this submission.

Yours Sincerely

A handwritten signature in blue ink, appearing to read 'R. Rowley', with a stylized flourish at the end.

Richard Rowley
Independent Chair
NAD Management Committee