



8 June 2009

Tom Forster
Manager, Telecommunications Branch
Commerce Commission
Level 6, Vector Building
44 The Terrace
P.O. Box 2351
Wellington 6140

Dear Tom

Re: Application for Determination for designated access service

Thank you for your letter of 27 May requesting comment on 2degrees' Application. You specifically requested comment on whether 2degrees' Application fulfils the requirements of sections 22, 22A and 23 of the Act.

Section	Relevant test	2degrees submission
22	Whether the party has "made reasonable attempts to negotiate the terms of supply of the service with the person who would otherwise be a party to the determination.	Points 58 – 63 of our Application address this requirement. 2degrees has tried for over 2-years to negotiate the Requested Service with Telecom. During this period, Telecom has never provided an offer to 2degrees.
22A	Precludes parties making an application where an agreement exists for the supply of the service for part or all of the specified period of time.	Points 51 – 56 of our Application address this requirement. There is no existing agreement between the parties for the Requested Service.
23	An application made under section 20 must: (a) be in writing; and (b) be given in the prescribed manner, if any; and (c) contain the prescribed information, if any; and (d) be accompanied by the prescribed fee, if any.	2degrees believes that our Application meets all of these criteria.

I would like to take this opportunity to address two subjects that Telecom has raised via media channels.



Telecom's agreement with Vodafone

Telecom has stated (via media channels) that they have offered an agreement to 2degrees that is the same as Telecom's agreement with Vodafone. We absolutely refute this. It quite simply is not true. With regard to the Requested Services, Telecom has never made any commercial offers to 2degrees. Telecom has provided one discussion paper – nothing more.

In any event, the deal that Telecom has agreed with Vodafone is largely irrelevant. What 2degrees is requesting is access on the same terms that the Commission Determined Vodafone is entitled to.

2degrees' commercial drivers are not the same as Vodafone's. If Vodafone agreed to something less than they were entitled to on Homezone, it may have been for a myriad of other commercial reasons to which 2degrees is not privy e.g. they may have horse-traded for something else or the parties may have agreed to 'leave the bar set high' to deter other potential new entrants.

2degrees has requested that Telecom provide Mobile Termination to 2degrees on the same terms as Telecom provides Mobile Termination to Vodafone (we understand that the pricing is much better). Telecom has refused to provide equivalence to 2degrees for Mobile Termination. It's a bit rich that Telecom now demands that 2degrees accept equivalence for Local Termination just because on this occasion it happens to suit Telecom.

The Local Service Telecommunications Service Obligation

Telecom has also suggested (via media channels) that the Commission's original 2006 Determination contradicts the terms of the Telecommunications Services Obligation.

2degrees submits that the pertinent obligation on Telecom is:

the option of charge free local calling must be offered as part of ordinary local residential telephone service

2degrees' request that Telecom not charge its customers a higher price for local voice calls to 2degrees local numbers, relative to the price charged for other local voice calls made by its customers is aligned with this obligation.

In 2006, both Telecom and Vodafone submitted extensively on TSO related issues. And the Commission dedicated approximately a third of its Final Determination to addressing the TSO. This issue has already been exhaustively litigated and the Commission has already Determined that:

104. *The Commission considers that forward-looking cost-based pricing for the interconnection service would be inefficient and detrimental to competition in the local calling market. Such an outcome would not best give effect to the purpose set out in section 18.*



111. *Under the interconnection service, the requirement to operate a fixed PSTN only applies to Telecom as the access provider. The Act does not impose any restrictions on the type of network technology operated by the access seeker, nor does it link the choice for the initial pricing principle to the access seeker's network technology.*
112. *The Commission accordingly rejects Telecom's argument that it is unable to select a pure bill and keep method.*
120. *The Commission considers that as Telecom and Vodafone will both originate and terminate significant numbers of local voice calls, bill and keep will provide each party with a valuable form of compensation, for the costs which they incur in terminating the other carrier's calls.*
130. *Pure bill and keep is compatible with Telecom's obligation under the TSO to provide residential customers with price-capped local calling. The adoption of bill and keep removes the potential for Telecom to have individual customers who incur high net interconnection costs for local calls to Vodafone local numbers.*
135. *The Commission is satisfied that the pure bill and keep method would best give effect to the purpose set out in section 18 of the Act. The alternative of a hybrid bill and keep approach shares several limitations with the forward-looking cost-based pricing method and thus would not give best effect to that purpose. The pure bill and keep method is also compatible with the effect of the TSO obligation to provide price-capped local calling and is more efficient in terms of the incentives to terminate one-way traffic streams.*
162. *Allowing price discrimination to address any increase in the TSO loss would reduce Vodafone's ability to compete in the local access and calling markets. This would soften the effects that such competition would have on Telecom, while denying consumers the benefits of additional competition. These outcomes are contrary to the purposes of the Act which is to promote competition for the long-term benefit of end-users.*
170. *The introduction by Telecom of a retail premium specifically for local voice calls made to Vodafone local numbers, compared to local voice calls to other networks, would be detrimental to competition in the local access market, and thus would deny end-users some of the benefits from increased competition. Given that such calls will not involve interconnection payments, and will not result in Telecom incurring costs beyond those caused by other local voice calls, any such discriminatory charge cannot be justified.*
171. *While the impact of the proposed Vodafone service on the TSO loss is likely to be relatively minimal, the TSO regime is sufficiently robust to absorb changes in market dynamics which impact both the size of the TSO loss and any shifts in market share.*



172. *Accordingly, the Commission requires that Telecom does not impose any charge on its retail customers that would discriminate between local voice calls made by those customers to Vodafone local numbers and local voice calls made to Telecom's and any other carriers' local numbers. This requirement applies to calling which is part of a retail bundle as well as to calls which are charged for on a usage basis.*

Yours sincerely

Bill McCabe
Chief Commercial Officer
Two Degrees Mobile Limited