



**Section 20: Application for Determination for
Designated Access Service**

13 January 2006

Public Version

I Summary

1. Vodafone wishes to offer local telecommunications services to customers over its existing mobile telecommunications network infrastructure. Vodafone intends to compete in the local services market by enabling Vodafone local customers to make and receive local calls from their mobile handset using a local number, when in a pre-defined geographical zone around their home or business.
2. Our local service is dependent upon Telecom providing interconnection with its fixed PSTN for calls to and from our local numbers. Customers need to be able to make calls to subscribers on Telecom's fixed PSTN from their Vodafone local number and to receive calls from subscribers on Telecom's fixed PSTN to their Vodafone local number.
3. The main remaining issue between Vodafone and Telecom is the meaning of "local call". Telecom argues that local calls must be, inter alia, calls between fixed networks. Vodafone is of the view that local calls can be made by, or to, customers on a mobile network.
4. After making every reasonable effort, Vodafone has been unable to reach agreement with Telecom on local service interconnection. Therefore, Vodafone seeks a determination by the Commission that Telecom be required to provide interconnection with its fixed PSTN for calls to and from Vodafone's local numbers.

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III The Person Giving Notice

5. The person giving this notice is Tom Chignell, General Manager Commercial Development, on behalf of Vodafone New Zealand Limited (**Vodafone**). Contact details are as follows:

Address: Level 1, 20 Viaduct Harbour Avenue, Auckland.
Phone: (09) 355 3200
Facsimile: (09) 355 3201
Email: tom.chignell@vodafone.com

6. Vodafone requests that all correspondence and notices in respect of this Application be copied to David Kreider, General Counsel at Vodafone:

Address: Level 1, 20 Viaduct Harbour Avenue, Auckland.
Phone: (09) 355 3200
Facsimile: (09) 355 3201
Email: david.kreider@vodafone.com

IV Parties to Determination

7. The parties to the determination are:
 - Vodafone; and
 - Telecom New Zealand Limited, Telecom Networks House, 68-86 Jervois Quay, Wellington (**Telecom**).
8. Vodafone and Telecom are both telecommunications network operators and service providers.
9. Vodafone is a mobile telecommunications company and operates a 2G GSM, a 2.5G GPRS and a 3G W-CDMA mobile network. As of 30 September 2005, Vodafone had 1.956 million customers in New Zealand.
10. Telecom operates New Zealand's major fixed PSTN. It also operates AMPS and CDMA/EVDO mobile networks. As at 30 September 2005, Telecom had 1.673 million mobile customers and provided services to around 1.8 million fixed lines.

V Service Description

11. Vodafone seeks a determination requiring the supply to Vodafone of a designated access service under Part 2 of the Telecommunications Act 2001 (the **Act**), being the service described in sub-part 1 of Part 2 of Schedule 1 of the Act as “Interconnection with Telecom’s fixed PSTN”. The service description for this service under the Act is “origination and termination (and their associated functions) of voice and data calls (including dial-up internet calls) on Telecom’s fixed PSTN”.
12. The service sought by Vodafone only applies to voice calls to and from Vodafone’s local numbers. Vodafone’s local numbers are currently those seven digit numbers allocated (or to be allocated) by Vodafone to its local customers. These numbers are listed in section 4 of Telecom’s Call Charging and Network Numbering Document or have been allocated to Vodafone in accordance with the NAD.¹
13. The local numbers currently allocated to Vodafone (having a code status of Assigned or Reserved under the Number Register of the Numbering Rules) are 03 421 XXXX, 03 970 XXXX, 03 971 XXXX, 03 972 XXXX, 04 821 XXXX, 04 932 XXXX, 06 930 XXXX, 07 930 XXXX, 09 945 XXXX, 09 946 XXXX, 09 947 XXXX, 09 948 XXXX and 09 949 XXXX.
14. The service sought by Vodafone does not apply to calls to and from Vodafone’s mobile numbers. Telecom and Vodafone agree on the terms that apply to calls to and from Vodafone’s mobile numbers.
15. The service sought by Vodafone in this Application shall be referred to as the **Requested Service**.

Vodafone’s local service requires local interconnection with Telecom’s fixed PSTN

16. For Vodafone to enter the local services market, Vodafone requires interconnection with Telecom’s fixed PSTN to enable both:
 - Vodafone local customers to call Telecom local customers on Telecom’s fixed PSTN; and
 - Vodafone local customers to be called by Telecom local customers on Telecom’s fixed PSTN.
17. We wish to ensure that our interconnection charges to Telecom for calls to our local customers are the same as Telecom’s regulated interconnection charges to Vodafone for calls to Telecom’s local customers. We are proposing reciprocal pure bill and keep pricing for both termination of calls from Vodafone’s local numbers to Telecom’s local numbers, and for calls from Telecom’s local numbers to Vodafone’s local numbers.

¹ The first 4 digits of the national toll code are of the form area code (3, 4, 6, 7 or 9) followed directly by 9XX or (in the case of area code 3) 421 or (in the case of area code 4) 821.

Vodafone local customers need to be able to call Telecom local customers

18. Where Vodafone local customers originate a call from their local number to a customer on Telecom's fixed PSTN, that call needs to terminate on Telecom's fixed PSTN.
19. Termination on Telecom's fixed PSTN is a regulated service under the Act and a service that Telecom has been unwilling to provide to Vodafone for calls originating from Vodafone local numbers.
20. Vodafone will allow end-users of Vodafone's local service to elect to have their local number as the A-number for outgoing calls where they are physically located within a defined geographical zone around their home or business when they are making the call. Vodafone therefore requires that the determination for the Requested Service include terms for the termination of calls from Vodafone's local numbers to Telecom's fixed PSTN.
21. For calls originated by the Vodafone local customer from a location other than within that defined geographic zone, the A-number will always be their mobile number. For these calls Vodafone will pay the interconnection charges for termination on Telecom's fixed PSTN specified in Vodafone's existing interconnection agreement with Telecom.

Vodafone local customers need to be able to be called by Telecom local customers

22. Where Telecom local customers originate a call on Telecom's fixed PSTN to a Vodafone local number, that call needs to be handed over to Vodafone at a technically feasible point of interconnection so that Vodafone can complete the call. A hand-over obligation is a standard feature of local service interconnection between fixed networks. Vodafone therefore seeks a determination that includes such an obligation on Telecom.
23. The Commission recognised in the Draft Determination on the TelstraClear interconnection application the fundamental nature of hand-over as an aspect of interconnection between networks.²
24. The parties to that application subsequently agreed to include a provision in their terms which effectively provided for this hand-over obligation, so the Commission was not required to include this term in the final determination.
25. A hand-over obligation is also consistent with industry practice. For example, in Telecom's "Standard Reference Offer",³ the services that each carrier must make available and provide to the other include:

² The Commission noted in the Draft Determination on the TelstraClear application "The handover of all originating traffic at a point of interconnection is fundamental to the efficient interconnection of two fixed networks. Random handover would be incompatible with any-to-any connectivity and would be contrary to the purpose of promotion of competition in telecommunications markets for the long-term benefit of end-users." Draft Determination on the TelstraClear Application for Determination for Designated Access Services dated 26 August 2002, para 131

“handing over or, where a free circuit is not available in the other carrier’s Network, offering to hand over to the other carrier any Intra-LICA Call or Toll Bypass Call”.⁴

26. Vodafone can not see any detriment to requiring Telecom to comply with such a hand-over obligation in relation to interconnection with a mobile network, as compared with interconnection with a fixed network.
27. If Telecom were free to refuse to handover calls to interconnected parties it could entirely frustrate the regulatory system as regards fixed interconnection. It could agree to provide termination to an access seeker on regulated terms, but decide not to hand-over calls for termination on the access seeker’s network. This would mean that the access seeker’s customers could call Telecom customers, but calls in the other direction would not be completed.
28. If the Commission determines not to impose a hand-over obligation on Telecom, Vodafone submits that the Commission can also frame the ability for Vodafone to receive calls to its local customers as an origination service, regulated as part of interconnection with Telecom’s fixed PSTN under the Act. This alternative is outlined in further detail in Annex 1.

Reciprocity

29. While Vodafone has the ability to seek regulated interconnection with Telecom’s fixed PSTN, the Act does not provide Telecom the ability to similarly seek regulated interconnection with Vodafone’s network to complete both sides of the local service interconnection. There is no requirement on an access seeker for interconnection with Telecom’s fixed PSTN to operate a fixed PSTN, but Telecom only has the reciprocal right to seek regulated interconnection with other fixed PSTN networks.
30. Because Vodafone neither has, nor intends to operate, a fixed PSTN, Vodafone suggests that interconnection between Vodafone’s mobile PSTN and Telecom’s fixed PSTN can be made analogous to interconnection between two fixed networks by including a condition in the determination requiring reciprocal terms for the termination of local calls on Vodafone’s PSTN. The condition would require that:
 - Vodafone offer Telecom terms that are reciprocal to the terms on which the Requested Service is to be provided, in respect of calls to Vodafone’s local numbers; and
 - Telecom acquires a termination service from Vodafone on such reciprocal terms.
31. Vodafone believes that such reciprocal terms should be subject to the exception that Vodafone is not required to operate a fixed PSTN and that the Vodafone local customer is not required to be in a particular fixed point, when making or receiving a local call. A degree of mobility, within the confines of the

³ http://www.telecom.co.nz/binaries/interconnection_agreement_template_july04.pdf

⁴ Clause 2.1 b of Schedule 3

defined geographical zone around a customer's home or business (the "homezone") should be sufficient.⁵

32. Any demand by Telecom for reciprocity in respect of operating a fixed PSTN or being in a particular fixed point would undermine Vodafone's freedom of technology choice and be a serious and fundamental departure from the clear technology neutrality objective of the Act. With interconnection on reciprocal terms with Vodafone, Telecom would be in the same position as for interconnection with a fixed PSTN.
33. Vodafone is prepared to enter into equivalent interconnection arrangements with Telecom (although such service would obviously not be regulated under the Act), to enable it to launch a local service on its mobile network.
34. Should the Commission determine not to impose a condition on the parties that would deliver reciprocity, the Commission has an option available to it that avoids the need for reciprocal terms. This option, along with an analysis of the serious asymmetric cost implications, is set out in Annex 1.

⁵ The definition of the homezone is covered in more detail in paras 39 to 43.

VI Justification for Application

35. In this section, we briefly outline our local service initiatives and explain why Vodafone acquiring the Requested Service will promote competition for the long-term benefit of end-users.
- We explain how Vodafone's local service is expected to work. The heart of our local service initiative lies in allocating local numbers to mobile handsets. This will enable our local customers to be called on either their local or mobile number and answer the phone on their mobile handset. Local service will also allow local customers in a defined geographic area around their home or business premises to make calls from their mobile handset using a local number as the A-number.
 - We outline the options available for launching this service without using local numbers and explain why none of these options are as positive for end-users as access to local service interconnection with Telecom with standard local numbers.
 - We argue that Telecom provides services to itself that are the equivalent of the Requested Service and therefore the Commission should apply the Act's standard access principles relating to non-discrimination.

How Vodafone's local service is expected to work

Local service is about Vodafone competing in the local access and calling market

36. Vodafone wishes to offer local services to customers using its existing mobile telecommunications network infrastructure.
37. In this Application, the term "Vodafone local customers" is used to refer to those Vodafone customers who have purchased Vodafone's local service, in addition to its mobile service.
38. Vodafone's local service will allow customers to have both a local number and a mobile number. Vodafone will assign local numbers that it has been allocated under Number Administration Deed (NAD) processes to the mobile handsets of its local customers on the basis of where their home or business premises are located.
39. We will define a homezone for each customer around the customer's home or business premises. Vodafone local customers will be able to make and receive local calls on their mobile handset when in this pre-defined homezone. More specifically:
- When in zone (i.e., at home or work), calls to a Vodafone customer's local number will be terminated on the customer's mobile handset.

- When in zone, customers will be able to choose to originate calls from their handset using either the local or the mobile number as the A-number.⁶
 - When out of zone, a call to the local number will, at the election of the customer, be diverted either to voicemail or, for an additional tariff, will be forwarded to the customer's mobile handset. Business customers will also be able to assign the equivalent of an extension number to their mobile handset for use in intra-company and intra-zone/office dialling.
 - If a customer does not want the divert service, when he is out of zone, a call to his local number will go to voicemail. As usual, the customer will receive a text message giving the A-number for the call that he missed or a text message informing him that the caller left a voicemail.
40. Vodafone's local service for residential and business customers will include a range of voice and data products and services. These services would directly compete with fixed local access, calling and data products of Telecom and other fixed operators.⁷
41. At any one time, customers will either be 'in zone' or 'out of zone'. We intend that, subject to handset support, our local customers will know whether they are 'in zone' by the presence of an icon on their phone display.
42. The best analogy with local service is a DECT phone, where a customer can make or receive a local call on a portable handset. Telecom refers on their website to a variety of DECT phones with an operating range of up to 300m outdoors⁸. The added benefit of Vodafone's local service is that a customer can use the handset as a mobile phone as well.
43. We expect to be quite restrictive about the size of the zones. We are exploring our technology options to do this. At their largest, we can constrain the zone to the coverage area of the cellsite (or sites) that provide coverage to the customer's home or business premises. This is a key element in the establishment of a geographic structure for our local service.
44. Vodafone's local service will utilise Vodafone's existing mobile telecommunications network infrastructure, without any need for investment in significant new technology. The operation is relatively straightforward. Both the local number and the mobile number will be affiliated within the Vodafone network with the customer's International Mobile Subscriber Identity (IMSI) number. The IMSI number of each Vodafone customer is stored on the customer's Subscriber Identity Module (SIM).

⁶ The only exception to this is in regard to emergency calls, which will only be able to be made with the mobile number as the A number. Also, we have proposed an audit right in the Proposed Agreement (see Annex 2) that would enable an auditor to confirm to Telecom that calls we present to Telecom as local calls were actually local calls (i.e., originated from a Vodafone local number when the caller was physically within their Home Zone).

⁷ Because calls from Vodafone local customers to Vodafone mobile numbers would be on-net calls, they could also have a particularly disruptive impact on retail competition for fixed-to-mobile calls.

⁸ <http://www.telecom.co.nz/content/0,3900,201485-201482,00.html>

Vodafone would use local numbers allocated to it under the NAD

45. Vodafone has been allocated local numbers by the Number Administrator pursuant to the Numbering Administration Deed and the Number Allocation Rules.⁹ These numbers are recorded in the Number Register of the Number Administration Deed.
46. Vodafone's local numbers fall into the category of Geographic Service Codes under the Number Allocation Rules. Rule 7 of the Number Allocation Rules details the rules that apply to the allocation and use of Geographic Service Codes. In particular, rule 7.1.1 provides:

“Geographic Service Code Blocks are allocated for the provision of services with a geographic structure, which can originate or terminate calls over Public Switched Telecommunications Networks.”
47. Vodafone's allocation of local numbers to its local service customers involves a service that has the required “geographic structure”. Local numbers would be allocated to customers based on the local calling area in which the local customer's home or business is located. Similarly, the use of local numbers has a geographic structure imposed through customers being required to be ‘in zone’ to utilise the Vodafone local service.
48. We expect Telecom to raise arguments about our use of local numbers either as part of this Application (which we believe would be irrelevant) or through NAD processes. We believe that our use of local numbers meets the NAD requirements:
 - Vodafone has a Public Switched Telecommunications Network as defined in the Number Allocation Rules.
 - Vodafone's proposed local service will have the required “geographic structure”, since local numbers will be allocated by Vodafone based on the local calling area in which the local customer's home or business is located and the use of Vodafone's local service will be limited to the geographic structure imposed by the relevant geographic zones.
49. Vodafone's local service does not create issues of caller confusion about the charges the caller will incur when calling a local number. The dialled number will continue to be relied on to inform the caller of the applicable charge. This is because, with Vodafone's local service, it is the receiving party who is prepared to pay for the benefit of mobility, while the calling party only pays the cost of a local call. Similarly, a call to a New Zealand mobile number will remain identifiable for callers by the prefix 02X.
50. In fact, we intend that this service will be identical for the calling party to calling a local customer on a fixed PSTN.
51. Local number portability will significantly increase the customer appeal of our local service products.

⁹ Number Allocation Rules, version 1.5, 10 September 2004.

52. The Commission has recently issued its Final Determination in respect of local number portability. The Commission has confirmed that local numbers may be ported across network types, including mobile, subject to certain constraints. Vodafone strongly supports a technology neutral approach to the definition of local number portability.

There is no feasible long-term alternative to the Requested Service

53. There is no feasible long-term alternative to the Requested Service for Vodafone to offer our local service. Customers need to be able to make calls to subscribers on Telecom's fixed PSTN from their local number and receive calls from subscribers on Telecom's fixed PSTN to their local number.
54. As we explain in this Application, we have attempted to negotiate an agreement for the Requested Service, but we have been unable to reach a commercial agreement with Telecom.
55. There are other options available for us to launch our local service:
- Use an alternative number range – We understand that Telecom will be more likely to agree to interconnection if we use non-geographic or personal numbers for our service rather than local numbers. There would be substantial set-up costs to explain the new number range to consumers that would inevitably affect our ability to compete.
 - Use a workaround – We have tested a business local service offering with some business customers using a workaround involving routing calls through Vodafone 0800 numbers. As explained below, we have rejected this option for wider launch. We can offer Integrated TalkZone as a way to work around the lack of local number interconnection with Telecom. However, the set-up costs are large enough that it only makes sense for a subset of larger customers. Most importantly, under this approach, customers need to retain their fixed line access, so local service could not be a substitute for Telecom's fixed local access.
 - Build some fixed network infrastructure – Telecom's objections to interconnection have focused on an argument that local numbers are reserved only for fixed connections. We could therefore build some fixed network infrastructure to overcome Telecom's concerns. This would be an entirely unjustifiable waste of money.
56. In our view, none of these options generates the benefits for end-users that we foresee from the use of Vodafone local numbers on Vodafone's mobile network. This is primarily because these options increase the costs of launching the service without generating any compensating benefit and therefore would act as artificial constraints on competition.
57. In this section, we outline each of the available options and explain their advantages and disadvantages.

Existing services

58. Before we turn to options for launching the service, it is worthwhile to consider existing services that allow customers to access geographic numbers on a mobile phone.
59. Telecom offers a call diversion service that allows its local customers to terminate local (or toll) calls onto a mobile device. Both Telecom's 'Call Diversion' and 'Customerlink' products allow Telecom customers, either on a temporary or permanent basis, to redirect incoming landline calls to a mobile device.
 - 'Call Diversion' allows a customer to "divert your calls to wherever you choose – another phone, a pager, mobile phone or message service" and "ensure calls are answered after hours or at weekends – divert your calls to a mobile phone".¹⁰
 - 'Customerlink' "automatically directs calls from one landline number to another number of your choice". This includes the ability for customers to divert calls to a mobile phone for a maximum period of 12 months in certain circumstances.¹¹
60. Vodafone offers Integrated TalkZone at present to larger business customers. This enables customers to answer calls to local numbers on their mobile phones.
61. Vodafone installs a connection between the customer's PBX and the Vodafone network and all incoming calls to local numbers that are to be answered on Vodafone mobile phones are routed through that connection.
62. Typically, there is a monthly fee charged per mobile connection and no additional charge for the cost of diverting calls from local numbers to Vodafone mobiles or for calls between mobiles in the same business. However, the customer must still pay a monthly access fee to the fixed network to retain their connection with the fixed network for this Integrated TalkZone product. And customers are required to maintain a PBX in order to work around the inability to answer calls to local numbers directly on Vodafone mobile phones.

Using an alternative number range would be higher cost to implement and less attractive to customers

63. Local numbers are the most widely recognised telephone numbers to New Zealand consumers. In particular, local numbers convey important information to the calling party about the cost of the call. Telecom's TSO Deed¹² requires Telecom to offer a local free-calling option to Telecom's residential subscribers.

¹⁰ <http://www.telecom.co.nz/content/0,3900,100489-203791,00.html>

¹¹ <http://www.telecom.co.nz/content/0,3900,24317-202109,00.html>

¹² Telecommunications Service Obligations (TSO) Deed for Local Residential Service entered into between the Crown and Telecom Corporation of New Zealand Limited and Telecom New Zealand Limited in December 2001 (**TSO Deed**)

Telecom's business subscribers know that calls to a local number will cost less than, say, a fixed-to-mobile call.¹³

64. Without local numbers, the impact of a local service offering would be much less significant. Vodafone's local service would then appeal primarily to business customers who have a significant business need for mobility and less concern about the costs of being called by their customers. The speed of take-up is also likely to be dramatically increased if a business can keep its local numbers when switching to Vodafone's local service.
65. Alternative number ranges include 0800 or 0508 free-phone service codes, 50XY Nation-wide Number Service Codes (for the provision of services without a geographic structure) and 070XYZ Personal Number Service Codes (where the numbers do not designate call answering points and are independent of network termination or location).
66. Alternative number ranges would not be an adequate substitute for a local number. Of key concern, apart from 0800 and possibly 0508, they are not widely known and as such do not provide the same tariff information to the calling party. Education of consumers about these alternative number ranges would introduce additional costs and likely slow down the take-up of local service considerably.
67. We can see no benefit to end users from requiring Vodafone local customers to use a number from an alternative number range.

The 0800 workaround we have devised is higher cost, offers limited functionality, and seriously limits the chances for expansion

68. Vodafone has been offering a reduced version of its local service to trial its business local service offering with New Zealand businesses.
69. On this trial, a customer's Telecom local number was put on permanent call forward to a Vodafone free-phone number, and Vodafone then routed the call from that free-phone number to the customer's mobile handset.
70. Vodafone has been prepared to invest in the significant cost involved in using such a divert mechanism in order to test the product.
71. However, this product is very much an interim solution for Vodafone and one that cannot represent a viable model on which to compete with Telecom in the local services market.
72. The additional costs incurred with this solution, that would not be incurred if Vodafone's full local service proposition were offered, are:
 - The cost to the customer of maintaining its Telecom local access line (Telecom will allow a customer to have a number without an access line, provided that number is forwarded to another Telecom number, but not to a number on another carrier's network);

¹³ It is not clear that Telecom will maintain its existing local call pricing for calls to Vodafone local numbers. We discuss this issue in more detail at section X.3 below.

- The fixed monthly costs of forwarding the Telecom local number to the Vodafone 0800 number; and
 - Reverse interconnect charge of 1.13 cpm paid to Telecom.
73. Use of the 0800 workaround results in reduced functionality for the customer, particularly the inability to deliver a true A-party number. The calling party number that the customer sees is the 0800 number.
 74. In addition, there is a limited pool of toll free numbers available relative to local numbers. There are approximately 55 million local numbers available under the current numbering plan, but fewer than 1 million 0800 numbers.
 75. As explained above, we also offer Integrated TalkZone to larger business customers. This enables customers to answer calls to local numbers on their mobile phones via programming the customers' PABX to divert calls to their local numbers through a direct connection that we install to the Vodafone network.
 76. There are additional costs in this approach relative to what would be incurred if we had a local service interconnection agreement with Telecom. There are costs in installing and maintaining the PBX and the network connection, plus the ongoing costs of local access from the fixed operator for every number that is diverted.
 77. These additional costs mean that Integrated Talk Zone can only be economically offered to customers of a reasonably significant size.
 78. As with alternative number ranges, we can see no reason to require Vodafone's local service to be offered using 0800 numbers when fixed operators' local services use geographic numbers.

Building fixed network infrastructure would be an unjustified waste of money

79. Vodafone could add additional fixed network infrastructure to its mobile telecommunications network. This would be very costly and time consuming, as well as being entirely unnecessary.

There is no long-term alternative to the Requested Service

80. Failure to reach agreement with Telecom on the terms for provision of the Requested Service is the single biggest obstacle preventing Vodafone launching its new local service.
81. In our view, there is no long-term alternative to the Requested Service. For Vodafone to compete in the local service market, it must be the provider of the

access line to the customer being called - i.e., Vodafone, rather than Telecom, must be the carrier supplying the access line.¹⁴

Telecom provides equivalent services to itself

82. Telecom provides services to itself that are the equivalent of or very similar to the Requested Service. The Act's standard access principles relating to non-discrimination suggest that Telecom should be required to provide the Requested Service to Vodafone.
83. In making a determination in respect of the Requested Service, the Commission must have regard to and apply each of the three non-price principles specified in clause 5 of Schedule 1 of the Act.¹⁵ The third of those principles is:
- Provision of services on terms and conditions (excluding price) that are consistent with those terms and conditions on which the access provider provides the service to itself.
84. The Commission in its Guidelines Paper¹⁶ notes in respect of the standard access principles:
- “The standard access principles in Schedule 1 require the Commission to consider whether or not the provision of a service is consistent with the terms and conditions on which the access provider provides the service to itself. Generally, competition and efficiency will be promoted through minimising discrimination in the terms and conditions of service. For this reason, the Commission is required to have regard to ensuring that the non-price terms and conditions of access are no different to external businesses as they are to internal businesses.
- ... To the extent there are concerns with operational practicability or security, access seekers should not face a higher standard than the access provider's own business.”
85. By insisting that local calls must be between fixed networks, Telecom is requiring terms for the provision of the Requested Service that are inconsistent with the terms on which it provides the service to itself. As mentioned above, Telecom has at least two products which allow local calls to be terminated on a network other than a fixed network.
86. Telecom has also signalled that it wishes to further increase the ability for customers to personalise calls to households by increasing the ability for customers to divert calls to a mobile phone or another landline.¹⁷

¹⁴ As the Commission correctly identified in a previous decision with reference to local access service provision to small/medium businesses (SMEs), “[A]n end-user who makes a local telephone call in New Zealand purchases that call service from the carrier supplying the access line.” Commerce Commission, Decision 497 at paragraph 314.

¹⁵ Section 29(a)

¹⁶ Commerce Commission, A Guide to the Role of the Commerce Commission in Making Access Determinations Under the Telecommunications Act, 28 May 2002, p 21

87. We also understand that Telecom plans to offer an integrated fixed/mobile phone to customers. From the few details that are available publicly at this stage, it seems that this could be a direct competitor for some of Vodafone's proposed local service products.¹⁸
88. Clearly Telecom does not require of itself that local calls can only be received on a fixed network, or even within a home LICA, in providing itself with the service of handing over a call to be terminated. Telecom customers presently enjoy the ability to, either on a temporary or permanent basis, terminate calls on any number, be that landline or mobile. Telecom cannot be said to have any fixed network requirement of itself in terminating local calls.
89. On that basis, there is no good reason to require Vodafone to ensure that local calls are only provided on a fixed network.

¹⁷ See 'Name not number – Telecom' article in the Dominion Post, 6 December 2004. As one senior Telecom executive commented in the same article "It's about creating a more personalised environment and 'nomadic-based mobility' that goes with that".

¹⁸ "Telecom eyes Pioneer phone", NZ Herald, 7 October 2005

VII Requirements for Application

90. In this section, we confirm that this Application meets the statutory criteria in section 22 of the Act.

Existing agreement between the parties

91. Section 22(a) of the Act 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. There is no current agreement between the parties to the determination for the supply of the Requested Service.
92. There is agreement between the parties for the supply of interconnection with Telecom's fixed PSTN in relation to Vodafone's mobile numbers and calls to and from Vodafone's mobile numbers. However, that Network Interconnection Service Supply Agreement¹⁹ makes it clear that there is no agreement in effect between the parties for the supply of interconnection with Telecom's fixed PSTN in relation to Vodafone local numbers and calls to or from Vodafone's local numbers:²⁰
- "5. The parties expect that the local service agreement negotiations referred to in clause 3.1 of the Heads of Agreement will result in the execution of a Network Interconnection Service Contract for local service. However, until any such local service agreement is executed, the parties agree that:
 - 5.1 Vodafone Local Numbers, and any calls to or from Vodafone Local Numbers, are not covered by this Agreement or any Network Interconnection Service Contract; and
 - 5.2 any references in this Agreement or any Network Interconnection Service Contract to Vodafone Local Numbers, or any calls to or from Vodafone Local Numbers, will be of no effect."²¹

Any agreement not to have any term determined by the Commission

93. Section 22(b) of the Act precludes parties making an application where the parties have agreed not to have any term for the supply of the service determined by the Commission. The parties in dispute have never agreed not to have any term for the supply of the Requested Service determined by the Commission.

Reasonable attempts at negotiation

94. Section 22(c) of the Act precludes parties making an application where the applicant has not made reasonable attempts to negotiate the terms of supply of

¹⁹ Network Interconnection Service Supply Agreement dated 13 May 2004 between Vodafone and Telecom

²⁰ Clause 5

²¹ Clause 3.1 referred to contained a provision contemplating the separation of negotiation of a local service agreement from the negotiation of the other interconnection agreements that were entered into in May 2004.

the service with the person who would otherwise be a party to the determination. In this section, we outline Vodafone's reasonable attempts to negotiate the terms of supply by Telecom of the service of interconnection with Telecom's fixed PSTN without reference to the Commission.

95. We submit that the Commission, in reviewing the negotiating record, ought to consider the following factors:
- The parties had entered into previous interconnection agreements that would have allowed Vodafone to offer its local service. These prior dealings represent a substantial basis of common understanding as to appropriate interconnection terms going forward (see section IX for further details);
 - During negotiations the parties exchanged specific proposals as to price and non-price terms; and
 - There was a focus of discussion on the most significant issues.
96. The Commission has previously acknowledged that industry practice and the dynamics of negotiation between a new entrant and an incumbent are also factors to be taken into account in assessing the threshold as to what constitutes reasonable attempts.²²

Description and evidence of steps taken by Vodafone to negotiate an agreement and resolve the dispute

97. It is now over two years since Vodafone and Telecom first commenced negotiations to reach agreement on the Requested Service. The delay in reaching a commercial outcome is despite Vodafone's repeated best efforts to reach a commercial outcome over that period.

98. [**CONFIDENTIAL INFORMATION**
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99. [**CONFIDENTIAL INFORMATION**

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100. [**CONFIDENTIAL INFORMATION**

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²² See Decision 494, paragraph 76

101. During commercial negotiations, Telecom and Vodafone have exchanged 8 draft agreements. Vodafone provided Telecom with its detailed proposals for the terms of supply for local interconnection on no less than 5 occasions: [**CONFIDENTIAL INFORMATION**]. Vodafone believes that all of these proposals to Telecom were reasonable commercial proposals.
102. The parties have also met on at least 10 occasions to discuss an agreement covering the Requested Service and exchanged substantive correspondence (including both emails and letters) on at least 30 occasions.
103. Vodafone has not referred to the specific content of negotiations or correspondence and other documents exchanged between Vodafone and Telecom in the course of these negotiations as the parties agreed that at least some of these negotiations and documents were to be treated as “commercial in confidence” or “without prejudice”. For similar reasons, we have not annexed any of the correspondence and other documents exchanged between Telecom and Vodafone in the course of these negotiations. To the extent that Vodafone can do so under its confidentiality arrangements with Telecom, Vodafone will provide any further verification that the Commission requires that the section 22 requirements have been met. The declaration of Mr Chignell at the end of this Application is qualified to the extent that we have not, in this Application, referred to the specific content of negotiations or correspondence and other documents exchanged between Vodafone and Telecom in the course of these negotiations.
104. [**CONFIDENTIAL INFORMATION**
-]. When these proposals over the last two years are taken together as a whole, there can be no question that Vodafone has made reasonable attempts to negotiate with Telecom.
105. Vodafone does not consider the Commission can properly view each proposal from Vodafone as a new negotiation, as we expect Telecom to urge. They are each attempts to resolve Telecom’s objections. Telecom was not going to offer proposals – it was going to be up to Vodafone to find a solution. If each proposal from an access seeker is to be regarded by the Commission as a new negotiation for the purposes of section 22(c), then access seekers will be reluctant to offer fresh proposals to resolve Telecom’s objections.
106. Telecom has been given sufficient time and opportunity to respond to Vodafone’s proposals. The threshold in section 22(c) was designed to ensure that parties made a genuine effort to find a commercial solution and not to provide Telecom with an opportunity to manage entry by competitors.
107. Vodafone considers that Telecom’s rejection of Vodafone’s proposals and insistence on conditions that deny Vodafone the ability to offer a local service using local numbers over its mobile telecommunications network amounts to actual or constructive refusal to negotiate.

Schedule 1 conditions

108. Section 22(d) of the Act precludes parties making an application where the applicable conditions in relation to the service (if any) have not been met. There are no applicable conditions defined in the Schedules to the Act relating to the designated service of interconnection with Telecom's fixed PSTN.

Approved Code

109. There is no approved code that provides for any matters sought in the determination.

VIII Description of the Dispute that Gave Rise to the Application

The main issue in dispute

110. [**CONFIDENTIAL INFORMATION**

]. With the exception of this issue, Vodafone believes that the parties are largely in agreement on the other terms. Although this seems a discrete dispute, it determines the critical issue of whether Vodafone can offer a local service using local numbers over its mobile telecommunications network.

111. Vodafone believes that a local service can be provided over a mobile telecommunications network. [**CONFIDENTIAL INFORMATION**

]. Because Telecom disagrees with Vodafone on this issue, Telecom refuses to enter into an interconnection agreement that would entitle Vodafone to use its mobile telecommunications network to enable end users to make calls from local numbers and receive calls to local numbers on the same basis as if it were interconnecting with a fixed network.

Interconnection implications generally

112. Vodafone submits that Telecom's refusal to provide the Requested Service, where there are no interconnection implications arising out of Vodafone's local service, is unreasonable and suggests an anti-competitive purpose. Vodafone's local service will allow limited mobility within a homezone and, for customers who take the divert-to-mobile option, full mobility in receiving local calls. This is not, as Telecom would suggest, a quality that excludes Vodafone from competing in the local calling and access market.

113. Considering the interconnection implications of Vodafone's local service for Telecom's costs, the fact that Vodafone's local service will be offered over a mobile network, with customers enjoying the benefits of mobility within a Home Zone, will be irrelevant.

- There will be no additional costs for Telecom arising out of the limited mobility aspects of Vodafone's local service in the homezone, nor through the divert option that gives full mobility in receiving calls.
- There will be no additional costs for Telecom as compared to calls made to, or received from, local numbers on any other carrier's network.
- There will be no additional obligations on Telecom as all local calls will continue to be either terminated or handed over by Telecom in the "home" LICA or the associated Major LICA.²³

²³ For a local (or intra-LICA) call, we describe in this Application the "home" LICA as the LICA in which the Telecom and Vodafone customer's premises are located.

114. On the basis therefore that, from both Telecom's perspective and a calling party's perspective, the call remains a local, or intra-LICA, call, Vodafone seeks a determination that obliges Telecom to hand-over the local call to Vodafone within the home LICA, or the associated Major LICA, as it would with any other carrier.
115. Vodafone is proposing an interconnection charging regime of bill and keep. We understand this is identical to the interconnection charging regime that Telecom has with fixed network operators for local (or intra-LICA) calls.
116. It is also consistent with Telecom's "Standard Reference Offer", which provides (at clause 3.1 of Schedule 4):²⁴

The charges each carrier must pay to the other for origination and/or termination of all Intra-LICA Calls and Internet Calls are nil (i.e. those Calls will be charged on the basis of "pure bill and keep").

117. It is important to note that Telecom considers the charges for "origination" of Intra-LICA Calls would be on a pure bill and keep basis. This can be interpreted as there being no charge for any hand-over of Intra-LICA Calls to the other carrier.

Vodafone's position on the meaning of "local call"

118. A call is a local call where the premises of the Telecom local customer and the Vodafone local customer are within the same LICA and (in the case of a call from a Vodafone local customer to a Telecom local customer) the Vodafone local customer is within that customer's homezone.
119. Our interpretation of a "local call" is consistent with the Commission's previous section 20 determinations which have recognised that both the characteristics of the industry and context of the Act demand a functional approach:²⁵

"The descriptions of the designated access services in sub-part 1 of Part 2 of Schedule 1 of the Act are functional, which is to be expected in an industry subject to significant and ongoing technological change."

Essence of the Dispute

120. [**CONFIDENTIAL INFORMATION**

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121. [**CONFIDENTIAL INFORMATION**

²⁴ http://www.telecom.co.nz/binaries/interconnection_agreement_template_july04.pdf

²⁵ Commerce Commission Decision 477, paragraph 26

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122. Vodafone does not consider it appropriate to adopt a highly prescriptive approach of what is, and what is not, a local call. To do so is the antithesis of a functional approach referred to above and favoured by the Commission. A highly prescriptive approach to the interpretation of “local call” is also erroneous for several reasons:

- By defining services and the definition of markets within the telecommunications industry by the technology that they utilise excludes customers from both service and cost benefits that technology advancements are capable of providing;
- It is inconsistent with standard industry practice and is substantially different from what has previously been agreed to between Telecom and Vodafone as a local call. Under both its 1998 and 2001 interconnection agreements with Telecom, Vodafone would have been entitled to launch its local service.²⁶ It is also inconsistent with Telecom’s own “Standard Reference Offer”.²⁷

123. Finally, Vodafone does not consider it appropriate to borrow concepts from the local free-calling service provisions in the TSO Deed. While the TSO Deed between Telecom and the Crown specifically excludes “calls to or from telephones or other devices connected to cellular, mobile radio, paging and other like networks, or any new or improved calls that are similar to, equivalent to, or that have characteristics closely linked to those calls”, such a source is not authoritative on what telecommunications infrastructure can and cannot be used to provide a local service.

²⁶ This point is explained further in the next section.

²⁷ http://www.telecom.co.nz/binaries/interconnection_agreement_template_july04.pdf

IX Previous Terms of Supply

There have been previous agreements for the supply of a similar local interconnection service

124. The Requested Service has not previously been supplied to Vodafone by Telecom. However, there have been agreements between Telecom and Vodafone for the supply of a similar local interconnection service since 1998. In particular:

- Network Interconnection Service Contract 7 (“Local Interconnection Service”) commenced on 30 October 1998 and expired on 14 May 2001. This agreement was transferred to Vodafone from BellSouth New Zealand and had originally commenced on 4 February 1998 (the **1998 agreement**); and
- Network Interconnection Service Contract 7 (“Local Interconnection Service”), commenced on 13 July 2001 and expired on 14 April 2003 (the **2001 agreement**).

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130. The Commission will note that our Proposed Agreement referred to below contains terms (regarding the use of a Home Zone area) that are more restrictive on Vodafone than the terms under either the 1998 agreement or the 2001 agreement.

X Terms of Determination

131. In this section, we set out our requested terms of the determination for supply of the Requested Service and seek three non-price conditions:

- Requiring Telecom to hand-over calls from its subscribers to Vodafone local numbers to Vodafone at a technically feasible point of interconnection;
- Obliging Vodafone to offer, and Telecom to purchase, the equivalent of the Requested Service on Vodafone's PSTN; and
- Preventing Telecom from charging its customers more for calls to Vodafone local numbers than for calls to local numbers on third party networks.

The Proposed Agreement

132. As noted previously in this Application, there are few terms in dispute between the parties. Vodafone proposes that the service must be supplied under the determination on the terms set out in the following agreement attached as Annex 2:

- Network Interconnection Service Contract 7 ("Local Interconnection Service") (the **Proposed Agreement**).

133. The Proposed Agreement relates to the Network Interconnection Service Supply Agreement that the parties entered into on 13 May 2004 (the **Supply Agreement**). The Proposed Agreement includes some consequential amendments to the Supply Agreement and related Network Interconnection Supply Contracts.

134. The principal terms that Vodafone is proposing for the Requested Service are those contained in the Proposed Agreement. We have shaded in grey certain key provisions in the Proposed Agreement that we believe are, or may be, contentious. We have discussed in section VIII what we believe to be the most important contentious provisions in the Proposed Agreement – the definition of "local call" (and the associated wording in the Network Interconnection Service Definition in Schedule 1 of the Proposed Agreement). In the following paragraphs in this section X, we discuss certain other terms, as well as conditions that we are seeking under sections 30(c) or (d) of the Act.

Price terms for the Requested Services

135. Vodafone proposes a bill and keep pricing arrangement for termination of local calls. Vodafone is comfortable with a bill and keep pricing arrangement for calls to local numbers on its mobile network, as further discussed in section VIII above.

136. A bill and keep price is consistent with industry practice and consistent with Telecom's "Standard Reference Offer" (see paragraphs 115 to 116).

Non-Price terms for the Requested Service

137. Under sections 30(c) and 30(d) of the Act, the Commission has broad powers to impose behavioural requirements, terms and conditions on the parties to a determination, to the extent the Commission believes it to be necessary to achieve the Act's objective as set out in section 18. In particular, a determination from the Commission must include:

- “(c) the terms and conditions (if any) on which the determination is made; and
- (d) the actions (if any) that a party to the determination must do or refrain from doing”

138. We request that the Commission exercise these powers to include in the determination the following non-price conditions.

Hand-over obligation

139. Further to our explanation of the need for a hand-over obligation at paragraphs 22 to 28, we request the inclusion of a term requiring Telecom to hand-over calls from its subscribers to Vodafone local numbers to Vodafone at a technically feasible point of interconnection, being in this case one of the Telecom Hand-over Points in Vodafone's premises.

140. Vodafone believes that such an obligation can be best achieved by the inclusion of clause 5.2 of the Proposed Agreement:

“All Local Calls that originate in the Originating Party's Network shall be handed over or, where a free circuit is not available in the Terminating Party's Network, offered to be handed over from the Originating Party to the Terminating Party.”

141. Vodafone considers that such an obligation should be uncontroversial. This type of obligation is entirely consistent with industry practice and Telecom's own “Standard Reference Offer”²⁸ (see in particular clause 2.1 b of Schedule 3).

Reciprocity

142. Further to our explanation in paragraphs 29 to 34 on the need for a reciprocity condition as part of any determination, Vodafone requests the inclusion of a condition whereby:

- Vodafone must offer Telecom, in respect of calls to and from Vodafone's local numbers, terms that are reciprocal to the terms on which the Requested Service is to be provided
 - The exception is that Vodafone should not be required to similarly operate a fixed PSTN and the Vodafone local customer should not be required to be in a particular fixed point when making or receiving the call, except within the confines of the Home Zone structure referred to in this Application.

²⁸ http://www.telecom.co.nz/binaries/interconnection_agreement_template_july04.pdf

- Telecom must acquire interconnection services from Vodafone on such reciprocal terms.
143. Vodafone does not believe that Telecom would in any way be prejudiced by a determination incorporating these reciprocal terms, even though the designated access service requires Telecom to operate a fixed PSTN.
144. While it need not represent a further condition of the determination, Vodafone notes that it is similarly prepared to enter into equivalent interconnection arrangements with Telecom to enable it to launch a local service on its mobile network.

Charging for calls to Vodafone local numbers

145. It is not clear that Telecom will maintain its existing local call pricing for calls to Vodafone local numbers.
146. Vodafone's local service will be more competitive in the local services market where subscribers on Telecom's fixed PSTN are able to call Vodafone's local customers and pay no more than if they were calling any other local number on any other third party network.
147. Vodafone seeks a determination from the Commission that includes an obligation on Telecom that it will not charge its customers any more to call a Vodafone local number than to call any other local number on a third party network.
148. The TSO Deed does not prevent Telecom from charging its residential customers for calls to a mobile network such as Vodafone's.
149. The local free-calling option is set out as a "principle" in clause 7.1 of the TSO Deed. It provides:
- "A local free-calling option for residential telephone service will be maintained for all Telecom residential customers."
150. The service definitions schedule of the TSO Deed defines what is and what is not "Local residential voice telephone service":
- "Local residential voice telephone service" is defined to apply to standard calls for voice which are dialled by the Telecom residential customer to a local number and which (a) originate from a demarcation point at the physical premises of a Telecom residential customer and (b) terminate at the demarcation point of other physical premises, where these points are in the same Telecom local calling area; and
 - "Local residential voice telephone service" then specifically excludes (among other things) "calls to or from telephones or devices connected to cellular, mobile radio, paging and other non-PSTN networks".
151. This means that calls to a Vodafone local number with our currently envisaged local service are not part of the "local residential voice telephone service", and

so Telecom is not prevented by the TSO Deed from charging its residential subscribers to call Vodafone local numbers.

152. The TSO Deed exception was presumably inserted to deal with the situation where the interconnection charge for calling the mobile network was higher than for calling a fixed network. In this case, the interconnection charge will be the same. In addition, the TSO Deed was created to protect consumers against the consequences of a lack of competition. It would be ironic if Telecom could now use it to prevent competition from benefiting consumers.
153. The most fundamental feature of our service is that it is functionally equivalent to a local call from the perspective of the person making the call. A defining characteristic of local calls is that they attract the same charge irrespective of the identity of the carrier to which the called party subscribes. From the perspective of the caller, calls priced in any other way are not local calls. Vodafone is asking the Commission to allow us to contest the local call market. We will be limited in our ability to do that if Telecom is able to discriminate against calls to our numbers.
154. The Commission has previously recognised the necessity of ensuring an access provider's behaviour in its retail relationship with its customer should not be allowed to undermine a determination that would otherwise promote competition for the long-term benefit of end users. For example, the Commission in the Local Mobile Number Portability Determination saw it necessary to prevent Donor Network Operators (DNO) from levying a porting-out fee on its customers for line set-up costs. The Commission reasoned that a porting-out fee levied by the DNO on its customer was:
- “not appropriate because if the DNO was able to recover the cost incurred directly from porting customers, it would have a strong incentive to overstate its costs and charge customers an inflated fee in order to deter customers from switching”.²⁹
155. Similarly, the Commission in its Draft Determination on TelstraClear's wholesale bitstream application³⁰ has proposed a condition obliging Telecom to refund a jetstream customer for any portion of the relevant billing period which is unused following customer switching. The Commission once again appear to have recognised that, in the absence of such a condition surrounding retail pricing behaviour, Telecom will be in a position to deter customer switching and therefore lessen the ability for the determination to promote competition for the long-term benefit of end-users.
156. Vodafone submits that an obligation preventing Telecom from price discriminating against calls to Vodafone local customers, as compared with local customers of other third party service providers, is similarly necessary to avoid Telecom being in a position to deter customers from switching to Vodafone's local service by charging (or threatening to charge) customers a higher price for calls to Vodafone local numbers.

²⁹ Draft LMNP Determination, 6 December 2004 at paragraph 90

³⁰ TelstraClear Bitstream Draft Determination, 21 April 2005 at paragraph 296

157. Vodafone is prepared to be subject to a reciprocal requirement not to discriminate against calls to Telecom local customers as compared to local customers of other third party service providers.
158. Should the Commission decide against using its powers under section 30 to impose such an obligation, Vodafone requests the Commission provide clear guidance in its determination on Telecom's ability to price discriminate between providers of local services.

Period of Determination

159. Vodafone proposes that the determination should apply from the date of the Commission's determination to 19 December 2006, or such later date within the period of any extension of the designated access service and being 24 months from the date of the determination. Vodafone considers this to be an appropriate horizon in that it provides certainty to the parties, while also recognising that the dynamic nature of the industry requires any determination to be flexible in the medium to long-run. Vodafone notes that the Commission has found these factors to be desirable in the TelstraClear and CallPlus interconnection determinations.
160. The proposed period will provide a sufficient amount of time for Vodafone to prepare and commence operation of its local service, however the period will not be so long that it will hinder negotiation of different terms and conditions should this be necessary as a result of changing conditions in the industry.
161. Vodafone also requests that:
 - The Determination require the parties to commence negotiations of further terms of supply at least 6 months before expiry of the current term; and
 - If the parties have been unable to agree to new terms by the expiry of the current term, the Determination shall continue the existing terms on an interim basis until the new terms are agreed or determined. However, any terms applied on an interim basis should not prevent either party making an application for a further determination.

Amendments to Supply Agreement etc

162. Amendments to the Supply Agreement are required to deal with the period of the determination. See clause 13.1 of the Proposed Agreement.
163. In Clause 13.1 of the Proposed Agreement, we also include a provision that deletes clause 5 of the Supply Agreement (see paragraph 92).³¹

³¹ The deletion of clause 5 will also have the effect of enabling calls from Vodafone's local numbers to be "standard calls" or "national calls", and calls to Vodafone's local numbers (that are not Local Calls under the Proposed Agreement) to be "standard calls", under other NISCs with Telecom. Once the principal issue of what is a local call is resolved, we believe these other effects of the deletion of clause 5 will be uncontentious.

164. The remainder of clause 13 of the Proposed Agreement contains other consequential changes to the Supply Agreement and related Network Interconnection Service Contracts which we believe should be non-contentious with Telecom.

XI Confidentiality

165. Vodafone requests the Commission make a confidentiality order under section 100 of the Commerce Act 1986 and sections 9(6) and 15(i) of the Act in relation to this Application and all information provided in connection with this Application.
166. Vodafone requests that, pursuant to section 100 of the Commerce Act 1986, this order apply until the expiry of 20 working days from the date on which the Commission makes a final determination in respect of any inquiry or investigation that may arise out of this Application.
167. Before the Commission formally makes its order, Vodafone requests that the following information be treated as confidential and commercially sensitive information, and accordingly not be made publicly available or disclosed to any person other than those persons from Telecom or the Commission directly involved with this matter (**Confidential Material**):
 - Sections VIII and IX
168. Vodafone further requests that the Commission exercise its discretion under section 6(2) of the Act to not include the Confidential Material in any public notice that it may be required to give under that Act.
169. Vodafone believes that the disclosure of the Confidential Material in any public notice that the Commission may be required to give under the Act would unreasonably prejudice the commercial position of Vodafone and/or Telecom.
170. In respect of the Confidential Material and documents containing the Confidential Material, Vodafone requests that the Commission return or destroy those documents on making any determination. We also request that the Commission, if it retains any such documents, withhold those documents pursuant to section 9(2)(b)(ii) of the Official Information Act 1982 if they are sought by an applicant under that Act after the expiry of any confidentiality order made under the Telecommunications Act 2001.
171. With the exception of the Confidential Material, this Application is not otherwise confidential. We will provide a Public version of this Application shortly.
172. For the avoidance of doubt, the foregoing request for confidentiality is made not only for this Application, but for all additional information the parties may provide in connection with this matter for which we request confidentiality protection

Declaration

THIS application is made by **Tom Chignell** on behalf of **Vodafone New Zealand Limited**.

Vodafone New Zealand Limited hereby confirms that:

- all information specified by the Commerce Commission (“the Commission”) has been supplied;
- all information known to the applicant which is relevant to the consideration of this Application has been supplied; and
- all information supplied is correct as at the date of this Application.

Vodafone New Zealand Limited undertakes to advise the Commission immediately of any material change in circumstances relating to the Application.

Dated this day of January 2006.

*Signed by **Vodafone New Zealand Limited**:

General Manager

I am a General Manager of the company and am duly authorised to make this application.

XII Annex 1 – Alternative to hand-over obligation and reciprocity

Origination as an alternative to a hand-over obligation

173. Vodafone local customers need to be able to be called by Telecom local customers. In this Application, Vodafone submits that this outcome is best achieved through imposing on Telecom an obligation to hand-over any calls its subscribers make to Vodafone local numbers. Such a condition is also entirely consistent with industry practice for local service interconnection, both in New Zealand and overseas.
174. If the Commission decides against imposing such a hand-over obligation on Telecom, Vodafone submits that a regulated origination service would also enable Vodafone local customers to be called by Telecom local customers. While it would be highly unusual (if not unique) to associate an origination service with local service interconnection, Vodafone submits that such a service provides, in effect, the same outcome - the ability for Vodafone local customers to be called by a Telecom subscriber. While to date an origination service has only been applied in relation to calls to 0800 numbers and for toll-bypass calls, Vodafone cannot see any reason why an origination service cannot similarly apply to calls to local numbers on the access seeker's network.
175. Like termination on Telecom's fixed PSTN, origination on Telecom's fixed PSTN network is clearly regulated as part of the designated access service described in sub-part 1 of Part 2 of Schedule 1 of the Act as "Interconnection with Telecom's fixed PSTN".
176. An implication for substituting an origination service for a hand-over obligation is that any reciprocity condition discussed in paragraphs 29 to 34 of the Application would need to apply to both a termination and an origination service. That is, a condition of the determination would be the offering by Vodafone, and the acquisition by Telecom, of both a termination and origination service consistent with the terms imposed by the Determination. In particular,
- Vodafone would offer Telecom, in respect of calls to and from Vodafone's local numbers, terms that are reciprocal to the terms on which the Requested Service is to be provided; and
 - Telecom would be obliged to purchase such a termination and origination service from Vodafone on such reciprocal terms.
177. While reciprocity is discussed below as a means to avoid asymmetric costs for either scenario (i.e. "hand-over and termination" or "origination and termination"), the effect of having both regulated origination and termination on a reciprocal basis is to "net out" any charges in both directions.

An alternative to imposing reciprocal terms for interconnection with Vodafone's network for local services

178. If the Commission decides against imposing a condition of reciprocity as part of its determination, Vodafone submits there is a further alternative which avoids a reciprocity condition, but nevertheless delivers interconnection with Telecom's fixed PSTN so that Vodafone local customers can both call, and be called by, Telecom local customers.
179. Such an alternative would see Vodafone purchasing from Telecom regulated termination (and, if the Commission decides against a hand-over obligation, regulated origination) on Telecom's fixed PSTN for calls from (and to) Vodafone local numbers. However, with no reciprocity condition, Telecom would purchase neither a termination nor an origination service from Vodafone.
180. The only obligation the Commission would need to impose on Telecom is simply to physically interconnect with Vodafone's network. This would amount to a minimal obligation which may include providing for associated facilities, such as access to premises etc.
181. Calls to and from Vodafone local customers would still complete but the transport of a call beyond the point of interconnection with Telecom would be undertaken by Vodafone not as a service to Telecom (and therefore at no charge to Telecom) but by Vodafone as a service to its own local customers. For example:
- Vodafone would accept calls handed over by Telecom to Vodafone local numbers and deliver these calls to Vodafone local customers (replacing any need for Telecom to acquire from Vodafone a reciprocal termination service); and
 - Vodafone would hand over calls from Vodafone local numbers to Telecom at the point of interconnection, but not as a service to Telecom (replacing any need for Telecom to acquire from Vodafone an origination service).
182. However, this non-reciprocal alternative would have the serious effect of imposing asymmetrical charges on Vodafone as compared with other local service providers. Should forward-looking cost-based pricing be imposed for interconnection with Telecom's fixed PSTN, Vodafone would face termination (and possibly origination) charges that its competitors in the local services market do not bear. Such an asymmetric cost base would not represent a level playing field and would have a significant impact on Vodafone's ability to compete in the local services market.

XIII Annex 2 – Proposed Agreement