

CONFERENCE TO CONSIDER
THE COMMISSION'S DRAFT REPORT ON
THE REVIEW OF REGULATED SERVICES

Tape 1

Side 1

The Commission has issued a draft report of the consultation and has received a number of submissions on that report from interested parties. We have called this conference to provide an opportunity for parties to bring additional material before the Commission, to comment on additional matters that were not covered in the prior submissions that we have received.

Doug Webb - With me this morning are two fellow Commissioners - Anita Mazzoleni and Gowan Pickering and also present are Commission staff. We will be taking presentations from the front table.

The way in which we will be conducting this proceeding this morning is that we have a series of time slots available for presentations to be made by interested parties. We will be commencing with a presentation by Mr Malcolm Alexander for the Telecommunications Carriers Forum. That presentation will cover the co-location code which is at present in front of the forum board. We will then proceed in accordance with the schedule, following Mr Alexander we will continue with Vodafone and then through the list as it's been issued. I would ask that when presentations are being made to us that the presenters should observe the time slot available. We are restricted for time so I would ask you to stay within the time that's available. You may take it that the Commissioners have read all the submissions so it is not necessary for you to take us back over those submissions. I would have no objection if presenters wish to highlight or briefly summarise matters from their submission but otherwise it can be taken that the submissions have been read. During the course of presentations to us, Commissioners may wish to ask questions of the presenter in which case we will simply stop you and ask our questions. There is not however to be cross-questioning between parties and I will be enforcing that requirement. Commission staff may also wish to ask questions as we go through. The proceedings are being recorded this morning in accordance with our normal practice and I would ask each person presenting introduce themselves, refer to the name of the organisation that they represent before commencing their presentation. Following the presentations by the parties we will then move to short closing statements again in the same order in which the presentations have been made.

I will turn first to Mr Malcolm Alexander for the Telecommunications Carriers Forum.

Mr Alexander - My name is Malcolm Alexander, I am the independent Chair of the Board of the Telecommunications Carriers' Forum and have held that role since the inception of the Forum in late 2002. I am here today at the invitation of the Commission to provide an update brief in terms of the process that the Forum is going through in working on the Radio Communication Co-location Code and will give you an overview of the process to date and the anticipated timeline from today. At the outset I would say my role is primarily one of governance, in terms of the Board I am not a member of the working party and to that extent, I do not partake in those discussions at a detailed level though I do talk with working party members, and the working party Chair from time to time. My role is primarily more strategic in nature, along with the remainder of the Board.

I say that simply to manage expectations in terms of level of detail and so. The members of the working for clarity are in alphabetical order, Broadcast Communications Limited, EcoNet, Telecom, TelstraClear, TUANZ, Vodafone and Whoosh Wireless. The working party Chair is now Susan Wells. Susan Wells is also the Forum Administrator appointed as of May this year. Prior to that she held a role with TelstraClear and was the Board representative for TelstraClear and was involved in some detail with the creation of the Forum and its rules and procedures. Susan has some knowledge and experience in this area. In terms of the overview of the process of today, I will very quickly go through the timeline post the Commission's rejection of the first Radio Communication Co-location Code that the industry put up. That occurred in June 2005. I can say that process was a learning experience for the Board as we sought to understand what that meant in terms of the interaction between the Forum and the Commission and we met with the Commissioner and Commission staff just to understand that better in terms of as a Board deciding what our steps were from here. As a result we decided to on the 3rd of August to reconvene the Radio Communication Co-location working party that had previously worked on the Code and put that forward. The initial brief was to examine the three matters that the Commission had specifically referred to in its rejection of the Code and the working party did so and delivered its report to the Board on 30 November 2005. That report also included a number of other recommendations that the working party felt could usefully be included in the Code and the Board at that time decided to authorise that work and so the mandate and scope of the working party and its consideration of that Code expanded at that point beyond the simple three matters that the Commission had directed the Forum to attend to. So primarily since December of 2005 through to today the working party has been looking at it with "fresh eyes" I suppose is the best way of calling it with the Code and has actively sought views within the industry and from the public. Indeed we received, our public consultation period on a revised Code as well as a Master Services Agreement, which has been prepared and which will be attached to the Code closed on the 21st of April 2006. A number of concerns and issues were raised. TUANZ for example raised a

number of high level concerns about the Code and its issues as did EcoNet, TelstraClear and various others indicated support. The working party then met on 4 May 2006 to start considering all those various submissions and points of view and basically since that date has been working a process through in terms of taking on board the various views and has substantially I am advised has substantially amended the Code and the Masters Services Agreement to reflect the outcome of public consultation. The working party has been meeting as I say pretty, relatively consistently through that period. Many issues have come up, some were new and a lot of them have been dealt. Some not in some members' view and I hope I'm not putting you on the spot here Tex but certainly it's the express view of EcoNet that they are not comfortable with the scope of the draft Code as it stands today. I'm sure Tex will make comments along those lines later on. However, I am advised that the remainder of the working group has got to the point where they are comfortable with the text of the Code and last night the working party Chair and Forum Administrator issued a rise draft of the Code to the working party primarily for confirmation that this Code and the attached Master Services Agreement are now ready to go to industry referendum which will be a process that we go through and is mandated by the Act prior to submission to the Commission again. It may be that that process in terms of the Code does bring forward a number other amendments, minor amendments in nature. So talking with the working party Chair and Forum Administrator last night, the process from here is essentially as follows: the responses from the working party members are due 17 August, that's two days from now. Now assuming that the majority of the working party approve the documents then that recommendation would occur on or about the 24th of August. That documentation would then come to the Board of the Forum for approval on or about 29 August. We do have a set Board meeting due for Friday 1st September I believe, I think that's the right date, I'm sure it's Friday now but we have a practice now in order to expedite things of approval by e-mail and or teleconference if necessary rather than wait for Board meetings. If that date one would assume that they would be then immediately issued for referendum on or about 30 August. If that date is met then we would allow a two week period for the referendum to flow through which would close 14 September. Assuming that the referendum meets the requisite level under the Act we would, the papers would be prepared for submission to the Commission and that would occur in the period 19 September - 22 September. The Board is required to approve this submission but we don't revote on the Code per se, that process has already occurred through the industry referendum. Board approves the papers that the cover note etc. is suitable, fit for purpose in terms of a submission to the Commission and then it would be submitted to you, our target date is 25 September. That would be the end of our process pending your consideration Commission of the revised Code. I think that is a broad overview of the process today. I have refrained from getting into the detail of the various disagreements or differences of view and the Commission and I am relying on submitters today to the extent that they wish to will make those points to you and certainly in our documentation we would look to be as fullsome as we can (tape 1840) to give the Commission the information it needs understanding it has to determine whether or not to

do further consultation. I think that's pretty much it from my point of view. I'm happy to take questions.

Doug Webb – Just for the sake of clarity that a very useful summary Mr Alexander of the process and perhaps it's worth my while saying that once the Code reaches the Commission then it will of course be reviewed by the Commission for the purpose of ascertaining whether it meets the Commission's concerns regarding the prior Code. We do require to be satisfied that the Code best meets the purposes of promoting competition, in this respect in relation to the mobile services markets so we will certainly be reviewing the Code from that point of view. We would wish to complete our review as quickly as we can. If the Code is approved by the Commission then of course it would come into force at the time of approval and if not approved by the Commission then of course it would go back to the Forum. The effect of approval by the Commission is of course that any future determination in relation to the regulated Co-location service the Commission would take full account of matters that had been already dealt with in the Code itself. The Commission would however retain discretion over all other aspects of the service which are not the subject of agreement within the Code so that would be the process going forward.

Mr Alexander wanted to make comment in response – Certainly just for the record to state that the objective, function and purpose of the Forum has its heart the promotion of competition in markets and for end-users, telecommunication services and certainly that has been my watchword as independent Chair in ensuring that the working party has got its eye on the ball in terms of that. What the Forum is acutely conscious of however is it's not in a position to mandate price, in fact it believes it would be at legal risk were it do so so. It's not able to deal with matters of a broad industry structural market behaviour. That is a matter in our view for the competition regulators and appropriately so. So within those parameters the Forum has done what it can do and has made those points to its members and interested parties. In our view we have reached the point where we have broad consensus and we can push that forward to the extent it cannot and does not deal with some of those matters in our view, or certainly my view speaking as Chair, is that that is appropriately a matter for the regulator to determine so the Board would have no difficulty with that approach.

Doug Webb - we will now move to the first of the industry presentations this morning - commencing with Vodafone.

Hayden Glass - Regulatory Manager for Vodafone, others were Doug Watt, Manager Economic Policy and Doctors Shiff and Small from Covec Economics Consultancy who have been doing some interesting work for Vodafone relevant to these issues. What I wanted to do is introduce and cover our key messages and then Covec will talk about some work they've been doing and then Mr Watt will cover some issues around the current state of the co-location and roaming markets. The key point that we want to make is essentially that we are not convinced that these regulations as opposed to any

other regulations that these regulations make much difference to market outcomes at all. That is basically what we will come back to again and again and the question that we think is for the Commission is to decide whether these regulations do actually make a difference and to specify clearly what that difference is because we do not see what difference these regulations make.

Mr Webb - Just for the record could you confirm that you're speaking of the co-location and national roaming.

Mr Glass - I apologise, yes. The only issues that concern Vodafone today are the regulation of, the current specified regulation of co-location and, and the roaming and our views on other issues have been already well-covered and I understand they're not matters of great industry dispute.

I suppose where we'd start is just an outline of, of what we plan to say. The first thing is that the world's moved on. In 2001 when these services were regulated I think we'd say there was concern about the ability of 2G operators to constrain entry of 3G operators around the world and New Zealand was considering how best to boost competition in the domestic market, and these regulations need to be seen in that context. So that's the first point. Second thing is the overall framework from our point of view, extension of these regulations only makes sense if they appreciably increase the odds of new mobile entry so the only reason to regulate the mobile market is to encourage we think, well to promote competition for the benefit of end-users but that is done through promoting entry as far as we can understand so these, these regulations, the purpose of the regulations is to encourage entry into the mobile market. Now if they don't have that effect then we don't see the virtue of extending them and we come back to the point I've already made which is I think the Commission needs to define clearly what these non-price regulations actually add and it is very important that we distinguish from the non-price stuff. The question here is should we extend the non-price regulation rather than the other question which is facing the Commission in separate proceedings, which is should we regulate other aspects of roaming or co-location, this particular issue we investigate should we regulate roaming prices and what to do about the existing sunrise and clause where you need to build 10% and you need to have a plan for a nationwide network. Now those are separate questions so the question is what do these regulations, these non-price regulations, what difference do they make to the prospects for new entry.

Then I turn over to Covec and I will explain some work that they have been doing looking at the business case for a 3G mobile entrant in New Zealand, a new mobile, a mobile only entrant and look at what difference roaming and co-location make to that, to the business case and the answer is it makes relatively little difference, they can, they can still be funded. The fourth thing is just to cover some aspects of the market as it currently stands and to talk about why we think that the current market situation demonstrates that extending these regulations is unnecessary. The only, we have thought

about this quite a lot obviously and the, the justification, the only justification that we can see for extending this regulation is if, (inaudible) flippant up there it says, better than something worse. I think what that means is if the Commission are of the view that it needed some sort of regulatory backup just in case the market were to take a turn for the worst and all of these things that we're saying, all of these deals we were willing to do and the reasonable terms, all that sort of stuff suddenly went away, potentially that might provide a justification for extension. That's a kind of, that's kind of the context of the final point. So that's, those are the four things we're gonna say. We don't think it is necessary any more if it ever was. We don't think that these regulations, we think the crucial question is do these regulations appreciably increase the odds of new mobile entry. We don't think that they do and in any case the market is working we think for co-location and for roaming.

The first point so the world has changed since these things were regulated so, the first, and this is quite an important point that often gets lost is that in 2001 no-one was going to build a 3G mobile network. Spectrum has obviously started to be sold around that time around the world, but it wasn't really until, well we launched in August 2005 and it wasn't really until the end of 2004 that Vodafone which has the standard bearer for wide band CD mobile worldwide was launching 3G mobile networks, and at that time around the world my understanding was that regulators faced with a future of new 3G entrants were concerned that 3G/2G entrants, people that had both sorts of network, would restrict access to 2G roaming in order to delay the entry of new 3G competitors and obviously because it would take a long time for the 3G operators to build their networks up to cover the whole country and in the meantime if they were denied access to roaming it would be very difficult for them compete with the integrated operators who would have the advantage of their customers having nationwide service from Day One. So the result of that was I think the regulators said well, in many many countries we'll regulate to ensure that that doesn't happen, that integrated 2G/3G operators offer roaming to 3G only operators. I think in practice evidence suggests that that hasn't happened and there are commercial agreements all around the world and as far as I can find there has never been a regulator actually required to use regulatory powers to force an operator to give 2G roaming to a new 3G entrant. So we just say that, that's changed basically since 2001. The other thing I think in the New Zealand context is that Vodafone is, and remains happy to offer both co-location and roaming on standard and reasonable terms. We do not require entrants to build out. We are more than flexible about the timeframes for these agreements. So we don't see the regulation as actually adding anything to existing commercial operations. In addition of course no-one has applied for these services and a co-location Code provides a standardised process or shortly will provide a standardised process across the industry for dealing with co-location, we've have made public our terms for co-location and from our point of view they're cost based as it is so we, we fail to see what extra we could do in terms of encouraging co-location.

So the short summary, there may have been concerns in 2001 that regulation of co-location and of roaming were required to support new mobile entry and, but we do not think there is evidence to support that case five years later.

The second point is so what's the standard for extension here and essentially. So the question is "should you extend the existing non-price regulation". We're going to come to that question a lot. Basically we think there are three steps. Define what would happen if regulation was extended, define what would happen if regulation was not extended and compare one with the other. I think that's fairly standard Commission practice and in our view you'd be wise to recommend extension of the regulation if it was, if you thought that the difference between those two amounted to a promotion of competition, i.e. you would get more competition if you regulated than if you didn't. And the important point is how would you get more competition, you would get more competition if these regulations promote entry. If these regulations have no impact on entry then in our view it is not going to add any value. And just to emphasise that point it is not enough to say that roaming and co-location are helpful, you know we would agree certainly roaming is helpful to an entrant. Co-location can save money, so therefore can be helpful to an entrant. We are not sure how helpful it is, but we do agree there is an impact there. The question is what difference does this regulation make relative to what would happen if this regulation did not exist and we look at the current state of the market, we look at the deals that exist in co-location and the terms that we offer and similarly in roaming and we wonder if this regulation actually does add any value. There is a difficult question of timing because there is another investigation in play looking at whether regulation, a further regulation of roaming co-location is required but on the basic question of "do these regulations, these non-price regulations add anything to case to mobile entry, we say that we are not convinced on that point.

Douglas Webb - The test that you are proposing to us appears to be a quantitative and a qualitative test. The qualitative component is focussing on the, what you're calling the "chances or prospects of entry" and the quantitative is, appears to be captured by the notion of an appreciable increase. I assume that that is a concept that you're suggesting needs to be something more than just a bare increase to the lowest degree in the prospect of entry but I would like to understand what your position is when you argue for the need for there to be an appreciable increase in the prospects for entry. Do you, do you have a view that this is some particular measurable degree of increase or how should we understand your point on this.

Mr Glass - Vodafone - I don't think we are arguing for an extensive qualitative or quantitative investigation into this issue. What we are looking for is an explanation by the Commission that says "this is what we expect to happen if regulation proceeds or is extended", "this is what we expect to happen if it does not", and we attribute the difference between those two, we count the difference between those two as being useful to new entrants, as being meaningful. I wouldn't, I mean appreciable, I wouldn't put too much emphasis on the individual word, but some difference to entry and some stated

difference and it is clear what that difference actually is, that is what I really mean by that. So we are not anticipating a modelling exercise or anything like that, just a clear statement of what difference these regulations make. We have seen in the draft report I think we've seen the Commission saying co-location can be useful, roaming can be useful, and I, we absolutely agree. The question is though, what difference does this regulation make to what is offered in the market for co-location and for roaming, so, some difference might be another way to express it.

Douglas Webb - Thank you for that. Looking then at your suggested approach to that issue, which appears to be to define a counterfactual and of no regulation and to test that against a factual of regulation, are you suggesting that this would be simply a judgment that you would just look at the incentives that the companies face in the market to grant or not grant on normal commercial terms co-location and roaming services, is that what you are thinking we would do in that case and the counterfactual case? We'd make a judgment. You have said to us this morning that Vodafone is happy to provide co-location and roaming services, and that we should, I assume therefore take that as being the counterfactual, but, I wonder if we could do that given that those services are now regulated so that you are offering the services in the knowledge that you could be compelled to offer them, so how would we make a judgement about how you would behave if there were no regulations. Is there is something you could suggest that we look at and use to make that type of judgement?

Mr Glass - Vodafone - I think it is obviously a very good point, I mean clearly, our behaviour might suddenly change and this is where we get to the, where I get to the point about sort of back up regulations, potentially that is where you end up. You say, well we are not sure, if we took away this regulation suddenly they might become horribly protective of these assets of theirs. I think that the incentives are such that we, we do, we'll cover this a little bit later on, I think the incentives are such that even without regulation we would be keen to share our network. Co-location, we don't think co-location presents an access problem because it saves us money as well so getting people, and it makes almost no difference to the entry effect if you like, so we are happy to make money for assets that we have already rolled out, so we don't think there is an access problem for co-location at all and for roaming, we see a world where as capacity grows on networks and costs rise, sharing, network sharing becomes critical and in that contest we think there are incentives on us to offer commercial roaming absent regulation. So, we certainly see commercial roaming agreements, absent regulation in other countries. There is obviously, I mean that's the ultimate judgment for the Commission isn't it, would, will regulation make a difference or not, and in this case you have got regulation in place whereas in perhaps your next investigation when you're looking at the, looking at other regulation to mobile you haven't got the regulation in place yet and you have to make a judgement about would it make a difference. I can't answer your question for you.

Douglas Webb – Yes thank you. I suggest to you that the difficulty we would face with

your approach is that we would need to avoid a circular proposition, and the circular proposition would be to take what you say and accept it on its face that you're offering co-location and roaming because it is in your interest to do so. Therefore if there were no regulation you would offer co-location and roaming on exactly the same terms. Therefore there is no need for regulation and I am just not sure how we could test that proposition in any way other than to do so at a level of stepping aside from Vodafone's expressed willingness or even evidence of behaviour and think about the incentives that face a party that controls what we would think of as a bottleneck facility to grant or withhold access to a new entrant and there I think there would be a rather clear view that an incumbent controlling a bottleneck facility does face incentives to deter or delay or withhold entry to a new entrant even though absent control of the bottleneck facility or absent monopoly status there may be other commercial incentives to collaborate with a prospective new entrant. If I think of the simple case of interconnection of networks exactly the same claim for rationality could be put for that case that it is in the interests of the incumbent to interconnect with a potential new entrant because that serves the needs of its own customers as well as reducing the costs of the incumbent, but that would not be accepted as an adequate reason for not regulating that facility. So I see a difficulty with this type of approach, but in any event if you want to add something on that please do otherwise we will just continue, but I think I am saying to you that I think the, while the argument that we should consider a counterfactual based approach is indeed consistent with the Commission's normal practice given the nature, or the bottleneck nature of the facilities that we are speaking of here. I am not sure how we could construct a robust counterfactual in this instance.

Mr Glass - Vodafone – I understand that. I guess what we'd say is that we, we would at least encourage you to follow that line of thinking. Where that line of thinking gets you is obviously for the Commission to determine but we don't see evidence of that line of thinking in the draft report, we see more co-location is important, roaming is important. And were, if the draft report were to say well, sorry if the final report were to say well here's what we think will happen without regulation, here's what we think will happen with regulation. We consider the difference to be there is a risk that Vodafone would suddenly change its behaviour, the market conditions would switch and suddenly the entrants would have a half tougher time, well that's the decision for the Commission but we are essentially here to say to that we are not convinced on the evidence that we've seen in the draft report that these regulations need to be extended.

Gowan Pickering (inaudible) ...Just for my purposes what's Vodafone's definition of reasonable terms?

Mr Glass - Perhaps it is easiest if we, if we take a tangible example.

Gowan Pickering – (inaudible) is there a particular return you are expecting to be different or, I mean are you offering the same return as you would you know internally or what?

Mr Glass - Right. Yeah think probably the best example would be co-location, it's hard to generalise. So on co-location we offer entrants two options, they can either pay half the capital and we split operating expenses of, for building a new site so we say OK we want to build this site, do you want to build this site too, it costs \$350,000. You pay half of it, we pay half of it and each party pays their own (inaudible). Or the other approach is that we pay the capital and the other party pays 13% of half of the capital costs, ie they pay a sort of a yield if you like on their share of the capital costs. It's entirely cost base approach to pricing so we consider that extremely reasonable. On roaming the other service it is much more difficult to price. We have looked around the place to try and get benchmarks from other countries and that is essentially what we've, what we've used to try and estimate what a reasonable roaming price would be, and to the extent that access seekers make agreements on those terms then we would consider those prices, those prices reasonable.

Anita - can I just clarify that, is that the same as what you would put in your cross-submission (inaudible). The figure seems slightly different, in terms of co-location.

Mr Glass - Vodafone – Ok. I hope it is the same as what we have in our cross-submission but we can certainly check, do you have.

Anita – I think that's, there was reference to a 10,000 per site.

Mr Glass – Ah, now before, when was this, before recently anyway we had a rather more ad hoc approach to co-location in that we, we simply charged \$10,000 for a rural site and \$7,000 for an urban, or it could possibly be the other way around, a very, based on a very rough approximation of what it would actually cost, what the savings would actually be and it was pursued generally on a reciprocal basis as well so the issues were not so acute but we've more recently adopted a more rigorous approach to the costing of these things and that has resulted in the system that we have now which.

Anita so why would those two numbers change as a result of this what you have just described (inaudible).

Mr Glass – Yeah exactly. Yeah, sorry yeah the, the, I should make clear the difference between \$10,000 a year and \$7,000 a year per year for rental so now it depends on what sort of site you are building and it depends on how much that site costs, so it, I suppose when I think about the numbers, yeah it's hard to, hard to generalise what the difference would be but.

Gowan - (inaudible) the, half of the CAPEX is \$100,000.

Mr Glass - Yes the number would be the same of course.

Gowan – Then, then you've got \$13,000 under the new approach.

Mr Glass – Indeed, yeah. It depends on the costs of the site is the answer.

Douglas Webb – Dr Small will you be covering, making some reference to these costs in your presentation? We've covered this, I'm just asking to check whether that's what (inaudible)

Dr Small - I don't think so no.

Douglas Webb - OK fine.

Mr Glass - We took the view that we covered that issue in various submissions but we, we can refer back to it, we can always come back to you with more if you wish.

Douglas Webb - Perhaps we will come back to you if we want some clarification on that.

Mr Glass – Sure. So now we are just going to turn to Covec.

Aaron Shiff a consultant from Covec - Hayden has asked us to look at, talk about some (inaudible) in regards to roaming and co-location, national roaming and co-location and the thing that I am gonna talk about today is some work we've been doing on the effect of national roaming and co-location on 3G entrant in New Zealand. So, so we have been doing some work for a while with Vodafone on understanding the economics of 3G entry in New Zealand and to (inaudible) developed a (inaudible) cost model of the costs that 3G would face under different entry scenarios, and I don't have any time today to talk about the details of this model but I would like to say that we're more than willing to discuss this with anyone who is here afterwards if they are interested in exactly what we have done. So today I'm just going to present some results that show how national roaming and co-location affect an entrant's costs and therefore its, its incentives. So, let me summarise with three key points that we want to make. The first key point is that 3G entry in New Zealand is expensive. A 3G entrant needs to spend a significant amount of money to enter the market so it's not a decision that anyone (inaudible) is that the expenditure that is required is not very significantly affected by either the price that the entrant pays for roaming or whether or not it has access to co-location relative to the total expenditure these things are relatively insignificant. And the third point is that the roaming rate, the rate that an entrant pays for roaming has an important effect on its incentive to build coverage, that is the extent of facilities based competition that results if there is entrants. So let me explain some, some of these things. So just firstly a few words about our model. We assume that a 3G entrant (inaudible)

Tape 1

Side 2

coverage in some or all of the five main cities in New Zealand and has access to 2G roaming elsewhere within Vodafone's 2G coverage. The network design that is explicit in the model is based on conversations between us and Vodafone's network engineers so we think it's a reasonably realistic scenario. We estimate costs over a five year period and we annualise costs over a ten year period. So other than that I won't talk about any more specific details of this thing. Today I will just present some results under a couple of simple scenarios, entry scenarios. One is where an entrant covers Auckland and Wellington only. The second is where it covers all five of the main cities and we assume that the entrant has volumes in terms of traffic and customers that are shown in this table. The important thing there is that we are assuming the entrant's market share grows at 3% per year. So this is just a baseline case for the purpose of generating some results that we can talk about. So under these scenarios the table on this slide shows our estimated total annual cost for the first five years of an entrant so these are for each year the operating cost plus annualized amount of capital cost and this is shown for the two entry scenarios and for different roaming rates from 15 cents a minute to 30 cents a minute. So you can think of these figures as the total amount of revenue that an entrant would need to raise in order to cover its costs. And if you look at the total column this is what I meant when I said that the costs of entry are significant. The total expenditure of an entrant under this scenario over five years is on the order of \$1 billion, a bit more than \$1 billion in all of the cases so you are looking at, if you want to cover your costs in the first five years you are looking at having to raise around \$1 billion of revenue. We can also by comparing the results in different cases we can also see what I meant by the effect of the roaming rate on the entrant's coverage decision, so just as an illustration here is, this table shows the estimated entrant's costs in the fifth year under the two scenarios at the two extreme roaming rates 15 cents and 30 cents and one of the first things we can observe is that the cost reduction that the entrant gets from expanding coverage from just Auckland and Wellington to all five cities is greater when the roaming rate is higher so the 15 cents roaming rate we estimate in the fifth year it would save \$2 million. At a 30 cent roaming rate we estimate it would save \$11 million if it expanded coverage in that way so it has a stronger incentive to expand out its coverage at the higher roaming rate. The other thing we can observe if you look down the columns in the table is under a given bill scenario the change in the entrant's costs in the fifth year as a result of doubling the roaming rate from 15 cents to 30 cents is sort of 35 to \$45 million relative to the total costing that year of 300 to \$350 million. So it's a change in total costs on the order of 10 to 15% from a doubling of the roaming rate so that's what I meant when I said before that the roaming rate is relatively insignificant in the context of the size of the total cost. So that's roaming. A couple of points to make about co-location we can address similar questions. How does access to a co-location affect an entrant's cost and we've done this using our model by comparing an entrant's cost in three different scenarios. One is a reasonably realistic scenario where the entrant co-locates some of its sites some of which require some capital upgrades to support co-location and it pays co-location rentals on these sites. The other two are extreme scenarios. One is where the entrant co-locates some of its sites. None of them need to

be upgraded and there's no rentals at all so co-location is just completely free in that case and the third scenario is the opposite extreme where the entrant has no access to co-location whatsoever and it has to build all of its own sites. So this is sort of the range of possible outcomes. We can compare the entrant's total cost in each of these cases to see what impact co-location has. So my last slide, this table shows some of the results that we get. The most interesting thing is to compare the free and none scenarios since these are the two extremes and we can see that having access to free co-location versus none has a reasonable impact on the entrant's capital costs of cell sites so it's about \$55 million that you save we estimate so that's a reasonable effect. There's also a small saving in operating costs of about \$2 million but these savings might be offset by the co-location rentals that have to be paid if there are any. In any case once you take these results and you annualise the capital costs over a ten year period then comparing the free and none scenarios the change in annualised total costs say in the fifth year is about \$20 million or \$21 million in that year. But to put that in context what does that mean in terms of the, the market share that the entrant would need to get to cover these costs, how does that change as a result of having access to co-location or not. Again comparing the free and none scenarios the change in the break even market share say at an (inaudible) of \$500, just for argument's sake, is about 1% market share. So in the context of things, comparing these two extremes where colocation is free or completely unavailable it has a relatively minor effect on the entrant's business case is the point that we wanted to make. So that's, that's, that's the end of what I had to say. I just want to repeat as I said at the beginning that we're happy to discuss. I don't want this to seem like it's just come out of a black box so afterwards if anyone's interested just get in touch with Hayden or myself and we, talk about it.

Mr Webb - Dr Shiff a couple of questions. Taking the roaming case first of all. Given that the roaming service currently is a specified service so that the roaming price is not regulated but the availability of roaming is regulated what, what relevance is it to us to argue that the roaming price is, or that the entry decision is relatively insensitive to the roaming price. Isn't the question we should be asking ourselves is the entry decision sensitive to the availability of roaming, leaving aside the price for the service. Isn't that the question we are considering here today?

Dr Shiff - I would agree with that. I guess the, the relevance of this is to say well if the Commission contemplates the idea of leaving the pricing of roaming to the market this is the kind, which is, which is what's in the, in the, the regulation as it is at the moment then this is the kind of, gives you a feel for what, what sort of outcome will happen under those circumstances. I agree with your proposition though.

Mr Webb - Just to be clear about that, that is the only question we have in front of us on roaming today because the issue of whether the roaming price should be regulated is a separate subject for consideration in the mobile services review. The second question I

have on the co-location issue. You've presented to us various estimates of the impact of co-location and co-location pricing. How does the model take account of the time effects surrounding co-location. And let me frame that question in this way. I assume that your model implies a requirement for the entrant to obtain a certain minimum number of sites for the location of its equipment either own sites or co-located sites. What, what is that number? What is the number of sites the model assumes?

Dr Shiff - We have, we model five years after entry and we have a coverage rollout plan for the entrant built into the model so I don't remember the exact numbers off the top of my head but I think in the first year the entrant has around 200 sites and it increases to around 500 or 600 by the end of the fifth year.

Mr Webb - So the model assumes that the entrant is able to obtain through co-location or own build something of the order of 200 sites in Year One is that right?

Dr Shiff - Yes.

Mr Webb - And then 100 additional sites per year is this.

Dr Shiff - It's not a straight line path but yeah that's the.

Mr Webb - The question then I have is leaving aside the, the costs that you're assuming here what would the model tell us about a scenario where the entrant was not able to conclude co-location agreements within your timeline, that is, if the incumbent required that each co-located site be negotiated and examined and it took three months to gain each site, this presumably would have a very significant effect on the, the rollout and therefore on the timing. My point is that surely it must be the case that the entry decision is sensitive to the availability of the sites under co-location and not simply the, the cost that's paid, assuming they are available.

Dr Shiff - Well. We're assuming that the entrant has access to roaming elsewhere where it doesn't have coverage and we've, the assumption that we've made is that the entrant has some 3G coverage that depends on the number of sites that it has and then everywhere else outside that it can roam Vodafone's 2G network where, where it exists and so if for whatever reason its rollout of cell sites were delayed compared to what we've assumed then what would happen is that it would end up paying a bit more for (inaudible). But other than saying that it is difficult for me to say exactly how (inaudible) yeah but it certainly, certainly could be modelled and that's a question that we could definitely answer if we delayed the plan by some amount then what effect does that have on the cost and (inaudible).

Mr Webb - Well, yes. I think I would just observe that the assumption that you're making then is somewhat self-evident. The assumption is that in fact roaming and co-

location are both available as a matter of, of commercial incentive and your point is that the entry decision is then insensitive to the price for those two services and my response to you is that the only issue we're asking ourselves here today is whether roaming and co-location should be mandatorily available. We're not asking ourselves what the price should be for those services.

Dr Shiff – (inaudible) on co-location I think we've said a bit more than that. We've, by comparing this sort of free and none scenario we're actually comparing what would happen if co-location was completely unavailable to if it was available and it was free, so, at least with co-location we are saying something about what would happen if co-location were completely unavailable at any price.

Mr Webb - Very well.

Anita - And that conclusion is quite significant in terms of the outturn. And that differential is quite significant. The none compared to the free case.

Dr Shiff - Sorry is, is, in, I'm sorry I don't know what you mean by.

Anita - It is quite a significant amount. Sorry it was a statement rather than a question. We'll leave it at that.

Dr Shiff - It's a large amount of money, I mean it's obviously an amount that I wouldn't want coming out of my pay packet 55 million bucks but, in capital but in terms of the viability of business case it doesn't make a huge difference. That's, I think that's the key point

Mr Webb - Yes thank you. Mr Glass do you have any closing comments so that we can move on

Mr Glass - We, we, yeah we just move on to the final part of our, our presentation so, and Miss Watts is going to talk about what difference.

Mr Webb - Let me just stop you for a moment while I. We're now intruding into Telecom's time. Mr Parkes you'd indicated to me earlier you may not require the full 30 minutes at this point, do you have any concerns if Mr Glass continues another five minutes?

Mr Parkes - No not at all.

Mr Webb - Very well, well then we have an outbreak of peace and I'll invite Mr Glass to continue for up to another five.

Mr Watt - Thank you. My name's Doug Watt. I work for Vodafone. What I'm gonna cover today is trying to shed some light on the question what will extending this regulation do to the case for entry and I'm gonna take the position that if there is a problem with access to these services then regulation may make a difference and I'm gonna shed light on that question and look at the evidence of what happens in the market with co-location and roaming. Now, so I'm gonna start with co-location, and I just keep that question mostly to remind myself that we are just dealing with, with extending non-price regulation and the effect that it will have on the case for entry. I'm gonna tell you four things about co-location, firstly that there is no access problem because co-location is very common. I'm gonna tell you that co-location benefits both access providers and access seekers so there's unlikely to be a problem in the future. I'm gonna tell you that there's difficulties in the, in the time that co-location takes due to mostly planning law and they're not matters for the Telecommunications Act and something I'm just gonna mention is that the telecommunications or the co-location code is nearly finalised but I think that's been well and truly covered already. So firstly this is a list of all our co-locations and shared facilities agreements that we have. We have 150 different agreements with 13 different parties. We have already adopted the timeframes set out in the draft co-location code. We have standard terms and conditions for price that are based on independent pricing which is basically from a, from a property manager saying what sort of return would you expect on this type of property and that's where the 13% number comes from that you were talking about before. And we've recently started providing access seekers with street addresses for co-locatable sites on a city by city basis OK, so. That's a snapshot, that's a snapshot of us as an access seeker, an access provider. That's the level of activity that we see in the market. This slide is about the cost savings from co-location. Moving from left to right the left-handmost column is six types of cell sites. The type at the top is a really quite large cell site you might see in rural New Zealand. The roadside site at the bottom would be one you might drive past and not even notice. The total cost in thousands of dollars under the total cost column the second column in, and then.

Mr Webb - Are they New Zealand dollars?

Mr Watt – Yes. Thousands of New Zealand dollars and these sites are. Oh moving, starting with co-location. The shared costs are what you might expect if, if you had a full co-location agreement so sharing the mast and all the power supplies and access tracks etc.. That column starting with \$333,000 that's how many, that's how many dollars the co-locating parties would share OK. Now the savings are half that amount so the third column there is just half the second column. Now we had some questions before about the 13% so this would be. Hayden said that we had two options, one pay half the capital or two pay 13% of half the capital so you would either pay in a co-location agreement both parties would pay the cost there under savings that capital cost or one the access seeker would pay 13% of that number under the savings column. Is that, is that clear? Yeah. Now moving to shared facilities and just a little bit of a health

warning about these numbers. These are, these are co-location agreements that do not share the mast OK. Now this encompasses a very wide range of circumstances and I've chosen a particular scenario to give you a consistent set of numbers but they're indicative only at this stage OK. This scenario consists of sharing everything but the mast but it could equally encompass in a rural site sharing a very long access track or power supply. Again you see there are savings, the savings are much less but they're still, still valuable to both parties.

Anita - These costs these are what apply now are they to the parties that you have agreements with on the preceding slide?

Mr Watt - These are, no this is going forward right so most of the historical stuff on the preceding slide will be under the previous regime that Hayden talked about with the 10,000 7,000. These are cost numbers upon which we would base our new regime which was either the capital, providing the capital or 13% on half that capital.

Anita - And you've just also reminded me in terms of the preceding slide, the total co-locates out of your total cell sites, what part is that number.

Mr Watt - So on, on our masts there are 14. So that's people co-locating on our masts. 14 co-locates and 36 shared facilities agreements, that's the second to last row and then us on other people's masts, us as an access seeker that's 63 and 37 shared facilities agreements.

Anita - (inaudible) of your total sites how many are (inaudible).

Mr Watt - Oh we have about 1,200 sites all up. About, it's hard to get the engineers to give you a number on this but about 300 we think could be co-located on without modifying them in an engineering sense and probably another 300 could be co-located on with some modification so with some costs. And the rest would be very small microsites or they might be on top of buildings where co-location just isn't relevant. Is, any more questions about that slide? OK now this is a distressing slide from a public policy perspective. The pie chart is the length of time it takes for us to build a cell site. The reason this is relevant is because a lot of this time taken will also apply to a co-location access seeker so the key point here is that compliance with planning law and also landlord negotiations actually take 63 weeks out of around 80 weeks it would take for us to build a cell site. Now an access seeker, a co-location access seeker has to go through exactly that same process, they have to get planning consent, RMA consent and landlord consent so in terms of speed, and we're talking about speed to market, the access provider doesn't have a big part in that. It's really the planning law that takes the time and as an example of that, co-location is difficult but it's not difficult because of the access providers, it's difficult because of planning laws. We plan to co-locate 80% of our 3G cell sites on our 2G sites and in the end we could only co-locate 40% of these

sites and that was with, to do with the problems in the planning law OK. So against this, so just on summing up co-location we don't see that an access problem. We don't see, we see that the co-location benefits both parties. We see the problems with the timing of co-location being relating to planning law and we see the code being close to being finalised so we, we don't see a strong case or any case at all really for continuing to regulate this service. And I'll hand over to Hayden.

Mr Glass - I think in the timing we might, we might wrap it up there. I think we just have some comments on roaming but I think we've covered those messages already in our previous submissions and, and in these slides of course so.

Mr Webb - Thank you Mr Glass. We'll close this presentation on this point. You'll have an opportunity to make some closing comments later. Thank you gentlemen. We'll invite Telecom to come forward.

Mr Parkes - My name is Bruce Parkes. I'm the General Manager of Government and Industry Relations at Telecom New Zealand. I have with me on my right Sarah Gillies from our internal legal team and John Leslie-Smith from Telecom's regulatory team. We only have a few comments to make this morning. This is quite an unusual conference for us. Despite the topic of extending regulations we don't actually have much to say and we agree with the Commission's conclusions in their draft report. We have a few comments we'd like to make to put on the record but we see our role primarily here this morning to assist the Commission and to ask any questions you may have. I don't think I need to tell anyone here that the telco industry is going through significant change, particularly with the new legislation being introduced into the House. Given this backdrop we believe that the stability and continuity of rolling over the ten designations for two years is appropriate. The main point we would like to make this morning is that in the next two years we expect that there will be very substantive changes in the industry which will build on many of the catalysts for change already evident in the industry. These drivers include the emergence of new wireless technologies. There have already been statements by a number of players about quite substantive sums of money to be invested in technology such as Wimax. The use of existing cellular investments to compete directly with Telecom's fixed network both with voice and broadband services. The mass market availability of a quality voice service is now I think a reality for the market. With the new legislation the availability of unbundled local loops, high quality UBS services and naked DSL will undoubtedly change the face of the market. We expect to see the entry of convergent players from other industries such as Google or Sky or Microsoft. We believe in the next two years that those players will feature in any assessment of market dynamics and it would seem that there is significant investment in capital waiting in the wings. The Government has stated that they've received firm statements of intent for investments in the New Zealand market totalling \$1.5 billion to \$2 billion depending on the different reports I've read. It sounds a bit like a Telethon. Different competitors staking their claim for how much

they'll pledge. Nevertheless we expect to see very large sums invested in the marketplace over the next few years. So it will be effectively the beginning of 2009 when the two year rollover period expires and these very substantive changes say to us that the time would, at that point in time that it would be ripe for a comprehensive review of market conditions and market structures. We think this should involve a detailed look at current and forward looking market conditions with a particular emphasis on the competitiveness of alternate networks to Telecom's copper network and it should include a detailed cost benefit analysis of whether regulation is warranted. We're aware that a number of the submissions have focussed on the designations of national roaming and co-location. We have chosen not to submit on the substance of these issues. This is not to say that we necessarily agree with all the comments made by the Commission in the draft report. So for example we do believe that the Commission has defined the market for co-location too narrowly. In our view co-location is possible and indeed does occur on sites other than just cellular mobile transmission sites so for example we believe co-location can occur on any building or tower that is of sufficient height that is structurally capable of supporting antennae. So that would include transmission towers such as BCL, exchange buildings of Telecom's. These would appear to have been excluded from the Commission's definition of the market for co-location. However our broader point is that in terms of the process the Commission is conducting a comprehensive review of the mobile market and in our view that's the appropriate process to consider these issues. The result of that review might be a reduction in increase in regulation or a change in mobile regulations of some sort. We're expecting that the Commission's process with the mobile review will accommodate submissions and cross-submissions and the like so that we will have ample time to put in detailed views as that process unrolls. So in our view it is most efficient to roll over the current regulations and that the two mobile designations allow this comprehensive process to take its course and on that basis we support the two year rollover of both the mobile, the two cellular related services and the eight other services in general. So that's the fairly straightforward position that we've taken. We did want to put that record on view and we're very happy to take questions on any matters.

Mr Webb - Very well, it appears there are no questions so we'll thank you for your presentation this morning. We've now made up time and are back on schedule again so that we'll take a 15 minute break at this point and resume at 10.40 with the next presentation from TelstraClear.

ADJOURNMENT

Mr Webb - Well we'll resume. The next presentation is TelstraClear.

Mr Dixon - I am Alistair Dixon, the Regulatory and Industry Adviser at TelstraClear and with me is Chris Abbott who's the Group Manager, Regulatory. TelstraClear agrees with the Commissions' draft recommendation to extend the regulation to ten services the

Commission has decided to investigate that are currently included in Schedule 1 to the Act and we agree not to extend the remaining three services the Commission has decided not to investigate for extension. TelstraClear notes that the Commission's decision whether to recommend extension of these services is not occurring in a vacuum. Earlier this month the Commerce Select Committee reported back to the House supporting the Communications Legislation Bill which would extend those services for a further two years. Separately the Finance and Expenditure Select Committee is considering the Telecommunications Amendment Bill 2006. While these Bills do not alter the process that the Commission should follow in providing its recommendation for extension to the Minister the changes in the Telecommunications Amendment Bill are likely to increase the value of extension of these services for a further two year period, notably around enforceability particularly of codes. The written submission phase has identified two main areas of contention amongst those parties that made submissions. First while there is agreement amongst the parties that eight of the ten services that the Commission has decided to investigate should be extended Vodaone does not agree with the other parties that the roaming and co-location services should be extended. Second not all parties agree with the Commission's approach to market definition and cost benefit analysis. This oral submission will focus on these two areas, two main areas of debate amongst the parties. First I will briefly address the issue of market definition and cost benefit analysis, then I will address the question of whether it's appropriate to extend the co-location and roaming services. TelstraClear agrees with the Commission that a pragmatic approach to market definition and investigation of the competitiveness of the markets under consideration is appropriate. This is for several reasons. First this investigation is quite different to Schedule 3 investigations into whether regulation is required for services that are not already regulated. By contrast the services that are subject of this review are already subject to regulation. The benefits and risks of continued regulation are more apparent than may be the case with proposed regulation of new services. A full cost benefit analysis is unlikely to provide a more accurate assessment of the risks of extending the regulation than the Commission's pragmatic approach. Secondly the rollover period is only for two years not the full five years that would be the case if these services were new regulated services. It's therefore quite reasonable for the Commission to judge that the risks associated with continued regulation of these services are much lower than if these services were to be extended for the full five years. A shorter time horizon means the degree of uncertainty is much lower than a five year period. Third the Act does not require the Commission to demonstrate a measurable increase in competition from a rollover of the current services. Nor does the Act expressly require that the Commission conduct a cost benefit analysis before deciding whether to extend the services. All that the Commission is required to demonstrate is that extending regulation of a service will create the conditions or environment for improving competition. TelstraClear considers that the Commission has done this for the services that it is proposing be extended. I'll now turn to the question of extension of the co-location in mobile roaming services. As stated in our submission TelstraClear agrees with the Commission that extending these services

for a period of two years will create the conditions for improving competition in the cellular communications market. Competition in the mobile telephony market is currently limited to two players. While TelstraClear has announced it intends to offer services using mobile technology next year initially this offering will be limited to Tauranga. Therefore competition is likely to continue to be limited for some time and across much of New Zealand. Allowing mobile regulation to lapse in the face of continuing limited competition would be inconsistent with the section 18 purpose of the Act of promoting competition for the long-term benefit of end users. In addition to this TelstraClear considers that there are several other important reasons why the co-location and roaming services should be extended. The Commission is currently undertaking a mobile stocktake process. This process is looking at potential amendments to existing co-location and roaming regulation as well as potential additional mobile market regulation. The need for a particular regulation to facilitate entry into the mobile market will be impacted by decisions on other mobile market regulation. For example the lack of a roaming service would increase the importance of co-location and vice versa. Therefore the existing mobile co-location and roaming regulations should not be allowed to lapse until the Commission's mobile stocktake process is complete. In relation to co-location the telecommunications Carringham Forum is close to finalising a revised draft code of the co-location as Mr Alexander said this morning. The fact the co-location is a regulated service led to the drafting of a code. The code is not a substitute for regulation. This draft code will be committed to the Commission for approval as a regulated code. That it would be a regulated code means access seekers have some basis for holding access providers to what they have offered in the code. If the regulation were to fall away this would no longer be the case. Furthermore proposed changes in the Telecommunications Amendment Bill further strengthen the protection afforded to access seekers by making approved codes legally enforceable. TelstraClear considers that it would be destabilising for the industry if co-location regulation were left to expire just as the industry is close to finalising a regulated code of practice for the service. To the extent the co-location is occurring without regulation in the majority of instances, and I think this was demonstrated in the information provided by Vodafone, this is with parties who are not potential new entrants in the mobile market i.e. co-location is either occurring between the existing established mobile players or with organisations who do not provide retail mobile services. The incentives to provide co-location commercially are stronger in these circumstances than in the case of a new rival. While providing co-location to a rival may save costs this may well be offset by a reduction in revenue. In addition the negotiating leverage of new entrants is much weaker as they are unable to provide equivalent reciprocal co-location opportunities on their sites. It's not only a question of whether co-location would be provided without regulation but also a question of whether it would be provided with the necessary speed and certainty. While co-location is not the substitute to building a network co-location can provide a more timely and efficient option for a new entrant in attempting to acquire new sites which are often associated with significant lease and resource consent issues. Further the need for a regulated co-location service is affected by the extent, is affected

by the extent of other mobile market regulation as I said before. For example the degree to which co-location is important to a new entrant's business case will depend on whether roaming can be obtained on economic terms and of course vice versa. Vodafone has raised practical issues with co-location. Undoubtedly suitability for co-location will vary between individual sites, however this is not a reason to remove any legal obligation to provide co-location at any sites. The assessment of the suitability of a co-location should be addressed on a site by site basis within an overall framework for co-location. In relation to roaming TelstraClear considers that a new entrant wishing to enter the New Zealand mobile market is likely to seek to negotiate a national roaming service. TelstraClear considers it unlikely that roaming would be commercially negotiated in the absence of any regulation because of the implications of entry for the incumbent's profitability. The current roaming regulation lacks clarity. For example the 10% threshold national coverage requirement before the regulated roaming service is available is unclear. However while deficient removing this regulation could remove important regulatory certainty for a new entrant. Given that the costs of continuing to regulate the specified roaming service appear low we consider that the benefits of continued regulatory certainty at least while the Commission evaluates the appropriateness of mobile market regulation as a whole unlikely to outweigh the costs. In conclusion the evidence in the draft report demonstrates that while competition has increased with the availability of the regulated services Telecom, and in mobile services Vodafone, continue to have substantial market power in the markets that are the subject of this review. TelstraClear therefore agrees with the Commission that extending these services for a further two years would create the conditions for improving competition. While the dividends of regulation for end users have so far been modest this is due, in TelstraClear's view, to the delays in gaining regulated access, the limited wholesale discounts, particularly for residential services, and the known price terms of supply not conforming to world's best practice. While not matters for these proceedings these issues need to be addressed if the full potential of the current regulated services and the new services proposed by the Government are realised.

Mr Webb - Thank you Mr Dixon. You have made the point to us this morning that thinking about the roaming service that it's TelstraClear's view that roaming would be unlikely to be commercially available in the absence of regulation and I'd like to just push that with you a little bit given the submission that has been made to us on the part of Vodafone that behaviour in the market in terms of commercially offering roaming demonstrates that the balance of incentives would be such that at least so far as Vodafone is concerned it believes that commercially, commercial agreements could be and would be reached regardless of the presence of regulations so this seems to be the exact opposite of the position that you're, you're putting and I'd like to know whether you have any, any particular experience or issues that you point us to to suggest that we should, we should favour your conclusion rather than the Vodafone conclusion on this issue.

Mr Dixon - Well I guess from TelstraClear's point of view we have had experience with trying to obtain access to services in the absence of regulation when they are bottleneck services and generally our success in obtaining those services in the absence of regulation has been at best limited. Certainly our ability to commercially negotiate favourable terms has been extremely restricted. I think there's a long history of us attempting to obtain services and failing to do so. Once the Act has been put in place and once the Act is put in place and there was a basically a regulatory backstop we were, we still, basically still, commercial negotiations were not necessarily straightforward but we were at least eventually, especially after following a regulated process, able to obtain favourable terms. Now that's the, sort of the precedent that we have available to us, it's the only evidence we have of obtaining regulated services both without regulation and without regulation, certainly and our experience is that backstop of regulation is important for ensuring that

TAPE 2

Side 1

Mr Edwards

Thank you for making for EcoNet. Today's presentation is Tex Edwards talking to one slide about collocation explaining why it's not just price and then we've got Andrew Davis my colleague working through a series of issues surrounding co-location detail. We've got a very strong view on co-location and its relevant failures. Prices have been discussed today, the situation on price is obvious. What we want to stress to the Commission today and the Commissioners is that it's not just price, that there's a whole series of very detailed engineering processes that are being used in an almost collusive manner to prevent rapid multi-access co-location and at a very simple level there's simple things to understand that the TCF hasn't agreed a standard cellphone tower type so our research shows that 84% of all cellphone towers are equal, equal actually for standard types of engineering and by agreeing that engineering protocol up front you facilitate rapid multi-access co-location which is workable co-location for rapid deployment. Remember that the rapid deployment issue equals cost. Rapid deployment means no J curve and it means certainty of execution in a, in a network business plan. Because just backing up, and we'll talk a little bit about interplay later, but the, if you have roaming to, to, to hold you over while you're building out your network you're actually subsidising your competitor. The new entrant subsidises the incumbent because the new entrant is a third of the way through a rapid multi-access co-locate arrangement. He's paying SAC, subscriber acquisition cost, he's investing in getting customers and, and generating solutions but actually all the revenue is going to the incumbent network because you're roaming and so interplay between these services is essential and we're respectful that today's submissions are just on co-location and roaming but at every available opportunity we must stress the interplay of these services so the interplay obviously between 900 spectrum roaming and co-location. So there's a failure of the code to understand exclusion zones. That's an engineering protocol of spectrum management. There's a failure of the code to focus on RMA. There's a failure of the code to avoid unnecessary tower replacement and there's very bizarre rules about new tower owning so, for ease of conversation there's 3,000 cellphone towers in New Zealand. We think 80% of those are available for co-locates. Some towers have to be replaced and re-engineered but that process is absolutely essential to sort out upfront because when you're in rapid multi-access and you're asking for a delivery of one, two, three, four, 500 sites it's critical. Rooftop usage isn't covered off in the code and actually the code doesn't actually articulate and stand and describe the difference between co-location, co-siting and near-siting and these are very important bits of detail that are used to confuse and obfuscate a new entrant because it slows you down and drags out your J curve. And there is also some crossover in the TCF between the, the Radiocommunications Act and the Telecommunications Act, so when we come into

spectrum management there's this interplay of spectrum issues that are used as the barrier to entry. Specifically the code does nothing to remove or minimise the exclusivity clauses that current incumbents use as a barrier to entry so the exclusivity clause where you need sub-leases or not sub-leases. And so there's this very large group of lease issues whereby there's no effort at the telecommunication carriers forum which is meant to be generating a competitive useful code to facilitate the manipulation of these private landlord leases which give exclusivity to one operator. And it comes as simple as that is that because there's no procedure in the telecommunications code in which databases must be managed you've got a situation where a new entrant can't go and look at the menu from one incumbent and the menu from the other incumbent and go well there's, this is exclusivity, we, these leases are no good on this operator's sites but on Telecom sites we could use them. So information provision is so expensive and so disorganised and is such a barrier to entry that it's, it's damaging any efficiency that you might see because you've got two blocks of celltowers to choose from 'cause technically a new entrant should be able to go well I've got 1,500 Telecom sites and 1,500 Vodafone sites. Which ones can I use, and we'll come back to that later and we've got a specific example of what the expense of cost of information has, how it's caused a problem Telstra. We actually we'd go as far as to say that we think the co-location code is a nonsense. It's got no intention of facilitating rapid multi-access. It's not just pricing that's missing but it's actually a tool to, to create a barrier. We won't zip through the normal EcoNet persona on the market. Again we stress interplay. Interplay is very important and interplay here today. co-location is actually worth nothing without 900 spectrum. co-location equals a roaming price. If you've got co-location and you've got 900 spectrum you've got a wholesale roaming price. There are some obvious natural pricing tendencies that with a little bit of regulation you could get almost a market outcome rather than have a lot of regulation and, and perpetually have to regulate. What I mean by that is that if the new entrant doesn't have 900 spectrum you have to perpetually regulate roaming because the 900 propagation properties in rural coverage are so good that you're always going to have to use 900 in a country with a geography of New Zealand to create a rural service obligation, a rural service capability sorry. And this rural service capability comes about from 900. Even if you move onto the 3G technology footprint all the equipment suppliers are looking at offering 900 based, 900 spectrum based rural 3G solutions and so again here the interplay's very important because we're looking at discussing roaming only and co-location only but what we're saying is that if you had a decent co-location protocol and a decent spectrum protocol then almost your roaming outcome comes out in the wash and every five or every ten years when your roaming agreement rolls over you don't need to have to go to the regulator because a commercial solution is there which is I'll build, and because we're working for the long-term benefit of the end user at every available opportunity we're looking to encourage a build and give the potential builders the facilities that they need so interplay very important with us. Is it three, is it four operators, we always mention is it three operators or is it four when we're with Telstra because obviously we would always say Telstra, go to it Telstra but there's plenty of room for four operators in New

Zealand and we need to deliver those messages. Just closing off on co-location, before I pass over to Andrew Davis. co-location is not just a issue that the incumbents and the industry should be concerned about. As telecommunications professionals we all have our own view on the market, fine, but we haven't heard the word environment mentioned today and I mention it as I close off on my part before I pass over to Andrew Davis because nobody's mentioned environment and we would argue that there are massive New Zealand environmental issues at stake here, not just in telecommunications but as a consequence of any potential regulatory outcome here. There are for ease of conversation 3,000, 3,500 cell sites in New Zealand. There only need to be 2,000. New Zealand consumer is hoping for an outcome where there's another two networks, there doesn't need to be 6,000 cellphone towers in New Zealand. We also believe that the TCF is a working example of why self-regulation doesn't work. We heard from Mr Alexander earlier in the morning that he was first mandated in 2002 and respectfully Commissioner Webb we had your letter back to the industry, back to the TCF in June of 2005. Well it's now August 2006 and notwithstanding the flurry of activity we've had since the Government announced unbundling and changed the road rules of the telecommunications landline industry the routine of the telecommunication carriers forum has been to delay, postpone and to not generate a workable code. So I'll close off on my closing point that I think it's important when discussing co-location that we also consider environmental issues. Thank you.

Mr Davis

OK I've got a separate presentation that Tex will be handing out now. I'll just bring it up on the screen. For the record my name's Andrew Davis and I work with EcoNet Wireless. Lies, damned lies and Vodafone submissions. co-location isn't working in New Zealand. Vodafone doesn't want to agree a fair roaming deal. Make no mistake these services will need to be designated and we will be coming to you for a determination. In the meantime the minimum that you can do is extend these services as specified services. Now before I go into my presentation I'll share with you my journey to Wellington today. I've travelled almost 4,000 kilometres to be here with you today and I have driven from Auckland to Wellington. But first I drove to Whangarei, I drove up to the Bay of Islands, Kaitiaia, back through Auckland, the Coromandel, Bay of Plenty, Rotorua, Taupo, Hamilton, Pirongia, Raglan. Just yesterday I covered Taumarunui, Ohakune, Waiouru, Dannevirke, Mangatainoka, Martinborough, back over the hills, Otaki, Paekakariki, Wellington. Now I wasn't on New Zealand's longest pub crawl though I did pass the Tui Brewery in Mangatainoka and it wasn't that I had nothing better to do with my time. I would much rather be building a competitive new network. I would much rather be bringing competitive new products and services to market. I would much rather be in the streets fighting Telecom and Vodafone for new customers. Instead I am here today fighting just to get started. Vodafone in their submission said they have over 100 co-locates out of a total of 1,200 sites. They have said that they co-locate 40 sites with organisations other than Telecom. Now the regulated service is cellular co-location so most of the co-locates that they claim fall

outside the scope of regulation anyway. The only co-locates that they can claim are the ones with Telecom because there are no other mobile operators here in New Zealand to date. So we contacted Vodafone and we said please send us a list of all these co-locates that you claim because frankly we don't follow you. From what we know of the market there is not that level of competition, of co-location in the market. This is the list that they sent us. Basically they claim 73 co-locates with Telecom in New Zealand, 51 of which are in the North Island. Now with very few exceptions I have driven to and visited every single one of those co-locates in the North Island and I photographed them to share with you here today. This is where they are on a map. Looks very impressive up and down the country co-locates everywhere. We also contacted Telecom, Vodafone claim to have all these co-locates with you. Well where are they? Is it true? Telecom said we only have three sites where we share the mast. At the rest we share access tracks, power and other infrastructure. Vodafone by e-mail to EcoNet claim that they were sharing 50 sites where people co-locate on their mast and they also said 30 of these were with Telecom. Well their submission to you today didn't include those 30 sites with Telecom. They claimed four. Here is a genuine co-locate in New Zealand. It is Muriwai, Piha Beach in Auckland. The explanation of Muriwai is that the community forced this co-location. Both operators tried to build their own mobile phone tower. Both operators had their resource consents turned down. It was community pressure that forced the operators to co-locate. The total process took six years. Six years to achieve what we think is New Zealand's first co-locate. This here is a genuine co-location. It is in Ruawai up in the Far North of the North Island. At this site Telecom is providing co-location services to Vodafone on a lattice transmission tower. Here is another genuine co-locate in Hamilton. Yet again it is Telecom providing co-location services to Vodafone. So what about the other 40 sites? Well you decide, but before I begin I want to make one statement and Vodafone have it in their submission anyway but they've glossed over it. Vodafone does not offer co-location services on any of its sites to any mobile operator anywhere in New Zealand today. Not one site nowhere to no-one. So what do you call two towers, a Vodafone tower and a Telecom tower standing next to each other. A Vodafone co-location of course. Dannevirke, two towers. Vodafone and Telecom next to each other. Something that you'd also notice with this site is Vodafone has their own cabinet space, I'm not sure if you can see but it's fenced off. This is the same with all sites that I visited. They don't share cabinets. They generally have fenced off areas. They are for all intents and purposes separate sites. The only thing that they can ever claim to share is the access track or the power supply. That's it. Clevedon, two sites. Vodafone and Telecom. Haruru Falls, two sites. Vodafone and Telecom. Huntly, two sites. Vodafone and Telecom. What do you call a Vodafone tower standing next to a Telecom tower with no obvious need to share either power or access. I actually walked up to these sites. I'll show it to you. It's in Whenuapai. There's existing concrete paved areas access through to both of these sites and perhaps they share a power supply but there's no obvious need for it. You're in a built-up, developed urban area yet they claim this to be a co-locate. Hunua, two sites. Yet again you can see you've got housings here that are separate, I mean the Vodafone site is probably at least

50 metres away, they've got their own separate houses, housing. They've even got the access tracks that they share, in a lot of cases they're not shared for very long because there's existing access tracks already there. The farmer already has an access track down to his back paddock. All that they share is that last 50 metres or so from the access to the back paddock across the paddock to their site. Now because their sites are so far apart these access tracks often branch off anyway so what the hell are they sharing? Kaitaia, two sites. Vodafone and Telecom. Kaitoke, two sites. Vodafone and Telecom. Kawakawa, two sites. Vodafone and Telecom. We're sharing an access track. Who owns the access track? Vodafone, Telecom or the farmer whose land it's on. Could Vodafone or Telecom realistically deny access to another operator? I don't think so. And we're not talking about a big cost here. The access tracks are typically either dirt or gravel. They're not sealed. They don't run for very long either. Tex got his car stuck in the mud trying to get to one of these sites. He had to have a journalist help push him out so that he could get out off this access track away from the site. These are not fancy access tracks. Mangawhai, two sites. Vodafone and Telecom. Maranui Hill, five sites. Telecom, Vodafone and three others and if you look off to the left and see that massive transmission tower the lattice tower please don't tell me that that tower could not hold all of the equipment that is on those four other sites. Martinborough, three towers, possibly four. I took this yesterday during heavy rainfall and couldn't decide if the fourth tower was a power pole or an actual tower so three, possibly four. Whangaroa, two sites. Telecom and Vodafone. Ohakune, two sites. Telecom and Vodafone. It's worth noting here these sites they're hundreds of metres apart and you'll see it in other sites, they claim co-locates where some of these sites are over a kilometre apart on farmer's land. Okaihau, four sites. Telecom, Vodafone and two others. But we're sharing the power supply. Well yet again who owns those power lines? Is it Vodafone, Telecom or the lines company and could they realistically deny access to another operator. In some cases yes they could but in most cases no I doubt it. Also in rural areas it is quite common for customers to pay a capital contribution for new lines to be installed and that if in future a second customer wants access to those lines they will pay a further contribution but that's used to partly reimburse that first customer's capital contribution. So that's something that the lines companies do anyway out in the rural areas.

Mr Edwards

It's interesting to note here that part of this environmental scarring is actually, part of it is Vodafone's doing but a lot of it is Telecom's doing because the legacy legislation of the 90's created the situation where Bell South couldn't co-locate and there's an order of magnitude policy differential between New Zealand and Australia because we had that Crown castle style third party initiative in Australia set up mid-90's, so as a consequence a lot of this environmental damage has been done actually by Telecom because they didn't allow Bell South or Voda to co-locate and then obviously Voda have a vested interest in maintaining as high as possible the entrant costs, the costs of entry for a new entrant but we'll go through later because we've got some more numbers but it's interesting to note.

Mr Davis

Otaki, four towers. Telecom, Vodafone, two others. Paeroa, two towers. Vodafone and Telecom. Kerikeri, two towers. Vodafone and Telecom. Yet again in this picture it's very clear as opposed to other pictures that they're not sharing housings. Vodafone has its own fenced off area. These are completely separate sites, apart from the fact that they share the same hill.

Mr Edwards

And occasionally, we don't have Whoosh here today but it would be worth getting some of the engineering and finance people from Whoosh because there's an audit trail of bizarre behaviour where a third party has gone to somebody on a tower that size, we, we've categorised the Vodafone towers into four standard types, 84% of them are four standard types and we've obviously done our engineering work on it but there's an audit trail of Whoosh, of behaviour with Whoosh where towers like that had the antenna reserved so from here to here was reserved for future technology, so for 4G, 3G, 5G, 10G that was all reserved so there's plenty of engineering capability in that particular tower. It's outside the content of today's workshop but, and some other time we'd like, we'd like to.

Mr Davis

It comes back to it's not just price. It's fair and reasonable terms and often they will say the entire headframe is reserved for future capacity therefore we'd love to have you on our tower but you can only sit halfway up the tower. So, you know, the amount of coverage you get depends upon your height. Well they've just halved your height. Forget it. It's not worth your while. Pirongia, two towers. Okeno.

Mr Edwards

Yeah this is great. This is actually a very interesting example. You actually come up the back hill and this is a hill at the top which is strategic, this is a monopoly asset because there's only one hill that covers this tower in the district. You drive up the back and you've got to be very careful when you're coming here 'cause you get your car stuck. (inaudible). But the issue here is we went to talk to this person and said well why don't you locate your kit here or here and the gentleman who was the chief engineer on this wireless network build it was not the cost of locating here from here. It wasn't access track and getting stuck on it. The issue was, was with him was that the information costs, the cost of getting the information from these two counterparties was larger than the cost of building that own tower and that really best reflects the bottleneck issues in that the quality of information that the incumbents are obliged to provide under the TCF creates a bottleneck.

Mr Davis

Raglan, two towers. Telecom and Vodafone. Yet again completely separate.

Completely separate housing. Separate everything. They share an access track and the power supply. That's all. Paradise Valley Road, two sites.

Mr Edwards

And again you can see the headframe on the Telecom site, the antenna. You don't have to be a PhD in engineering to understand that the antenna weight and visualise that type of antenna on the Vodafone tower. Obviously they've all got different descriptions in terms of the engineering functionality of it but it's quite important because when you, when you do the audit trail of excuses of why co-location didn't occur you get into some quite petty engineering discussions. Some of them are reasonable but most of them for the, the long part aren't and it's the TCF not dealing with these that, that create a facade of co-location not rapid multi-access good for 100, 200, 300, 500 sites.

Mr Davis

Yeah they use engineering reasons a lot to deny co-location and they would have you believe that these rocket ships will fall over if you put two or three more antennas on top. Down at the pub, off the record, and I've had them tell me this, they will joke with you that you could crash a 747 into their towers and the 747 will come off second best but when you're negotiating with them no, you put two or three more antennas on this tower it will become unstable and it will fall over. Complete nonsense. Pukepoto. This was actually a complete needle in a haystack but we found it. The photo's very unclear because it was taken from over five kilometres away but I can assure you I looked with binoculars. There are two sites there. Kakapiko Lookout. Yet again a complete needle in a haystack because Kakapiko Lookout according to the Tourism Information Centre in Rotorua does not exist. There's four Tourism Information Centres around Rotorua. They rung every single one. Nobody could find it. We were driving around with our cellphone seeing what cell site we were on until we got a little bit of coverage from this site and drove in that general direction to find it. Now the reason I bring this up is we didn't go to four sites, three of which the main reason was there was insufficient address information provided. Most of these they provided very little address information and you could drive around in a circle for 50 k's before you found the site. State Highway 14, two sites. Vodafone and Telecom.

Mr Edwards

Our understanding of some of those Vodafone towers are that they're Bell South towers designed in the US and capable of having co-locates 'cause you've got a different protocol in the US, and you know you can see from engineering just the scope and width of it, of the tower. It's important that when you get into the next level of detail that the, some of the excuses that you get are that the foundations are different which, now foundations are different and, because obviously you can't have a tower that's blowing in the wind so the foundation functionality is different. But you can see that all the, many of the slides that we've looked at are very similar so it actually leads one to, to understand that having standard tower types is very important and it's critical to rapid

multi-access because you, you can drive through the country and you will literally see not 2 or 300 but 4 or 500 towers that have similar engineering substance to them.

Mr Davis

What do you call a Vodafone tower standing next to and being completely dwarfed by a massive Telecom lattice transmission tower? They would have you believe that this is an example of good co-location policy in action. Look at it. The Vodafone site isn't even a quarter the size of that Telecom lattice tower.

Mr Edwards

We've got confusion here. We opened up the presentation saying that there is confusion between co-location, near-siting, co-sharing and that's where we've got, it's not just price in the code 'cause there's just a plethora of engineering processes that are creating confusion.

Mr Davis

What do you call towers that are on separate hill tops, in separate paddocks so far apart that we struggled to get them both into one picture? A Vodafone co-location of course. I've had our engineers check the radio licensing database at the MED to get some idea of how far apart these sites are. And you can't quite tell from the picture because it's almost a kilometre and yet that is an example of co-location according to Vodafone. Tauranga, two sites. As you can see separate housings, fenced off. Two completely separate sites. Te Kauwhata, two sites. Vodafone and Telecom. What do you call a Vodafone tower that doesn't have any other tower nearby, doesn't have any other company's cellular equipment installed on it. It only has Vodafone cellular equipment installed on it and there's no other tower nearby. Apparently this is a Vodafone co-location. We couldn't find the other site. Apparently there's a Telecom site somewhere nearby on the same farmer's land. Yet again our engineers have checked the radio licence database. The closest site they could find is two and a half kilometres away yet Vodafone would have you believe that this is an example of co-location. Two and a half kilometres away. Tutukaka, four sites. Vodafone, Telecom and two others. Waihi, two sites. Telecom and Vodafone. Waiouru, two sites. Vodafone and Telecom. It was snowing yesterday in Waiouru and I took this photo at dawn which is why you can barely make out the two sites but they are there. Waiuku, two sites. Telecom and Vodafone. This one here takes the cake. What do you call a Vodafone tower and a Telecom tower that are separated by more than one city block, have several factories in between them, have a road in between them, even has a Police station in between them and yet again we struggled to get these both into the one picture. What else but a Vodafone co-location. Try counting the number of rooftops between these sites. You can barely make out that Telecom site in the distance but it's there. To give you some idea I've put up a Wise's map. They're diagonally opposite each other on separate city blocks. Yet Vodafone would have you believe that this is an example of co-location. Waiwera, there's three sites there. Telecom, Vodafone and I assume BCL has a massive

lattice transmission tower nearby. Yet again that lattice transmission tower could easily carry both operators' equipment on it. Wellington, two sites. Telecom and Vodafone. Paekakariki, two sites. Yet again I apologise for the quality of the picture but it was very heavy rain yesterday. Whakamaru, this is near Mangakino, three sites. Telecom, Vodafone and one other. Whangarei, six sites. Telecom, Vodafone and four others. It's a massive environmental (inaudible). Whangarei again, two sites. Whangarei again, two sites. Pukepoto, two sites. Mangatainoka, four sites. Vodafone, Telecom and two others. Now any guy my age knows that Mangatainoka is home of the Tui Brewery. And you all know the Tui ads. Yeah right. co-location works. We have over 100 co-locates. Yeah right. There are only three although I see from Vodafone's submission today possibly four genuine cellular co-locates in New Zealand. Muriwai which the community forced and two Telecom lattice transmission towers where Vodafone has installed kit. Vodafone does not provide co-location services on any of their towers to any mobile operator anywhere in New Zealand. Not one, nowhere. We would love to agree a fair roaming deal with new entrants. Yeah right. Since 2001 EcoNet has been in negotiations with Vodafone. Vodafone have never offered a fair price.

Mr Davis

Yeah as you hear is that there's a lot of differences in other new entrants because you've got this pricing tension if you've got 2GSM networks, you've got same technology pressure. At the moment a regulatory decision comes that there must be roaming then you get this price tension and we would really welcome some interface with the Commission and with Meteor in Ireland, Cellsi?? in South Africa and Hutch?? in Australia.

Mr Edwards

The OECD benchmarking is wrong. Yeah right. It is still cheaper for a Vodafone Australia customer to come here and internationally roam than it is for locals here at home in New Zealand to make local calls on the Vodafone network. Leave it to us. Self-regulation works. Yeah right. Number portability. Over ten years of delay and it's still not here. co-location. Five years. Delay. It is still not here. Roaming. Over five years of delay. It is still not here. Competition. Still isn't here. The only thing that New Zealand telecommunications industry leads the OECD in is denial, procrastination and delay. Now throughout my presentation I've used some humour but please don't think that we take this matter lightly. We don't. And please don't think that it's a laughing matter because it's not. Lies, damned lies and Vodafone submissions. Vodafone does not provide co-location services on any of its towers to any other mobile operator anywhere in New Zealand. co-location is not working in New Zealand. EcoNet's experience trying to negotiate roaming with Vodafone has been as farcical as Vodafone's co-locations claims. Vodafone does not want to agree a fair commercial roaming deal. Vodafone does not want competition. To agree roaming and co-location with us would be to bring about competition. They do not want to do that. It is not in their economic interest to do that. That is why both roaming and co-location must be

designated and we will be coming to the Commission to seek a determination but in the meantime the very minimum that you can do is extend these services as specified services. Thank you for your time.

Yes thank you gentlemen. I will now proceed to closing statements, and I'll call first on Vodafone. Mr Glass.

Mr Glass

Let me just say first I suppose EcoNet knows more about, has driven more comment as a network in it than I have. I guess I really only have three things, three things I want to say from this morning's proceedings. First, first and foremost I think there's an important distinction between promoting competition and managing market outcomes and I've taken it to be the Commission's job to promote competition, so the question I, I would have for EcoNet is on, especially on this co-location question is so, in how many of those sites did someone come to Vodafone and say we would like to co-locate with you and were denied for illegitimate reasons. How many of those sites were situations where someone said I'd like to build a tower, I'd like to put it on your site, sorry I'd like to put up a site, I don't want to build a tower, I want to use your site and Vodafone said no for illegitimate reasons, for reasons that would be reasonably constrained by the, by the Commission. Now the answer is I, I don't know the answer to that question but I suspect the answer is very very few and, so what we're seeing in New Zealand is a transformation from Vodafone Telecom share sites where it's convenient but, but reciprocally to a situation where you've got a new entrant who wants co-location. Now the question for the Commission is will Vodafone refuse co-location in those circumstances and these are relatively novel circumstances where it's going to face a competitor who wants to co-locate extensively. Now, and that's the question before the Commission so the historical approach, the, the evidence that it tell, that it gives you, it doesn't necessarily tell you anything about an access problem i.e. that if people ask were they refused. I'm sure Mr Edwards is going to come back with more on that in his, in his closing statement. I think, I think that is actually a, a fundamental question from, on the other side of things on roaming as well. Do we have an access problem? Is, is a mobile phone network irreplicable or is it just about making life easier for the entrant, 'cause if it's, where, where does the balance lie between these different things and obviously speaking as a, as a firm that's already built its network I have a higher threshold for, for what in my view counts as an access problem than potentially new entrants do because they see our network as a relatively easier way to get into the market. So I encourage the Commission to, to think carefully about is this an access problem or are we, are we trying to achieve some other objective here. Are we just trying to reduce the number of towers in the landscape for example, which is a legitimate objective but potentially not an issue for Telecommunications Act. The second thing I'd say is there's, there's been a lot of talk about incentives, incentives to deal and, would, would Vodafone do a deal with a new entrant. I just want to make this as clear as I possibly can, so if an entrant is going to enter anyway, if an entrant is going to build a network we will lose customers at

retail. They will take market share from us regardless of what we do, so in that world when you've got a credible new entrant we would rather do a wholesale deal. Why? Because we're gonna lose retail money anyway and so we might as well try and make some back at roaming or in wholesale if we can. So there's an obvious incentive to deal with people who would otherwise build, would otherwise build competing infrastructure. That's the point I (inaudible) and I think that applies to roaming and I think that applies to, to co-location as well. If we build our assets and we can co-locate obviously we have incentives to do so. And the third thing I'd say is just, is just on the question of what's the Commission's task and I think this is coming back to something that we said at the beginning. Telecom said, and TelstraClear too to some extent, that, that this is, this is essentially

Tape 2

Side 2

Mr Glass (continued)

Extending these regulations is essentially a good thing to do in the meantime and you've got another investigation potentially beginning in to what other mobile market regulation might be required. I mean I agree with him that, that there are many other issues that are not being covered in this proceeding but the question for the Commission in this proceeding is not well is this very important or not, it's not well you know, does it really make terribly much difference. The question for the Commission is would extending this regulation make terribly much difference to the prospects for new entry and, and Vodafone's answer continues to be no it would not make terribly much difference to the prospects for new entry so the question is in a situation where it doesn't make terribly much difference do you keep it or do you not keep it and we would say you don't keep it, and that's all I have to say.

Thank you Mr Glass. Mr Parkes.

Mr Parkes

I suspect we have even less to say in our closing submissions than in our main submission. As I said before we haven't commented on the substance of the issues to do with roaming or co-location. We would be happy to respond to any of the matters raised in the submission. I would just reiterate that Telecom does have a track record of co-location with other organisations. It's a pity Whoosh Wireless aren't here. That's an organisation that's clearly a competitor to Telecom that we have a number of commercial co-location agreements with. In terms of the environmental issues that have been raised by EcoNet it is true that it is hard. The RMA really pushes us as a network operator to build to the minimum environmental standards possible in terms of the impacts on the visual environment so we will build a tower driven by the Council

requirements that is as small as is necessary for our purposes and as slim as possible. That will often mean that it is more effective for there to be two smaller towers than one very large tower in an area. That is one of the reasons why there is often two sites or two towers in a particular site, and I think the Commission need to understand the impact the RMA and Council requirements does have on certainly their operators. But the primary point I would like to make is that we have a track record of co-location and as new mobile operators enter the market we would expect to strike commercial deals going forward and we look forward to working with those potential entrants as they develop their business plans and want to talk at a level of detail that we can engage with and at an engineering and level of specificity that will allow us to actually have a dialogue on co-location. And we're happy to provide any further follow-up questions or answers as the Commission needs.

Thank you Mr Parkes. Mr Dixon.

Mr Dixon

Thank you Commissioner. Firstly I think the first point we would like to make in summing up is that there is industry consensus for extension of all the services other than co-location and roaming and secondly that the review is occurring within, with the backdrop of the Communications Legislation Bill, the Telecommunications Amendment Bill and the Commission review of whether there is any reasons, whether there are any reasons for a lack of access in the mobile market. The question before the Commission that we see is will the extension of the regulated services provide benefits above, above allowing those services to lapse so will there be a benefit in terms of promoting competition from extending those services. We've heard from the forum, Vodafone, Telecom and EcoNet so I just have a few comments in relation to each of their submissions. Firstly we heard from the forum independent Chair, Malcolm Alexander. Malcolm pointed out that the code first depends on a successful referenda and the target date for the draft code is the 25th of September so the, if that code were passed the ongoing availability of the co-location service in the Act would ensure that that code is enforceable particularly with the changes that are proposed with the Telecommunications Amendment Bill. And with respect to Vodafone, Vodafone stated that they would consider extension was justified if it provided a backstop, a regulatory backstop. We would agree. We, as we've, as we've said a regulatory backstop is important for enabling new entrants to negotiate with incumbents. Vodafone suggested that the Commission must compare the factual regulation of extension against the counter factual of expiry of services to demonstrate an appreciable increase in competition and TelstraClear's view is that such granular analysis is not required for this investigation. TelstraClear's view is that the extension of the services in of itself will deliver a net benefit as a backstop. Vodafone also presented as to whether the services will best promote competition. It's not whether they will best promote competition. The question before the Commission is will there be an incremental benefit over letting those services lapse. As far as Telecom's submission is concerned, on one of those rare

occasions TelstraClear actually agrees with Telecom and we agree with Telecom's view that extension is appropriate to ensure stability and continuity given the changes that the telecommunications market faces. With respect to EcoNet's submission I think EcoNet made the point very clearly that there is grounds for continued regulation of both co-location and roaming and that's all I have to say in summing up. Thank you.

Thank you Mr Dixon.

Mr Edwards

Commissioners thank you for making time for us today. It's important that you understand that we're not a voting member of the TCF and that we've attended the TCF meetings just as an observer, albeit a little bit vocal. We heard at the beginning of today's workshop that the TCF has a code that's all ready to submit and that you should be seeing it soon. Our observation is that it, this is a farcical code and it has no detail capable of facilitating rapid multi-access because the ten, 15 year damage done to New Zealand means that we have a distorted environment, we have 100% penetrated market and we have both incumbents having full networks with no co-location. So it's, it's trying to fix something that's a very entrenched problem and although the TCF has been at it for four years we don't think we're any closer to a positive outcome and that's why regulation is needed. We heard a little bit about incentives, incentives for co-location. It makes sense for us to generate some wholesale revenue. Why wouldn't we agree to co-location. We all know the story of the expensive mobile phone market in New Zealand. We would, we saw part of the Vodafone model. We would invite the Commerce Commission to look at our model. Our model shows prices in order of magnitude difference. Our model shows prices in some market segments dropping 80%. If you drop mobile phone prices 80% any marginal revenue that you'll gain from co-location revenue is, is negated to an exponential fact by price drops. We heard, we heard a little bit about whether co-location or roaming would make much difference and I, I mention it to the Commission because every little step makes a bit of difference. Every little step is a signal to the incumbent that the regulatory environment's changed. It's very strategic that we explain to the Commissioners and the Commission that we've applied for 90 co-location applications where we've had engineering drawings done. One counterparty has responded with a generalised price but no detail and no specific sites. The other counterparty has created such confusion about pricing but also about information gathering that the information gathering exercise is more expensive than the actual process and as a consequence negotiations have stalled. So again it reiterates the point that it's not just price. It's information and it's database management that's critical to facilitate a rapid deployment. We make a couple of observations about Telecom's unwillingness to comment and it's a little bit about the signalling. Telecom was given a genuine signal inkling that it's the incumbent monopolist in the landline business and it was sent a signal to alter its behaviour and we, we invite and suggest the Commerce Commission consider making a, sending a similar signal to the incumbent monopolist who has 66% market share in the mobile market, Vodafone. And it might be a small

step but the signalling impact of that step is very material when you're in the trenches negotiating co-location. Closing off we agree with Telstra. We agree with a lot of what Telstra has to say and we're very respectful for their observations and, and the diligent work they do. The only observation we'd make in difference is that we believe there's plenty of room for four operators in New Zealand but there's a \$3 billion mobile market in New Zealand today. It will grow to a \$5 billion market by 2012. There's plenty of room for four operators, and it sort of kind of explains why there's the need for regulation because it's easy to adopt somebody else into the club and go from a duopoly to a triopoly but to create a truly competitive dynamic market all the issues need to be considered and we, what we're looking for is not a pyrrhic solution where there's, where there's one marginal change but we need a universal change and a vision of four operators in the market and a regulatory environment that works for us. We are angry and we're frustrated. We've been at it for five years. Our closing messages are this. Interplay, interplay and interplay. Interplay between services and signalling it's very important to us. The devil is in the detail and the concept of just pricing co-location is not adequate. We need co-location targets and co-location timings and solutions outside the framework of the Commerce Commission's powers at the moment to deal with other issues like RMA and private cell site leases which are possibly anti-competitive. We're grateful for your time today and we're grateful for the signalling that you, your time and focus on this important issue has given the industry. Thank you very much.

Thank you Mr Edwards. That completes the closing submissions to this conference and completes the presentations by the industry participants. I want to thank you all for the effort and time that has been put in today to discuss these issues with the Commission. I want to emphasise that the Commission has not reached a final conclusion on any of these matters and we will be carefully reviewing the submissions that we've received and what has been said to us today. We expect that we will complete our process by delivering a report to the Minister with our recommendations within a relatively short period. It is, there is an interplay here between the Commission's work and various legislative processes but nonetheless we have made a commitment that we will deliver our recommendations to the Minister in adequate time to, in adequate time to allow officials and the Minister to complete their review of those recommendations prior to the expiry date of the regulated services. I have nothing further that I wish to add today. Let me just check if there's anything more we need to cover. Very well, then thank you again for your attendance and we are closed.