



Commerce Commission Schedule 3 Investigation into Roaming and Co-Location Services Draft Report

Submission from Telecommunications Users Association of NZ Inc (TUANZ)
P O Box 33 1014, Takapuna, Auckland. www.tuanz.org.nz

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TUANZ supports most of the conclusions and recommendations contained in this Draft Report.

Declaration of the roaming service is clearly necessary to the development of competition in cellular mobile services. Vodafone's proposed undertaking would not have been an effective alternative – particularly as Telecom has now announced that it also intends to offer a GSM service.

TUANZ supports the Commission's intention to provide a technologically neutral description of the roaming service, so as to allow for developments in the rapidly evolving field of mobile access services.

However, the draft recommendation has two deficiencies that may undermine the effectiveness of the regime proposed by the Commission: 1) it fails to declare Co-Location as a designated service, and 2) lack of clarity as to the way data services that are part of a cellular mobile service are to be treated in the pricing of the Roaming service.

1. Non-designation of Co-Location services

The Commission's preliminary view concludes that it is not necessary to designate the Co-Location service. This view seems to be based largely on the fact that New Zealand Communications has apparently reached a commercial agreement with Telecom. While TUANZ warmly welcomes that commercial agreement if so, and hopes it will facilitate the entry of NZ Telecommunications into the service market, we note that this agreement was reached only under the immediate threat that the Commission would otherwise force the issue by designating the Co-Location service.

TUANZ does not believe that a single commercial agreement is sufficient reason to close down consideration of a factor that is recognized as essential to the long-term development of competition in cellular mobile services. TUANZ does not assume that NZ Telecommunications will be the last service provider to enter this market. Neither do we agree that the agreement between Telecom and NZ Communications will necessarily make it easier for any future market entrant to gain co-location access on reasonable terms. NZ Communications has been fortunate (at long last) in the

coincidence of the current investigation with Telecom's own strategic decision to enter the GSM facilities market and operate its own retail service.

The Draft Report does not address another consequence of leaving co-location access at the mercy of its highly concentrated market market. TUANZ agrees with the Commission that it is in the long term interest of the end user for mobile network operators to have a clear incentive to move up the "ladder of investment": from roaming access, to co-location access, to independent facilities, whenever and wherever market share and business case permit. We are concerned that so long as co-location services have no regulated pricing principle for reference, incumbent access providers will have asymmetrical market power to influence the business case for a competitive access seeker either remaining as a roaming customer or migrating upward to co-location. Once regulated co-location pricing is off the regulator's agenda, it is realistic to assume that access providers will exploit the relative market weakness of access seekers to maximize their own commercial interest, which must include inhibiting the growth of any competitor where possible.

Co-location pricing, therefore, is not just a matter of the "new market entry" cited by the Commission (para 273), but also the environment for development, growth and ongoing investment by entrants over the medium and long term. We ask the Commission to reconsider this matter in terms of Section 18's reference to the "long term" benefit of the end user.

2. Roaming, data services, and MTS as pricing proxy

The Commission's Discussion Paper for this investigation specifically invited comment on the differences between data and voice services in the context of roaming, but we note that the Draft Report contains neither the word "voice" nor the word "data" from end to end. We assume that this is a deliberate decision to keep the service description as broad, and as technology-neutral, as feasible. The draft Description of Service (para 565) also omits that part of the current description in Part 3, Schedule 1 of the Act which excepts "value added services" (para 71). TUANZ agrees that the "value-added" reference is highly ambiguous and better omitted as proposed.

Our concern is that current cellular mobile services, both 2G and 3G and on all technology platforms, increasingly focus on data services to end-users, both for service differentiation and for network revenue. Most service providers offer, in addition to voice handsets, connection devices (such as PC cards) that are purely data-oriented with no separate voice channel. A large number of the users represented by TUANZ rely upon their mobile cellular service for email and other Internet-oriented service connections. With HSDPA and equivalents, mobile service providers offer data services at broadband speeds, though at substantially higher retail prices than fixed-line broadband.

In this context, we are concerned by the Commission's proposal to rely upon Mobile Termination Service benchmarks as a proxy for roaming pricing principles. The Commission's own investigations, like those of every credible telecommunication regulator, have identified mobile termination charges as remaining substantially above justifiable cost, and as being sustained by the community of mobile service providers only because the mobile operators, collectively, gain massively from charging these exorbitant rates due to the high proportion termination charges represented by calls that originate on fixed networks, and therefore paid by fixed line operators and end users.

Since the Draft Report appears to have ignored the data roaming issue, TUANZ must reiterate some key points from our earlier submission.

- It is absolutely essential that mobile data services be included in any roaming service definition. Data services are increasingly important for business and private users, and also as revenue generators to support infrastructure investment. For example, data services include VOIP, instant messaging, and file transfer tools critical to mobile business applications for which national access is essential.
- Voice and data services should be considered separately for the purposes of price modelling, because customer billing continues to charge separate retail pricing for voice and for data. Voice is billed and settled in call minutes (following PSTN precedent), whereas data is billed in quantity of bytes transferred (following Internet service provider precedent).
- Users need to be able to expect charges for both voice and data services to be the same on a national roaming connection as on a home network connection, particularly as users will typically not know when their handset roams from a home network base station to another network's base station.
- In the case of both voice and data roaming, billing to the user should reflect the terms and conditions of the user's contract with the home network, regardless of the way that such services are billed on the roaming host network. The roaming host network operator may offer its own customers data usage terms and conditions significantly different from those of the roaming guest's home operator.

Some of the non-price conditions in roaming arrangements between operators may also need specific reference to the requirements of data service roaming, distinct from voice call requirements.

- It is normal for cellular mobile networks to provide data services to their own subscribers on a private Internet Protocol network, which connects to the public Internet only through the host network's own private gateway servers. These servers and routers are usually configured to provide services exclusively to network subscribers.
- For proper data roaming, mobile network data gateway routers must be configured to recognize the presence of a roaming user from another subscription network, to notify the home network of the roaming user's network location, and to create a data path to the roaming user's home network data gateway, in order for normal data service to be enjoyed by the roaming user.
- Data roaming setup is therefore a separate and different operation to the standard voice roaming arrangements that simply establish a roaming user as a temporary user on the roaming network (after an authorization check) and send only billing information to the home network.

In a final Report, TUANZ hopes to see reference to these issues that are real for end users, with explanation as to how they are to be addressed in the Roaming service, or reasons why they do not require to be addressed.

Ernie Newman
Chief Executive