



Eric H. Loeb
International Regulatory Law
and Policy Director

Suite 1000
1120 20th Street, NW
Washington DC 20036
202-457-3803
FAX 832-213-0444
loeb@att.com

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Commerce Commission
Mobile Termination Draft Report
Network Access Group
P.O. Box 2351
Wellington, New Zealand
telecommunications@comcom.govt.nz

Re: Mobile Termination Draft Report – October 18, 2004

AT&T Corp. and AT&T Global Network Services International Inc. – New Zealand Branch (collectively, “AT&T”) are pleased to provide comments on the Commerce Commission (“ComCom”) Draft Report “*Draft Report on whether Mobile Termination should become a Designated or Specified Service*,” issued 18 October 2004 (the “*Draft Report*”). AT&T provides a large volume of telecommunications services to New Zealand and has an interest in this proceeding because excessive mobile termination charges in New Zealand have a very negative impact on AT&T’s customers who make calls to New Zealand. AT&T commends the ComCom for conducting the investigation into above cost mobile termination charges, and issuing this well reasoned and empirically supported Draft Report.

AT&T supports the ComCom’s preliminary finding that there is a separate wholesale market for mobile termination services (“MTS”) on each of the mobile networks operated by Vodafone NZ Ltd and Telecom NZ Ltd. (*Id.* at ¶5). Similarly, AT&T shares the ComCom’s view that the mobile network operators (“MNO”) are subject to insufficient competition in the wholesale market for termination services on their respective networks (*Id.* at ¶8). Finally, AT&T agrees with the ComCom’s proposal that TSLRIC should be the final pricing principle for establishing cost-oriented MTS charges (*Id.* at ¶604), and that a one time reduction in mobile termination rates is more desirable for the interests of consumers than a phased reduction over several years (*Id.* at ¶583). An immediate reduction will benefit New

Zealand consumers by bringing an end to monopoly profits that the MNOs have been enjoying for far too long.¹

I. Regulated Reduction of Mobile Termination Rates is in the Best Interests of Consumers and Competition

Significantly, ComCom's preliminary views are consistent with and supported by ample precedent that have uniformly rejected MNO arguments that MTS rate regulation is inappropriate or unnecessary. Like an increasing number of other regulators around the world seeking to protect the long-term interests of consumers in the absence of disciplining market forces, the ComCom has properly recognized the need to regulate mobile termination rates. AT&T agrees with the ComCom's conclusion, based on facts in the record of this proceeding, that MNOs are subject to limited competition on their respective networks, as there remains no sufficient supply side or demand side constraints on MTS charges. As a result, each MNO has market power over calls terminating on its network. Unfortunately for consumers, the MNOs are abusing this power by extracting excessive rates from parties that cannot meaningfully influence or avoid the rates if they wish to call subscribers of the MNOs.

Other regulatory authorities and policy makers have correctly reached conclusions and taken regulatory actions concerning the harm to consumers presented by high mobile termination rates in countries with calling party pays MTS systems. For example, the Australian Competition and Consumer Commission ("ACCC"),² the UK's Ofcom, the European Commission,³ Jamaica's Office of Utilities Regulation ("OUR"),⁴ Ireland's Commission for Communications Regulation ("ComReg"),⁵ the OECD,⁶ and the Office of the United States Trade Representative ("USTR")⁷ have all analyzed the market performance of MTS in calling party pays jurisdictions, and have found consistently that rates are not disciplined by either market forces or MNO restraint. If the MNOs will not exercise self-restraint from taking excessive profits from calling consumers that do not even subscribe to their services, then it is entirely appropriate for the regulator to protect those consumer interests.

¹ See, e.g., *Vodafone's NZ unit FY net jumps 71% to NZ\$154m*, *Total Telecom*, October 13, 2004, at: <http://www.totaltele.com/view.asp?ArticleID=112455&Pub=tt>

² ACCC, *Mobile Services Review, Mobile Terminating Access Service, Final Decision* (June 2004).

³ See *Commission Recommendation 2003/31/EC on relevant product and service markets within the electronic communications sector susceptible to ex ante regulation*, OJ L 114, 8.05.2003, at 45, market 16 of the Annex.

⁴ See Office of Utilities Regulation, *Assessment of Dominance in Mobile Call Termination, Supplementary Consultative Document*, TEL 2004/03 (March 30, 2004).

⁵ See Commission for Communications Regulation (ComReg), *Decision Notice-Designation of SMP*, Decision No. D9/04, Document No. 04/82, (July 29, 2004).

⁶ OECD, *Access Pricing in Telecommunications 2004*, at 141.

⁷ United States Trade Representative, *Results of 2004 Section 1377 Review of Telecommunications Trade Agreements*, Apr. 7, 2004, at 2, available at: <http://www.ustr.gov/sectors/industry/Telecom1377/2004/1377report.pdf>

II. The ComCom Properly Defines the Relevant Market

AT&T supports the ComCom's conclusion that the relevant market at issue is the national wholesale market for mobile termination services on each mobile operator's network. The ComCom's reasoning is sound, as MTS are purchased by other operators for purposes of interconnection to complete calls, independent of any additional or ancillary mobile services.

Specifically, AT&T agrees with the ComCom's proposal to reject Vodafone's claim that MTS is part of a broader mobile market (e.g., mobile origination and subscription) that should be considered for purposes of market analysis of substitutable services. Other national regulators have reached similar conclusions, rejecting this unjustifiably over inclusive market definition, and determining that the MTS market was the relevant and appropriate market for evaluation.⁸ Indeed, the MNOs own actions also affirm that retail markets are separate from wholesale markets for call termination because the MNOs generally take great pains to establish rather different tariff rates for termination of calls to their mobile customers from their own retail mobile customers (on-net mobile calls) versus to their mobile customers from fixed network customers (fixed to mobile calls, i.e., off-net). If wholesale and retail mobile termination services were elements of a single competitive market, it is unlikely that this discrimination would occur.

III. Regulation of Future 3G Networks

Notwithstanding our general support for the ComCom's analysis and preliminary views, AT&T does differ with the ComCom's conclusion not to regulate mobile termination rates on future 3G networks (*Id.* at ¶620). AT&T asserts that if 3G services will utilize a calling party pays interconnection payment system, then the same market flaws will exist as they do with non-3G services. Thus, ComCom should define the market now, and the basis for regulating cost-oriented 3G MTS, to clarify the obligations for MNOs from the outset.⁹ This would be an appropriate

⁸ For example, Ofcom in the UK, ComReg in Ireland, the ACCC in Australia, the OUR in Jamaica and the National Telecommunications Commission ("EETT") in Greece all agree with this assessment.

⁹ In considering Ofcom's proposals for ex-ante regulation of mobile termination, the European Commission ("EC") stated that "although 3G retail services might constitute an emerging market, which should not be subjected to inappropriate obligations, termination of voice calls on 3G networks is not as such to be considered as a novel service or a newly emerging market". The EC concluded therefore that it would be appropriate for Ofcom to impose certain regulatory obligations on all the UK MNOs regarding 3G voice call termination. In the absence of such obligations, the EC considered that the MNOs "could easily bypass the regulation of 2G termination, potentially leading to distortions of competition". See Case *UK/2003/0040: Wholesale mobile voice call termination* - Comments pursuant to Article 7 (3) of Directive 2002/21/EC, dated February 5, 2004.

market definition, even if development of a MTR pricing principle for 3G services occurs at a subsequent time.

IV. The ComCom Correctly Proposes that TSLRIC should be the Final Pricing Principle for Establishing Cost-Oriented Charges

AT&T fully supports the ComCom's proposal to set TSLRIC-based termination rates as the final pricing principle. Additionally, AT&T reiterates that a "bottom-up" TSLRIC modeling is the most economically appropriate method for establishing pertinent costs in the dynamic mobile industry. Other national regulatory authorities have conducted cost studies of mobile termination rates charged by MNOs. For example, Sweden, and South Korea have also adopted or will adopt a TSLRIC cost model to calculate mobile interconnection costs.

Further, upon establishing the appropriate cost model, ComCom is justified to oppose adding a network externality surcharge above the TSLRIC rate. As we have stated in prior comments, the value-of-service-based "network externality" mark-up is an empirically unsubstantiated and entirely inappropriate subsidy. Finally, there is a solid basis to ComCom's conclusion that a one-off reduction in mobile termination rates is more desirable for consumer interests than a phased reduction over several years. There is no merit to consumer interests in postponing the reduction of monopoly profits for mobile termination services, and no transition period is necessary.

V. Movements in Mobile Termination Rates and Fixed-to-Mobile Prices Demonstrate Pass-Through of Mobile Rate Reductions Should Occur

AT&T agrees with the ComCom's view that pass-through of mobile termination rate reductions will occur, because of the intense competition in fixed call origination markets. This is supported by the ComCom's analysis of industry fixed-to-mobile revenues and fixed-to-mobile minutes that show a pass-through rate of 65.1% over a 4-year period. The ComCom properly asserts that it is reasonable to expect this level of pass-through to increase over time as the tolls and fixed-to-mobile market become increasingly competitive (*Id.* at ¶ 487).

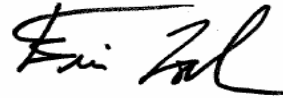
A significant reduction in mobile termination rates is likely to lead to a significant reduction in retail fixed-to-mobile rates to the benefit of end-users. Thus, it is reasonable to expect that as mobile termination rates drop and align more closely with cost, operators will respond and pass those reductions through to their mobile pricing structures. As evidenced in the market for fixed termination, carriers that do not respond to cost reductions risk losing market share to more nimble carriers who respond quickly with more competitive pricing arrangements. This is because customers may substitute between different carriers (e.g., between mobile carriers,

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between fixed line and mobile carriers and between fixed line carriers) if any should fail to offer the best available terms for calls to mobile customers.

For the foregoing reasons, AT&T supports the ComCom's recommendations in the Draft Report to take steps to correct the mobile termination rate market failure in New Zealand, and also agrees with the ComCom's proposal to use TSLRIC as a final pricing principle for establishing cost-oriented MTS rates, with a one-off reduction in mobile termination rates.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Eric Loeb", written in a cursive style.

Eric H. Loeb