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7 February 2006

Chris Abbott
Commerce Commission
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Dear Chris

MOBILE TERMINATION DRAFT RECONSIDERATION REPORT - PROCESS

1. We attach Telecom's submissions on the Commission's mobile termination draft reconsideration report, dated 22 December 2005.
2. As well as the issues addressed in Telecom's submissions, we wish to raise three concerns regarding the Commission's reconsideration process:
 - a. The fact that the Commission has indicated that it does not intend to hold a conference;
 - b. The fact that the Commission has added a new consideration to the service specification without any rationale or explanation of how the new matter will be applied; and
 - c. The structure of the final report.

The need for a conference

3. We note that the Commission issued two statements in relation to the reconsideration process, dated 13 and 27 September 2005. The first statement was made without consultation, and stated the Commission's view that it did not intend to hold a conference as part of the reconsideration process. Following that statement Vodafone and TelstraClear made submissions to the Commission. The Commission then reconfirmed its view that it did not intend to hold a conference. The Commission failed to provide Telecom with copies of the submissions made, or with an opportunity to comment before it made its 27 September 2005 statement.
4. Telecom submits that failing to consult the parties properly, and denying a conference, is contrary to the process in the Act, as well as standard and expected practice. While

Telecom is mindful of the Commission's desire for a timely process, this should not be a reason to subvert due process.

5. Telecom's view is that it is imperative that the Commission hold a conference in respect of the Reconsideration Draft Report. Continuity and access to the Commissioners (as decision makers) is an important aspect of any regulatory process. This is particularly so where the Commissioner's previous findings are being reconsidered. A fast outcome, creating process issues and a decision based on less than all relevant information, is not in anyone's interests.
6. Telecom notes that there have been a number of significant changes between the Commission's Final Report and Draft Reconsideration Report. This serves to highlight the need for an open and transparent process, including a conference.

New matter for consideration in its service description

7. The Commission has included a new matter for consideration in its service description: that it will take account of any pass through commitment given by an access seeker in considering an application for mobile termination.
8. However, the Commission has not explained in its Draft Reconsideration Report how such a commitment would be relevant to the Commission's consideration, and how the Commission would consider such a commitment.
9. In order to allow parties an opportunity to respond meaningfully to the proposed new condition, Telecom urgently seeks clarification from the Commission as to how a pass through undertaking would be considered and applied by the Commission, and the opportunity to submit in response to this clarification.
10. Not only is it critical for parties to be given the opportunity to comment meaningful on the new proposal, it is also critical that parties understand the Commission's approach to reduce regulatory uncertainty going forward.
11. Telecom submits that the Commission should make cross-submissions due 10 working days after it has provided clarification.

Structure of the final report

12. Telecom notes that the Commission's Draft Reconsideration Report only addresses issues that have changed from its Final Report. The Commission must reconsider the decision to regulate (or not) in full, and not merely update its final determination. Telecom submits that the Commission must ensure that its final reconsideration report is a full and complete report, covering all matters relevant to the Commission's decision.
13. We look forward to comment from the Commission on the above matters.

Yours sincerely



Anna Moodie
Regulatory and Competition Counsel