



20 April 2005

Mr Osmond Borthwick
Manager Network Access
Commerce Commission
PO Box 2351
WELLINGTON

Dear Osmond

Consultation on service description for mobile termination

1. I refer to the Commission's email of 6 April 2005, seeking submissions on a draft service description for the mobile termination service. The email proposed a handset based distinction between 2G and 3G in the service description – i.e., that voice calls terminated on 3G handsets would be excluded from the regulated service description.
2. Specifically, the Commission has requested submissions addressing two issues:
 - (a) Will the service description achieve the effect of regulating the termination of 2G voice calls while excluding from regulation all 3G calls? If not, why not? and
 - (b) Could the service description be improved? If so, how?

TelstraClear's responses to these questions are set out below.

- (a) *Will the service description achieve the effect of regulating 2G voice calls and excluding from regulation all 3G voice calls? If not, why not?*
3. TelstraClear is concerned that the service description will result in a large number of 2G voice calls going unregulated. This is because a significant number of handsets already in the market are 3G handsets even though the network equipment enabling the termination of the voice call on that handset is not 3G.
4. The rollout of 3G capable handsets is likely to precede the New Zealand 3G network rollout as handset manufacturers cater for a global market and most handsets are 2G/3G capable. Further, 3G handsets are now being sold to

ensure that they are capable of being used for data transmission in geographic areas where 3G network equipment has been rolled out to facilitate high-speed data transmission. The Commission's proposed service description would mean that all voice calls terminated on such handsets would escape regulation, even though the majority of voice calls are likely to be conveyed on 2G network equipment. Furthermore, it is likely to be difficult for originating operators to verify whether voice calls terminate on "3G handsets". Sim-card swapping may create an additional problem in determining which calls terminate on "3G handsets".

5. As TelstraClear noted at the Mobile Termination Conference in February, if Telecom's 027/1XRTT service technically meets the Telecommunications Act definition of 3G, and therefore handsets used on that network qualify as 3G, then over 90% of TelstraClear traffic terminating on Telecom mobile users' handsets will be excluded from regulation. This is despite the fact that these handsets use traditional circuit switched voice capability to receive such calls, i.e., 2G – even in areas of 3G coverage.
6. In fact, it is TelstraClear's understanding that even on a Vodafone w-CDMA network voice traffic will initially generally be carried using current GSM circuit switched voice capability even in areas of w-CDMA coverage. Accordingly, TelstraClear anticipates that all "3G handsets" will be GSM capable and will make and receive calls using current network technology the majority of the time for the period of designation of the mobile termination service.
 - (b) *Could the service description be improved? If so, how?*
7. As outlined in earlier submissions, TelstraClear considers that the Commission should regulate all circuit switched voice and draw a distinction between circuit-switched voice and high-speed data (including VoIP), rather than between 2G and 3G networks or 2G and 3G handsets. In TelstraClear's view, the use of 2G/3G handsets to delineate regulated/non-regulated services is anomalous in so much as the regulation relates to voice calls, but the 2G/3G capability relates to data services. We consider that regulation should be service-based and technology neutral.
8. TelstraClear believes that carving out circuit-switched voice calls terminated on 3G capable handsets will reduce the benefits of regulation to end-users. As stated in previous submissions, we also do not consider that regulating such calls is likely to have any adverse impact on mobile operators incentives to invest in 3G network technology.

9. For the avoidance of doubt, TelstraClear's own plans for significant investment in a 3G mobile network are unaffected by the prospect or actuality of regulating circuit-switched voice calls over either 2G or 3G network.
10. Further, drawing a distinction based on network or handset technology is likely to give rise to significant uncertainty. Such a distinction is likely to also create perverse incentives – just as a network based distinction would incentivise mobile operators to rollout 3G sooner than economically efficient, a handset based distinction will incentivise “3G handsets” to be rolled out sooner than economically efficient.
11. As stated in our previous submissions, TelstraClear considers that if the Commission chooses to exclude 3G voice calls from regulation it should define 3G networks based on available throughput capacity. This is the FCC approach and seems better aligned with the Commission's stated justification for excluding 3G. That is, a network-based exclusion would exclude from regulation voice services that may be run over new 3G networks that mobile network operators may choose to invest in rolling out. This seems more appropriate than a handset-based exclusion that would exempt from regulation calls to CPE that mobile customers (largely) invest in.
12. However, in TelstraClear's view, the Commission would achieve an appropriate 3G carve-out only by regulating the termination of circuit-switched voice calls conveyed over 2G or 3G networks, and excluding data services from regulation.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Grant Forsyth', with a horizontal line underneath.

Grant Forsyth
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