

**TELECOMMUNICATIONS USERS ASSOCIATION
OF NEW ZEALAND INC**

19 May 2005

Mobile Termination Draft Report
Network Access Group
Commerce Commission
P O Box 2351
Wellington

MOBILE SERVICE DEFINITION

In replying to your 10 May invitation to comment on the service description issue, TUANZ recommends, in the strongest possible terms, that the Commission does not pursue any further attempt to distinguish between termination of voice calls on 2G mobile networks and termination of voice calls on 3G mobile networks.

Such a distinction would be unworkable, costly to service providers, damaging to the competitive dynamics of the voice call market and, above all, detrimental to the short-term and long-term interests of the end users. We therefore believe that a decision to implement such a regulatory distinction would be contrary to the Commission's responsibilities under the Telecommunications Act.

TUANZ notes that not only the user community, but also all other providers of voice call services (including two who plan themselves to invest in 3G networks) dismiss as spurious the claims from Telecom and Vodafone that a technology-neutral voice-call termination regime will discourage investment in 3G networks and services. No other grounds have been advanced.

TUANZ believes that the Commerce Commission's obligations under Section 18 of the Telecommunications Act would clearly direct the Commission to evaluate any pro-competitive measure as *prima facie* being in the long-term interests of the user, unless compelling evidence to the contrary is provided. In this case, the bald assertions from Telecom and Vodafone do not provide any real-world evidence whatsoever, and are strongly contested by equally credible participants to this Inquiry.

The claim that regulatory correction of market failure in call termination "discourages investment" in mobile networks has not been accepted by regulators in any comparable jurisdiction.

Telecom and Vodafone have already made substantial investments in 3G, on business plans that could not have ignored the likelihood of regulatory intervention in the termination market.

Ofcom (UK) is cited in the Commission's Draft Report as having applied only information requirements on UK 3G networks for the time being. This Ofcom decision did not constitute a finding that regulation would not be economically beneficial. It only reflected Ofcom's lack of legal authority to regulate in the absence

of historical data on the particular network operation. It thus does not provide any precedent for the Commission's decisions regarding the New Zealand market.

TUANZ strongly urges the Commerce Commission not to proceed with any proposal to exempt 3G networks from voice-call termination regulation that applies to 2G networks. Such an action would introduce serious distortionary factors into the call termination market, and significantly undermine the usefulness of regulation on 2G networks.

- All carriers would be forced to implement complex new billing systems to verify additional termination network types and account separately for services that, at origination, are identical voice calls.
- Demand for network identification of each mobile account will seriously raise costs of implementing mobile number portability and undermine the benefits of that hard-won dimension of competition in the mobile services market.
- If exempted, Telecom and Vodafone will use the excess profits from voice call termination to fund anti-competitive cross-subsidisation of bundled products such as call plans, handsets or origination charges, in effect forcing users to migrate to 3G, to avoid unregulated higher termination charges of 2G-to-3G voice calls.

Had this determination been made several years earlier, while 3G was still in the future, it could have been argued that a regulation that exempted 2G might have been effective – that the regulated 2G termination charges would have set some kind of benchmark for 3G termination when it came on stream. However in New Zealand's case we are regulating in a scenario where 3G is here and now, so the effect of regulating one type of network but not the other will be to incentivise operators to quickly migrate most or all traffic to the unregulated 3G network. Hence, such an exemption would nullify the benefits of the current Inquiry process and as such could not be supported by almost all of those who in good faith have participated in this process.

The Commission will recall that New Zealand customers still pay among the highest mobile termination rates in the OECD. Large NZ call-centres have been obliged to reject calls from mobiles because of high terminating charges, which is a disgraceful situation given that real termination costs are known to be far below such charges.

In these circumstances, we believe it would be inappropriate to tinker further with the latest proposed definition, which we see as wrong in principle and impossible to implement in practice.

TUANZ recommends the Commission return to the definition proposed in our earlier submission, by which all voice-call terminations to mobile networks are treated equally.

Ernie Newman
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