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Osmond Borthwick
Manager, Network Access
Commerce Commission
P O Box 2351
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Dear Osmond

Mobile Termination Conference

We respond to the Commission's letter of 4 February 2005 regarding the Mobile Termination Conference.

Telecom is extremely disappointed that the Commission would suggest significant changes to the conduct of the conference two weeks out from the scheduled date for the conference. Telecom will be materially prejudiced by the proposals, and this is detailed below.

It is also highly undesirable that at this late stage the Commission has thrown doubt on the proposed scope of regulation. As the Commission has been aware since at least 30 November 2004, Telecom has proceeded on the basis that the Commission was proposing regulation of all mobile termination. If the Commission were to now propose regulation of fixed to mobile termination only a delay of the conference would be required to allow Telecom an opportunity to analyse and respond given Telecom's economic analysis is predicated on an assumption that the Commission's mobile termination report covers termination of mobile calls on both fixed and mobile networks. It is not clear why this issue was not clarified in the 4 February 2005 letter, and Telecom requests that the Commission clarify its position as soon as possible.

Telecom requests that the Commission revise its proposals and revert back to past conference procedure and its advice of 11 November 2004. Telecom has relied upon this advice and has already committed substantial resource and effort to its conference preparation. Telecom appreciates that the 4 February 2005 letter clearly signals the questions the Commission would like to focus on, and that the Commission would like as much time as possible to be made available for dialogue with presenters. Telecom believes these objectives can best be met within the standard conference framework.

Our detailed comments follow.

Conference procedure

The proposal to extend regulation to mobile termination is a serious issue for Telecom's business. The Commission's process must give parties an opportunity to participate that is effective and fair. In Telecom's view the 4 February 2005 proposal does not meet this standard in the following respects.

(a) *The standard conference procedure allows a robust opportunity to present*

A key change proposed in the 4 February 2005 letter is that presentations by parties would be restricted to opening and closing statements. It appears that the sessions proposed on particular topics are to be dedicated to answering questions, and presentations are not allowed for.

The Commission's established practice in conference procedures has been to enable parties to make oral submissions to the Commission. This has involved presentations from internal and external experts. Questions from the Commission are an integral, but not the only, aspect of this process. This reflects, correctly in Telecom's view, the fact that oral presentations are a significant contributor toward a robust and fair process, and a robust outcome.

This was the process used by the Commission for the local loop unbundling Schedule 3 investigation.

The Commission confirmed a timetable and procedure for the mobile termination proceedings on 11 November 2004, some three months ago. This stated that following submissions and cross submissions:

"3. Parties making oral presentations at the conference are encouraged to deliver a statement of issues by [16] February 2005. The statement of issues should briefly summarise the main issues **the party proposes to address** at the conference.

4. The conference on the Draft Report will be held on [23] February to [25] February 2005. Presentations at the conference must be confined to **supporting remarks on each party's own submission, comments on other parties' submissions and responses to Commission questions.**"¹

This statement by the Commission is in line with past practice that parties are provided an opportunity to put their own case and are available to answer any questions from the Commission.

(b) *Telecom has prepared on the basis of the Commission's previous representations*

The Commission's 11 November 2004 notice required the parties to submit a statement of issues on 16 February 2005. This required parties to plan their conference speakers and material in advance of that date. Telecom has, since cross submissions were filed on 23 December, invested considerable internal and external resource in planning and preparing its presentations.

Telecom has relied upon the Commission's statement as to the procedure on 11 November 2004 and its established practice.

The Commission has been aware since 30 November 2004 that Telecom had engaged two US Professors in addition to domestic experts in these proceedings. Their presentation preparation is well underway based upon past conference procedures.

Now, several months later and only two weeks before the conference, the Commission proposes to abandon its previous conference procedures and confirmed timetable on which the parties have, and are entitled, to rely upon. The Commission now also states that it does not wish to hear from one of these US Professors.

This proposed change, so close to the conference dates, is simply poor practice. It is far too late for Telecom to re-organise its resources, without incurring significant cost. Flights,

¹ See email from the Commission (Anthony Morris). The dates in February were subsequently amended due to a conflict with hearing dates on declaratory proceedings that affected the Commission, Telecom and TelstraClear. Those final dates have been inserted here.

accommodation and fees have already been arranged and preparations for presentations are already well underway to fit into a structure that Telecom's speakers will present one by one consecutively.

Proposed Mobile Termination Conference Schedule

For these reasons, Telecom requests that the Commission reconsider its proposed conference schedule.

Telecom instead proposes that the conference schedule should follow that of past procedure, namely:

- Introductions
- Submissions from the party/parties being regulated
- Submissions from other parties
- Closing Comments

Telecom currently estimates the timing of its presentations as:

- Introduction 15-20 minutes
- Substantive presentations approx 4 ½ to 5 hours
- Closing 40 minutes

Telecom requests that its presenters appear on the second day of the conference. This is because one of Telecom's senior managers is out of the country on 23 February 2005 and will only be available to present in the latter half of the afternoon on 24 February (note this presenter will be addressing competition issues, which the Commission's 4 February 2005 timetable has proposed be addressed on 23 February 2005).

We look forward to hearing from you.

Yours sincerely



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Competition & Regulatory

cc Adam Hibbs, Chris Abbott - Commerce Commission