

TWO DEGREES MOBILE LIMITED
VODAFONE NEW ZEALAND LIMITED

Telecommunications Act 2001
~~Draft~~ Undertaking to the Commerce Commission
under Schedule 3A in respect of the
~~Vodafone~~2degrees FTM Call Termination Service

2 October 2009 ~~6 May 2009~~

Draft Undertaking to the New Zealand Commerce Commission under Schedule 3A of the Telecommunications Act 2001

Dated ~~6 May 2009~~ 2 October 2009

Parties

1. ~~Two Degrees Mobile Limited of 131 Khyber Pass Road, Auckland (2degrees) Vodafone New Zealand Limited of Level 1, 20 Viaduct Harbour Avenue, Auckland(Vodafone)~~

in favour of:

2. **New Zealand Commerce Commission** being a Crown entity established by section 8 of the Commerce Act 1986 (**Commission**).

Background

A. ~~Vodafone2degrees~~ is a cellular mobile telephone network operator who operates a cellular mobile telephone network.

B. ~~Vodafone2degrees~~ gives this Undertaking pursuant to Schedule 3A of the Telecommunications Act 2001, as amended by the Telecommunications Amendment Act (No. 2) 2006.

1. Interpretation

Unless the context indicates otherwise, the following terms have the following meaning in this Undertaking:

1.1 **Access Seeker** means a provider of public switched fixed telecommunications services in New Zealand that owns or operates a voice switch in New Zealand and that provides a properly completed and executed Deed of Acceptance in favour of ~~Vodafone2degrees~~.

1.2 **Deed of Acceptance** means the deed of acceptance specified in Schedule 5.

1.3 **Expiry Date** means the date which is 5 years from the date of registration pursuant to clause 2.1.

1.4 **Undertaking** means this Undertaking given by ~~Vodafone2degrees~~ to the Commission under Schedule 3A of the Telecommunications Act 2001.

1.5 ~~Vodafone2degrees~~ **FTM Call Termination Service** means the service specified in Schedule 1.

2. Commencement and term

2.1 This Undertaking takes legal effect immediately after it is registered by the Commission under Clause 6 of Schedule 3A of the Telecommunications Act 2001 and continues until the earlier of:

a) the Expiry Date; and

b) the date on which either of ~~Vodafone2degrees~~ or the Access Seeker provides written notice to the other party to terminate this Undertaking, in the event that ~~Vodafone2degrees~~ becomes an access provider for the FTM Call Termination Service (or a service

substantially similar to the FTM Call Termination Service) as a designated access service under the Telecommunications Act 2001.

3. Undertaking terms and conditions

3.1 ~~Vodafone2degrees~~ undertakes to the Commission that, during the period this Undertaking is in effect, it will provide the ~~Vodafone2degrees~~ FTM Call Termination Service:

- a) specified in Schedule 1;
- b) at the prices specified in Schedule 2; and
- c) on the terms specified in Schedules 3 and 4,

to any Access Seeker.

4. Notices

4.1 Any communication in respect of this Undertaking should be made in writing to:

Attention: ~~Chief Commercial Officer~~~~General Manager Wholesale and New Business Development~~

Address: ~~Vodafone New Zealand Limited, Level 1, 20 Viaduct Harbour, Auckland~~ Two Degrees Mobile Limited, 131 Khyber Pass Road, Auckland

Facsimile: ~~(09) 355 2006~~ (09) 919 7001

Copy to:

Attention: General Counsel

Address: ~~Vodafone New Zealand Limited, Level 1, 20 Viaduct Harbour, Auckland~~ Two Degrees Mobile Limited, 131 Khyber Pass Road, Auckland

Facsimile: ~~(09) 355 2005~~ (09) 919 7001

Signed by ~~Eric Hertz~~ Tom Chignell as
Authorised signatory for ~~Vodafone~~
~~New Zealand Limited~~ Two Degrees Mobile Limited
in the presence of:

Signature of witness
Chignell

Signature of **Eric Hertz**~~Tom~~

Name of witness (block letters):

Place of abode:

Calling or description:

Schedule 1
Service Description

Vodafone2degrees FTM Call Termination Service

The **Vodafone2degrees Mobile Termination Access Services** comprises the FTM Call Termination Service.

The FTM Call Termination Service comprises:

- (a) acceptance of all FTM Calls handed over from the Access Seeker Network to the **Vodafone2degrees** Network in accordance with the FTM Call Handover Obligation for which a **Vodafone2degrees** Mobile Number is provided, and delivery or offer of delivery of each such FTM Call to the Designated Destination in respect of that FTM Call; and
- (b) transmission of an Answer Line Signal to the Access Seeker Network in respect of FTM Calls handed over from the Access Seeker Network to the **Vodafone2degrees** Network in terms of this Undertaking and answered by the called party or by some other means,

where the Access Seeker has:

- (c) for each FTM Call handed over from the Access Seeker Network to the **Vodafone2degrees** Network, transmitted the line, information or control signals in the Signalling Format that relate to the establishment of that FTM Call, including details in the Signalling Format of the valid **Vodafone2degrees** Mobile Number called; and
- (d) for each FTM Call handed over from the Access Seeker Network to the **Vodafone2degrees** Network that is to a number that has been ported to the **Vodafone2degrees** Network in accordance with the LMNP Determination, added a Hand-off Code to that number as its prefix in accordance with the Network Terms and the LMNP Voice Interconnect Specifications.

**Schedule 2
Pricing**

Vodafone2degrees FTM Call Termination Service

1. _____ The price for the Vodafone2degrees FTM Call Termination Service, which the Access Seeker agrees to pay, is as follows:

Type of Chargeable FTM Call		Chargeable FTM Call rate
<u>(a)</u>	All Chargeable FTM Calls during the period from the <u>Services Commencement Date to 31 December 2010 (inclusive)</u> .	<u>5.56</u>
<u>(b)</u>	All Chargeable FTM Calls during the period from 1 <u>January 2011 to 31 December 2011 (inclusive)</u> .	<u>4.73</u>
<u>(c)</u>	All Chargeable FTM Calls during the period from 1 <u>January 2012 to 31 December 2012 (inclusive)</u> .	<u>4.25</u>
(a) <u>(d)</u>	All Chargeable FTM Calls during the period from the Services Commencement Date <u>1 January 2013</u> to 31 March <u>December</u> 2013 (inclusive).	3.83 <u>3.0</u>
(b) <u>(e)</u>	All Chargeable FTM Calls during the period from 1 January 2014 <u>April 2013</u> to 31 March <u>December</u> 2014 (inclusive).	3.64 <u>2.0</u>
(c) <u>(f)</u>	All Chargeable FTM Calls during the period from 1 April 2014 <u>January 2015</u> to the Expiry Date (inclusive).	3.45 <u>1.0</u>

Notes:

1. The Chargeable FTM Call rate is an amount in cents per minute.
2. The Chargeable FTM Call rate applies on a ~~per second minute plus second~~ basis, with, in the case of such Chargeable FTM Calls with a Duration of less than one minute, the Duration of those Chargeable FTM Calls being rounded up to one minute.
3. ~~[This clause has been left intentionally blank]The charge for each Chargeable FTM Call is rounded up to the next whole cent.~~
4. For the avoidance of doubt, Chargeable FTM Calls of more than two seconds Duration will be charged for the full period of the Call, including the first two seconds.
5. Where a Chargeable FTM Call starts on one date, and ends on a different date, the Chargeable FTM Call rate applicable on the start date shall apply to the entire Call.
6. Vodafone2degrees may round its total charges to the Access Seeker for all Chargeable FTM Calls on any invoice either up or down to the nearest whole cent.
7. For the avoidance of doubt, Clause 17.3 of Schedule 3 of this Undertaking applies to the prices set out in this Schedule 2.

Schedule 3
Terms and Conditions
~~Vodafone~~2degrees FTM Call Termination Service

[Refer to separate attachment: "Schedule 3, Terms and Conditions"]

Schedule 4
Service Specific Terms and Conditions
Vodafone2degrees FTM Call Termination Service

1. Interpretation

Unless the context otherwise requires, words and expressions defined or construed in the main body of this Undertaking or **Schedule 3**, and not otherwise defined or construed in this **Schedule 4**, have the same meanings as defined or construed in the main body of this Undertaking or **Schedule 3** when used in this **Schedule 4**. In addition:

Chargeable FTM Call means any FTM Call handed over from the Access Seeker Network to the Vodafone2degrees Network in accordance with the FTM Call Handover Obligation and giving rise to the transmission of an Answer Line Signal, with a Duration of greater than two seconds;

Designated Destination means the point in the Vodafone2degrees Network to which a Vodafone2degrees Mobile Number provided in respect of an FTM Call has been allocated or assigned by Vodafone2degrees, disregarding any call forwarding or like functionality or service that may have been invoked by an End User, the Access Seeker, Vodafone2degrees or a Network Operator which results in that FTM Call being routed to another point in the Vodafone2degrees Network or to any other network (including the Access Seeker Network) from which the Answer Line Signal in respect of that FTM Call emanates;

Duration means the period determined in accordance with methodologies:

- (a) employed by Vodafone2degrees in determining the actual duration of calls for the purposes of calculating the charges paid by other persons; and
- (b) which have been established having regard to:
 - (i) when an Answer Line Signal for an FTM Call is detected by Vodafone2degrees in respect of that FTM Call; and
 - (ii) when a Release Signal for that FTM Call is detected by Vodafone2degrees in respect of that FTM Call;

FTM Call means:

- (a) a series of signals associated with full duplex, real time, audio communication contained within a dedicated circuit established between the originator and the intended recipient (which may include a dedicated traffic channel over the air interface); where the bandwidth to be provided is 64 kbits per second for PCM encoded speech, circuit-switched data or fax; whether or not there is actual communication between the originator and the intended recipient of the signals; disregarding CCITT No. 7 MTP or ISUP messages including (without limitation) messages relating to set up, answer or release of an associated call including calling or called numbers;
- (b) that originates:
 - (i) from an Access Seeker End User;
 - (ii) from a "Local Number" (as that term is defined in the LMNP Terms) (and that Local Number is the A-number for the FTM Call); and
 - (iii) in a network in New Zealand;

- (c) where the number dialled by the calling party is a Vodafone2degrees Mobile Number or where a Vodafone2degrees Mobile Number is provided by the Access Seeker as a result of number translation by the Access Seeker in accordance with **Clause 5.2** (but excluding, for the avoidance of doubt, calls where a Vodafone2degrees Mobile Number is provided by the Access Seeker as a result of number translation in any other circumstances); and (d) the Designated Destination is in Vodafone's 2degrees' cellular mobile network (including Vodafone's2degrees' 2G GSM cellular mobile network and Vodafone's 2degrees' 3G W-CDMA mobile network and any future Vodafone2degrees cellular mobile network),

but excluding any other type of call (including an MTM Call or video telephony call), text message or multi-media message.

FTM Call Handover Obligation means the obligation set out in **Clause 4**.

2. Provision of Vodafone2degrees Network Interconnection Service

2.1 Provision of Vodafone2degrees Network Interconnection Service

Subject to the terms and conditions of this Undertaking, Vodafone2degrees will make available and provide the FTM Call Termination Service to the Access Seeker.

2.2 Testing

Vodafone's2degrees' obligation under **Clause 2.1** is conditional upon agreement on the successful completion of:

- (a) appropriate testing in accordance with Clause 15.4 of **Subschedule 3A to Schedule 3** and the Operational Procedures; and
- (b) any other testing reasonably required by each party.

3. Price ~~and pass-through obligation~~

3.1 Price of FTM Call Termination Service

The price of the FTM Call Termination Service to be provided under this Undertaking, and which the Access Seeker agrees to pay Vodafone2degrees, for each Chargeable FTM Call is specified in **Schedule 2**.

3.2 ~~[This clause has been left intentionally blank]~~ Pass-through by Access Seeker of reductions in the price of the FTM Call Termination Service

- ~~(a) — Where there is a reduction in the price of the FTM Call Termination Service payable by the Access Seeker under this Undertaking (as compared to the most recent price applying under any previous interconnection agreement with Vodafone, or the most recent price applying under this Undertaking) on or after the Service Commencement Date, the Access Seeker shall passthrough to Access Seeker End Users (as a reduction in the retail price it charges such Access Seeker End Users for fixed to mobile calls to Mobile Numbers) the benefit of that reduction in the price of the FTM Call Termination Service in the Access Seeker's financial year in which the reduction occurs.~~

- (b) ~~For example, if Vodafone reduces the price of the FTM Call Termination Service payable by the Access Seeker under this Undertaking on or after the Service Commencement Date by 1 cent per minute and, in the course of the remainder of the Access Seeker's financial year in which the reduction occurs, Access Seeker End Users make 1 million minutes of FTM Calls, then the Access Seeker will pass-through to Access Seeker End Users a benefit of \$10,000.00 (i.e., 1 million multiplied by 1 cent) in that financial year.~~
- (c) ~~It will not be necessary for the pass-through to apply equally to each Access Seeker End User.~~

3.3 ~~[This clause has been left intentionally blank]~~ **Notice from Access Seeker and audit rights**

- (a) ~~Within 6 months of the end of the Access Seeker's relevant financial year, the Access Seeker shall provide a notice to Vodafone confirming whether or not it has complied with **Clause 3.2**. In providing this notice, the Access Seeker shall not be required to provide any confidential or commercially sensitive information to Vodafone, other than this confirmation.~~
- (b) ~~Upon receipt of the notice under paragraph (a), Vodafone may require an auditor to provide an audit report of whether or not the Access Seeker has complied with **Clause 3.2**. The auditor shall be a recognised auditing firm, selected by the Access Seeker, that is independent of the Access Seeker. The Access Seeker shall provide all information that is reasonably required by the auditor to complete the audit report (subject to such confidentiality requirements on the auditor as the Access Seeker may reasonably require).~~
- (c) ~~Vodafone shall pay for the costs of the auditor in providing the audit report. However, if the auditor confirms that the Access Seeker has not complied with **Clause 3.2**, and the pass-through was less than 90% of the benefit in the reduction in the price of the FTM Call Termination Service, then the Access Seeker shall reimburse Vodafone for the costs of the auditor.~~
- (d) ~~Where the audit report identifies an under-recovery amount (i.e., passthrough under **Clause 3.2** of less than 100% of the benefit in the reduction in the price of the FTM Call Termination Service), the Access Seeker undertakes, as soon as reasonably practicable, to pass-through such an amount by crediting the Access Seeker End Users on a basis to be approved by the auditor.~~

3.4 ~~[This clause has been left intentionally blank]~~ **Pass-through by Vodafone of reductions in the price of the FTM Call Termination Service**

- (a) ~~Where there is any reduction by any Access Seeker to its MTR rate on or after the Services Commencement Date, Vodafone shall pass-through to Vodafone Fixed Calling Customers (but not before the Services Commencement Date) the benefit of that reduction in MTR rates (as a reduction in the retail price it charges such Vodafone Fixed Calling Customers for fixed to mobile calls to Access Seeker Mobile Numbers) in the Vodafone financial year (being 1 April to 31 March) in which the reduction occurs.~~
- (b) ~~For example, if the Access Seeker reduces its MTR rate by 1 cent per minute on or after the Services Commencement Date and, in the course of the remainder of the Vodafone financial year in which the reduction occurs, Vodafone Fixed Calling Customers make 1 million minutes of calls to the Access Seeker's mobile numbers, then Vodafone will (following the Services Commencement Date) pass-through to Vodafone Fixed Calling Customers a benefit of \$10,000.00 (i.e., 1 million multiplied by 1 cent) in that Vodafone financial year.~~

- (c) ~~It will not be necessary for the pass-through to apply equally to each of the Vodafone Fixed Calling Customers.~~
- (d) ~~In this **Clause 3.4** and **Clause 3.5**, the following terms have the following meanings:~~
- (i) ~~**MTR rate** means fixed to New Zealand mobile termination rates levied by a mobile network in New Zealand operated by the Access Seeker for calls by Vodafone Fixed Calling Customers to Access Seeker Mobile Numbers; and~~
- (ii) ~~**Vodafone Fixed Calling Customers** means any Vodafone fixed calling customers and any Vodafone local service customers that make calls originating from a geographic number.~~

3.5 ~~[This clause has been left intentionally blank]~~**Notice from Vodafone and audit rights**

- (a) ~~Within 6 months of the end of the relevant Vodafone financial year, Vodafone shall provide a notice to the Access Seeker confirming whether or not it has complied with **Clause 3.4**. In providing this notice, Vodafone shall not be required to provide any confidential or commercially sensitive information to the Access Seeker, other than this confirmation.~~
- (b) ~~Upon receipt of the notice under paragraph (a), the Access Seeker may require an auditor to provide an audit report of whether or not Vodafone has complied with **Clause 3.4**. The auditor shall be a recognised auditing firm, selected by Vodafone, that is independent of Vodafone. Vodafone shall provide all information that is reasonably required by the auditor to complete the audit report (subject to such confidentiality requirements on the auditor as Vodafone may reasonably require).~~
- (c) ~~The Access Seeker shall pay for the costs of the auditor in providing the audit report. However, if the auditor confirms that Vodafone has not complied with **Clause 3.4**, and the pass-through was less than 90% of the benefit in the reduction in the MTR rate, then Vodafone shall reimburse the Access Seeker for the costs of the auditor.~~
- (d) ~~Where the audit report identifies an under-recovery amount (i.e., passthrough under **Clause 3.4** of less than 100% of the benefit in the reduction in the MTR rate), Vodafone undertakes, as soon as reasonably practicable, to pass-through such an amount by crediting Vodafone Fixed Calling Customers on a basis to be approved by the auditor.~~
- (e) ~~**Clause 3.4** and this **Clause 3.5** apply only to voice calls and not (for the avoidance of doubt) video calls or any other type of calls or messages.~~

4. FTM Call Handover Obligation

An FTM Call that is handed over by the Access Seeker from the Access Seeker Network to the ~~Vodafone2degrees~~ Network shall be handed over at the most expedient Access Seeker Handover Point relative to the point of origination of the FTM Call. For the purposes of this **Clause 4**, the “the most expedient ~~Vodafone2degrees~~ Handover Point relative to the point of origination of the FTM Call” shall be the Access Seeker Handover Point that is associated with the point of origination (based on the LICA Group structure set out in **Subschedule 3E** to **Schedule 3**).

5. Identification of FTM Calls

5.1 Calling party numbers

For the avoidance of doubt, in respect of any FTM Call handed over from the Access Seeker Network to the ~~Vodafone2degrees~~ Network, there shall be no charge to

[Vodafone2degrees](#) for the provision by the Access Seeker of any number information provided by the Access Seeker, including the A-number or any part of the A-number or any default A-number provided in accordance with **Subschedule 3D** to **Schedule 3**.

5.2 Number translation

The Access Seeker shall not, in relation to any FTM Call, translate the number dialled by the calling party into any other number to be presented to [Vodafone2degrees](#), unless:

- (a) the translation is made in accordance with the requirements of the LMNP Determination and the LMNP Voice Interconnect Specifications; or
- (b) the following apply:
 - (i) [Vodafone2degrees](#) notifies the Access Seeker in writing that it requests the Access Seeker to undertake this number translation;
 - (ii) the Access Seeker agrees to undertake that number translation; and
 - (iii) the parties have agreed the terms on which that number translation will take place.

5.3 Notification of Third Party Reseller numbers

[Vodafone2degrees](#) shall use its best endeavours to notify the Access Seeker from time to time of any [Vodafone2degrees](#) Mobile Numbers that have been allocated to a Third Party Reseller and that are used on the [Vodafone2degrees](#) Network. However, for the avoidance of doubt, if [Vodafone2degrees](#) has not notified the Access Seeker under this **Clause 5.3** for any reason, any FTM Call for which any of those [Vodafone2degrees](#) Mobile Numbers are provided as the called party number will still be an FTM Call under this Undertaking. For the avoidance of doubt, nothing in this **Clause 5.3** limits clauses 21.4 or 21.5 of **Subschedule 3A** to **Schedule 3**.

6. Mobile Number Portability

For the purposes of applying the Network Terms and the LMNP Voice Interconnect Specifications to an FTM Call to a [Vodafone2degrees](#) Mobile Number referred to in clause

~~1.80.2~~ [1.78.2](#) of **Subschedule 3A** to **Schedule 3**:

- (a) the Access Seeker may be:
 - (i) an “Originating Carrier” or a “Bypass Carrier”; or
 - (ii) a “Donor Carrier” or a “Contracted Service Deliverer” for a Network Operator; and
- (b) [Vodafone2degrees](#) may be a “Host Carrier” or a “Terminating Carrier”,
(as those terms are defined in the Network Terms).

Schedule 5
Deed of Acceptance
Vodafone2degrees FTM Call Termination Service

[Date]

By: [Full name of Access Seeker]

In favour of: ~~Vodafone New Zealand Two Degrees Mobile~~ Limited (Vodafone2degrees)

By this Deed:

1. We refer to the Undertaking given by Vodafone2degrees in favour of the New Zealand Commerce Commission dated [] 2009 (the **Undertaking**). All capitalised terms used in this Deed will have the same meaning as set out in the Undertaking.
2. We request that Vodafone2degrees provide the Vodafone2degrees FTM Call Termination Service in accordance with all of the terms and conditions of the Undertaking.
3. We agree that the Undertaking is legally binding on us as an Access Seeker for the Vodafone2degrees FTM Call Termination Service, that we give all warranties of an Access Seeker set out in the Undertaking and that we shall comply with all of the obligations of an Access Seeker set out in the Undertaking. Vodafone2degrees may enforce the terms of the Undertaking against us as an Access Seeker.
4. Our IRD number is [] and our GST registration number is [].
5. Our notice details, for the purposes of the Undertaking, are as follows:

[New Zealand address]
Attention: [Name or office]
Telephone: [Number]
Facsimile: [Number]
6. Where we are, at the date of this Deed, a party to an agreement with Vodafone2degrees for the provision of services equivalent or substantially similar to the Vodafone2degrees FTM Call Termination Service, we agree that, when Vodafone2degrees begins to provide the Vodafone2degrees FTM Call Termination Service to us under the terms of the Undertaking:
 - (a) Vodafone2degrees will no longer be required to provide those services to us under that agreement;
 - (b) the parts of that agreement that apply to those services shall not apply whilst Vodafone2degrees provides the FTM Call Termination Service to us under the terms of the Undertaking; and
 - (c) that agreement shall be interpreted accordingly.
7. We undertake to make available to Vodafone2degrees, at any time when we operate a cellular mobile network in New Zealand and at any time requested by Vodafone2degrees, a telecommunications service that is the same as the Vodafone2degrees FTM Call Termination Service at prices no greater than those specified in Schedule 2 of this Undertaking, and otherwise on reciprocal terms that are the same as the terms on which Vodafone2degrees makes available the Vodafone2degrees FTM Call Service under the Undertaking, mutatis mutandis.

8. For the purposes of section 9 of the Property Law Act 2007, and without limiting any other mode of delivery, this Deed will be delivered by the Access Seeker immediately on the earlier of:

- (a) physical delivery of an original of this Deed, executed by the Access Seeker, to 2degrees, or
- (b) transmission by the Access Seeker or its solicitors (or any other person authorised in writing by the Access Seeker of a facsimile, photocopied or scanned copy of an original of this Deed, executed by the Access Seeker, to 2degrees.

No such delivery shall be subject to any condition, and delivery shall be irrevocable evidence of the Access Seeker's intention to be bound by this deed.

Executed and delivered as a Deed
By [*Full name of Access Seeker*]

Director

Director