

# **Commerce Commission**

## **Schedule 3 Investigation into Mobile Termination Access Services**

### **Submission on the Draft Report and Revised Undertakings**

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Submission by



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## **Schedule 3 Investigation into Regulation of Mobile Termination Access Services**

### **Submission on the Draft Report and Revised Undertakings**

MTAS Investigation  
Telecommunications Branch  
Commerce Commission  
PO Box 2351  
Level 6, 44 the Terrace

shane.kinley@comcom.govt.nz

#### **Introduction:**

CallPlus reiterates its view that high mobile termination rates are the most critical issue in the New Zealand Telecommunications market at this time and welcomes the opportunity to respond to the Draft Report and Revised Undertakings

In terms of the revised undertakings there would appear to be little change in the position of the respective parties therefore we have not made further comments over and above those made in previous submissions on the inadequacies of the undertakings and our preference to have a regulated service and a regulatory framework that can ensure that future issues are addressed as and when they arise.

CallPlus broadly supports the approach being proposed by the Commission and the need to quickly regulate mobile termination rate, after 4 years of consideration. CallPlus would like to see a significantly lower single MTR rate on a second + second rate, with no artificial differentiation by origination – neither by geography, technology or network of origination.

For further information please contact:

Graham Walmsley

General Manager – Wholesale & Regulatory

CallPlus Ltd, Level 4, 110 Symonds Street, Auckland

Tel: 09 919 6028, Fax: 09 919 6029,

Email: [Grahamw@Callplus.co.nz](mailto:Grahamw@Callplus.co.nz)

## Specific Comments on Questions

### 1. Cost Based v Bill & Keep

*455. The Commission is seeking the views of interested parties on the appropriate factual scenario, including the form of regulation, and the relevant pricing principle and cost standard. The Commission is particularly interested in parties' comments on the Commission's preliminary assessment of cost-based pricing compared to BAK as the pricing principle for the regulated service that would best give effect to section 18 of the Act.*

CallPlus is not necessarily persuaded by 2 Degrees arguments around Bill & Keep, and particularly if that is only applicable to MTM termination as this would create undesirable market distortions.

A 'forward looking cost based' model - provided it is can be set at the correct level - should address some of the key issues including the ability to abuse on-net pricing and remove artificial distinctions such as international origination or VoIP where there is no real cost justification for different rates.

However we do support the 2 degrees view that the rate should be closer to the current fixed line rates which are a blend of Bill & Keep and 1c. At more realistic levels for mobile termination rates we are likely to see less of the 'confusion marketing' practices that consumers currently experience. Consumers are likely to see simpler offers such as flat rate bundles across fixed and mobile calling.

Given the global concerns with respect to mobile termination rates, and the time lag to regulatory impact, it is anticipated that there will be significant reductions in MTR rates around the world over the next few years. It is therefore important that the regulation takes into account the future anticipated reductions.

### 2. Single Mobile termination rate

*950. The Commission is seeking any evidence of differing cost structures for different operators which could be grounds for asymmetric pricing, and the views of interested parties over the timeframe for any asymmetric pricing to be phased out.*

CallPlus believes that it is critical that a single rate is established for mobile termination regardless of whether the service is mobile to mobile or fixed to mobile as these are substitutable services and a difference in rates will create distortions in the market.

It is also important that a single rate is established regardless of the network operator. The current undertakings create the situation where rates to one provider will become more than the other provider. This creates problems at a retail and wholesale level.

For example; at a wholesale level when offering termination services to international carriers it is simply not possible to offer a different rate for calls terminating on a Vodafone network from calls terminating on 2 degrees or Telecom network. The advent, and increasing level of, number portability makes this impossible. Therefore when rates are different a carrier, such as CallPlus, has little option but to offer a single blended rate and take the risk on the margin impact of the mix of traffic.

Similar problems occur at a retail level as a result of the increasing porting of numbers which will accelerate with a new entrant. Different carrier termination

rates logically lead to the retail strategy of charging of different retail rates by carriers to align with different carrier costs.

Unfortunately as consumers do not know the destination carrier from the number this will continue to put consumers in the invidious position of not knowing the cost of their call at the time they make the call. This is not in consumer's best interest.

### **3. Assessment of non-core price terms & other issues**

*949. The Commission is seeking the views of interested parties on the significance and magnitude of call set up charges for mobile networks and parties preferred approach to recovering call set up costs.*

#### **3.1 Minute + Second v Second + Second**

The application of a minute plus second regime has a significant impact on the true cost of termination. Given the significantly higher cost of mobile termination over fixed termination and the high proportion of short duration calls this becomes a major cost factor.

In its previous submission (5<sup>th</sup> Sept 2008 s4.2) Callplus detailed the extent of the issue showing that the majority of calls from CallPlus' network to Mobile operators were less than 60 seconds and the additional cost that a Minute + Second regime levies.

CallPlus repeated the analysis for June 2009 (see the charts in Appendix A) and found that results were almost identical, the increased cost of termination was a significant cost - [ ]RI% for Vodafone and [ ]RI% for Telecom.

A 'Minute plus Second' regime creates a number of undesirable outcomes.

- CallPlus agrees with 2 Degrees view that this 'stifles innovation and the ability to "structure retail pricing" as competitors choose.
- It rewards poor network performance - Short duration calls are often associated with dropped calls or poor quality reception where parties hang-up and retry. The extent of these calls is controllable and operators should not benefit by receiving a full minute interconnection at an inflated margin.
- Where mobiles are out of coverage and calls go to voicemail this usually result in short duration calls.
- It creates the perverse outcome of rewarding higher prices to consumers. By keeping retail prices high consumers make short duration mobile calls, which in turn rewards the mobile network operator.
- It significantly impacts on the ability of the network operators competitors to compete in the lucrative international market for New Zealand termination as international practice is to charge second plus second.

CallPlus would prefer the approach of factoring any setup costs into an overall second plus second rate. However we would anticipate that setup costs are negligible and have a minimal impact on the overall rate.

When considering this issue it should also be noted that there are already 'other charges' levied on competitors for fixed -to-mobile calls. Telecom, despite the

introduction of LNMP, charges an additional per call charge of 0.5c each time a Non-code access customer calls a mobile number. There is no equivalent charge for fixed calls.

### **3.2 Internationally originated & VoIP calls**

CallPlus supports the Commissions preliminary view with respect to internationally originated charges & VoIP calls. There should be no artificial differentiation by origination – neither geographic, technology nor network of origin.

#### **3.2.1 Cost Based Justification**

There is no economic justification for Telecom to price discriminate between international & domestically originated calls. Other mobile carriers do not.

In fact it is arguable that Telecom incur less costs when an internationally originated call is handed over to Telecom in New Zealand over existing links compared with Telecom transiting the call itself.

It is ironic that Telecom themselves submit that there is a cost associated with establishing handover links and a national transit cost associated with calls. When a carrier such as CallPlus hands over an internationally originated call to Telecom in New Zealand it does so in exactly the same manner as with its domestic traffic.

- CallPlus pays Telecom for those links already
- CallPlus meets all the cost of transiting those calls from its internationally established points of presence

In fact there are significant cost savings for Telecom in that it

- does not have to establish links with the upstream carrier
- does not have to establish an overseas POP
- does not have to pay for the cost of transit
- does not have to offer second plus second termination (the international standard) but instead gets minute plus second termination from CallPlus.

There is, in fact, a strong case for a lower mobile termination for internationally originated calls. This is in direct contrast to Telecom's current practice of abusing its monopoly position by charging a 60% premium (24c v 15c) in addition to the 'minute +second' surcharge.

A similar scenario exist with respect to VoIP calls where CallPlus bears all the costs associated with upstream providers, or its own VoIP customers, and bears the costs of having to convert the call from VoIP to TDM in order to handover the call over existing links (which it pays for) to the mobile operator.

Again , if anything, the Mobile operator faces reduced costs.

#### **3.2.2 Consumers benefit**

Telecom and other New Zealand Service providers, and ultimately New Zealanders through lower international calling costs, benefit from regulated

termination rates in many overseas countries. Reciprocal access to such regulated rates is clearly a requirement for this system to continue working.

Furthermore it is important that Telecoms competitors are allowed to compete in the international market. CallPlus has taken the step of establishing commercial relationships with overseas carriers, points of presence and international capacity in order to

- Reduce CallPlus' cost of outbound international terminations by an estimated [ ]RI% compared with using Telecom as a transit provider. Ultimately the consumer wins as a result of more competitive international rates
- Generate revenue (to help recover the costs of CallPlus establishing international & domestic POPs and domestic and international backhaul) through offering termination services into New Zealand. Assisting with business case to establish international presence in order to reduce outbound termination and reducing the cost of New Zealanders calling home and making NZ businesses & consumers more accessible internationally as well as encouraging investment and competition.

### **3.4 Non 'Calling Party Pays' calls - Mobile to Toll Free**

In contrast to other mobile operators, Telecom is choosing to interpret their undertaking as excluding the situation where the 'Calling party Pays' (CPP) principle does not apply – i.e. Calls to a Toll-free number.

In order to enable a Toll free service it had been the practice in the industry for the originating carrier to charge the terminating carrier the same charge as the terminating carrier would normally charge for termination under CPP. This is the case with fixed line traffic and all other mobile operators other than Telecom.

As the major provider of Tollfree services, as well as a mobile operator, Telecom is abusing its monopoly position and gains an unfair competitive advantage in the fixed line calling market by artificially maintaining the price of calls from Telecom Mobile to toll-free numbers at 24c (a 60% markup).

CallPlus would suggest that the service description incorporates voice calls where the 'Calling Pays Principle' is reversed in order to enable a consumer service i.e. Calls to Toll free.

### **3.5 Transit traffic**

Telecom, in contrast to Vodafone, appear to be proposing that undertakings should not cover transit traffic ( i.e. traffic handed over by an access seeker to Telecom which does not originate on the access seekers network but on a third party network). CallPlus assumes that they are also asserting that regulation should not cover this type of traffic.

There is no similar precedent in the fixed line business, nor is this global practice. To leverage its investment CallPlus today offers domestic carriers transit services who does not wish to invest in their own interconnect links or points of presence.

Telecom are effectively trying to close out from the regulated service a key component of the wholesale telecommunications market. It should make no difference whether the traffic is originating on the access seekers network or a third parties to whom the access seeker offers a transit arrangement.

Given that this is so completely at odds with international practice and the fundamental operations of interconnection it may be that CallPlus have misunderstood the intent.

### **3.6 Handover Deductions**

Telecom have submitted that fixed line carriers incur a transit cost to transport Fixed-to-mobile calls from their local point of presence (POP) to the Mobile Carriers Access point.

Fixed line carriers elect to either build to the POP to avoid the charge or can make transit arrangements with other carriers who have built.

CallPlus agrees with Telecom that this is how the model work and that the commission need to be aware that fixed line carriers do incur a transit cost where a mobile provider does not have a handover point in that local area.

However CallPlus would take issue with Telecom with respect to:-

- The quantum of the cost at 3.5c/min is overstated and CallPlus would estimate that the cost is minimal – approximately 0.1 to 0.2 c/min.
- Telecom continue to press for 29 points of interconnect however Callplus believes that 16 is a more appropriate number
- Telecoms proposed solution of embedding the 'savings' back into the termination rate. CallPlus' understanding of Telecoms proposed solution is that the Commission account for this by adding back an allowance for the transit cost from the POP to the MSC into the mobile termination rate.

This is a completely inappropriate solution and would unfairly disadvantage fixed line operators, such as CallPlus, who would choose to perform its own transit to the MSC rather than being 'forced' to pay Telecoms inflated price as a result of the cost being imbedded in the MTR.

This does, however, suggest that the Commission need to provide clarity on the number of handover points on which the MTR is calculated as part of its service description. CallPlus' preference would be for :

- An MTR rate based local handover, similar to the current fixed arrangement.

Local handover is the most efficient model. Both the mobile carrier and the fixed line carrier minimise their costs with a local handover as CallPlus believes that it is far more likely that a call originating in a fixed line area (e.g. Dunedin) is going to terminate on a mobile in the Dunedin area rather than another part of NZ - therefore local handover minimises transit costs for both parties.

- Where Mobile operators want handover to an MSC outside of the local area then a transit arrangement can be reached with the fixed line operator.

### **3.7 Reciprocal Interconnection Setup costs and links**

CallPlus view is that both parties to the interconnection should meet their own costs in building to the other network operator. If links are one-way then the cost of the link should be born by the person wanting to interconnect – i.e. the party sending the traffic for termination. If the links are bidirectional then the costs should be shared.

If Telecom wish to send traffic to the new operator then the charges should be reciprocal.

This is the standard arrangement for interconnection deals with international carriers including carriers significantly larger than Telecom.

**Appendix A – Connected call lengths for Fixed to Mobile calls**  
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