

Dr Ross Patterson  
Telecommunications Commissioner  
Telecommunications Branch  
Commerce Commission  
Wellington  
New Zealand

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5th September 2008

Dear Commissioner Patterson

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

NZ Communications welcomes the invitation to submit on whether an investigation into mobile termination is needed.

Only occasionally does a government agency investigation in New Zealand align with the timing of a sea change in international regulatory policy. Not since the unbundling studies of 2006 has the future of New Zealand's Telecommunications investment & competition policy rested on such a crucial investigation.

The Commission is looking at the conditions required to facilitate efficient competitive entry, rather than entry *per se*. Termination (ie access to customers) is a crucial input for any telecommunication service provider. Where termination rates are set above cost, as they undoubtedly are in New Zealand, they present significant and potentially insurmountable barriers to efficient new entry. We show in our submission that without appropriate regulatory intervention, consumers in New Zealand will continue to suffer from limited competition, low utility and high prices for mobile services. This is supported by the independent Concept Economics report.

The case for an investigation (and regulation) is overwhelming. We strongly encourage the Commission to move to a formal Schedule 3 Investigation without delay.

The following summarises our position:

- Economic evidence and current international thinking show that Bill and Keep (BAK) is the most appropriate interconnection termination methodology for the new millennium in mobile communications.
- The level of closed network usage in New Zealand is overwhelming. We understand in some market segments over 95% of traffic is on net showing the huge dominance of incumbents and presenting very high barriers to new entry. The incentives to deter cross network calling is exacerbated by the high termination rates.
- We acknowledge New Zealand precedent for BAK including where Vodafone NZ sought and obtained BAK in September 2006 in its PSTN determination. The Commission also imposed a section 30 condition preventing Telecom from retail price discrimination for calls terminating on Vodafone's network (as had been requested by Vodafone).

- We are one of New Zealand's largest infrastructure investors and seek to remove these anti-competitive market distortions which maintain the current duopoly.
- Regulation is a necessary condition for efficient new market entry and can be expected to lead to efficient retail competition for the long term benefit of end-users of telecommunications services.

We are grateful for all the Commission's work on this matter and we look forward to participating fully in the investigation should the Commission be convinced, as we are that it is essential.

Thank you for your consideration of our position

Yours sincerely



Bill McCabe  
Chief Commercial Officer  
**New Zealand Communications Ltd.**