

26 March 2003

Mr Douglas Webb  
Telecommunications Commissioner  
Commerce Commission  
PO Box 2351  
**WELLINGTON**

Dear Douglas

**Application for determination for number portability**

1. Pursuant to section 31 of the Telecommunications Act 2001 (the **Act**) notice is hereby given by the parties listed below (the **Applicants**) seeking a **determination in respect of designated multi-network services**, being the local telephone number portability service<sup>1</sup> and cellular telephone number portability<sup>2</sup> (the **Number Portability Services**).
2. TelstraClear has, on behalf of the other Applicants, paid the required non-refundable application fee of \$22,500 (inclusive of GST) by way of electronic transfer to the Commission's bank account
3. Subject to the application made below, the Applicants acknowledge that we jointly will be required to meet any additional application costs incurred by the Commission and make periodic payments to jointly reimburse the Commission for a portion of the costs it incurs in completing the determination requested. Furthermore, the Applicants acknowledge that after the determination is completed that we may be jointly required to meet some or all the costs that were incurred by the other parties to the determination.
4. Number Portability Services require multi-operator process and each participant can be both a donor and a recipient of ported numbers. The applicants believe that the Act contemplates that determinations of multi-network designated services can be multi-party, rather than a series of bi-lateral determinations, such as has occurred with the determinations in respect of interconnection and resale designated services. Consequently, this application has been made jointly by the Applicants.
5. Further, given the multi-network character of Number Portability Services and the multiple roles of each operator, we request that:
  - The Application Fee be waived (and the fee refunded to the Applicants); and

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<sup>1</sup> The first designated service, sub-part 2, Part 2, Schedule 1 of the Act.

<sup>2</sup> The second designated service, sub-part 2, Part 2, Schedule 1 of the Act.

- The Commerce Commission's costs of this investigation be either recovered as part of the Commission's costs of performing its functions under the Act which are recovered by means of the levy applied pursuant to section 11 of the Act or amongst operators which have been issued with local or mobile telephone numbers in a fair and competitively neutral manner.
6. We also request that the Commission confirm how it intends to allocate its costs at the time of deciding whether to investigate this Application. We note that some of the smaller Applicants may wish to withdraw from the proceedings if they face the prospects of significant costs in participating as a party to these proceedings.

## **DETERMINATION DETAILS**

### **THE PERSONS GIVING NOTICE**

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7. In addition, please find attached a letter of support from Econet Wireless. Econet Wireless would have been an Applicant but they do not currently qualify as an access seeker or access provider under the Act<sup>3</sup>.

#### **DESCRIPTION OF SERVICES**

8. As noted above, the Number Portability Services for which the Applicants seek a determination are:
- (a) local telephone number portability service; and
  - (b) Cellular telephone number portability service.
9. The Applicants seek a determination of the formula for how the cost of delivering the service must be apportioned between participants in Number Portability Services.
10. The Number Portability Services are designated multi-network services.

#### **JUSTIFICATION FOR APPLICATION**

11. A determination is being sought due to the failure of any agreement between industry participants pursuant the Numbering Administration Deed (NAD) to reach agreement regarding the formula for apportioning costs of the Number Portability Services.

#### **ACCESS SEEKERS AND ACCESS PROVIDERS TO THE DETERMINATION**

12. The access seekers and access providers to the determination may include (but are not necessarily limited to):

TelstraClear Ltd  
Callplus Ltd  
Compass Communications Ltd  
ihug Ltd

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<sup>3</sup> Econet will seek the right to provide its views as an interested party pursuant to section 38 of the Act.

WorldxChange Communications Ltd  
Telecom New Zealand Ltd  
Vodafone New Zealand  
Walker Wireless

13. All of these access seekers and access providers are telecommunications providers.

#### **REQUIREMENTS FOR APPLICATION**

14. There is no current agreement between any of the Applicants and any access provider on the apportionment of the costs of providing the long-term solution for Number Portability Services.
15. The Applicants note that, unlike with an application under section 22 of the Act, it is not a necessary requirement for a determination request in respect of a multi-network designated services that the Applicants have made a reasonable effort to commercially negotiate an agreement. However, there have been discussions in the NAD over the allocation of the costs of Number Portability Services for over 16 months, without a successful resolution being reached. The Applicants believe that the negotiations in the NAD have irretrievably broken down over a fundamental disagreement between the Applicants, on the one hand, and other parties, principally Telecom, over the principles in accordance with which the costs of long-term solution for Number Portability Services should be allocated.
16. In December 1992 the Ministry of Commerce (predecessor to the current Ministry of Economic Development, MED) established a voluntary group of telecommunications industry representatives to provide advice on the management of telecommunications numbering in New Zealand, the New Zealand Telecommunications Numbering Advisory Group (NZTNAG). Very soon after its inception, NZTNAG parties raised the issue of providing telephone number portability. These calls for portability proved fruitless as NZTNAG required unanimity to progress an issue and Telecom New Zealand routinely rejected calls for portability or made unacceptable demands of its competitors to pay the inflated costs of enabling Telecom to provide portability.
17. In November 1997 Telecom offered its competitors an interim and limited telephone number portability service known as call readdress. One of the main impediments to the widespread use of this interim service is the cost imposed by Telecom for its use.
18. In August 1998, with no further advancement within the industry on a solution to provide full, or long term number portability (LTNP), the then Minister of Communications called for the industry to either agree a solution to the provision of LTNP or he would regulate for its provision. An industry group was formed under the chairmanship of the MED to develop a process for LTNP. Despite a lack of agreement being reached by the industry on a solution for the provision of LTNP, and on the advice of the MED that, should they be called on to advise on regulation, they would recommend regulation in the form proposed by some members of the industry, the Minister chose not to regulate and left it to the minority of the industry to progress their proposed process for LTNP.

19. In March 1999 the Commerce Commission authorised the Number Administration Deed (NAD). A key component of the NAD is a process to determine whether there are net benefits from the implementation of LTNP and should net benefits be found, a process for the implementation of LTNP. In December 1999 the NAD Management Committee agreed to commence the process for considering LTNP – which involved an independent cost benefit study into LTNP, conducted by LECG and AAS. The cost benefit study found that the implementation of LTNP would yield net social benefits to society, as long as number portability was not rationed through price or non-price terms.
20. Subsequent to the receipt of this report, the NAD parties have struggled but failed to agree a key aspect necessary for the implementation of LTNP, being an agreed mechanism for the apportionment of costs - the subject of this application. Unfortunately the Applicants cannot provide further details as to the NAD deliberations as the work of the NAD is governed by a blanket confidentiality provision. The Applicants recommend that early in their investigation, the Commission seek access to the NAD's deliberations and investigations into LTNP.
21. The Applicants wish to note that at this time the parties to the NAD are productively progressing the task of developing the technical solution for the delivery of LTNP. However, the Commission should monitor this work and should progress falter, consider intervening in order to ensure that no further unnecessary delays impede the implementation of LTNP.
22. There are no conditions set out in Schedule 1 of the Act applicable to the Number Portability Services.

#### **TERMS OF DETERMINATION**

23. The Applicants request the Commission:
  - (a) apply the following principles to determine the following in relation to the apportionment of the costs of providing each of the Number Portability Services between participants in the relevant Number Portability Service:
    - (i) costs are assessed on the basis of each participant<sup>4</sup> using the most efficient currently available technology (whether or not an individual participant in the Number Portability Services uses such technology); and
    - (ii) in a competitively neutral manner; and
  - (b) applying the principles in sub-paragraph (a), determine in respect of each Number Portability Service that:
    - (i) each participant in that Service (in its capacity as donor or recipient network) shall be solely responsible for its own costs of designing, building, implementing and testing the databases, signalling and other systems and capacity within its network and the associated interfaces with other networks required to provide the Number Portability Services (**system set up costs**); and

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<sup>4</sup> The term “participant” is used because each operator may be both an access provider and access seeker (or in the terminology traditionally used for number portability services, a donor network or a recipient network).

- (ii) each participant in that Service (in its capacity as donor or recipient network) shall be solely responsible for the costs incurred within its network to identify, process and route calls to a ported number<sup>5</sup> to the network to which the number has been ported, including the costs of a database “dip” to identify whether a number is ported and the network location of the ported number and the costs of any additional call conveyance associated with routing the call to that network (**per call costs**); and
- (iii) each participant in that Service in its capacity as the recipient network must pay the donor network operator a once-off charge to recover the donor network’s reasonable administrative costs (calculated on a TSLRIC basis<sup>6</sup>) to the porting request.

#### **CONFIDENTIALITY**

24. The Applicants make no claim of confidentiality in respect of this application.

#### **DECLARATION**

25. This application is made by the following Parties: TelstraClear Ltd, Callplus Ltd, Compass Communications Ltd, ihug Ltd and WorldxChange Ltd.

26. The Parties hereby confirm that:

- \* all information specified by the Commission has been supplied;
- \* all information known to the Applicants which is relevant to the consideration of this application has been supplied;
- \* all information supplied is correct as at the date of this application.

27. The Applicants jointly undertake to advise the Commission immediately of any material change in circumstances relating to the application.

Dated this 26<sup>th</sup> day of March 2003.

Signed by TelstraClear Limited:



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Kevin Millar  
Head of Change

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<sup>5</sup> Number means a local telephone number in the case of the local telephone number portability service and a cellular telephone number in the case of the cellular telephone number portability service.

<sup>6</sup> As defined in Schedule 1 of the Act.

I am an officer of the company and am duly authorised to make this application.