



COMMERCE COMMISSION

Please refer to:

2.6/J10314  
547533v1

12 February 2007

Malcolm Alexander  
Independent Chair  
Telecommunications Carriers' Forum  
C/o Organisers New Zealand Limited  
P.O. Box 302469  
North Harbour  
Auckland

cc: TCF Forum Administrator  
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Dear Malcolm

**Approval of the Telecom Number Portability Exemption Application for Post Dialling Delay ("PDD").**

The Commission agrees with the Telecommunications Carriers' Forum ("TCF") Management Committee's recommendation<sup>1</sup> that Telecom New Zealand Limited ("Telecom") be granted an exemption to clause 14.2.1 of the Network Terms<sup>2</sup> for post dial delay for the two call scenarios specified in Telecom's application for exemption<sup>3</sup> and hosted at the exchanges set out in Appendices 1 and 2 of that application for the specified period from 1 April 2007 until 31 December 2012.

The Commission's reasons for granting the exemption are:

- If Telecom was to reduce the introduced post dial delay on ported numbers for the two specified call scenarios to the 1 second or less, as per clause 14.2.1 of the Network Terms, it would have to significantly bring forward in time its rollout of the Next Generation Network ("NGN"). The Commission considers that this option is not practicable.
- The Commission considers that only a proportionally small number of customers will be affected if the exemption is granted to Telecom and while it may be detrimental to the purpose of section 18 to grant this exemption, the cost to Telecom of bringing

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<sup>1</sup> Telecom Number Portability Exemption Application – Post Dial Delay: TCF Management Committee Recommendation to the Commerce Commission, 24 November 2006.

<sup>2</sup> The Network Terms are part of Commission Decision 554: Determination on the multi-party application for determination of 'local telephone number portability service' and 'cellular telephone number portability service' designated multinetwork services, 31 August 2005.

<sup>3</sup> Application by Telecom New Zealand Limited for exemption: clause 14.2.1 of the Network Terms – Post Dial Delay, 6 October 2006.

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forward its NGN rollout in order to comply with clause 14.2.1 will likely have an even greater adverse impact on the purpose set out in section 18 of the Act.

The exemption is to have effect for the period from 1 April 2007 until 31 December 2012, inclusive.

The exemption is from the obligations in clause 14.2.1 of the Network Terms in respect of the two call scenarios specified in Telecom's application which are also set out below.

Clause 14.2.1 requires that the additional PDD introduced by parties' local number portability solutions must be no more than 1 second compared with a similar call to a customer with a non-ported number in 99.9% of all call cases. The exemption is limited to the following call scenarios:

- Calls made by customers hosted off Telecom's NEAX61 Kai switches to numbers which have been out-ported off the same NEAX61 Kai switch ("Intra-Kai Calls")(both Telecom customers and customers of resellers).
- Calls made by customers hosted off NEAX61E switches to numbers which have been out-ported off another NEAX61E switch (the donor NEAX61E switch) and which need their initial signalling to transit through a further NEAX61E switch (the transit NEAX61E switch) ("Transited Calls") (both Telecom customers and customers of resellers).

The exemption shall apply for all purposes for assessing compliance by Telecom with clause 14.2.1 of the Network Terms – PDD equivalent service criterion 1 for voice services.

The customers in relation to whom the exemption applies are all customers hosted off Telecom NEAX61 Kai or NEAX61E switches listed in Appendices 1 and 2 of the application respectively (either Telecom customers or customers of resellers).

The exemption is granted subject to the following conditions:

1. The Commission may request an audit of the PDD for Intra-Kai Calls and Transited Calls as set out below:
  - (a) If at any time the Commission has reasonable grounds to believe that the PDD (including the PDD that is permitted under the Network Terms) for Intra-Kai Calls and Transited Calls is materially greater than the PDD specified in paragraphs 10 and 19 of Telecom's Application, the Commission may require an audit to be carried out by an independent expert ("the Audit").
  - (b) The Commission will appoint an independent expert to carry out the Audit, following consultation with any persons who the Commission considers may have a material interest in Telecom's exemption.
  - (c) If the independent expert finds, after carrying out the Audit, that the PDD in respect of both Intra-Kai Calls and Transited Calls is materially greater than that specified in paragraphs 10 and 19 of Telecom's application, then the Commission may either revoke or

amend this exemption (including changing the conditions of the exemption). The Commission will take into account the outcome of the independent expert's Audit and any other factors that it considers relevant when reconsidering Telecom's exemption.

2. Telecom must provide a report assessing the PDD as set out below:
  - (a) On 1 October 2007 and 1 October 2008 Telecom will provide the Commission, the parties to the Determination, and the TCF Board with a report containing such information reasonably required by the Commission to assess whether the PDD specified in paragraphs 10 and 19 of Telecom's application is at or about those dates materially greater than that specified in paragraphs 10 and 19 of Telecom's application ("Report").
  - (b) After Telecom has provided the 1 October 2008 Report, Telecom does not need to provide the Report again unless requested to do so by the Commission on 3 months written notice.
3. The Commission may require cost-benefit analysis (i.e. an analysis where the costs and benefits of continuing to grant the exemption are measured against a counterfactual of the costs and benefits of not continuing to grant the exemption):
  - (a) If at any time after 1 April 2009 the Commission has reasonable grounds to believe that the PDD specified in paragraphs 10 and 19 of Telecom's Application (excluding that permitted under the Network Terms) is having a material detrimental impact on the public's perception of number portability, the Commission may require a cost-benefit analysis to be undertaken by an independent expert ('Cost-Benefit Analysis').
  - (b) The Commission will appoint an independent expert to carry out the Cost-Benefit Analysis, following consultation with any persons who the Commission considers may have a material interest in Telecom's exemption.
  - (c) If at that time the independent expert finds, after carrying out that Cost-Benefit Analysis, that the costs of continuing to grant Telecom's exemption exceed the benefits, then the Commission may either revoke or amend Telecom's exemption (including changing the conditions of the exemption). The Commission will take into account the outcome of the independent expert's Cost-Benefit Analysis and any other factors that it considers relevant when reconsidering Telecom's exemption.
4. Telecom must provide any information reasonably required by an independent expert in carrying out the Audit or Cost-Benefit Analysis as specified in the conditions 1 and 3 above to the independent expert.

5. Telecom may request confidential treatment of any commercially sensitive information provided under conditions 1 to 4 above as if it was provided under clause 15.9.2 of the Network Terms.
6. Telecom will bear all costs reasonably incurred by the Commission in reconsidering Telecom's exemption, including the costs reasonably incurred by any independent expert in carrying out the Audit or Cost Benefit Analysis.

The Commission considers that the exemption best gives or is likely to best give effect to the purpose set out in section 18 of the Act, because as noted previously, only a proportionally small number of customers will be affected if the exemption is granted to Telecom and while it may be detrimental to the purpose of section 18 to grant this exemption, the cost to Telecom of bringing forward its NGN rollout in order to comply with clause 14.2.1 of the Network Terms will likely have an even greater adverse impact on the purpose set out in section 18 of the Act.

Yours sincerely

*Neville Lord*

Neville Lord  
Acting Manager, Network Access