



COMMERCE COMMISSION

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19 March 2004

Application for determination of “Local telephone number portability service” and “Cellular telephone number portability service”

Preliminary statement on eligibility of access seekers and access providers

Introduction

1. On 26 March 2003, the Commission received an application for determination of designated multinet network services (“the application”) under section 31 of the Telecommunications Act 2001 (“the Act”) from TelstraClear Limited (“TelstraClear”), Callplus Limited (“Callplus”), Compass Communications Limited (“Compass”), ihug Limited¹ (“The Internet Group”), and Worldxchange Limited (“WorldxChange”) (together “the Applicants”). A letter supporting the application was also received from Econet Wireless New Zealand Limited (“Econet”).
2. The application sought a determination by the Commission in regard to:²
 - (a) the local telephone number portability service, and
 - (b) the cellular telephone number portability service.
3. On 29 July 2003, the Commission decided to investigate the application for determination concerning the local telephone number and the cellular telephone number portability designated multinet network services under section 35 of the Act.
4. The Commission determined that it need only be satisfied that one or more of the Applicants qualifies as an access seeker of the designated multinet network services sought within the application in order to meet the required conditions of an application. The Commission found that TelstraClear meets the specified requirements of an access seeker.³ In reaching its decision to investigate the Commission noted that “[t]he Commission reserves its entitlement to consider the point prior to issuing a draft Determination with respect to the number portability services and will undertake further evaluation and analysis during the course of the investigation in order to ascertain whether all Applicants meet the access seeker criteria.”⁴

¹ Also known as *The Internet Group Limited*

² Application for Determination for Number Portability, 26 March 2003, paragraph 1

³ Application for Determination for Number Portability, 29 July 2003, paragraph 58, p. 8

⁴ Application for Determination for Number Portability, 29 July 2003, paragraph 59, p. 8

5. On 23 September 2003, the Commission wrote to request submissions on those persons that may qualify as access seekers or access providers under the designated multinet network services “local telephone number portability service” and “cellular telephone number portability service.”⁵ The Commission did not request submission at this time from TelstraClear as the Commission had determined that TelstraClear was an eligible access seeker for both local and cellular number portability in its decision to investigate.
6. Submissions were received from CallPlus, Compass, The Internet Group and Worldxchange as potential access seekers and BCL, Citylink, Counties Power, Equant, Tangent⁶ (and on behalf of United), Teamtalk, Telecom, Vodafone and Woosh Wireless, as potential access providers, of the designated multinet network services.
7. On 20 February 2004, the Commission wrote to TelstraClear to request further information on its eligibility as an access seeker (and access provider) of the cellular telephone number portability service.⁷ TelstraClear provided a response to the Commission’s request on 27 February 2004.⁸
8. The Commission has now had the opportunity to assess the eligibility of the access seekers individually, and assess any other telecommunications providers who may be eligible access providers under the Act. The purpose of this statement is to provide preliminary advice to the telecommunications industry of the status of access seekers and access providers for the local telephone number portability service and cellular telephone number portability service under the Act.

Commission Jurisdiction

9. The definitions of “access provider” and “access seeker” for the designated services of “local telephone number portability service” and “cellular telephone number portability service” are:

Access provider: Every person who operates -
 (a) a PSTN to which numbers have been allocated; and
 (b) a telephone service that relates to that number portability service

Access seeker: Any person who -
 (a) operates a PSTN to which numbers have been allocated; and
 (b) operates a telephone service that relates to that number portability service; and
 (c) seeks access to that number portability service

10. Paragraph (a) of both definitions requires that an access seeker or provider must operate a PSTN to which numbers have been allocated. In order to “operate” a PSTN,

⁵ Commerce Commission letter, *Number Portability: Notification of Request for Submissions on Certain Matters relating to the Commission’s Decision to Investigate*, 23 September 2003.

⁶ On 8 March 2004, Tangent wrote to advise the Commission that from 1 March 2004, Tangent has changed its name to Vector Communications Limited.

⁷ Letter from the Commission (Borthwick) to TelstraClear (Forsyth), *Number Portability Application: Eligibility of TelstraClear as an Access Seeker for Cellular Number Portability*, 20 February 2004

⁸ Letter from TelstraClear (Forsyth) to the Commission (Borthwick), *Number Portability*, 27 February 2004

the Commission considers that an access seeker or provider must control the working of, or manage or direct the operation of, an element of a PSTN to which numbers have been allocated.

11. In assessing the eligibility of access seekers for both the local telephone number portability service and the cellular telephone number portability service, the Commission considers that an access seeker is required as at the date of the application, to operate rather than merely intend to operate a PSTN to which numbers have been allocated.

Industry allocation of telephone numbers

12. The current number allocation rules⁹ state that

Rule 1.1.1 The Number Administrator will allocate Code Blocks for use within New Zealand public switched telephone networks under the Number Administration Deed according to these rules.

Rule 1.1.2 These rules apply to the allocation of Code Blocks, and do not imply any obligation on any other party to activate allocated numbers or route calls. Nor do they imply any obligation to pass calls from one Party's network to another Party's network.

Rule 1.2.1 A Code Block may only be allocated to a Service Provider. Service Providers will not be entitled to receive allocations if the Independent Chair has suspended such rights under clause 8.4(c)

13. "Service Provider" and "Carrier" are defined in the number allocation rules¹⁰ as

Service Provider means a person providing, or intending to provide, Public Switched Telecommunications Services in New Zealand, who qualifies under the Numbering Administration Deed for the allocation of numbers in accordance with these Rules. A Service provider may, or may not, be a Carrier.

Carrier means any person operating a PSTN for providing services

14. Blocks of telephone numbers are provided to service providers who may or may not be a carrier operating a PSTN. The number allocation rules enable a service provider to be allocated numbers in contemplation of the future supply of a relevant service with that allocated telephone number range. It does not require that the service provider is, or intends to be, a carrier in its own right.

Eligibility of access providers and access seekers over the duration of a determination

15. The Commission notes the assessment of applicants as access seekers, and other industry participants as access providers, has been undertaken at a fixed point in time.
16. The number allocation rules enable a service provider to be allocated numbers in the expectation that these numbers may become active at a future period for use with a telephone service relating to the relevant number portability service. Until such time

⁹ M-Co, *Telecommunications Numbering Plan Number Allocation Rules*, Version 1.3 (3rd Operational Version), 12 November 2003

¹⁰ *ibid*

as a service provider activates numbers within that range, the Commission notes that the service provider would not be an eligible access seeker or access provider for that service.

17. This assessment of telecommunications industry participants as eligible access seekers and access providers has been considered at a fixed point in time, namely the date of application. The eligibility status of any access seeker or access provider can change over the duration of a Commission's determination process. The local telephone number portability service and cellular telephone number portability service descriptions provide for the ongoing assessment of eligibility of any access seeker or access provider.
18. Industry participants are obliged to notify the Commission when they consider their status as an access seeker or access provider has changed where the Commission has an application for a relevant designated multinet network service before it, or a determination for a relevant service is active.

Eligibility of Access Seekers

19. This section sets out the Commission's preliminary view as to the eligibility of each applicant as an access seeker for the services of "local telephone number portability service" and "cellular telephone number portability service" respectively.
20. In considering the eligibility of each applicant as an access seeker, the Commission notes that where an applicant is determined to be an eligible access seeker for a number portability service, that eligible access seeker is also an access provider for the same service.

Status of TelstraClear as access seeker

21. In its decision to investigate the number portability application, the Commission found that TelstraClear met the specified requirements of an access seeker in respect of both local telephone number portability and cellular telephone number portability.¹¹ In reaching its decision, the Commission noted that the Commission reserved its entitlement to undertake further evaluation and analysis during the course of the investigation in order to ascertain whether all applicants meet the access seeker criteria.¹²
22. The Commission remains satisfied that TelstraClear operates a PSTN to which local telephone numbers have been allocated and operates a local telephone service, and accordingly is an eligible access seeker, and also an eligible access provider, for the designated multinet network service of local telephone number portability under the Act.
23. Following the release of the decision to investigate, Telecom restated its concern that many of the applicants fail to qualify as access seekers in relation to either or both of the local telephone number portability service or cellular telephone number portability

¹¹ Application for Determination for Number Portability, 29 July 2003, paragraph 58, p. 8

¹² *ibid*, paragraph 59, p. 8

service.¹³

24. Telecom noted that it was unable to provide a detailed view as to whether the arrangements by which TelstraClear resells Vodafone's cellular service is sufficient for TelstraClear to qualify as an access seeker of cellular telephone number portability. The Commission sought further information from TelstraClear on its eligibility as an access seeker of the cellular telephone number portability service.¹⁴
25. In response, TelstraClear advised that it has been issued with 029 and 023 numbering ranges, which are designated for cellular mobile services.¹⁵ TelstraClear notes that cellular services are provided on the Vodafone network. TelstraClear is responsible for the allocation of numbers from TelstraClear's 029 number range, allowing TelstraClear to allocate cellular numbers to its customers which match their fixed PSTN numbers.¹⁶
26. Telecom submitted that "a "pure" reseller would not qualify as an access seeker of Cellular NP [Number Portability] primarily because, in terms of paragraph (a) of Schedule 1, Part 2, Subpart 2 of the Telecommunications Act 2001, resellers do not operate a PSTN to which numbers have been allocated."¹⁷
27. Telecom submitted that "a "reseller" that provides no additional functionality to the service "resold" would not be the "provider" of a "cellular telephone network service" – rather, that "reseller" can be said to have nothing more than a billing relationship with the end-user".¹⁸
28. The Commission is of the view that an access seeker or access provider must exert an element of control over a PSTN in order that an access seeker or access provider can be said to operate a PSTN to which numbers have been allocated.
29. The Commission is satisfied that TelstraClear, through the use of its 029 number range, exerts some element of control over the Vodafone 2G network. The 029 numbers are unique to TelstraClear and are assigned by TelstraClear to customers. These numbers operate on Vodafone's network, and are specifically conditioned within the Vodafone network. TelstraClear accordingly operates a cellular telephone service and seeks access to the cellular telephone number portability service.
30. TelstraClear submitted that "[i]f TelstraClear is not treated as an access seeker because it does not "operate" a cellular network, it would follow that TelstraClear for the same reasons would not qualify as an access provider. The result would be that the TelstraClear number range falls outside the number portability arrangements defeating

¹³ Letter from Telecom (Blackett) to the Commission (Borthwick), *Number Portability: Submissions on Certain Matters relating to the Commission's decision to investigate*, October 2003

¹⁴ Letter from the Commission (Borthwick) to TelstraClear (Forsyth), *Number Portability Application: Eligibility of TelstraClear as an Access Seeker for Cellular Number Portability*, 20 February 2004

¹⁵ Letter from TelstraClear (Forsyth) to the Commission (Borthwick), *Number Portability*, 27 February 2004

¹⁶ *ibid*

¹⁷ Letter from Telecom (Blackett) to the Commission (Borthwick), *Number Portability: Submissions on Certain Matters relating to the Commission's decision to investigate*, October 2003

¹⁸ *ibid*

the whole purpose of the cellular telephone number portability service to achieve full portability access [to] all cellular number ranges.”¹⁹

31. The Commission acknowledges that an outcome where a telecommunications provider has numbers under its exclusive control and use of that provider and is unable to port such numbers, while other providers are able to do so, would be inconsistent with the purpose of number portability; namely that end-users are able to port their numbers from one service provider to another.
32. The Commission confirms that TelstraClear is an eligible access seeker, and also an eligible access provider, for the designated multinet network service of cellular telephone number portability under the Act.

Status of CallPlus as access seeker

33. CallPlus has advised that it operates a fixed PSTN to which local telephone numbers have been allocated, that numbers within this allocated range are active on its PSTN and that it operates a telephone service relating to the local telephone number portability service.²⁰
34. The Commission is satisfied that CallPlus is an eligible access seeker, and also an eligible access provider, for the designated multinet network service of local telephone number portability under the Act.
35. CallPlus has advised that it does not operate a cellular PSTN. Callplus has been allocated cellular number ranges. However no numbers within these ranges are currently active and accordingly CallPlus does not exert any control over a cellular PSTN to which numbers have been allocated.
36. The Commission is satisfied that CallPlus is not an eligible access seeker or access provider for the designated multinet network service of cellular telephone number portability under the Act.

Status of Compass as access seeker

37. Compass has submitted that it is “an “access provider” in respect of the designated multinet network service local telephone number portability, and specifically that Compass does operate a PSTN to which numbers have been provided in Auckland, Wellington and Christchurch.”²¹ Compass operates a local telephone service and seeks access to the local telephone number portability service.
38. The Commission is satisfied that Compass is eligible as both an access provider and an access seeker for the local telephone number portability service under the Act.
39. Compass has advised that it does not operate a cellular PSTN to which numbers have been allocated.²² The Commission is satisfied that Compass is not an eligible access

¹⁹ Letter from TelstraClear (Forsyth) to the Commission (Borthwick), *Number Portability*, 27 February 2004

²⁰ Discussion with CallPlus (Cooper) and the Commission (Abbott), 11 March 2004

²¹ Letter from Compass (Hussona) to the Commission (Mosby), *Number Portability*, 10 October 2003

²² Discussion with Compass (Hussona) and the Commission (Abbott), 15 March 2004

seeker or access provider for the designated multinet network service of cellular telephone number portability under the Act.

Status of The Internet Group as access seeker

40. The Internet Group has advised that it “operates a PSTN and has had allocated to it local numbers in accordance with the Number Administration Deed. At present we are operating local service only on a trial basis...”²³ The Commission notes that although the Internet Group offers the service on a trial basis only, the Internet Group satisfies the criteria that it operates a telephone service that relates to the local telephone number portability service and seeks access to the local telephone number portability service.
41. The Commission is satisfied that the Internet Group is eligible as both an access provider and an access seeker for the local telephone number portability service under the Act.
42. The Internet Group has advised that it does not offer a cellular telephone service that relates to the cellular telephone number portability service.²⁴ The Commission is satisfied that The Internet Group is not an eligible access seeker or access provider for the designated multinet network service of cellular telephone number portability under the Act.

Status of Worldxchange as access seeker

43. Worldxchange considers that it is an access seeker for the local telephone number portability service under the Act. “[Worldxchange] do have local number ranges permanently assigned to us under the National Number Plan, [Worldxchange] does operate a PSTN, [Worldxchange] does have local services running over this PSTN”²⁵ Worldxchange says that, although it is using local number ranges allocated under the National Numbering plan, those numbers are not Worldxchange local numbers, but TelstraClear numbers that have been assigned by TelstraClear to Worldxchange in perpetuity.²⁶
44. The Commission considers that the permanent reassignment of local numbers from TelstraClear to Worldxchange for use on Worldxchange’s PSTN network satisfies the criteria that it operates a PSTN to which numbers have been allocated.
45. Worldxchange operates a telephone service related to local telephone number portability. The Commission is accordingly satisfied that Worldxchange is eligible as both an access provider and an access seeker for the local telephone number portability service under the Act.

²³ Letter from The Internet Group (Diprose) to the Commission (Borthwick), *Request for submission*, 7 October 2003

²⁴ *ibid*

²⁵ Letter from Worldxchange (Clarkin) to the Commission (Webb), *Submission – Eligibility to be a party to Number Portability Determination Request*, 3 October 2003

²⁶ *ibid*

46. Worldxchange has advised that it is not an access provider of cellular telephone number portability services under the Act as it does not have any cellular services presently operating over any PSTN, and does not have a cellular number range assigned to it under the numbering plan.
47. The Commission is satisfied that Worldxchange is not an eligible access seeker or access provider for the designated multinet network service of cellular telephone number portability under the Act.

Eligibility of access providers

Status of BCL as access provider

48. BCL has submitted that it is not an eligible access provider for either the local telephone number portability service or the cellular telephone number portability service under the Act.
49. BCL submits that it does not satisfy the requirements of an access provider for the local telephone number portability service. "BCL does not operate a PSTN to which numbers have been allocated. BCL does not operate a telephone service that relates to the "local telephone number portability service"". ²⁷
50. BCL also submits that it does not satisfy the requirements of an access provider for the cellular telephone number portability service as "[it] does not operate a PSTN to which numbers have been allocated. BCL does not operate a telephone service that relates to the "cellular telephone number portability service.". ²⁸
51. The Commission is satisfied that BCL is not an eligible access provider for the designated multinet network services of local telephone number portability or cellular telephone number portability service under the Act.

Status of Citylink as access provider

52. Citylink has submitted that it is not an eligible access provider for the designated multinet network services of local telephone number portability or cellular telephone number portability. Citylink has advised that it does not operate a PSTN and does not provide a telephone service related to the local telephone number portability service. Citylink has also advised that it does not operate a PSTN and does not provide a telephone service related to cellular telephone number portability. ²⁹
53. The Commission is satisfied that Citylink is not an eligible access provider for the designated multinet network services of local telephone number portability or cellular telephone number portability service under the Act.

Status of Counties Power as access provider

²⁷ Letter from BCL (Bowron) to the Commission (Borthwick), *Number Portability*, 9 October 2003

²⁸ *ibid*

²⁹ Email from Citylink (de Wit) to the Commission (Mosby), *Number Portability*, 24 September 2003

54. Counties Power has submitted that it is not at present an access provider for either of the designated multinet network services of local telephone number portability or cellular telephone number portability.³⁰
55. Counties Power submitted that “[we] do operate a telecommunications network which members of the public who are contracted to one of our retail partners will be able to use for the purpose of communicating between telephone devices. While members of the public can dial their own calls across our network, we perform no voice switching on the network. We carry customer voice data to our retail partners who then switch telephone calls within our network or into the PSTN. Similarly no telephone numbers have been allocated by us on our network, however retailers operating on the network allocate telephone numbers that point to devices connected to our network”³¹
56. In respect of the local telephone number portability service, Counties Power submits that “we do not operate a telephone service in the ordinary meaning of the words, rather we provide a network which allows retailers to operate telephone services. Since the two legs of the “access provider” definition are conjoined it follows that we are not an “access provider”, irrespective of whether or not our network is a PSTN to which numbers have been allocated.”³²
57. The Commission notes that while Counties Power operates a PSTN and numbers are used on that network, local telephone numbers have not been allocated to Counties Power. Rather, local telephone numbers have been allocated to carriers who utilise the Counties Power network.
58. The Commission is satisfied that Counties Power is not an eligible access provider for the designated multinet network service of local telephone number portability under the Act.
59. In respect of the cellular telephone number portability service, Counties Power submit that the Counties Power network “does not presently support cellular telephone services as we understand the term, that is transmissions to and from portable telephones capable of operating throughout the network area and maintaining service while moving between the local areas covered by different base stations. Consequently none of the telephones operating through our network are likely to be allocated cellular numbers so the issue of cellular telephone number portability does not arise.”³³
60. Counties Power does not operate a PSTN to which cellular numbers have been allocated, or operate a telephone service that relates to the cellular telephone number portability service. The Commission does not consider that Counties Power is an eligible access provider for the cellular telephone number portability service under the Act.

³⁰ Letter from Counties Power (Lack) to the Commission (Borthwick), *Number Portability*, 2 October 2003

³¹ *ibid*

³² *ibid*

³³ *ibid*

61. The Commission is satisfied that Counties Power is not an eligible access provider for the designated multinet network services of local telephone number portability or cellular telephone number portability service under the Act.

Status of Equant as access provider

62. Equant says that it is not an access provider for a local telephone number portability service or a cellular telephone number portability service. It does not satisfy either of the criteria to be an access provider. Equant exited the retail switched voice market in New Zealand in January 2003.³⁴
63. The Commission is satisfied that Equant is not an access provider for the designated multinet network services of local telephone number portability or cellular telephone number portability service under the Act.

Status of Tangent / United Networks as access provider

64. The Commission received a response from Tangent in respect of United Networks and Tangent, as Tangent Limited acquired United Networks telecommunications network following Vector Limited's purchase of United Networks.³⁵
65. Tangent has advised that Tangent does not operate a PSTN to which numbers are allocated, and it does not operate a telephone service that relates to local telephone number portability. Tangent has also advised that it does not operate a telephone service that relates to the cellular telephone number portability service or operate a cellular PSTN to which numbers have been allocated.
66. The Commission is satisfied that Tangent is not an eligible access provider for the designated multinet network services of local telephone number portability or cellular telephone number portability service under the Act.

Status of Teamtalk as access provider

67. Teamtalk has advised the Commission that it does not meet the conditions as an access provider for the designated multinet network services of local telephone number portability or cellular telephone number portability.³⁶
68. The Commission is satisfied that Teamtalk is not an eligible access provider for the designated multinet network services of local telephone number portability or cellular telephone number portability under the Act.

Status of Telecom as access provider

69. Telecom has advised the Commission that it satisfies the requirements of an access provider for both the local telephone number portability service and the cellular

³⁴ Email from Equant (Goodchild) to the Commission (Mosby), *Number Portability: Equant Response*, 29 September 2003

³⁵ Letter from Tangent (Elliott) to the Commission (Borthwick), *Number Portability*, 9 October 2003

³⁶ Email from Teamtalk (Brown) to the Commission (Mosby), 8 October 2003

telephone number portability service.³⁷

70. The Commission is satisfied that Telecom is an eligible access provider for the designated multinet network services of local telephone number portability and cellular telephone number portability under the Act.

Status of Vodafone as access provider

71. Vodafone has advised the Commission that it meets the conditions of an access provider for the cellular telephone number portability service but does not meet the conditions of an access provider for the local telephone number portability service.³⁸
72. Vodafone notes that it does not currently offer a local calling service to its customers. Telephone numbers have been allocated to Vodafone for local service. However these numbers are not currently allocated to end users. Vodafone submits that “[o]n the basis that the Act requires both numbers to be allocated to the PSTN and provision of a service that relates to local telephone number portability, Vodafone does not believe it satisfies the conditions of an access provider for local telephone number portability.”³⁹
73. Vodafone submits that it satisfies the conditions of an access provider for the cellular telephone number portability service as “(a) Vodafone operates a PSTN to which numbers have been allocated; and (b) Vodafone operates a telephone service that relates to that number portability service.”⁴⁰
74. The Commission is satisfied that Vodafone is an eligible access provider for the designated multinet network service of cellular telephone number portability service. Vodafone is not an eligible access provider for the local telephone number portability service under the Act.

Status of Woosh Wireless as access provider

75. Woosh has advised the Commission that it does not consider that it meets the criteria specified in the Act to qualify as an access provider for either local telephone number portability service or cellular telephone number portability service⁴¹. While Woosh does operate a PSTN, numbers have not been allocated to that PSTN.
76. The Commission is satisfied that Woosh Wireless is not an eligible access provider for the designated multinet network services of local telephone number portability or cellular telephone number portability under the Act.

³⁷ Letter from Telecom (Blackett) to Telecom (Borthwick), *Number Portability: Submissions on Certain Matters relating to the Commission’s Decision to Investigate*, 7 October 2003

³⁸ Letter from Vodafone (Talaic) to the Commission (Borthwick), 7 October 2003

³⁹ *ibid*

⁴⁰ *ibid*

⁴¹ Letter to the Commission (Mosby) from Woosh Wireless (Powles), 23 October 2003

Summary

77. The following table summarises the Commission's preliminary view of the status of both applicants and other industry providers as access seekers or access providers under the Act for the designated multinetwork services of local telephone number portability and cellular telephone number portability.

| | Designated multinetwork service | | | |
|---------------------------------|--|-----------------|---|-----------------|
| | Local telephone number portability service | | Cellular telephone number portability service | |
| | Access Seeker | Access Provider | Access Seeker | Access Provider |
| Applicants | | | | |
| TelstraClear | ✓ | ✓ | ✓ | ✓ |
| CallPlus | ✓ | ✓ | X | X |
| Compass | ✓ | ✓ | X | X |
| The Internet Group | ✓ | ✓ | X | X |
| Worldxchange | ✓ | ✓ | X | X |
| Other Industry Providers | | | | |
| BCL | - | X | - | X |
| Citylink | - | X | - | X |
| Counties Power | - | X | - | X |
| Equant | - | X | - | X |
| Tangent | - | X | - | X |
| Teamtalk | - | X | - | X |
| Telecom | - | ✓ | - | ✓ |
| Vodafone | - | X | - | ✓ |
| Woosh Wireless | - | X | - | X |

DATED this 19th day of March 2004



Douglas Webb
Telecommunications Commissioner
Commerce Commission