



TelstraClear Limited

**Cross Submission on other parties' responses to Commission's Draft
Determination on Number Portability Functions and Standards for
Local and Mobile Number Portability**

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PUBLIC VERSION

(Note: There is no Restricted Version)

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1. INTRODUCTION

1. This is TelstraClear's cross submission on the responses made by Telecom and Vodafone to the Commerce Commission's "*Draft determination on the multi-party application for determination of 'local telephone number portability service' and 'cellular telephone number portability service' designated multi-network services*", dated 12 May 2005 (**draft determination**).
2. TelstraClear, Telecom and Vodafone agree on most issues relating to the draft Determination. As such, our cross submission focuses mainly on responding to the few issues where TelstraClear supports solutions proposed by other submitters and disagrees with the others, or proposes modifications to their suggestions.

2. FIXED TO MOBILE PORTING

3. As set in TelstraClear's response to the draft Determination dated 10 June 2005 (**TelstraClear's Response**), TelstraClear endorses, as a matter of policy, the principle of portability of numbers between fixed and mobile networks provided the solution is workable.
4. We strongly agree with Vodafone's view that the Commission's approach in the draft Determination of limiting the geographic scope of local numbers ported to a mobile network to a single cell site will be impracticable for operators, disadvantageous for end users, and an arbitrary limitation on and therefore in conflict with section 18 of the Telecommunications Act 2001 (the **Act**).
5. TelstraClear agrees with Vodafone's submission on 10 June 2005 in response to the draft Determination (**Vodafone's Response**) that:
 - a) local numbers should not be limited to a single transmission tower or cell site;
 - b) there should be no restriction that the service must be limited to calls made and received in the geographic area;
 - c) there should be no requirement that the end user's telephone device is not capable of performing call handover between transmission towers; and
 - d) the porting of local numbers to mobile devices will not result in customer confusion as Telecom suggest.

6. The solution required to have a workable regime for fixed to mobile portability needs to be technology neutral, and can be resolved by addressing issues around the application of the defined term “Local Calling Area”.
7. TelstraClear agrees with Vodafone that the key to fixed to mobile portability is the application and definition of the local calling area.
8. Local numbers have geographic boundaries; mobile numbers do not. These geographic areas (known as local calling areas) are defined by the donor carrier. They reflect the geographic area within which that donor carrier provides a local service to its customers, using a particular local number range allocated to it by the Number Administration Deed (**NAD**).
9. When local numbers are ported, that number should logically remain within and associated with the local calling area defined by the donor carrier for that number. That is, it is linked to an address in the local calling area (the residential or business address of the customer or end-user). However, as with Telecom’s call forwarding feature, there should be no requirement that the end-user receives calls from that number inside the local calling area.
10. When the local number is ported from a fixed network onto another fixed network, the gaining service provider (**GSP**) will use its exchange areas, which correspond with the exchange areas of the donor carrier, for that number. The boundaries of their exchange areas will not necessarily be exactly the same, and it will be up to the GSP to ensure that the ported local number logically remains in the donor carrier’s local calling area for that number
11. Mobile/wireless networks will use cell sites and transmission towers to define their geographic boundaries for local numbers allocated to them by the NAD. If a local number is ported from a mobile/wireless network to a mobile/wireless network, the GSP will use its cell sites/towers which correspond with the cell sites/towers in the donor carrier’s local calling area for that number.
12. Likewise, if a local number is ported from a mobile/wireless network to a fixed network (or visa versa), the GSP will use its exchange areas that correspond with the cell sites/towers of the donor carrier for that number (or visa versa).
13. Thus the Commission does not need to define the geographic boundaries for fixed to mobile portability as it has attempted to do in paragraph 68 of the draft Determination. The Commission should instead leave it to the donor carriers to define those areas, and amend clause 4.1.8(a) in the draft LMNP Terms to require a Ported Local Number to logically (not physically) remain

within the Donor Carrier's relevant local calling area.

14. This amendment along with the current definition of Local Calling Area in the LMNP Terms accommodates all the porting scenarios outlined above.

3. EXEMPTION PROCESS

15. TelstraClear disagrees with Telecom's submission on 10 June 2005 in response to the draft Determination (**Telecom's Response**) that the Commission will be acting ultra vires if it reserves to itself the power to grant exemptions from the determination in the future. It observes that no authority has been provided by Telecom in support of its submission.
16. The Commission has jurisdiction to reserve this power in its determination:
 - a. The Commission has the power to exempt specific services from the determination when it makes the determination. In the present case the Commission cannot foresee all potential cases for exemption at the date that it issues its determination. It is therefore reserving the right to consider possible applications for exemptions as and when they arise in the future. This is a power that is incidental to its powers of determination; and
 - b. Section 40(1)(f) of the Telecommunications Act (**the Act**) allows the Commission to include terms and conditions in a determination. Clause 15 of the Network Terms, once it forms part of the determination, will be a term of the determination.
17. The Commission is not attempting to delegate its decision-making powers to the Telecommunication Carriers' Forum Management Committee, as was proposed in the draft Network Code. Nor is it attempting to usurp the statutory rights and powers arising under sections 58 and 59 of the Act. These sections will continue to be given full force and effect.
18. Clause 15 of the Network Terms does not allow the Commission to change or amend the determination. It allows the Commission to grant an exemption from the determination in terms of the determination itself. TelstraClear considers that the Commission would be acting pursuant to a term of the determination, rather than amending the determination, if it were to grant an exemption in the manner expressly provided for in clause 15. If a party requires the terms of the determination to be changed or it is unwilling or unable to follow the procedure for obtaining an exemption provided for in clause 15 of the Network Terms, it must still apply for an amendment under

section 59 of the Act.

19. There is little merit in having a process involving the Telecommunication Carriers' Forum (TCF) recommending exemptions be granted if the parties are still required to lodge an application with the Commission under section 58 or 59 of the Act. Furthermore, the powers of the Commission under these two sections are subject to limitations that will preclude them being used to provide the exemptions of the kind envisaged.

4. INTERNATIONAL ORIGINATED SHORT MESSAGES

20. TelstraClear agrees with Telecom's request in Section G of the Telecom Response that the Commission go further in its final Determination in relation to internationally originated SMS, as we believe this would best address the issue of equivalent service to the long term benefit of end users. TelstraClear therefore suggests the Commission adopt the approach set out in paragraph 70.2 of Telecom's Response.

5. DATE OF INCEPTION AND EXPIRY

Date of Inception

21. TelstraClear agrees with the Commission's approach in the draft determination that the appropriate date of inception is the date of the determination so that parties are required to take the necessary steps after the date of the determination to ensure they meet the 'go live' date¹.
22. TelstraClear does not agree with the view in Telecom's Response that it is not necessary to specify such a date to ensure parties take the necessary steps to meet their obligations by the implementation date².
23. TelstraClear also does not agree with Telecom's suggestion that, if the Commission does specify a date of inception, the parties should not be required to meet **any** of the terms of the Determination until the 'go live' date³.
24. However, TelstraClear considers that there needs to be further clarity by the Commission around the date of inception to ensure parties are not required to immediately meet those terms of the Determination which obviously make no

¹ Draft Determination, paragraph 156.

² Telecom Response, paragraph 74.

³ Telecom Response, paragraph 75.

sense until the IPMS is turned on. The Commission should be explicit on which obligations in the LMNP Terms and the Network Terms are binding from the date of inception and which are binding from the 'go live' date.

Implementation of IPMS

25. Whilst TelstraClear agrees with Telecom and Vodafone that the Industry Portability Management system (**IPMS**) is not likely to be available by 1 April 2006, TelstraClear disagrees with the views in the Telecom Response⁴ and the Vodafone Response⁵ that it is unnecessary for the determination to include a date in the determination by which carriers must be able to connect to the IPMS for integration testing of internal systems ("**IPMS integration date**").
26. Even now, the TCF is having difficulty getting commitments from Telecom and Vodafone for key milestones for the TCF number portability project plan. Including an IPMS integration date in the final determination substantially reduces the risk that parties will not be ready to go-live on IPMS by 1 April 2007.
27. The key reasons given in Telecom's Response for not including an IPMS integration date is that the parties are reliant on Hewlett Packard (**HP**) to deliver IPMS and HP is not a party to the determination⁶, and that each carrier will have their own timeline for when they will be ready for this⁷. In TelstraClear's view, the wording proposed by Commission in clause 1.4 of the Network Terms⁸ already accommodates the first concern, since it refers to when carriers must be *able* to connect, not when parties must be connected. The second concern can be accommodated by ensuring the IPMS integration date adequately reflects the lead-time required.
28. While Vodafone also object to the final determination including an IPMS integration date, they state that the TCF's current "*Project Plan schedules integration testing to take place in September 2006*" and that in their view "*this timing allows sufficient time for integration testing to take place*"⁹.

⁴ Telecom Response, paragraph 68

⁵ Vodafone Response, paragraph 84

⁶ Telecom Response, paragraphs 80 to 83

⁷ Telecom Response, paragraphs 85

⁸ TelstraClear proposed in its Response that clause 1.4 of the Network Terms be moved to the LMNP Terms.

⁹ Vodafone Response, paragraph 66

29. Vodafone's September 2006 date is consistent with TelstraClear's Response¹⁰ that the Commission should use an IPMS integration date of September 2006 for mobile number portability (in the LMNP Terms). Further, as this date reflects the date in the TCF project plan, it should already be reflective of the parties lead-time requirements for mobile portability.
30. Similarly it is consistent with the approach proposed in TelstraClear's Response that if the Commission were to require local number portability to be introduced ahead of mobile number portability, the Commission should use an IPMS integration date which is 6 months prior to the determined go-live date for local number portability.¹¹

6. CONFERENCE

31. TelstraClear believes that as there are only a small number of issues where this is no agreement, and as the parties have had the opportunity to present their views on those issues in both submissions and cross submissions, there is no need to hold a conference.

¹⁰ TelstraClear Response, paragraph 34

¹¹ TelstraClear Response, paragraph 35