



**TelstraClear Limited**

**Cross Submission on other parties' responses to Commission's Draft  
Determination on the multiparty application for determination of  
"local telephone number portability service" and "cellular telephone  
number portability service" designated multi-network services**

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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, Vodafone, ihug, WorldxChange, CallPlus and Woosh Wireless 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 6 December 2004 (**draft number portability cost allocation determination**).
2. TelstraClear, Vodafone, ihug, WorldxChange, Callplus and Woosh Wireless largely agree that the Commission's proposed allocation principles for number portability will best promote competition to the long-term benefit of end-users. This group includes both DNOs and RNOs, fixed and mobile operators and operators with a small existing customer base and others with much larger customer bases. Telecom's submission on the draft determination (**Telecom's Response**) is alone in its fundamental rejection of the Commission's proposed approach.
3. As such, our cross submission focuses mainly on addressing Telecom's Response. We also identify the few issues where TelstraClear disagrees with the other submitters or proposes modifications to their suggestions.

## 2. GENERAL RESPONSE TO TELECOM SUBMISSION

4. Telecom has submitted "that any allocation methodology should, to the extent practicable, appropriately allocate costs to align relevant incentives in a way so as to generate the most efficient outcome. Only this will be for the long-term benefit of end-users".<sup>1</sup> TelstraClear agrees with this view. Where we differ is over the consequences that application of this principle has for the allocation of number portability costs. TelstraClear's view is that the Commission's proposed cost allocation methodology is entirely consistent with this principle.
5. Telecom previously argued that it should not incur any of the costs of number portability because, as it did not intend to be an access seeker, it would not

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<sup>1</sup> Telecom Response, para 4.

benefit from number portability.<sup>2</sup> Telecom has now conceded that it will be an access seeker<sup>3</sup> so it can no longer use this argument. Instead Telecom relies on the expectation that other access seekers will port more customers from Telecom than Telecom will port from them. Telecom effectively ties the benefit of number portability directly to access seekers, and directly to the amount of porting they will do.

6. Telecom disregards that end-users are the ultimate beneficiaries of number portability. End-users will benefit from number portability because number portability will remove a barrier to entry/competition and therefore enhance competition, including where it is not currently considered “limited”. End-users need not port to benefit from number portability. All end-users will ultimately benefit from the increased competition.
7. Therefore, Telecom’s proposed principle that costs and benefits of number portability should be aligned is best met by spreading the costs of portability across all end-users. This, in turn, can be achieved by allocating costs on the basis of existing customer numbers (or some proxy). This is entirely consistent with the approach proposed by the Commission.
8. Taking the same view of the benefits of number portability, overseas regulators have consistently allocated number portability costs on the same basis as the Commission proposes. There are only two exceptions:
  - a. Oftel’s initial decision, reached in the very earliest days of number portability, allowed BT to recoup some of its additional call conveyance costs for a limited period of time. No other regulator has followed the Oftel decision; and
  - b. the ACCC’s decision not to permit the DNO to recover per line costs from the RNO. While TelstraClear sees benefit in requiring the DNO to meet its own per line costs, TelstraClear accepts, given the common view expressed by other submitting parties, a DNO per line charge, but

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<sup>2</sup> Refer, for example, to Telecom’s paper to the NAD Management Committee “Allocation of Costs of Implementing Long Term Number Portability” in which it made the following statement: *Telecom does not accept a view that it should bear the costs of implementing LTNP in its systems. While Telecom is prepared to make the considerable changes to its network and operating systems to facilitate LTNP if such changes would be to the long-term benefit of end-users, Telecom is not the access seeker and therefore would not be willing to incur the associated costs. Telecom is not seeking the ability to in-port numbers from other carriers. Nor does Telecom foresee itself trying to differentiate itself in the market on the basis of making the out-porting of numbers available.*

<sup>3</sup> Refer to Section 3: Relevant Access Seekers and Access Providers.

subject to reasonable safeguards against monopoly pricing.

9. While Telecom argues that the Commission's proposed approach will be detrimental to the long-term benefit of end-users, TelstraClear notes:
  - a. number portability has operated in most other developed economies in accordance with the universally accepted portability cost allocation principles for nearly ten years. Yet Telecom has failed to provide any evidence from these markets of the delayed investment, poorer innovation, distorted retail pricing or skewed market behavior which Telecom says results from application of those cost allocation principles.
  - b. Telecom has not pointed to any unique conditions in the New Zealand market which make it likely that these universally accepted portability cost allocation principles will cause market distortions here which they have not caused elsewhere. In fact, there is nothing new in Telecom's arguments: they are substantially the same as those made by many other incumbents which have been consistently rejected by other regulators and disproved by actual market experience of number portability.
  - c. The countries that rank higher than New Zealand in the OECD comparative pricing tables all have introduced number portability in accordance with these universally accepted cost allocation principles. Number portability is not a "magic bullet": New Zealand's poor ranking is attributable to a range of factors. However, the absence of cost effective number portability arrangements is one of the main structural impediments to a more competitive market.

### **3. RELEVANT ACCESS SEEKERS AND ACCESS PROVIDERS**

10. TelstraClear welcomes Telecom's unambiguous statement in its response that it will be an access seeker for both local and cellular telephone number portability. TelstraClear agrees with Telecom's view that:
  - a. an access seeker within the meaning of the portability number service descriptions does not have to be an applicant to determination

proceedings;<sup>4</sup> and

- b. Telecom meets the criteria to be considered an access seeker for both fixed number portability and mobile number portability.
11. Telecom's acknowledgement demonstrates the benefit which all competitors derive from number portability once it is introduced. Telecom argues that, while it may benefit from fixed number portability by now deciding to be an access seeker, its competitors will benefit substantially more and therefore should bear most of the costs. Allocating the fixed costs of number portability on the basis of a relative assessment of benefit between operators at a particular point in time is also inappropriate given the long life of the portability systems and the changes in market shares likely to occur over time. That the flow of out-ports may be against the incumbent in the early days of number portability reflects the incumbent's commanding market position and the pent up demand resulting from high barriers to switching. The competitive benefits of number portability will be undermined if the allocation of its costs reflects the very market distortions which portability is designed to address.
  12. TelstraClear disagrees with Telecom's view that TelstraClear is not an access seeker for mobile number portability. The Commission has already rejected Telecom's arguments and Telecom raises no new points in its Response.
  13. TelstraClear agrees with both Telecom<sup>5</sup> and Vodafone<sup>6</sup> that the Commission should have a role in monitoring the eligibility of parties to ensure that an accurate register is kept of access seekers and access providers throughout the term of the determination. Telecom's proposal that Telecom should be afforded the opportunity to comment on any proposed change of status of any other party<sup>7</sup> should apply to all access seekers and access providers.
  14. In addition, TelstraClear proposes that the Telecommunication Carriers' Forum (TCF) also should be notified of any proposed changes. As the administrator of the Industry Portability Management System (IPMS), the TCF is responsible for signing up parties onto the contractual arrangements with

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<sup>4</sup> Telecom Response, para 13.

<sup>5</sup> Telecom Response, para 21.

<sup>6</sup> Vodafone response to the draft number portability cost allocation determination ("Vodafone's Response"), para 32.

<sup>7</sup> Telecom Response, para 22.

the TCF necessary to enable them to use the IPMS, and for identifying any associated contractual issues between the TCF and the IPMS service provider (e.g. HP).

15. Vodafone is “especially concerned that resellers or MVNO entrants who may not allocate to customers numbers from their own number ranges [and therefore would not be eligible as access seekers] contribute to the costs of LMNP as they gain market share”.<sup>8</sup> Vodafone suggests this could be done by a contract between the network operator and the MVNO or reseller. While TelstraClear agrees with Vodafone’s comment, we believe that this is a commercial matter between those parties. The cost allocation principles would apply to the network operator hosting the MVNO or reseller as if the numbers issued to the MVNO’s or reseller’s customers were retail customers of the network operator. The Commission does not need to address this issue in the final determination.

#### **4. TECHNOLOGY SOLUTIONS FOR NUMBER PORTABILITY**

16. Telecom argues that “the Commission has misinterpreted the number portability solutions that carriers are looking to employ”<sup>9</sup> and as a result, the Commission incorrectly focuses on the inputs rather than the outcomes of number portability. Telecom says that there is “a risk that in assuming a solution the Commission will prevent carriers from employing the most effective and efficient solution”<sup>10</sup>.
17. Telecom’s point is not clear. If Telecom only means that the Commission’s discussion of the different technical solutions for the purposes of deciding how to efficiently allocate costs should not be taken as prescribing the technical solution which each operator must implement, TelstraClear agrees. The TCF number portability codes, as Telecom notes, allow operators to decide their own internal network solution.
18. But it seems that Telecom is arguing something else. Different number portability solutions – Telecom’s “inputs” - will produce different costs overall and within each of the three operator specific categories, especially set-up and additional call conveyance – Telecom’s “outcomes”. Telecom seems to

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<sup>8</sup> Vodafone Response, para 33.

<sup>9</sup> Telecom Response, para 25.

<sup>10</sup> Telecom Response, para 25.

be saying that the Commission must start from the actual costs which result from the technical solution chosen by each operator. Telecom gives the example of the significant additional call conveyance costs incurred using a Query on Release (**QoR**) solution which it says should be allocated to the RNO,<sup>11</sup> but as the Commission correctly notes, had the operator chosen a full IN solution, there would be no additional call conveyance costs to be allocated. In Telecom's view, the Commission apparently must apply its allocation approach to the costs as it finds them.

19. If Telecom is making this second argument, then it is missing the point. While the Commission should not prescribe that a particular solution be implemented, the Commission can appropriately make assumptions about the most efficient solution in devising its allocation principles:
- a. the Commission is required to allocate number portability costs in a way which best gives effect to the section 18 object and in doing so, the Commission is required to consider the efficiencies which will result or are likely to result;
  - b. the network and other resources utilised, and therefore costs, vary between the different technical solutions for number portability. Some solutions are more efficient than other solutions;
  - c. section 18, and in particular the efficiency criteria of section 18(2), requires a two step approach to cost allocation:
    - (i) the Commission must assess what are the efficiently incurred costs of number portability; and
    - (ii) the Commission must then decide how to allocate those costs most efficiently to promote the competition to the long term interests of end-users;
  - d. the object of section 18 is **not** advanced by allocating inefficiently incurred costs; and
  - e. accordingly, the Commission should base its cost allocation principles on an assumption of an efficient access provider choosing the most efficient available technology.

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<sup>11</sup> Telecom Response, para 88.

20. It seems to us that the price of the right that the TCF codes give each operator to choose its own technical solution must be that the operator does so at its own cost. The ACCC noted in its portability pricing principles that:

*“The choice of the most efficient method of providing LNP, subject to meeting the requirements of the Numbering Plan, is a matter for each CSP to determine. Although these pricing principles are designed to encourage efficient choices of the methods to provide LNP, they do not aim to limit those choices. Nor are they predicated on any particular choice of methodology.”<sup>12</sup>*

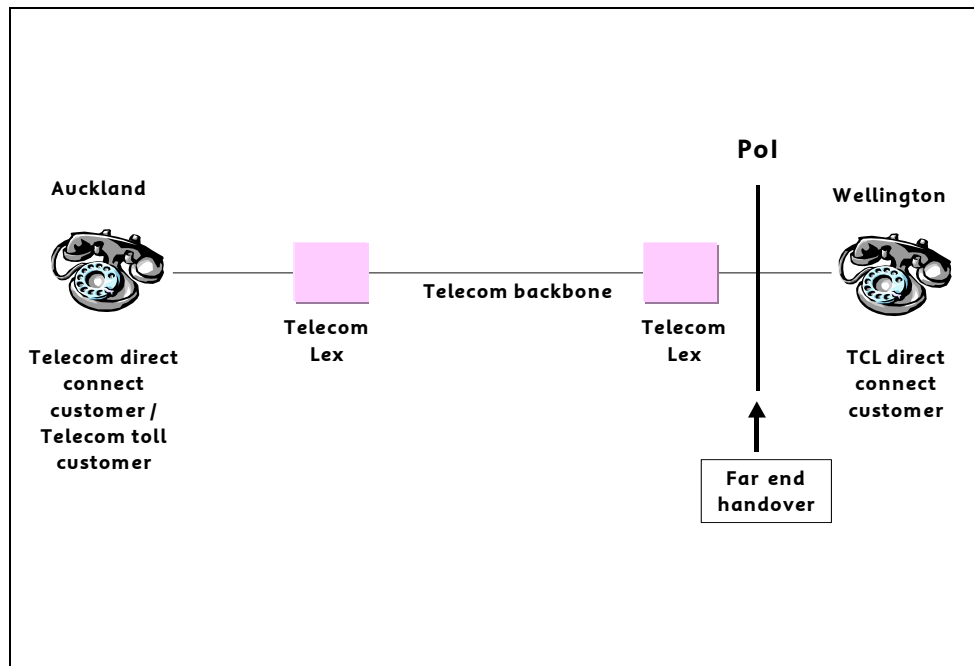
21. The TCF approach probably gives individual operators more flexibility to choose their own number portability solution than in Australia, which is all the more reason to adhere to the principle of each carrier bearing its own set-up costs.
22. Telecom states that “the cost allocation methodology for call conveyance costs ... are made on the basis that the Commission expects a carrier to carry a ported call for as long as it can on its own network before it passes it to another carrier”.<sup>13</sup> The handover principles which apply to calls to ported numbers are the same as those which apply to calls of the same type to non-ported numbers. The following diagrams compare the base case of Telecom toll call to a non-ported TelstraClear number (case 1) with a Telecom toll call to a TelstraClear customer using a ported Telecom number (case 2), a TelstraClear toll call to a Telecom customer not using a ported number (case 3) and a TelstraClear toll call to a TelstraClear customer using a Telecom ported number (case 4). As can be seen from these examples, whether interconnection involves near end or far end handover depends not on whether the call is to a ported number, as Telecom seems to imply, but whether the toll call is a Telecom or TelstraClear toll call (irrespective of whether it also is a call to a ported or a non-ported number).

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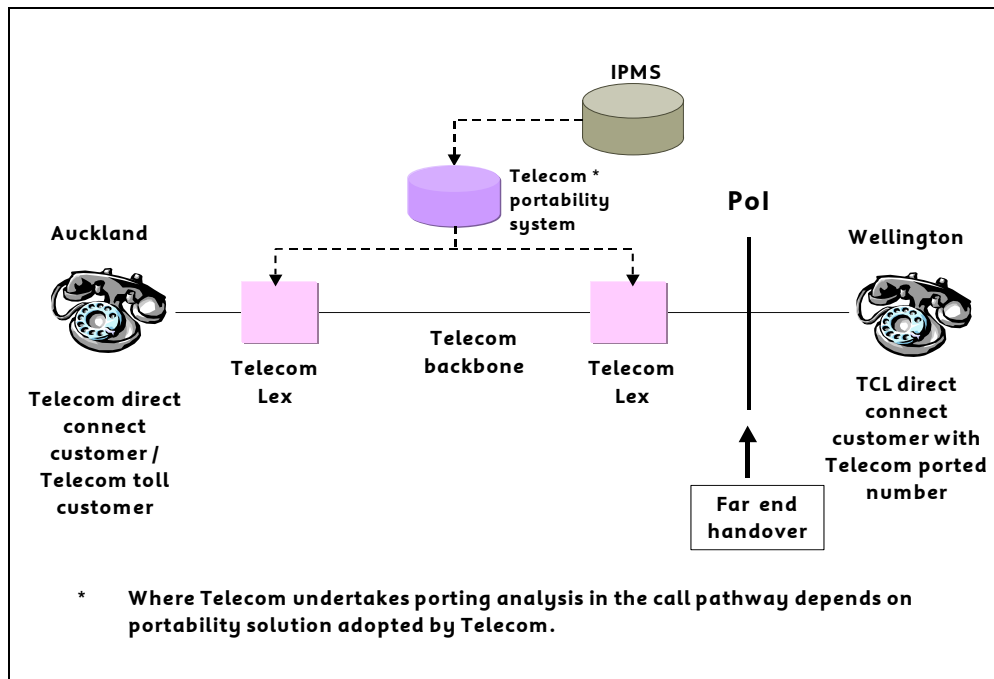
<sup>12</sup> Pricing Principles for Local Number Portability, a Guide, June 1999, para. 3.2.

<sup>13</sup> Telecom Response, para 85.

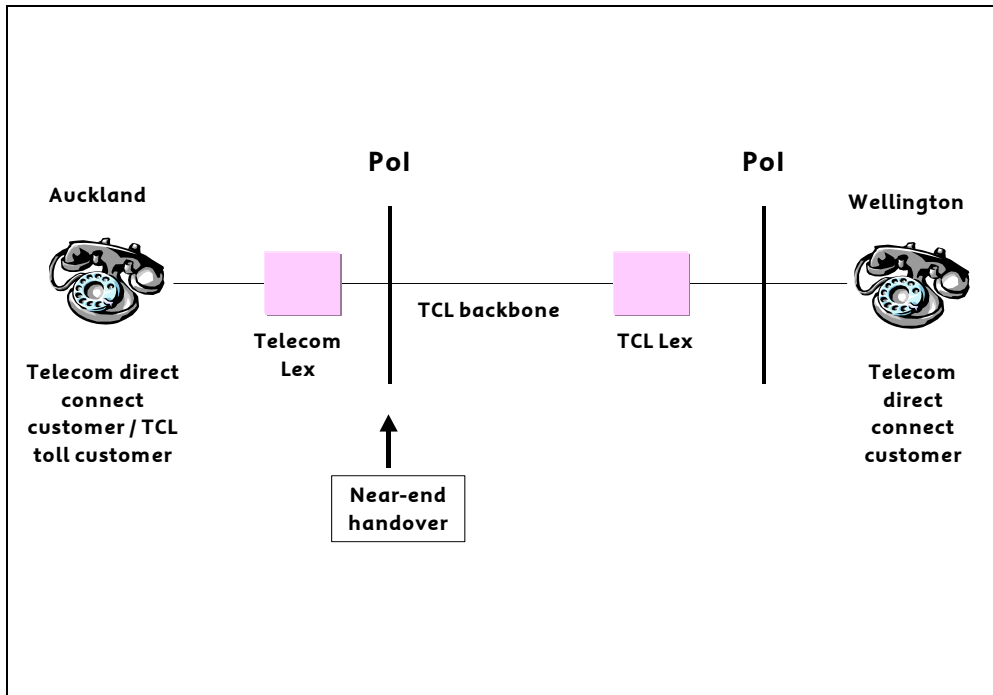
Case 1: Telecom toll call to a TelstraClear non-ported number



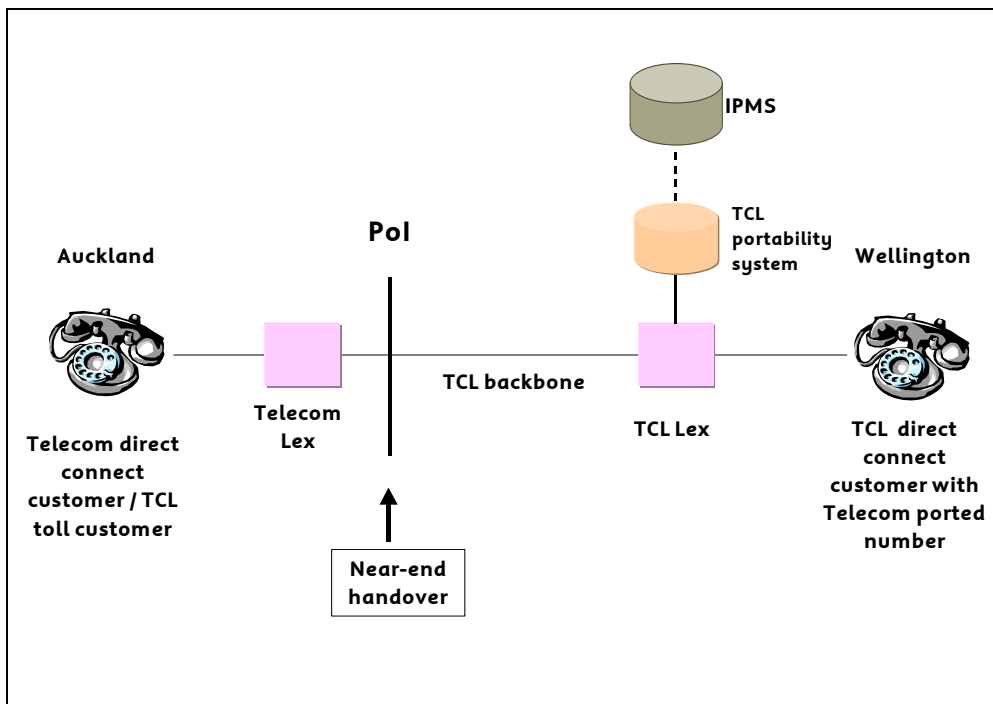
Case 2: Telecom toll call to a TelstraClear customer with a Telecom ported number



Case 3: TelstraClear toll call to a Telecom non-ported number



Case 4: TelstraClear toll call to a TelstraClear customer with a Telecom ported number



## 5. COST ALLOCATION PRINCIPLES

23. Vodafone and Telecom argue that the Commission's cost causation principle means that "all the customer set up costs and any additional call conveyance costs should be allocated to porting customers or to the RNO".<sup>14</sup>
24. This takes an overly narrow view of causation. As TelstraClear has previously explained, an originating carrier (DNO or otherwise) needs number portability capability within its network to offer any to any connectivity to its own customers. It could not charge calls from its own customers to ported numbers unless it had the ability to interrogate the IPMS and then route calls to the new network location of the called number. It is also true, of course, that if the called party had not been able to take his or her number when switching to the RNO network, the originating carrier would not need the number portability functionality. But, as can be seen, there is more than one "causal event" and more than one cost causing party involved in number portability.
25. Vodafone comments that the proposed principle of "alignment of costs with benefits" is redundant:<sup>15</sup> it either means that the RNO faces the costs of number portability, which means it is the same as Vodafone's view of cost causation, or it means the RNO should not face the full costs of number portability, in which case it is the same as the principle of lowering barriers to switching.
26. TelstraClear disagrees with Vodafone that the Commission's proposed third principle is redundant, for the following reasons:
- a. this principle allows recognition of the benefits which non-porting customers derive from number portability through enhanced competition which results from the ability of all customers to switch more easily; and
  - b. if a narrow view of causation is taken, as Vodafone does, this principle allows recognition of the DNO's continuing benefit in using number portability to successfully complete and charge for calls to ported numbers.

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<sup>14</sup> Vodafone Response, para 9.

<sup>15</sup> Vodafone Response, para 15.

27. TelstraClear agrees with Vodafone's proposed principle that "the widest feasible spread of costs is likely to be the most efficient"<sup>16</sup>. As with Vodafone, TelstraClear believes this is best achieved by requiring operators to bear their own costs because this is a good proxy for allocating costs across all customers, on the basis that they all benefit from number portability.
28. Telecom argues that the Commission should give primacy to dynamic efficiency and that:
- "[t]here is no evidence of any emphasis on dynamic efficiency – or the cost allocation principles which most impact on it – in the cost allocation methodology for the common industry costs proposed in the Draft Determination. Accordingly, inefficiencies may result, which will ultimately be to the detriment of end users".<sup>17</sup>*
29. Number portability enhances dynamic efficiency because new entrants which enter the market as a result of the introduction of number portability are unlikely to limit their service offering to telephony services to which number portability applies or to offer exactly the same telephony services as the current supplier(s). These new entrants are likely to deploy networks using the best available technology and to offer new and innovative services.
30. The present lack of number portability has (and is) retarding innovation because the reluctance amongst customers to switch without taking their number means that the incumbent does not have to innovate as much to retain them. Removing this barrier to entry/competition means that operators will have to compete on their merits, which in technology-based industries such as telecommunications usually translates to innovation.
31. As noted above, number portability has operated for many years in other countries in accordance with the cost allocation principles the Commission proposes for New Zealand. On Telecom's logic, the New Zealand market should be more innovative than those markets. TelstraClear sees no evidence of this. Another key dimension of dynamic efficiency is investment. Again, on Telecom's logic, investment would be greater in New Zealand but again we see no evidence of this.

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<sup>16</sup> Vodafone Response, para 10.

<sup>17</sup> Telecom Response, para 40.

32. Telecom argues that the Commission wrongly identifies improvements in price and service features as Type 1 and Type 2 benefits:
- a. Telecom asserts that the Commission wrongly treats “the reduction in the transaction costs for a porting customer as if it is a reduction in the costs of the service providers.”<sup>18</sup> Telecom correctly points out that RNOs will face additional costs in building and operating the systems for number portability. However, Telecom’s competitors currently have to expend resources and effort in attempting to overcome customers’ strong reluctance to switch without their number. These costs may involve extra marketing effort; reimbursing the customer’s costs caused by changing its number, such as printing new stationary; the costs of a Telecom redirect service<sup>19</sup> or crediting some or all of the costs of the customer maintaining its Telecom lines for inbound calls in order to retain its number. The larger number of customers which an entrant can attract to its network as a result of number portability also helps increase the entrant’s scale economies; and
  - b. Telecom then says that as there are no cost reductions, it follows that there will be no price reductions<sup>20</sup>. The increased competition/new entry that will result from number portability will put pressure on competitors to reduce prices through cost reductions and reduced margins.
33. Telecom argues that the Commission assumes that a sufficiently large number of customers will switch service providers as a result of number portability to justify a price reduction.<sup>21</sup> Telecom must mean that it will not reduce prices for its remaining customers until it has lost enough customers to make it worthwhile reducing its margins earned on its remaining customers to keep them. However, Telecom’s argument is circular: if the costs of switching are too high, Telecom is likely to lose fewer customers and may never reach the point where it feels it must respond with an across the board price reduction.
34. Telecom goes on to say that, given the Commission’s finding that Telecom

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<sup>18</sup> Telecom Response, para 44.

<sup>19</sup> This service is charged on a per call basis for each call made to a customer whereas the costs of Local and Mobile Number Portability (LMNP) would be largely once off. TelstraClear’s annual payments to Telecom for call forwarding are approximately \$2.5 million per annum.

<sup>20</sup> Telecom Response, para 45.

<sup>21</sup> Telecom Response, para 46.

faces limited competition in local telephone services in non-metropolitan markets, the Commission overstates the benefits of number portability<sup>22</sup>. Again, there is circularity in Telecom’s argument. The lack of number portability is one of the barriers entrants face in deploying network in non-metropolitan areas. While entrants face the same hurdle in metropolitan areas, the higher revenue generated by metropolitan customers justifies the costs associated with connecting some customers in these areas in the absence of number portability. The introduction of number portability may make it more feasible to compete for some customers or in some areas outside the metropolitan areas, particularly if other costs fall, such as technology, interconnection payments and TSO contributions. The Commission, in looking at the existing levels of competition in the metropolitan access markets acknowledged that number portability may in fact effect competition by influencing the level of customer churn between carriers “by reducing the costs associated with switching from one carrier to another”.<sup>23</sup> While the Commission’s comments are made in relation to metropolitan markets, they are equally applicable in describing the barriers which are faced by entrants in non-metropolitan markets without number portability.

35. Telecom considers that “number portability is unlikely to induce price reductions in the fixed line toll calling or the mobile markets as both of these markets are already highly competitive.”<sup>24</sup> The fact that, for the purposes of the designated resale services, the Commission has determined that Telecom no longer faces limited competition does not mean that the market is perfectly or “highly” competitive and that there are no further supra-normal rents which can be competed out to the benefit of end-users.
36. In response to Telecom’s comment on the competitiveness of mobile markets, TelstraClear notes that the Commission in its Draft Mobile Termination Report is of the initial view that this market is not sufficiently competitive at this time.<sup>25</sup>
37. On Telecom’s alternative approach, the costs of number portability should be allocated on the basis that “the ability to port a number is an option for

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<sup>22</sup> Telecom Response, para 47.

<sup>23</sup> Wholesale Determination Decision 497, May 2003, para 358.

<sup>24</sup> Telecom Response, para 47.

<sup>25</sup> Telecommunications Act 2001: Schedule 3 investigation into regulation of mobile termination, draft report, 18 October 2004, para 305.

customers and competing network operators.”<sup>26</sup>

38. In TelstraClear’s view, an options analysis actually supports the Commission’s approach. First, the capability to port is the end-user’s option not the RNO’s. All end-users have the option to port. Even if an end-user chooses never to exercise that option, their current provider knows that they can more easily switch because they do have that option and therefore that provider has to work harder to stop them exercising the option. If an end-user does switch, the end-user does not lose the option because they can always switch again (including back to the DNO). As the ACCC concluded, the best way to reflect the option value of portability is for an end-user to face the costs of an operator’s portability systems in the retail price for the direct connect fixed or mobile service provided to that end-user.<sup>27</sup>
39. Second, the consequence of Telecom’s approach is actually to devalue the option held by all end-users. If an incumbent can shift the costs of an inefficient portability implementation onto its competitors, the barriers to switching increase and the value to end-users of the option to switch reduces.
40. Third, even if portability should be valued as an option in the hands of operators, as Telecom argues, the value depends on whether a short term or a long term view is taken. As discussed above, in the short term there may be an outflow of ports from the incumbent, but over the long term, the level of in-ports to the incumbent may increase significantly if it is the most efficient operator and is able to win or win back customers. Valuing the option on today’s market conditions ignores what its future value may be.

## **6. COMMON INDUSTRY COSTS**

41. TelstraClear agrees with Telecom that the category of “common industry system set up costs” needs to be more closely defined. TelstraClear agrees with Telecom’s proposed definition<sup>28</sup>. The TCF Board has agreed the TCF will own the IPMS System, since someone needs to own and take responsibility for administering this industry solution. On the basis that the Commission’s Number Portability Cost Allocation Determination will determine how the costs for this system will be allocated, the TCF has entered into contractual

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<sup>26</sup> Telecom Response, para 50.

<sup>27</sup> ACCC, Principles for Mobile Number Portability, May 2001, para 6.3.1.

<sup>28</sup> Telecom Response, para 62.

arrangements relating to the IPMS. These cover the development of the technical specification, design, build and application software support for the IPMS, and the TCF is intending to enter into contracts for the provision of the necessary hardware, software licenses, system hosting implementation and provision of managed services necessary for the IPMS. There will also be administrative costs incurred by the TCF to oversee the management of the IPMS.

42. TelstraClear believes it would be useful, as proposed in its response, to clarify the “other common systems” reference in Telecom’s proposed definition. As set out in paragraph 7(b) of TelstraClear’s Response, there needs to be a clear demarcation point between the common industry system costs and the per-operator set-up costs.
43. The access point to the common industry system is an agreed centralized location and each operator should be responsible for the costs they incur on their side of that access point. Thus the definition of per-operator set-up costs should expressly state that each operator is responsible for building and operating its own links to access the IPMS at the agreed centralised location.
44. Telecom has proposed (at para 68) an alternative methodology for allocating common industry costs. TelstraClear does not agree with Telecom’s proposal for the following reasons:
  - a. Telecom proposes that “contributing” carriers” (presumably these are the carriers that Telecom refers to as “existing”) should absorb 50% of the upfront industry common costs, with the rest being recouped on a per port basis. Telecom offers no explanation for why the split should be 50:50. Nor does Telecom explain how the 50% share is to be split between the existing operators.
  - b. Nor does Telecom provide any explanation as to why some industry common costs should be allocated on the basis of subscriber numbers, and other industry common costs allocated on a per port basis. In TelstraClear’s view the industry common costs should all be allocated in the same way, and this should be on the basis of subscriber numbers.
  - c. Telecom provides no explanation of how the per port charges would be set. For example, over what timeframe would the remaining 50% be recovered? It is also unclear whether Telecom intends that “contributing carriers” would bear the extra per port charge as well as new entrants.
  - d. Allocating part of the industry common costs by way of per port charges

would mean that operators doing most of the porting would incur most of the cost, and would therefore act as a barrier to switching and a barrier to entry.

45. We agree with CallPlus<sup>29</sup> that a service provider which resells a local or mobile service supplied by a network operator using a number allocated to that network operator should not be required to contribute to the common industry costs for those numbers.<sup>30</sup> These numbers would be included in the active number base of the network operator and would go to calculation of its contribution.
46. We also agree with CallPlus's concern about allocation of common industry costs between mobile and fixed operators, although for a different reason. As the one platform is used for both forms of portability, the costs can be allocated on the basis of each operator's share of the aggregate number of fixed and mobile numbers, which should address CallPlus's concern. Although fixed number portability is likely to be introduced sometime before mobile number portability, the initial allocation should be calculated for both fixed and mobile operators at the same point in time. TelstraClear suggests the date of the Commission's Final Determination.
47. TelstraClear disagrees with CallPlus's submission that industry costs should be allocated based on subscriber numbers rather than active numbers.<sup>31</sup> There is an important difference. Many individual customers, particularly business customers, have multiple numbers, such as:
  - a. a DDI block assigned to a single line which supports a PBX;
  - b. fixed numbers for multiple sites; and
  - c. blocks of mobile numbers for an individual end-user's employees (increasingly mobile carriers are promoting mobile virtual private networks or calling groups).
48. Counting customers rather than numbers also can give a distorted picture of number use because an individual customer may have multiple accounts and want to port all or only some of the numbers on all or some of its accounts.

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<sup>29</sup> CallPlus Submission on draft determination (CallPlus Response), p 2.

<sup>30</sup> WorldxChange Submission on the draft determination (WorldxChange Response), p 1.

<sup>31</sup> CallPlus Response, p 2.

For example because alternative network is only available in some of the customer's locations or because the customer wants to "hedge its bets" by having two or more suppliers of direct connect services.

49. Allocating common industry costs based on active numbers best meets the Commission's cost allocation principles because it represents the best proxy for matching cost contribution to the benefit which end-users will derive from number portability. As number portability reduces the transaction cost involved in changing providers for each number which is ported, end-users with more numbers benefit to a greater extent.

#### **7. ALLOCATION OF PER OPERATOR SET UP COSTS**

50. TelstraClear agrees with Vodafone's analysis supporting the Commission's proposal that each carrier should bear its own set up costs.<sup>32</sup>
51. Telecom adds nothing new to its previous arguments against this approach.

#### **8. ALLOCATION OF PER LINE SET-UP COSTS**

52. TelstraClear endorses the concerns of WorldxChange, ihug, CallPlus and Woosh Wireless over the potential anti-competitive effects of a high per line charge. We agree in particular with WorldxChange's comments that the per line costs could distort incentives to build network rather than buy resale services if the per line porting charges exceed the reassignment charges for resale.
53. We agree with CallPlus's comment that Telecom will have little incentive to negotiate a reasonable charge, and we anticipate, based on our experience with negotiating similar charges with Telecom for other services, that it will be as difficult for us as the smaller operators. This is illustrated by the industry experience with the introduction of Toll Free number portability. The TNAS System had been fully developed and tested but it had to be "mothballed" for almost a year until bi-lateral issues relating to the recovery of costs were resolved.
54. For these reasons, we do not agree with Telecom's proposal that the setting of the per line charge should be left to commercial negotiation. TelstraClear agrees with Vodafone's proposal that the industry should initially endeavor

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<sup>32</sup> Vodafone Response, paras 19 to 23.

to negotiate per line changes and the Commission step in if the parties cannot agree. TelstraClear proposes that, if negotiations fail, the Commission set an initial charge based on benchmarking and provide that a party can request the Commission to undertake a full cost analysis to set a final charge.

## 9. ALLOCATION OF ADDITIONAL CALL CONVEYANCE COSTS

55. Telecom argues that the RNO should pay the additional call conveyance costs because “those conveyance costs arise ....**because** the call is ported, and are therefore additional to an originating carrier’s normal costs of carrying calls to the interconnection handover point”.<sup>33</sup>
56. Telecom gets the inter-carrier relationship backwards and therefore misidentifies the cause of the additional call conveyance. As Telecom implicitly acknowledges, the additional call conveyance costs are incurred by the access seeker (it being the originating carrier for a local call) on its side of the Point of Interconnect (“Pol”). It is a cardinal principle of interconnection that the access seeker is responsible for its costs of getting the call to the Pol: the access provider cannot logically be required to pay the access seeker to buy termination services from the access provider. If the access seeker makes technology or routing choices on its side of the Pol that increase the distance a call travels in reaching the Pol, that is the access seeker’s concern. For example, TelstraClear hauls calls from its direct connect customers in Hamilton to its switching centre in Auckland and if the call is to terminate to a Telecom end-user in Hamilton, TelstraClear hauls the call back to the handover point of that ESA. That happens to be more cost efficient for TelstraClear than building a switch in Hamilton, but whether or not it is objectively more efficient, TelstraClear’s choice should be irrelevant to Telecom.
57. Number portability is no different. The cause of the additional call routing is the lack of a full IN solution in the originating carrier’s network which would avoid the need for additional call conveyance. This factual/counterfactual analysis shows that it is not the fact that the number is ported which causes the additional call conveyance.
58. Telecom implies the Commission is misconceived in its view that an IN solution does not incur additional call conveyance costs. Telecom refers to a

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<sup>33</sup> Telecom Response, para 83.

Query on Release (QoR) solution, but fails to acknowledge that there are other IN solutions which do not involve any additional call conveyance and that QoR is not regarded as a “full”, or the most efficient, IN solution. The FCC rejected the ILECs’ proposal to implement number portability by means of QoR, including because it would inefficiently incur the very sorts of additional call conveyance costs of which Telecom complains:

*“we require that any long-term method ensure that carriers have the ability to route telephone calls and provide services to their customers independently from the networks of other carriers ... methods which first route the call through the original service provider’s network in order to determine whether the call is to a ported number, and then perform a query only if the call is to be ported, would treat ported numbers differently than non-ported numbers, resulting in ported calls taking longer to complete than unported calls. This differential in efficiency would disadvantage the carrier to whom the call was ported and impair that carrier’s ability to compete effectively against the original service provider. Finally, dependence on another carrier’s network also reduces the new service provider’s ability to control the routing of telephone calls to its customers, thus inhibiting its ability to control the costs of such routing. For these reasons, a long-term number portability method should not require dependency on another carrier’s network. ...*

*We recognize that this criterion will effectively preclude carriers from implementing QOR. Those carriers that oppose QOR argue that it would treat ported and non-ported numbers differently, force reliance on the incumbent LEC’s network, increase post-dial delay and the potential for call blocking, result in inefficient routing, create significant network interoperability issues, and delay deployment of a long-term number portability method. ... Based on the record before us, we conclude that the competitive benefits of ensuring that calls are not routed through the original carrier’s network outweigh any cost savings that QOR may bring in the immediate future.”<sup>34</sup>*

59. Vodafone says that the donor carrier re-rerouting case raised by TelstraClear should be left to commercial negotiation. TelstraClear agrees: our point is that the Commission should make clear that its principle that each carrier

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<sup>34</sup> In the Matter of Telephone Number Portability, 11 FCC Rcd 8352, paras 53 and 54.

should bear any additional call conveyance costs applies to the additional call conveyance costs on the DNO and RNO networks and not to conveyance on a transit network.