



Telecom New Zealand Limited

Cross-submission in respect of the

Commission's Draft Determination on the application from TelstraClear Limited, Telecom New Zealand Limited and Vodafone New Zealand Limited under s. 31(a) of the Telecommunications Act 2001 to decide certain functions and standards necessary to provide local and cellular telephone number portability services

24 June 2005

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A EXECUTIVE SUMMARY

- 1 Telecom's cross-submissions focus on the following key issues:
 - 1.1 the Act does not permit fixed to mobile portability;
 - 1.2 local number portability is limited to services offered via a fixed network connection to the end-user's permanent and identifiable premises, including those delivered over, for example, fixed wireless networks;
 - 1.3 the Donor Carrier must be allowed to define the Local Calling Area;
and
 - 1.4 Vodafone has not put forward a workable long-term solution for the issue of service equivalence for internationally originated SMS.
- 2 Telecom has limited its cross-submissions to responding to specific issues raised by other parties. To the extent that they are not referred to here, Telecom reiterates its submissions of 10 June 2005.

B SCOPE OF THE LOCAL NUMBER PORTABILITY SERVICE

Fixed-to-mobile number portability outside the scope of the Act

- 3 The Telecommunications Act 2001 ("Act") does not permit fixed to mobile number portability. The Act is clear: there are two separate designated multinetwork number portability services:
 - 3.1 Local telephone number portability service; and
 - 3.2 Cellular telephone number portability service.
- 4 Had Parliament intended local numbers to be ported on to cellular mobile services, it would have designated a single multinetwork service, or a third designation, which allowed fixed to cellular portability.
- 5 TelstraClear and Vodafone are, in essence, asking the Commission to determine a fixed to mobile portability service. To this extent, their submissions do not contribute much of substance for the Commission to consider, as the Commission does not have the power to determine such a service.
- 6 Telecom acknowledges that how telecommunications services are offered to end-users is changing. This is the nature of the industry. However, at the point where the legislation no longer accords with current technology, there are processes to address any disparity. These processes allow for the implications of any changes to the legislation to be fully considered.
- 7 Should the Commission be minded to extend the scope of the local telephone number portability service to include cellular mobile services, not only would this be contrary to the plain meaning of the Act, but it would also change the structure of telecommunications in New Zealand - the way that customers are charged, interconnection arrangements, and market structures would all change.
- 8 Before such a significant change could occur, there would need to be robust analysis of the costs and benefits, including any efficiencies gained. The current application does not permit the Commission to make such a change, and does provide an opportunity for adequate analysis of these issues to justify significant change being made.

- 9 The need for robust analysis was recognised by the European Commission when it decided fixed-to-mobile portability would not be covered by its number portability directive¹. The Final Report on Number Portability for Mobile Networks found that:²

"it is not yet clear what kind of benefits the introduction of FMSP [Fixed-Mobile Service Portability] can bring to the telecommunications industry or more generally to the whole of society. This uncertainty about benefits, and in part about costs, makes it difficult for the NRAs [National Regulatory Authorities] to take policy decisions on the introduction of FMSP."

- 10 A similar view has recently been taken by Ofcom.³

Local number portability only applies to fixed telephone network services

- 11 Local number portability is described under Schedule 1, Part 2, Subpart 2 of the Act as:

"A service that enables an end-user of a fixed telephone network service to change providers of that service but to retain the same telephone number within a local calling area." (emphasis added)

- 12 As detailed in Telecom's 10 June 2005 submissions, the Act is clear that a fixed telephone network service is only one which is provided via a network connected to an identifiable, fixed physical premises used by the user/end-user.

- 13 A similar interpretation has been taken very recently by Ofcom in its Determination to resolve a dispute between BT and Vodafone concerning geographic number portability⁴ (the "Ofcom Number Portability Determination"). The dispute under consideration was whether BT was under an obligation to port geographic numbers to Vodafone in connection with Vodafone's Wireless Office service.

- 14 While the exact wording of the UK legislation differs from the New Zealand legislation, the intent behind each is the same: that there are separate

¹ Directive 2002/22/EC of the European Parliament and the Council – article 30.

² Final Report on Number Portability for Mobile Networks, 4 April 200, prepared by the European Telecommunications Office for the European Committee for Telecommunications Regulatory Affairs – paragraph 6.2.4

³ Determination to resolve a dispute between British Telecommunications Plc ("BT") and Vodafone Limited ("Vodafone") concerning geographic number portability, 21 June 2005.

⁴ Ibid.

fixed (or local) and mobile (or cellular) number portability services, and that the fixed number portability service is one that is offered via a connection to the end-user's premises. The UK Communications Act defines "Number portability" as portability of "Geographic Numbers, at a specific location" and "Non-geographic Numbers, at any location". In the Ofcom Number Portability Determination, at paragraph 4.18, Ofcom concluded that:

"...on a literal (i.e. everyday) interpretation that the reference to "specific location" in (i) of the definition requires either:

- (i) *that the network termination point is at a specific location; or alternatively*
- (ii) *that the telephone number is to be retained at a specific location.*

In this case, Ofcom believed that because Vodafone Wireless Office is a mobile service, the network termination point cannot be at a specific location or, applying the alternative interpretation set out at point (ii) of the preceding paragraph, that retention of the telephone number cannot be at a specific location."

- 15 The concept of a "specific location" is directly analogous to a "fixed" service.. Accordingly, the ordinary meaning of the word "fixed" in New Zealand and Ofcom's interpretation of "specific location" above supports Telecom's submission that the local number portability service set out in the New Zealand Telecommunications Act requires that there must be a fixed network connection at a specific, identifiable fixed location.
- 16 TelstraClear and Vodafone's proposal that the Commission allow local numbers to be ported to cellular mobile services, is clearly contrary to the plain meaning of the Act.

Fixed wireless solutions

- 17 As noted in its 10 June 2005 submissions, Telecom acknowledges that, fixed wireless services are a fixed telephone network service for the purposes of local number portability, where a fixed receiver is attached to an end-user's building (i.e. a "specific" location) and transmits a wireless signal between two fixed points.
- 18 The key outstanding issue is how a fixed wireless service is defined. Telecom's view is that only a fixed wireless service that meets the following requirements would be a fixed telephone network service for the purposes of local number portability:
 - 18.1 Has a network connection to the end-user's building or user's premises; and

18.2 Is used at a permanent, identifiable location.

- 19 Telecom acknowledges that a fixed wireless service that meets these requirements may allow an end-user at a fixed location to be serviced by more than one cell site or transmission tower during a call and that call handover between these sites or transmission towers may be performed, for network management purposes. However, this is different to a situation where call handover is performed for the purpose of providing mobility to the end-user. For a fixed wireless service, only those “home” cellsites allocated as providing coverage at the fixed location of the customer can provide the fixed wireless service.
- 20 A distinction must be drawn between a fixed wireless service, and a mobile wireless service. Any service that does not require a network connection to be retained at the end-user’s premises, but instead allows an end-user to be mobile, and use the service at more than one fixed location, must be excluded on the grounds that it is a “mobile” as distinct from a “fixed” telephone network service. A service that allows call handover to occur in order to provide mobility must also be excluded for the same reason.

Relevance of the NAD

- 21 TelstraClear has relied heavily on the Numbering Administration Deed (“NAD”) to support its view that the Commission should allow local numbers to be ported to cellular mobile services. In particular, TelstraClear asserts that “local numbers are not allocated on the condition that the receiving party must operate or build a fixed PSTN”, and appears to suggest that this should inform the Commission’s interpretation of the Act.
- 22 Telecom disagrees. The legislation is clear so the Commission should not need to rely on external sources to interpret the legislation.
- 23 Irrespective of this, Telecom considers that the “geographic structure” requirement of the Number Allocation Rules requires the number to be used at a fixed location. This interpretation is similar to the approach taken by the EC, which defines a geographic number as:

*“a number from the national numbering plan where part of its digit structure contains geographic significance used for routing calls to the **physical location of the network termination point**”⁵ (emphasis added)*

⁵ EC Directive 2002/22/EC – article 2

- 24 Based on this definition, the EC's requirement to provide number portability provides that a user must be able to retain their number "(a) in the case of geographic numbers, at a specific location; and (b) in the case of non-geographic numbers, at any location".⁶
- 25 The parties clearly disagree on the correct interpretation of the NAD. The Commission has acknowledged⁷ that responsibility for the administration and application of the NAD lies with the Number Administrator, Management Committee and Independent Chair. As the correct interpretation of the NAD has not been determined by any of these bodies, the Commission cannot not rely on TelstraClear's interpretation for guidance.⁸
- 26 TelstraClear also appears to conclude that the Commission should rely on the NAD to support a conclusion that any service offered in a Local Interconnect Calling Area ("LICA") is a fixed service. TelstraClear's logic is unclear. Neither the NAD, nor the Numbering Allocation Rules dictate that a geographic service is one that is only used in a LICA.

Policy

- 27 As noted above, policy arguments for and against allowing fixed to cellular number portability are largely irrelevant, as the Act does not permit fixed to cellular number portability.
- 28 However, if the Commission is minded to extend the meaning of local number portability beyond the clear meaning of the Act, Telecom reiterates that this will have significant implications:
- 28.1 Any move away from the clear interpretation of the Act risks altering the structure of telecommunications in New Zealand, including how customers are charged, interconnection and market structure. Such a significant change would first require detailed analysis of the costs and benefits.
- 28.2 Such a change would break down the numbering distinction between local and mobile calls currently relied on by customers. This would

⁶ EC Directive 2002/22/EC – Article 30

⁷ Number Portability Functions and Standards Draft Determination – Point of Clarification, 31 May 2005

⁸ Telecom notes that the allocation of numbers under the NAD alone is not definitive in determining the correct interpretation of the NAD. The NAD governs the use of numbers. Any reliance of allocation of numbers by the NAD is therefore irrelevant.

result in customer confusion and potentially also Fair Trading Act issues. The EC's number portability directive (for example) states that:

*"the impact of number portability is considerably strengthened when there is transparent information, both for end-users who port their numbers and for end-users who port their numbers and also for end-users who call those numbers."*⁹

- 28.3 The TSO plays a significant role in telecommunications in New Zealand. As Vodafone acknowledges, the TSO Deed requires Telecom to provide free local calling to Telecom residential customers. This excludes calls to cellular networks. Telecom is obliged to provide, and callers expect, free local calling. The customer distinction is made based on the number that they dial.
- 28.4 The parties have developed the Network and LMNP Terms on the understanding that fixed-to-mobile portability was not permitted. It is not clear whether the requirements of the Network and LMNP Terms, or the IPMS are consistent with the requirements of fixed-to-mobile portability.
- 28.5 Vodafone raises issue with Telecom's CustomerLink service. The CustomerLink service generally still involves a fixed PSTN connection to the end-user's building. The service is primarily used by end-users that are moving premises and want to divert calls to their new building for a specified period, or to temporarily divert calls to another device when there is a fault with the connection to the end-user's building. The current CustomerLink rules specify that calls can only be diverted to mobile phones on a temporary basis and in limited circumstances (e.g. where there is a fault on the customer's fixed line). Accordingly, the CustomerLink service is very different from a cellular local service where there is never any form of connection to the end-user's building.
- 29 Clearly the issues are significant. The current application is not the appropriate mechanism by which to instigate a change with such significant implications.

⁹ EC Directive 2002/22/EC – recital 40

C THE LOCAL CALLING AREA

30 Telecom reiterates its submissions of 10 June 2005 with respect to the definition of "local calling area". For the reasons detailed in those submissions, it is imperative that the Donor Carrier (as defined in the Terms) defines the geographic area within which a number can be ported, either directly or indirectly.

31 Telecom considers that a revised definition of "local calling area" that was consistent with the ACIF Code may eliminate any ambiguity with the definition:

"The geographic area defined by the Donor Carrier which is serviced by the Donor Carrier's local exchange."

32 Such a definition would address the issues detailed in Telecom's 10 June 2005 submissions.

33 TelstraClear and Vodafone have suggested amendments to this definition, and to clause 4.1.8(a), which remove the requirement for the Ported Local Number to physically remain within the Donor Carrier-defined Local Calling Area. As outlined in Telecom's 10 June 2005 submission, these amendments would jeopardise the integrity of the Donor Carrier's call routing rules and outcomes, and of the currently understood charging regime.

34 The definition of Local Calling Area, and the continued integrity of routing and charging outcomes, are fundamental to the seamless operation of the number portability regime. Vodafone's arguments hinge on the Act allowing fixed to mobile portability – which it does not. The definition of Local Calling Area, as currently drafted, is grounded in entirely sensible technical constructs. The Commission should not allow the fixed to mobile portability debate to affect non-related areas of the Terms.

35 Vodafone's proposal that a customer need only have a premise in a Local Calling Area in order for that customer to have a local number was also raised by Vodafone in the UK and rejected by Ofcom in the Ofcom Number Portability Determination.

36 In its submission to Ofcom, Vodafone UK suggested that the Communications Act should be read as requiring only that an end-user be located in a donor carrier's "service area" (the UK equivalent of the "local

Calling Area" definition in the draft Terms) at the time of a port request.¹⁰ Ofcom rejected this on the grounds that the UK Communications Act requires that the network termination point, or the telephone number, remain at a "specific location" - not that the Customer remain at a specific location.¹¹ For the same reason (that New Zealand's Act requires that the network connection, not the end-user, remain at a "fixed" location) Telecom considers the Commission should reject Vodafone's argument in New Zealand as well.

¹⁰ See "Vodafone – Response to Ofcom's draft determination on GNP", p2-,3. and "Determination under Sections 188 and 190 of the Communications Act 2003 to resolve a dispute between British Telecommunications Plc ("BT") and Vodafone Limited ("Vodafone") concerning geographic number portability, 21 June 2005", paragraph 5.12.

¹¹ Determination under Sections 188 and 190 of the Communications Act 2003 to resolve a dispute between British Telecommunications Plc ("BT") and Vodafone Limited ("Vodafone") concerning geographic number portability, 21 June 2005", paragraph 5.22.

D INTERNATIONALLY ORIGINATING SHORT MESSAGES

- 37 As noted in its 10 June 2005 submissions, Telecom welcomes guidance from the Commission to facilitate commercial arrangements to ensure equivalent service for internationally originated SMS.
- 38 Vodafone's submission (that Telecom could negotiate with Vodafone UK) and its complex diagrams describing how it foresees international SMS working, only serve to highlight just how unlikely it is that its proposal will result in a workable regime which delivers long-term benefit for end-users. Telecom remains of the view that international operators who open up the +64 number range with Vodafone NZ will strongly resist any attempts by Telecom or other New Zealand operators to persuade them to split that traffic into multiple streams, delivering some traffic to Telecom and some to Vodafone.
- 39 Therefore, Telecom reiterates its earlier submissions on this issue.