

24th January 2005

The Telecommunications Commissioner
The Commerce Commission
P O Box 2351
Wellington

Attention : Douglas Webb

Dear Sir,

RE: Submission – Number Portability Functions and Standards

WorldxChange has prepared this response to the Commission's letter dated January 10th 2005.

Enforceability

In general, we agree with the intent of the recent joint application submitted by Telecom, Vodafone and TelstraClear in order to have the two Number Portability codes drafted by the TCF made enforceable by the High Court.

As the designated Tier II carrier board member on the TCF, we have seen first-hand the historical procrastination and buck-passing between the Office of the Telecommunications Minister, MED and the Commission Commission with respect to attempting to resolve the issue of enforceability caused by the deficiencies in the Telco Act.

Because of this bureaucratic nightmare, and the time it will take for the Government to review the Act, the main players in the telco industry have come up with an interim plan that would see the two codes being enforceable upon all parties to the multi-designated Number Portability service by the High Court. This clearly demonstrates a willingness to self-regulate amongst the industry players and these companies should be commended for their actions to date by the Government.

In our opinion, the only way that the June 2005 date for the implementation of fixed line number portability will be met by two or more carriers is if the LMNP and the Network Codes have some sort of enforceable provisions that back the codes via legal recourse. This is required in order to motivate all seven of the eligible access providers/access seekers identified in the Draft Number Portability Cost Allocation Determination to get their respective networks ready in time.

LMNP & Network Codes

There are a handful of square-bracketed terms in both the LMNP and the Network code that are yet to be resolved and we wish to comment on a few of them.

Definitions - Local Calling Area

The definition of Local Calling Area should be defined as the areas that make up the Telecom LICAs because Telecom will be the Donor Carrier in the majority of local number porting instances.

4.1.3 Compliance with Service Levels

We do not see the consequences of failing to meet SLA's as being an industry role to define and/or enforce penalties. This is a role for either the regulator or the judicial process if this application were to be approved and we would therefore prefer that the Commission define the detail related to this clause.

4.1.8 Local Calling Area Requirements

We do not see this clause as being debateable and would prefer it to remain as currently worded.

6.7 Terminating International Short Messages

We believe that this clause should be removed from the code as it pertains to what would normally be included in a bilateral agreement between two carriers.

14.5 Enforcement Agency Audits

Again, consequences for any failure to comply with any part of these two codes should not be in the realm of the carriers and or the TCF. We would like to see the Commission define these terms as detailed in clause 4.1.3 above

15 Relaxations & 15.3 TCF Management Committee may grant exemptions

We believe that the concept of exemptions to an approved code that is enforceable by the courts to be mutually exclusive. Either all aspects of each code are enforceable or they are not. If exemptions need to be considered in some form then surely the High Court (directly) or the Commerce Commission (indirectly acting for the courts) must be the entities who would make the relevant decisions.

Throughout these two codes, there is an underlying theme that the TCF will be the supposed policeman for all aspects of exemptions, enforceability, compliance and penalty allocation for all aspects of these codes. WorldxChange does not believe that the TCF should have any part in granting exemptions on specific carrier obligations under either the LMNP or the Network code. The TCF is an incorporated society with no powers of enforcement upon its membership that is comprised of more than just the Tier I & II carriers identified as being eligible access providers/seekers under the Draft Number Portability Cost Allocation Determination.

We therefore do not see any entity other than the Commerce Commission or the High Court being able to approve any addition/change to an enforceable code by some sort of mandated process.

Schedule 1 & the LMNP Operational and Support Manual

Clause 5.4.1 refers to documents listed in Schedule 1 that all carriers must comply with assuming that this application does become enforceable by the High Court. This schedule is currently blank and if documents were to be added periodically then we would like to see the process that would allow this to happen described and included in the code.

The Operational and Support Manual for LMNP is yet to be completed and we understand that this manual will not be subject to any High Court enforceability of the two identified codes. As we understand it, this document will contain terms that are to be agreed to by the carriers and that fall outside the scope of the two codes.

Therefore, as it stands, we assume that only the LMNP and the Network Codes in their current form will be subject to this application (minus Schedule 1 and not including the LMNP Operational and Support Manual). If this is not the intention of this application then all other relevant documents should also be circulated to interested parties prior to any Commerce Commission decision being made on enforceability of these codes.

Conclusion

WorldxChange supports the purpose and intent of this application with respect to enforceability due to the situation that the industry finds itself in with no code being able to be enforced under the current Telco Act.

We have concerns with the actual workability of parts of each code in the real world and would like to see the Commerce Commission clarify these highlighted issues during a short-term investigation.

Thank you for the opportunity to comment on this application. The Director's of WorldxChange are available to Commission staff for discussion and further comment on this issue if required.

Regards,

Paul Clarkin
Director, Operations & Carrier
WorldxChange Communications Limited