

NZ COMMUNICATIONS LIMITED



**Submissions to the Commerce Commission (New Zealand)
in relation to the Standard Terms Proposal for the Co-location on Cellular Mobile
Transmission Sites Service - Public Version (28 April 2008)
of Vodafone New Zealand Limited**

Prepared by NZ Communications Ltd

Public version – 20th May 2008

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26 May 2008

1. INTRODUCTION

- 1.1** In New Zealand, the new mobile telecommunications operator must commence operation at a time of 100% mobile penetration and must build its network in a period of no longer than 36 months. This contrasts with a period of up to 15 years provided to the incumbents, who built capacity and coverage on an incremental basis over that period.
- 1.2** In order to address this situation, New Zealand Communications Ltd (“**NZCL**”) has provided a submission on the Standard Terms Proposal prepared by Vodafone NZ dated 28 April 2008 (“**STP**”) which deals with both the:
- (a) special requirements required for a new network operator in its immediate large scale build phase; and
 - (b) clarifications to the STP that will apply at all other times to ensure that, among other things, that the Standard Terms Determination (“**STD**”) that will ultimately result from the current process meets the requirements of, among other things, Section 30G of the *Telecommunications Act, 2001* (“**Act**”).

Rapid multi access is required so consumers benefit this decade from mobile competition

2. KEY ISSUES

- 2.1** Section 30J of the Act provides NZCL with the opportunity to comment on “*any matter to which the [STP] relates*”.
- 2.2** NZCL believes that the STP is deficient for a number of reasons, including without limitation:
- (a) it fails to meet many of the requirements of Section 30G (for example, it fails to state adequate time frames pursuant to which the Access Provider must make the service available to the Access Seeker);
 - (b) it is overly complex and, as a result, it will not effectively address a key requirement of the STD, being the requirements of Section 18 of the Act;
 - (c) it fails to take into account the special requirements of a new mobile telecommunications carrier during its immediate build phase; and
 - (d) disappointingly, it is clearly one sided in favour of the Access Provider.
- 2.3** In this submission, NZCL requests the Commerce Commission (“**Commission**”) to consider the unique context of the New Zealand mobile market and the need for network operators (such as NZCL) to quickly achieve a situation of network parity with the incumbents. To this end, we suggest the inclusion of a new Schedule 8 in the STD which addresses a “Rapid Multi Access Period”. This Schedule 8 has been prepared by NZCL’s operational staff and reflects the style of document and terms of co-location which they believe, based on their experience at the coal face, would be required to facilitate Rapid Multi Access during the start up period.

- Co location needs to be simple,**
- Targets must be “built sites”**
- Penalties must be relevant to the revenue base of access providers**
- 2.4 NZCL proposes that, for the period of 24 months immediately following the data on which it makes its first Request to an Access Provider pursuant to the Standard Terms Determination (“STD”), the provisions of Schedule 8 (or concepts substantially similar to it and prepared in a more legalistic form) shall prevail over the other provisions in the STD to the extent of any inconsistency.
- 2.5 Notwithstanding the inclusion of a new Schedule 8 to deal with the Rapid Multi Access Period, NZCL submits that a large number of essential matters have not been adequately addressed in Vodafone’s STP. To this end, NZCL has prepared a major undecided issues list (“MUIL”) to assist the Commission in identifying those significant issues on which the various Access Providers and Access Seekers appear to have differing views. An understanding of these issues is essential for the Commission in preparing its STD as it will assist the Commission in identifying those issues, in NZCL’s view, on which Vodafone (when preparing the STP) will have a view which is contrary to that of a potential Access Seeker. We ask that the Commission take this MUIL into account when preparing the STD.
- 2.6 As an overriding observation, in NZCL’s view the key reasons why the number of co-locations undertaken to date in New Zealand is insignificant is that there is no incentive contained in the Act for Access Providers to supply the Mobile Co-location Service. In NZCL’s view, it is essential that the STD provide that incentive, along with providing certainty to all Access Seekers in terms of the scope of the Service, the timing of the Service and the conduct of Access Provider in relation to same. In particular, it is necessary that any Service Level Agreement be adequate to create a proper incentive for Access Providers in providing the Service. As noted below, in NCZL’s view, a significant motivator to be included in the Service Levels is that, in circumstances where co-location is not possible due to the Access Provider’s breach of its obligations under this Mobile Co-location Terms, concession must be made to the Access Seeker in relation to any roaming prices between the parties. In NZCL’s view, this would be far more effective than only providing financial penalty in relation to failure to achieve individual milestones in the co-location process. Appendices 2, 3, 4 and 5 to this document provide further context for NZCL’s submissions.

3. THE RAPID MULTI ACCESS PERIOD

The R-MAP schedule 8 is designed to deliver simplicity and Speed to the process

- 3.1 In NZCL’s view, it is essential that Schedule 8 (or a more formal document based on it) be added to the STD to regulate a Rapid Multi Access Period. These requirements for special treatment of Access Seekers rolling out significant and ubiquitous new networks has international precedent. For instance, in Australia between 1991 and 1997 broad powers and immunities, among other things, were provided to the two new mobile telecommunications networks in order to allow them to develop sufficient network to enable them to commence and compete effectively with the incumbent. Our understanding is that an arrangement with a similar effect was put in place in Ireland to enable its new network operator, Meteor, to develop its network in an efficient way during a specific period of time.
- 3.2 While the bulk of NZCL’s submission relate to those matters which NZCL submits need to be remedied in the Vodafone STP in any event, the overriding observation of NZCL is that, even if all of those changes were made by the Commission in its STD, the STD will remain insufficient to enable NZCL to efficiently roll out its network to a standard that would enable it to compete in a saturated market within a reasonable period of time.
- 3.3 It is a submission of NZCL that, while the conventional STD (excluding Schedule 8) will apply during the 24 months period referred to above, Schedule 8 will also apply. To the extent of any inconsistency between the STD terms and Schedule 8, Schedule 8 will prevail during that period.
- 3.4 Schedule 8 is intended to summarise all of those matters which, in NZCL’s view, are critical to a new entrant. These include matters which are not adequately addressed by the current STP including, without limitation:
- (a) ensuring that certain Standard Site Types are included in the STD, rather than just a process for generating Standard Site Types;
 - (b) Access Providers have a Common Format Site Database in existence on the date that the Commerce Commission determines its STD;

- (c) degradation standards are efficiently formulated in relation to each of the Standard Site Types;
- (d) Access Providers are required to meet certain antenna minimisation standards to ensure that there is maximum opportunity for Access Seekers to co-locate on existing infrastructure;
- (e) the Service Levels in the Rapid Multi Access Period not only relate to achieving certain time targets on a site by site basis but require the achievement of targets in relation to a certain number of Mobile Co-locations at Relevant Sites during the 24 month Rapid Multi Access Period. The corresponding penalties should cross refer to roaming rates otherwise charged by the Access Provider to the Access Seeker.

4. MAJOR UNDECIDED ISSUES LIST

4.1 To assist the Commission in its work in preparing the STD, the following MUIL provides NZCL’s perspective on those issues which sets the two incumbents and NZCL apart. It is noted that this is NZCL’s perception of the situation based on NZCL’s experience over the last 5 years in the New Zealand market.

4.2 MUIL

No	Issue	Comment	Pathway to Resolution
1	Standard cell tower types	There are approximately 2000 cell towers in New Zealand. 80% of them represent approximately 6 standard designs. The TCF meetings held in March and April 2008 illustrated the failure of the industry to decide on what was a “Standard Site Type” to facilitate rapid multi access.	The Commission engage an independent engineer to decide upon Standard Site Types to be included in the STD. This will help bulk engineering protocols be agreed and speed up rapid multi access.
2	Databases	The Common Format Site Databases needs to be available simultaneously with the STD being determined by the Commission. The breath and width of this are critical.	The Commission reference international databases from an international tower owning company, and consider making it a condition precedent that the Access Providers deliver similar databases to the Commission for their inspection.
3	Requirement to use antenna minimisation technology	There is no agreement on this issue. Access Seekers want Access Providers to be required to use modern antennas as it frees up space on the existing cell towers and makes the “future use” issue less of a problem. This is stalling Access Seekers building co locations without pole replacements, which or course makes the process uneconomic.	The Commission engaged their independent engineer who liaises with international tower owning companies. They review international jurisdictions and make a decision on when an Access Seeker can (at the Access Seeker’s cost) require an Access Provider to use the latest technology to facilitate a more efficient use of the resource.
4	Requirement to accept a level of degradation	There is no agreement by the industry on what the acceptable level of degradation should be. It’s a new concept in NZ because co location is new. It’s similar to making compromises on not having the entire spectrum. Degradation is a common international concept associated with co location.	We believe the Commission’s engineers should look at international precedents and then determine the different levels of unacceptable degradation for: <ul style="list-style-type: none"> • City sites • Suburban sites • Rural sites

5	Requirement to set targets	<p>Access Seekers want “number of sites built” as targets not “number of meetings held“.</p> <p>For instance, a date by which 100 sites should be built needs to be included in the Service Levels.</p>	<p>Targets and penalties (Incentives) are the most important guidance the Commission can give the Access Providers. Most countries have about 1/3 of cell sites co located, NZCL has budgeted for 1/3 , Everyone knows how many cell sites are required to deliver “like for like coverage”. The target must be” <i>built and operating co locations“.</i></p>
6	Requirements to set penalties	<p>Penalties must be real. We estimate that the Access Providers make \$5million dollars a day in revenue. If targets fail, then roaming offered by that Access Provider to the affected Access Seeker should be discounted and meaningful penalties in proportion to the dominance of the incumbents must exist. NZCL feels 5 to 10% of daily Revenue, is a penalty which would create an incentive to co locate.</p>	<p>Mobile telephony is more profitable to network operators than land line and broadband. Penalties should reflect the economic impact of co location failures.</p> <p>Penalties/incentives must be set for the entire RMAP.</p> <p>The threat of regulated TSLRIC MVNO’s is another incentive.</p>
7	Vertical versus horizontal separation	<p>Co location is meaningless unless it is on a like for like basis, mounting antennas ½ way down a pole, does not give adequate coverage to an Access Seeker.</p>	<p>The Commission’s independent engineers need to make judgements on when antenna minimisation can be used to facilitate horizontal separation and hence like for like coverage.</p>
8	Rapid multi access approval systems	<p>An Access Seeker is required to build a network. If it doesn’t cover 65% of the population then the roaming agreement will be terminated. It is not any cheaper to co locate, but its quicker and more environmentally and community friendly.</p>	<p>Targets must act as an incentive for rapid multi access. Some application to the process must be sanctioned by the Commission engineers, specifically Standard Site Types, as this is the key bottleneck to this process.</p>
9	Requirement to reasonably assist with landlords and RMA	<p>RMA is a key constraint for new entrants in NZ. As a developed economy with tight environmental standards, this is a major road block to new construction. Experience has shown communities don’t want their landscape littered with too many towers.</p>	<p>Co location is being advocated by Access Seekers not as a formula to save money, but as a way to save time.</p> <p>Language requiring the Access Provider to help with RMA consents needs to be comprehensive.</p>
10	Requirement for Access Providers to have a dedicated wholesale co location manager	<p>Telecommunications network companies are large and complex. Large companies can use their size to “play games” with smaller entrants. Regulating (similar to LLU) to ensure that a person with delegated authority can manage every aspect of a regulated service is constructive. Because NZCL has dealt with a circus of different executives in the past, it wants to stop the buck passing on important issues.</p>	<p>In the LLU process, Access Providers are required to have senior independent executives whose sole purpose is to service wholesale clients on an independent basis.</p> <p>The Commission need to state the job specification of the DWCM.(Dedicated wholesale co location manager.)</p>

5. NZCL'S SUBMISSIONS ON THE STP AS PRESENTED BY VODAFONE

5.1 The following tables reflect NZCL's submission on the document as provided by Vodafone to the Commission 28 April 2008.

5.2 As noted above, NZCL submits that these changes would be required to the STP as a minimum for it to both work for an Access Seeker and for it to meet the requirements of, among other things, Section 18 of the Act. Time constraints and the unnecessary complexity of the STP, necessarily means that not every required improvement has been covered.

5.3 The provision of these submissions does not derogate from NZCL's submission that:

- (a) Schedule 8 should be included to regulate the Rapid Multi Access Period; or
- (b) the Commission should further consider the issues in the MUIL.

5.4 General Terms

Clause No.	Clause Title	Comments	Proposed Amendments
1.1	Definitions	In certain circumstances, reference to Access Provider is an Access Provider to whom an Access Seeker may imminently make a Request.	After the word "made" in the definition of "Access Provider", insert the words ", or may make,".
1.1	Definitions	An Access Seeker may, in some circumstances, be an Access Seeker who may make a Request.	After the word "made" in the definition of "Access Seeker", insert the words ", or may make,"
1.1	Definitions	In the definition of "Building", provision should be made for infrastructure of an Access Provider which may not currently be used in connection with its Cellular Mobile Telephone Network but which will be used for that purpose.	In the definition of "Building", insert the words ", or which may be used," after the word "used" on the third line.
1.1	Definitions	In the definition of "Cable Housing", provision should be made for infrastructure of an Access Provider which may not currently be used in connection with its Cellular Mobile Telephone Network but which will be used for that purpose.	In the definition of "Cable Housing", insert the words ", or which may be used," after the word "used" on the third line.
1.1	Definitions	All of the cells in a Cellular Mobile Telephone Network may not be contiguous.	In the definition of "Cellular Mobile Telephone Network", clause (b)(ii), delete the word "contiguous".
1.1	Definitions	While it is accepted that a Telecom exchange building may require separate treatment for the purposes of the STD, it is possible that lands surrounding the Exchange building, and which may otherwise host a mobile base station, should be treated as a conventional mobile base station and not as an Exchange.	In the definition of "Exchange", clause (a), delete the words ", and includes all of the Telecom owned, leased and licensed property on which the Building is situated".

1.1	Definitions	A Mast the subject of a Co-location Services may be Mast which has been erected but which is not currently used for transmission by the Access Provider.	In the definition of “Mast”, insert the words “, or may be used,” after the word “used” on the second line.
1.1	Definitions	A Utility Service the subject of a Co-location Services may be a Utility Service which is available but which is not currently used by the Access Provider.	In the definition of “Utility Services”, insert the words “, or may be used,” after the word “used” on the first line.
3.1.7	Interpretation	There are no circumstances where the reference to months should be reference to calendar months.	Delete clause 3.1.7.
New 3A	Database	Prior to the making of any Request, the Access Provider has obligations to provide access to the Common Format Database. While this is referred to in the Operations Manual, it needs to be a primary obligation on the Access Provider in the General Terms.	Insert a new clause 3A as follows: “3A Database <i>To the extent that the Access Provider has not done so prior to the date that the Access Provider receives the Access Seeker’s Request, the Access Provider must ensure that the Common Format Site Database has been created and continually updated as required by the Mobile Co-location Operations Manual.”</i>
4.2	Request to access the Mobile Co-location Service	An amendment is required to clause 4.2 to facilitate the inclusion of clause 3A.	Insert at the commencement of clause 4.2 the words “Without limiting clause 3A,”.
7.4.2	Security Requirements	As the security amount can be adjusted every six months after the Access Date to an amount equal to the total value of charges under the Mobile Co-location Terms over the two month period immediately preceding the date of any request for such adjustment, the initial security amount referred to in clause 7.4.2 should relate only to any two consecutive months period in the initial six months after the Access Date.	In clause 7.4.2, insert after the word “period” the words “during that period which is six months after the Access Date.”.
New 7.6A	Access to Security	For the avoidance of doubt, terms relating to the Access Provider’s right of access to Security need to be provided.	Insert a new clause 7.6A as follows: “7.6A Access to Security <i>The Access Provider may only access the Security as expressly permitted by these Mobile Co-location Terms and only to the extent permitted by same in each instance.”</i>

9.3	Procedures and Technical Specifications	The opening words for clause 9.3 are circular.	Delete the first sentence of clause 9.3 and insert the following: <i>“References to the Mobile Co-location Operations Manual include, without limitation, reference to the various procedures and technical specifications which are listed in Appendix X of the Mobile Co-location Operations Manual.”</i>
9.5	Procedures and Technical Specifications	Clause 9.5 is unclear and irrelevant.	Delete clause 9.5.
10.5	Objections to Change	There is a step missing in the objection process being that, if there is an objection received to a change, there is no mechanism provided for Access Providers and Access Seekers to be informed of same. In addition, there is no requirement in clause 10.3 for the Telecommunications Carriers Forum to give Notice to all interested parties on the same date. The proposed amendment resolves both of these issues.	Delete the first sentence of clause 10.5 and insert the following: <i>“If any Access Seeker or any Access Provider objects to a proposed change under clause 10.4, the Telecommunications Carriers Forum must give Notice of same to all other Access Providers and Access Seekers within 5 Working Days of receipt of such objection, and all Access Providers and all Access Seekers have 10 Working Days from the date of such notification by the Telecommunication Carrier Forum to negotiate and agree the proposed change.”</i>
10.5	Objections to Change	It is essential to ensure that in the event of any change, an Access Seeker must form part of the majority which approves that change.	In clause 10.5, delete all references to “75%” and insert references to “90%”.
10.11	Objections to Change	This clause currently pre-supposes that the reasons why an independent recommendation maker made a decision either for or against the change is because one or either of the parties who opposed or supported the change was right or wrong. This may not be the case. The independent recommendation maker may make a recommendation for completely different reasons to those which were considered by the opposers and approvers.	Delete clause 10.11 and insert the following clause in its place: <i>“If either the proposed change is accepted or rejected by the independent recommendation maker, the independent recommendation maker must be directed to make a decision as to which party or parties is to bear the independent recommendation maker’s costs based on all of the circumstances of the matter.”</i>

11.1.5	General	The absolute obligation contained in clause 11.1.5 would generally not be possible for an Access Seeker to meet in all circumstances, and is out character with the other obligations contained in clause 11.1.	Delete the word “never” at the commencement of clause 11.1.5 and insert the words “use all reasonable endeavours to ensure it does not”.
15.6	Invoicing and Payment of Charges	Interest should not accrue on an invoice in circumstances where that invoice is subject to a bona fide invoice dispute.	At the commencement of clause 15.6, insert the words “Subject to the provisions of clause 17,”.
16.3	Non Payment	Suspension should only apply to that part of the Mobile Co-location Service to which non payment relates.	In clause 16.3, delete the words “the Mobile Co-location Service” in the first line and insert the words “that part of the Mobile Co-location Service the subject of non payment” in its place.
18.1	Other Invoice Disputes	There is a typographical error.	Delete the word “either” in the second line of clause 18.1.
19.1	Limitation of Access Seeker’s Liability	To ensure that there is clarity as to the application of clause 19.1, the clause needs to expressly provide that it remains subject to the remainder of clause 19.	At the commencement of clause 19.1, insert the words “Subject to the provisions of this clause 19,”.
19.5	Cost of Recovering Charges	The Access Seeker should be given a reasonable time to pay the Access Provider’s reasonable expenses incurred by the Access Provider in exercising its rights to recover any charge.	In clause 19.5, delete the words “on demand” in the first line and insert the words “within 10 Working Days from a claim by the Access Provider for payment of same.”.
23.1	Outages	The advice referred to must be given in writing.	In clause 23.1, delete the word “advice” in the first line and insert the word “Notice”.
23.2	Planned Outages	All Planned Outages must be kept to a minimum	At the end of clause 23.2, insert the following sentence: <i>“The Access Provider must use its reasonable endeavours to ensure that the number of Planned Outages is kept to a minimum and that the Access Seeker is provided not less than 10 Working Days Notice of each Planned Outage.”</i>
23.3.2	Planned Outages	Written notice is required of any Planned Outages.	At the commencement of clause 23.3.2, delete the word “advise” and insert the words “provide Notice to”.
23.5	Unplanned Outages	The Access Seeker should receive a written notice of any Unplanned Outages.	In clause 23.5.1, delete the word “advice” in the first line and insert the word “Notice”. A similar change should be made in clause 23.7.

24.2.1	Responsibility for Faults	The Access Seeker should not be “responsible” for acceptable levels of degradation the subject of the Mobile Co-location Interference Management and Design Schedule.	At the commencement of clause 24.2.1, insert the words “except to the extent that same is contemplated or permitted by any Schedule to these Mobile Co-location General Terms,”.
24.2A	Responsibility for Faults	A similar clause to that contained in clause 24.2 should be inserted to specify the faults for which the Access Provider is responsible.	Repeat clause 24.2 but invert references to Access Provider and Access Seeker.
24.3	Responsibility for Faults	See above.	Replace clause 24.3 with the following: <i>“Despite the Access Seeker’s responsibilities under clause 24.2 and the Access Provider’s responsibilities under clause 24.2A, this clause 24 does not create any right for the Access Seeker or the Access Provider (as the case may be) to access any property controlled by the other or fix any cable or equipment or thing unless expressly provided otherwise in a Mobile Co-location Terms.</i>
24.4A	Responsibility for Faults	The Access Provider should have a similar responsibility to that given to the Access Seeker under clause 24.4.	Insert a new clause 24.4A as follows: <i>“Where the Access Provider is responsible for a fault under clause 24.2A, and the Access Seeker is to fix the fault on its behalf in accordance with the Mobile Co-location Operations Manual, the Access Provider shall pay the Access Seeker the relevant Charge.”</i>
26.3	Reporting Faults to the Access Provider	The Access Provider’s obligations in clause 26.3 must be undertaken promptly.	In the second sentence of clause 26.3, insert the word “promptly” before the word “advise”. In the last sentence of clause 26.3, insert the words “use its reasonable endeavours to” before the word “ensure”.
27.3	Fixing Fault	The Access Provider must not unreasonably withhold its acknowledgment of a reported fault that is the Access Provider’s responsibility under clause 24.1.	In clause 27.3, insert the words “which must not be unreasonably withheld or delayed” after the number “24.1”.
28.1	Safeguarding of the Access Provider’s Network and Access Provider’s Equipment	The absolute obligation contained in the first line of clause 28.1 should be qualified as an intention.	In the first line of 28.1, delete the words “and so” and insert the words “with the view to ensuring”.

28.1.2	Safeguard of the Access Provider's Network and Access Provider's Equipment	Unilateral ability of an Access Provider to authorise persons to work on or around the Access Provider's Network is too restrictive.	In clause 28.1.2, delete the words "people authorised by the Access Provider" and insert the words "suitably qualified people".
30.2.2	Responsibilities for Access Provider Owned Equipment	Allowances for interference etc in the Schedule 5 need to qualify the provisions of 30.2.2.	At the commencement of clause 30.2.2, insert the words "except as contemplated or permitted by the Mobile-Co-location Interference Management and Design Terms."
30.2.4	Responsibilities for Access Provider Owned Equipment	The Access Seeker should be responsible for its own acts but not those of the third parties or the Access Provider.	At the end of clause 30.2.4, delete the words "caused by the Access Provider" and insert the words "not caused by the Access Seeker".
33.1.8	Software and Access Provider Systems	The Access Seeker's back up and testing procedures regarding the software should not be subject to Access Provider's approval.	In clause 33.1.8, delete the words "Access Provider approved".
33.1.9	Software and Access Provider Systems	The right to use any Access Provider Systems should only terminate in relation to a particular Mobile Co-location Services that is terminated or suspended.	In clause 33.1.9 (a), delete that clause and insert the words "supply of a particular Mobile Co-location Services being terminated or suspended, and then only the extent that it relates to that particular Mobile Co-location Service."
37.4.2	Suspension of Supply Following Consultation and Default Notice	Any consultation must be undertaken in good faith.	In clause 37.4.2, after the words "each other" on the second line, insert the words "in good faith".
37.7	Immediate Suspension or Restriction	The timing provided at the end of clause 37.7 must be consistent with the timing provided in clause 37.8.	At the end of clause 37.7, delete the words "as soon as reasonably practicable" and insert the words "immediately".
38.1	Termination of Supply	There are circumstances in which charges for the Mobile Co-location Services are not payable (for example on suspension).	At the commencement of clause 38.1, insert the words "Except as otherwise expressly provided by these Mobile Co-location Terms,".
38.5.5	Termination of Supply by the Access Provider	Clause 38.5.5. is not a continuation of clause 38.5 but a separate clause.	Re-number clause 38.5.5 as clause 38.6.
38.6	Termination of Supply by the Access Provider	Clause 38.6 is not required as all of those options are available to an Access Provider in any event.	Delete clause 38.6.

39.4	Negotiations	Negotiations must held in good faith.	In the third sentence of clause 39.4, insert the words ‘in good faith’ after the word “Dispute” where that word first appear.
39.5	Dispute Resolution Options Where Negotiations Fail	In the event that the parties are unable to agree on the dispute resolution mechanism, the most efficient and cost effective dispute resolution arrangement should be the default.	In clause 39.5.4 delete the words “either Party” and insert the word “the Parties”. At the end of clause 39.5, add the following sentence: <i>“In the event that the Parties are unable to agree on the method of resolving the Dispute and Deadlock as set out in this clause 39.5, either Party may by written notice request the Commission to nominate and appoint an appropriate expert to resolve the Dispute and Deadlock and the procedure referred to in clauses 39.7.2 to 39.7.13 shall apply.”</i>
39.6.3	Mediation	If the parties have agreed to proceed with mediation, neither party should have the right to revoke the mediation referral agreement.	Delete clause 39.6.3.
40.1	Health and Safety	The requirements by the party must be communicated to the other.	In clause 40.1, delete the last sentence and insert the words: <i>“Each party must communicate its requirements to the other as soon as practicable after the Access Date, or after those requirements arise, in writing. Each party’s reasonable requirements for security, health and safety must be the same as those which it applies to itself.”</i>
40.3	Health and Safety	The Access Seeker’s employees, agents and invitees should not be required to enter into the relevant facilities at their sole risk in circumstances where the Access Provider has not complied with the relevant legislation, or as otherwise been negligent.	At the end of clause 40.3, insert the words “nothing in this clause obviates any liability of the Access Provider to the Access Seeker or the Access Seeker’s employees, agents or invitees in circumstances where the Access Provider or its personnel have been negligent or have failed to comply with any law”.

5.5 Schedule 1 – Service Description

Clause No.	Clause Title	Comments	Proposed Amendments
1.2	The Mobile Co-location Service	In NZ Communication’s view, the description of the Mobile Co-location Service is inadequate. All of the elements that make up the Mobile Co-location Service should be included in the Service Description. In NZCL view, the proposed new clause 1.2 does not stray into the “how” of the Mobile Co-location Service, rather outlines the “what” of the Mobile Co-location Service. In NZ Communication’s view, while it is more extensive than the wording currently used in the Act, it is not inconsistent with it.	<p>Delete clause 1.2 and insert and new clause 1.2 as follows:</p> <p><i>“1.2 The Mobile Co-location Service is a service that requires an Access Provider to:</i></p> <p><i>1.2.1 provide an Access Seeker access to the Access Seeker Space at the Sites for the purpose of enabling the Access Seeker to install, maintain, operate and remove the Access Seeker’s Equipment to enable the Access Seeker to operate a Cellular Mobile Telephone Network;</i></p> <p><i>1.2.2 provide power, other utility and associated services to support the Access Seeker’s Equipment at the Access Provider’s Site;</i></p> <p><i>1.2.3 provide the Mobile Co-location Service assistance as referred to in clause 3.1 below;</i></p> <p><i>1.2.4 provide to an Access Seeker Rapid Multi-Access;</i></p> <p><i>1.2.5 undertake antenna minimisation”</i></p> <p><i>1.2.6 achieve targets set by the Commission</i></p>
4.1.4	Mobile Co-location Service Exclusions	The Mobile Co-location Service should extend to those parts of the Access Provider’s Network that may not currently be used by the Access Provider in association with its Cellular Mobile Telephone Network, but which are intended to and will be used as part of its Cellular Mobile Telephone Network.	In clause 4.1.4, insert the words “and will not be used” after the words “not used”.
4.1.5	Mobile Co-location Service Exclusions	At the time of installation the Access Seeker’s Equipment may not then currently be used for the Cellular Mobile Telephone Network but may be intended to be so used.	In clause 4.1.5, insert the words “and will not be used” after the words “not use”.

5	Rapid Multi-Access	Rapid Multi-Access is an intricate part of the description of the Co-location Service.	<p>Insert a new clause 5 as follows:</p> <p>“5. <i>Rapid Multi-Access</i></p> <p>5.1. <i>The Mobile Co-location Service obliges an Access Provider to simultaneously accept from an Access Seeker, and simultaneously process and approve, service orders for Cellular Mobile Telephone Network Co-location Access to Access Provider’s Sites at one time in circumstances where the Access Provider’s Sites the subject of the Application are of the same Standard Site Type. This is referred to as Rapid Multi-Access.” blocks of up to 30 sites must be treated as one application on the basis that they are of a “similar site type”</i></p> <p>“6. <i>Antenna Minimisation</i></p> <p>6.1. <i>The Mobile Co-location Service includes an obligation upon an Access Provider, upon a written request of an Access Seeker as set out in the Mobile Co-location Operations Manual, to replace any existing antennas owned or operated by the Access Provider at the Access Provider’s Site, within the time frames required for same in the Mobile Co-location Operations Manual, to facilitate the location of the Access Seeker’s Equipment in proximity to the Antennas of the Access Provider on the Access Provider’s Sites, including without limitation on the same horizontal plain and including without limitation on the same headframe or Mast.”</i></p>
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5.6 Schedule 2 – Service Level Terms

Clause No.	Clause Title	Comments	Proposed Amendments
1.4	Definition	A definition for “Deliverable” is required.	“Deliverable” means the deliverable in relation to each service attribute as set out in Appendix 1.
4.1.2	Exclusion	The Service Levels should continue to apply where any Access Seeker failure arises as a result of Access Provider conduct.	At the end of clause 4.1.2, insert the words “, except to the extent that such Access Seeker failure arises as a result of the act or omission of the Access Provider or any person for whom the Access Provider is responsible.
4.1.4	Exclusion	Similar comment to that in relation to 4.1.2 above.	At the end of clause 4.1.4, insert the words “except to the extent that anything referred to in paragraphs (a), (b) and (c) above arises as a result of an act or omission of the Access Provider or any person for whom the Access Provider is responsible.
5.1	Access Seeker Forecast	Use of the words “accurate” is unnecessary as all of the obligations in relation to Forecast should be located in the one place in the STD. These are adequately dealt with in the Mobile Co-location Operations Manual. Forecasts depend on databases and the RMAP availablit	In clause 5.1, delete the words “accurate” on the first line.
8.2	Close Performance Penalty	Delete clause 8.2. As indicated below, in relation to Implementation Plan, the concept of a “soft launch” commencing after the Determination Date is essentially useless to NZCL and presumably all other Access Seekers.	Delete clause 8.2.
Appendix 1		An initial matrix is required to establish the Service Level applicable to the Rapid Multi Access Period.	<p>A Service Level is an associated performance penalty is required in relation to a failure of the Access Provider to meet the requirements of the targets set out in relation to the Rapid Multi Access Period. As noted above these performance penalties must be sufficient to ensure that the Access Provider has sufficient motivation, currently completely lacking in the regulatory environment, to assist the new entrant in expeditiously and efficiently rolling out a new network. It is the submission of NZCL that those particular performance penalties must relate to either:</p> <p>(a) the payment of a sufficiently large amount of money to the Access Seeker to act as motivation in itself; this payment shall related to the size of revenues of the</p>

			<p>access provider set at approximately 5 % of daily revenues or</p> <p>(b) to reflect a reduction for a period of time, in relation to the roaming price otherwise provided by that Access Provider to the relevant Access Seeker until such time as the default is remedied.</p>
Appendix 1 & Appendix 2		Throughout the remainder of Appendix 1 and Appendix 2, the time period should reflect those time periods nominated by NZCL in its submission in relation to the Operations Manual.	<p>Amend the time periods referred to in the “Service Level” column in Appendix 1 and the “Deliverable” column in Appendix 2 as follows:</p> <ul style="list-style-type: none"> • Issue of Site Data Pack – 3 Working Days • Decision on Access Seeker’s Full Site Application – 5 Working Days • Decision on Access Seekers Conditional Notice – 5 Working Days • Decision on Access Seeker’s Project Plan – 7 Working Days • Notification of Planned Outages – 10 Working Days • Notification of Unplanned Outages - - within 2 hours on a 24 x 7 basis
Appendix 1		All tolerance level should be set at 98%.	<p>Delete all tolerance levels contained in Appendix 1 & 2 and insert in their place “98%”.</p> <p>The tolerance level for fault management for Mobile Co-location Service should be 95%.</p>
Appendix 2		<p>A performance penalty must be included for all of the Service Levels the subject of Appendix 1. Currently, there is no performance penalty provided in relation to Planned and Unplanned Outages, nor is there one for fault management for Mobile Co-location Service.</p> <p>Secondly, no incentive to perform will arise from a 7% deduction in the standard chart. In our view, the figure in (a) in each of the equation should be set at 100%. The tolerance level, coupled with the various limitation clauses in relation each of the Service Levels provides enough protection for the Access Provider.</p>	

5.7 Schedule 3 – Operations Manual

Clause No.	Clause Title	Comments	Proposed Amendments
2.1.1	People and Contact Details (General)	The service manager must be the single point of contact (SPoC)	In clause 2.1.1, delete the words “a list of the people” and insert the words “the name of the person”.
2.2	People and Contact Details	Each party must have single point of contact.	In clause 2.2, delete the last row in the table.
3.1.3	Technical Manuals and user Guides (Status of external documents)	All documents must be web based	In clause 3.1.3, delete the word “Electronic” on the first line and insert the word “web accessible” in its place.
5.1.2(c)	Communications (General)	The obligation contained in clause 5.1.2(c) should be for the benefit of both parties.	Delete the clause 5.1.2(c) and insert in its place the following words: <i>“seeks to mitigate any impact upon the public brand of the Party which may lead to a negative impact on that Party.”</i>
5.1.3	Communications (General)	Information regarding media enquiry must be provided to the other party promptly.	In clause 5.1.3, insert the word “promptly” before the word “inform” on the third line.

6.2.1	Prerequisites (Operational Prerequisites)	All documents and spreadsheets must be on the database. Clause 6.21 is redundant.	Delete clause 6.2.1 and insert a new clause 6.2.1 in its place as follows: <i>“The Access Provider must ensure at all times that all documentation required by the Access Provider in relation to the processes the subject of this Mobile Co-location Operations Manual are available to the Access Seeker for immediate use in electronic form.”</i>
6.2.2(a)	Prerequisites	The Access Provider must provide access to the operational support systems promptly.	In clause 6.2.2(a), insert the word “promptly” before the word “grant” on the first line.
6.2.3(a),(c)	Prerequisites (Operational Prerequisites)	The opportunities for the Access Provider to arbitrarily or withhold the ability for the Access Seeker to obtain the benefit of the Mobile Co-location Service should be minimised.	In clause 6.2.3, delete clauses (a) and (c).
7.2.1	Overview of Mobile Co-location Service	Any repetition of key definitions etc should be avoided.	Delete the last sentence in clause 7.2.1.
7.2.2(b)	Overview of Mobile Co-location Service (The Mobile Co-location Service)	There are a number of provisions in our proposed amendments to the Mobile Co-location General Terms which ensure that the Access Provider remains liable for the negligent or wilful acts or omissions and breaches of the Mobile Co-location Terms.	At the commencement of clause 7.2.2, insert the words “Subject always to the obligation of the Access Provider as set out elsewhere in this Mobile Co-location Terms,”.
7.3 12/13 th rows in table	Overview of Mobile Co-location Service (Procedure for the Supply of Co-location Service)	Project plan submission/approval must be agreed prior to executing Site Agreement.	Amend process and flow to ensure all approvals are issued prior to Site Agreement being entered into. These should be tied to a RMAP protocol , with bulk plans submitted simultaneously
8.1.1	Access Seeker Forecasting (Mobile Co-location Forecasts)	Forecasting to be in relation to following 12 months period.	In clause 8.1.1, delete number “24” and insert the number “12”. Delete reference to “two year” and insert the words “one year” and delete the word “eight” and insert the word “four”.
8.1.3	Access Seeker Forecasting	While the first quarter of each 12 month forecast should be binding, the remainder should be indicative.	In clause 8.1.3, delete clause (b) and in clause (a) delete the words “a committed” and insert the word “an indicative”.
8.1.6	Access Seeker Forecasting (Mobile Co-location Forecasts)	There is no obvious reason why this clause needs to be included.	Delete clause 8.1.6.

8.1.8	Access Seeker Forecasting (Mobile Co-location Forecasts)	All communications should be between the respective SPoC	At the end of clause 8.1.8, delete the words “the address from which it was sent” and insert the words “the Mobile Co-location Service Manager of the Access Seeker.”
8.1.10	Access Seeker Forecasting (Mobile Co-location Forecast)	It must be clear that any provision of the Service Levels not to apply shall only relate to that period for which the relevant Forecast is outstanding.	At the end of clause 8.1.10, insert the words “(but only for that period during which the relevant Mobile Co-location Forecast is outstanding)”.
8.2.1	Feedback	A time period needs to be provided pursuant to which the Access Provider is to review the relevant Mobile Co-location Forecast.	At the commencement of clause 8.2.1, insert the words “within 5 Working Days of the date on which the Access Seeker first provides the Mobile Co-location Forecast to Access Seeker,”. At the end of clause 8.2.1, insert the words “, and make any reasonable request of the Access Seeker for additional information relating to the Mobile Co-location Forecast or give the feedback referred to in clause 8.2.3.”.
9.3	Prioritisation and Capacity Limits (Capacity Limit)	The capacity limit is too low, particularly in situations where new networks are being rolled out.	In clause 9.3.2, delete reference to “a maximum (inclusive) cumulative total of 30” and insert the words “a minimum (inclusive) cumulative total of 50.”.
9.4	Prioritisation and Capacity Limits (Prioritisation: “first come, first served”)	Overall, should there be any dispute on priority listings in relation to Access Seeker applications, then Access Seekers should agree on priority not Access Provider.	At the end of clause 9.4.1(a), insert the words “(unless the relevant Access Seekers otherwise agree and notify the Access Provider in writing of same)”. At the end of clause 9.4.1(b), insert the words “, which capacity number must be amended if the Access Provider is so directed by all relevant Access Seekers by notice in writing within 5 Working Days after the last day of each month (as anticipated by clause 9.4.1(a))”. In the second paragraph of clause 9.4.1(c), insert the words “(subject to any contrary agreement between the Access Seekers as notified pursuant to clause 9.4.1(b))” after the word “then” on the fourth line.
10.2.5(b)	Queuing policy	Obligations to start activities in a timely manner, and obligations to complete tasks within specified times must be provided throughout the document.	In clause 10.2.5(b), insert the word “immediately” before the word “process” on the second last line.

10.2.6	Queuing policy	Obligations to start activities in a timely manner, and obligations to complete tasks within specified times must be provided throughout the document.	At the commencement of clause 10.2.5, insert the word “immediately”.
10.3.6	Queuing policy (“use it or lose it”)	The “use it or lose it” principle must also apply to reservations made by the Access Provider for use of the Relevant Facilities for its own use.	Insert a new clause 10.3.6 as follows: <i>“In the event that an Access Provider does not use the Relevant Facility for the purposes of its reasonable forecast requirements for capacity on those Relevant Facility within 18 months of the date that it first notified same on the Common Format Site Database, that forecast will lapse and it will be remove from the Queue. To the extent that the Access Provider wishes to continue to reserve that capacity, it must reinsert same in the Common Format Database but such reservation will not take precedents over any other Access Seeker Application in the Queue prior to that date that that reservation was re-listed in the Common Format Site Database.”</i>
10.4	Queuing policy (Extension Applications)		At the end of clause 10.4.2, insert the words “to the Access Provider’s reasonable satisfaction”. Further, in clause 10.4.2(b), delete the words “meaningful and”.
10.5.1	Queuing policy (Access Provider requirements)	The queuing policy set out in clause 10 must apply to the Access Provider’s current reasonable Forecast requirements for capacity in the relevant Facilities.	Delete clause 10.5.1 and insert the following clauses: <i>”10.5.1 The queuing policy set out in this clause 10 applies to the Access Provider’s current and reasonable forecast requirements for capacity on the Relevant Facilities.</i> <i>10.5.1A For the purpose of the application of clause 10.4, to the extent that the Access Provider is required to take an action or make a decision in relation to its own forecast use, it must take that action or make that decision as if its own forecast use was that of the Access Seeker and must immediately notify in writing all relevant Access Seeker in the Queue of its conduct in relation to same.</i>

			<p>In relation to clause 10.5.3, delete the word “not” in the fourth line.</p> <p>Delete clause 10.5.4.</p>
12	Provisioning System	The Provisioning System must be such that it cannot be used to frustrate the intent of the Mobile Co-location Terms or to provide any barrier to an Access Seeker or gain the benefit of the Mobile Co-location Service.	<p>At the end of clause 12.1.2, insert the words “The Provisioning System must be such that it is efficient and economical for any reasonable Access Seeker to use and must be available, as a minimum, during all business hours in New Zealand.”</p> <p>In clause 12.1.6, delete the word “and” on the second line and insert the word “promptly”.</p> <p>In clause 12.2.2, delete the word “an” on the second line and insert the words “a mutually convenient”.</p> <p>In clause 12.4.1, insert the words “which must include all uses anticipated by these Mobile Co-location Terms” at the end of that clause.</p>
12.6	Provisioning System (Costs)	Access Provider and Access Seeker should be responsible for their own costs in relation to any common database or provisioning system preparation and maintenance.	Delete clause 12.6.3.
12.7.2	Provisioning System (Application Processing)	Because the time referred to in clause 12.7.2 is critical to the Queuing policy, the Access Provider must provide prompt notification to the Access Seeker.	In Clause 12.7.2, in the fourth line insert the word “promptly” before the word “notify” in the second line.
12.8.2	Provisioning System (Rejection of an Application)	The rejection of any application by the Access Provider is a significant matter for an Access Seeker. It must be clear that the Access Provider must all times act in good faith and reasonably.	At the commencement of clause 12.8.2, insert the words “at all times acting in good faith,”
12.9.1	Access Provider Progress Report	Certainty is required in relation to the time pursuant to which the Access Provider must provide the monthly report.	At the commencement of clause 12.9.1, insert the words “Within 5 Working Days of the commencement of each subsequent month”.

13.2.1	Site Data Pack	The time for issuing of the Site Data Pack must be prescribed.	<p>At the commencement of clause 13.2.1, insert the words “within 3 Working Days”.</p> <p>Further, in clause 13.2.4(d), insert at the end the words “, including without limitation details of all other Applications the subject of any Queue applicable to that Relevant Facility”.</p>
13.3	Letter of Notice to Landlord	Again, time periods must apply to the Access Provider’s conduct.	<p>At the commencement of clause 13.3.1(a), insert the words “within 3 Working Days after receipt of a Site Data Pack Application”.</p> <p>Requirement to work on a sub lease must be inserted</p>
14	Detailed Site Design – Stage 2	<p>Amendments are required to clause 14 to ensure that:</p> <p>(a) there are clear time frames for the undertaking of any matter by the Access Provider; and</p> <p>(b) that each party bears its own costs in relation to the process.</p>	<p>In clause 14.2.1, insert the words “the earliest most” before the word “suitable” in the second line.</p> <p>In clause 14.2.2, references to “Mobile Co-location Project Managers” should be deleted and reference to Mobile Co-location Service Manager” inserted.</p> <p>In clause 14.2(a), delete the words “as soon as reasonably practicable” and insert the words “within 3 Working Days” in its place.</p> <p>In clause 14.2(b), insert the word “immediately” before the word “approve”.</p> <p>In clause 14.2.9, insert the word “immediately” before the word “provide”.</p> <p>Delete clause 14.2.10. The cost of the detailed Site sign visit should be with each of the respective parties.</p> <p>In clause 14.4.1, insert the words “within 1 Working Day of receipt of same” at the end of the clause.</p> <p>At the commencement of clause 14.4.2, insert the words “within 5 Working Days of receipt of the Full Site Application.”</p> <p>At the commencement of clause 14.4.2(b), insert the words</p>

			<p>“where it has an express right to do so pursuant to this Mobile Co-location Terms,”.</p> <p>Delete clause 14.4.5.</p>
17.1.1	Overview	Delete this clause as it could potentially be construed as providing further obligations on the Access Seeker which are not expressly covered by clause 17.2 and following.	Delete clause 17.1.
17.3.2(b)	Demonstration of Fulfilment of Conditions	The Access Provider must promptly notify the Access Seeker whether the amended terms to the right of Relevant Occupation are acceptable.	In clause 17.3.2(b), insert the word “promptly” before the word “notify”.
17.4.1	Final Site Approval	Again, time frames are required for the Access Provider’s Conditional Notice.	<p>In clause 17.4.1, insert at the end the words “within 2 Working Days of receiving such Conditional Notice.”</p> <p>In clause 17.4.2, insert at the end the words “within 5 Working Days of receipt of the Access Seeker Conditional Notice,”</p>
17.5	Execution of Site Agreement	Both the Access Provider and Access Seeker must act promptly in executing the Site Agreement.	In clause 17.5.1, insert the word “promptly” before the word “execute”.
18.2	Project Plan – Stage 4 (Project Plan)	NZCL submits that the Project Plan must be agreed prior to execution of the Site Agreement.	<p>Move clauses 18.2.1 to 18.2.3 to after clause 17.4 as part of the final site approval process.</p> <p>In current clause 18.2.3, insert the words “within 2 Working Days of receipt of same” at the end of the clause.</p> <p>Clause 18.3 should also be moved to clause 17.4.</p> <p>In Clause 18.3.1, insert the words “within 7 Working Days of receipt of the Project Plan,” at the commencement of second sentence.</p> <p>Further, in clause 18.3.2(d)(i), insert the words “within 5 Working Days of receiving the amended Project Plan” before the word “approved” on the second line.</p>

<p>19</p>	<p>Mobile Co-location Implementation – Stage 5 (Overview)</p>	<p>Clause 19 is overly complex. The implementation phase does not require three periods. Site implementation is all that is required.</p> <p>GREATER SIMPLICITY IS REQUIRED NZ will set a world record for the size of Co location documents and the length it takes to get a co location</p>	<p>Delete all of clause 19 and insert the following in its place:</p> <p><i>“19.1.1 The implementation of the Mobile Co-location Service (“Mobile Co-location Implementation”) will be undertaken in accordance with this clause 19.</i></p> <p><i>19.2.1 As soon as practicable upon the Site Agreement have been entered into, the Access Provider must make the Relevant Facilities available to the Access Seeker to commence the Access Seeker’s Build at those Relevant Facilities.</i></p> <p><i>19.3.1 The Access Seeker must not radiate signals from the Access Seeker’s Equipment or otherwise operate the Access Seeker’s Equipment at the Relevant Facilities prior to the Access Seeker meeting all the relevant requirements set out in the Interference Management and Design document.</i></p> <p><i>19.3.4 [retain clause 19.3.4 as currently appearing with reference to “Mobile Co-location Build Period being reference to Mobile Co-location Implementation]”</i></p> <p><i>19.4.1 The Access Seeker will provide the Access Provider with sufficient information to confirm that the Access Seeker Build was undertaken and completed in accordance with the Project Plan and “as built documentation” (“Project Closure Checklist”).</i></p> <p><i>19.4.2 The Project Closure Checklist must be in the form set out in Appendix Q.</i></p> <p><i>19.4.3 After the Access Seeker provides the</i></p>
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			<p><i>Project Closure Checklist to the Access Provider, the Access Provider will, within 4 Working Days either:</i></p> <p>(a) <i>approve the Project Closure Checklist and confirm to Access Seeker the completion of the Mobile Co-location Implementation, then promptly issue the Access Seeker with approval of the Project Closure Checklist (“Project Closure”); or</i></p> <p>(b) <i>notify the Access Seeker that it does not approve the Project Closure Checklist, including reasons for rejection and require the Access Seeker to rectify any items to enable the Project Closure Checklist to be approved by the Access Provider.</i></p> <p><i>19.4.4 The Project Closure must be in the form set out in Appendix R.</i></p> <p><i>19.4.5 After the Access Provider issues the Access Seeker with a Project Closure, the Access Provider must promptly update the Common Format Site Database regarding the Mobile Co-location Implementation at the Relevant Facilities.</i></p>
21.4	Access Provider to Act Expeditiously	The obligations contained in clause 21 and depicted in the diagram again do not contain any time frames for the Access Provider’s conduct.	<p>Insert a new clause 21.4 as follows: <i>“The Access Provider must act expeditiously in relation to all of its required actions or decisions as referred to in the diagram contained in clause 21.3.3.”</i></p>

22	Relinquishment	NZCL does not agree to its infrastructure being handed over to an Access Provider at any time.	<p>In clause 22.2.1, the word “Access Seeker” where last appearing should be “Access Provider”.</p> <p>At the end of clause 22.2.3, insert the words “within 2 Working Days of receiving same” at the end of that clause.</p> <p>In clause 22.3.1, reference to “6 months” should be reference to “3 months”.</p> <p>Delete clause 22.3.9. The provisions of clause 22.3.6(b) are sufficient.</p>
23	Relocation	An error has occurred in the drafting of clause 23.2.2.	<p>Delete clause 23.2.2 and insert a new clause 23.2.2. as follows:</p> <p><i>“The Access Seeker will not unreasonably withhold or delay its consent to a Relocation. Reasonable grounds for the withholding of a consent will include, without limitation, circumstances where the Relocation is likely in the Access Seeker’s reasonable opinion to result in a detrimental effect to the supply of the Access Seeker’s Services to its Customers or End Users.”</i></p>
25.2	Invoicing	Charging for a hard copy paper invoice is excessive.	<p>Delete the last sentence of clause 25.2.1.</p> <p>Similarly, delete clause 25.3.4.</p>
27	Common Format Site Database	There is no reason why the Access Provider’s reasonable Forecast Requirements are not also included on a monthly basis in the Common Format Site Database. This will be key information that each Access Seeker requires in order to plan its network rollout. As submitted in relation to other documents, there should be no opportunity for an Access Provider to manipulate its forecast requirements in order to avoid a Mobile Co-location obligation.	<p>Delete clause 27.2.1 and insert the following in its place.</p> <p><i>“The Access Provider is responsible for populating and updating, on a monthly basis, the information contained in the Common Format Site Database (including without limitation in relation to its current and reasonable Forecast Requirement for capacity) and must update the Common Format Site Database more regularly where expressly provided by this Mobile Co-location Terms.”</i></p>
28.2	Standard Site Types Purpose	A key purpose of the Standard Site Types is to facilitate Rapid Multi Access.	At the end of clause 28.2.1(d), insert the words “to facilitate Rapid Multi Access”.

28.3.1	Identification of Standard Site Types	In NZCL's view, there is already a group of site types which can be considered to be Standard Site Types and these should be attached to the STD as an appendix.	Insert a new clause 28.3.4 as follows: <i>“Notwithstanding any other provision of this Mobile Co-location Operations Manual, the Access Provider and the Access Seeker acknowledge and agree that those groups of Relevant Facilities described in Appendix [] shall be deemed to be Standard Site Types for the purposes of this Mobile Co-location Terms. For the avoidance of doubt, nothing shall prevent the Access Seeker identifying further groups of Relevant Facilities as Standard Site Types pursuant to this clause 28.3.”</i> <i>Standard cell tower types must be agreed prior to the service starting</i>
28.4	Standard Site Types Solution	In addition to certain Standard Site Types being able to be identified in the STD on the date of its determination, NZCL is of the view that the Standard Site Type Solution applicable to those Standard Site Types can also be included in that Appendix.	At the end of clause 28.4.1, insert the words “for the avoidance of doubt, the Standard Site Type Solution relating to the Standard Site Types referred to in clause 28.3.4 above are described in Appendix [].”
28.9	Access Provider's Draft Design	In the event that the Access Provider's Draft Design for the Standard Site Type Solution is not satisfactory, rather than the Access Provider drafting a design for a second time, the Access Seeker should be entitled to draft the design.	In clause 28.9.3(b), delete the last sentence and insert a new sentence as follows: <i>“In this event, the Access Seeker may choose to return to the previous step of the process to develop a Standard Site Type Solution provided however that the Access Seeker will develop a draft design detailing the proposed Standard Site Type Solution and sent to the Access Provider the draft design.”</i> As a consequential amendment, in clause 28.10.1, insert the words “(or the Access Provider approve the Access Seeker's draft design in circumstances where clause 28.9.3(b) applies)” after the word “above” on the second line.
28.11	Costs	The cost of the development and design of the Standard Site Type Solution should be the responsibility of the individual parties.	Delete clause 28.11.1.
29.2	Utility Services	It should not be at the discretion of the Access Provider which Utility Services are made available for the Mobile Co-location Service. The Access Seeker should choose which Utility Services it requires and the Access Provider must then, acting reasonably, determine whether they are available.	Delete clause 29.2.1 and insert the following: <i>“The Access Seeker may choose, in its sole discretion, those utility services available in relation to the Relevant Facilities will form the Utility Services for the relevant Mobile Co-location Service. The Access</i>

			<i>Seeker must notify the Access Provider of such Utility Services in its Initial Site Application. The Access Provider may, acting reasonably and in good faith, decide that some of those Utility Services shall not form part of the Utility Services for the Mobile Co-location Service.”</i>
30.2	Cost and Ownership	An adverse consequences of clause 30.2.1 as it is currently drafted is that the parties will not be motivated to request replacements or upgrades to Utility Services, even when same is clearly required for the benefit of all parties. The requesting party will remain responsible for all costs associated with the replacement or upgrade of the Utility Services.	Delete clauses 30.2.1 and 30.2.2 and insert new clauses as follows: “30.2.1 <i>Except in circumstances where the replacement or upgrade of the Utility Services is reasonably required for the benefit of both parties (in which case all parties shall be responsible for the costs associated with the replacement or upgrade of the Utility Service pro rata with the use of same) the requesting party will be responsible for all costs associated with the replacement or upgrade of the Utility Service.</i> 30.2.2 <i>To the extent that either party incurs cost in association with the replacement or upgrade of the Utility Service which are the responsibility of another party pursuant to clause 30.2.1, that other party will reimburse the party carrying the costs for all reasonable actual costs incurred in relation to the replacement or upgrade, including costs of equipment and labour, which are the responsibility of that reimbursing party pursuant to clause 30.2.1.”</i>
31.1	Lighting (General)	To the extent that additional lighting is required at the Relevant Facilities as a matter of law, rather than as a result of the Access Seeker’s activities at the Site, the Access Provider should be responsible for the providing the extra lighting.	At the commencement of clause 31.2, insert the words “Except to the extent that additional lighting is required as a matter of law at the Relevant Facilities and such requirement does not arise as a result of the Access Seeker’s activities at those Relevant Facilities (in which case the Access Provider will be required to provide the additional lighting at its own cost),”

32.2.4	Power (Power connection to the Access Seeker Equipment)	Certainty is required as to the amount that the Access Provider may charge the Access Seeker for electricity.	At the end of clause 32.2.4, insert the words “For the avoidance of doubt, the amount that the Access Provider may charge the Access Seeker in relation to same is the amount that would otherwise actually be required to be paid by the Access Provider to the electricity provider in relation to same”.
36.7	Faults (Costs)	Charging for the use of the fault managing system is excessive.	Delete clause 36.7.3
38.2.1	The Access Seeker’s Responsibility	There needs to be parity between clause 38.1.1 and 38.2.1.	At the end of clause 38.2.1, insert the words “except where a fault is the Access Provider’s responsibility because it is due to any act or omission of the Access Provider or a Customer or End User of the Access Provider.”
38.2.5	The Access Seeker’s Responsibility	Any costs incurred by the Access Provider must be reasonable.	In the third line of clause 38.2.5, delete the words “Access Provider” and insert the words “Access Provider’s reasonable costs” in its place.
39.4.3	Fixing Faults	The Access Seeker should only be required to reimburse the Access Provider where the Access Seeker would otherwise be responsible for fixing that emergency fault.	In clause 39.4.3, after the word “behalf” on the third line, insert the words “provided that the Access Seeker is otherwise responsible for fixing that emergency fault”. Further, on the fourth line, insert the word “reasonable” before the word “costs” on the second last line.
40.4.2(b)	Planned Outages	The Access Provider must give the Access Seeker much notices as reasonably practicable of any Planned Outages.	At the commencement of clause 40.4.2(b), insert the words “by providing as much prior written notice as is practicable in all the circumstances (but in any event not less than 10 Working Days,”
41.2.1	Terms of use and costs	This is yet another example of clauses which provide the Access Provider with unnecessary unilateral ability to frustrate the Access Seeker’s activities at the Relevant Facilities. They go beyond what is required to protect the Access Provider’s Equipment at the Site.	Delete clause 41.2.1 and insert “The Access Seeker must only use the Planned Work System for the purpose of conducting the Planned Work at the Relevant Facilities”. Further, clause 41.2.4 should be deleted.

42.2.3	Planned Work Application	Again, timing is required on the Access Provider’s activities.	<p>In clause 42.4.3, insert the words “within 2 Working Days after receiving same” at the end.</p> <p>Similarly, at the commencement of clause 42.4.5, insert the words “within 5 Working Days of receipt of the Access Seeker’s Planned Work Application,”</p>
42.5.3	Planned Work Project Plan	Again, timing is required on the Access Provider’s activities.	<p>Insert at the commencement of clause 52.5.3 the words “within 5 Working Days of receipt of the Access Seeker’s Project Plan for the Planned Work”.</p> <p>Similarly in clause 42.6.1, insert the word “promptly” before the word “issue” on the second line.</p> <p>Similarly, at the commencement of clause 42.6.7, insert the words “within 5 Working Days of receipt of the information from the Access Seeker referred to in clause 42.6.5”.</p>
46.1	Security Clearance	Any conditions must not derogate from an Access Seeker’s rights under these Master Co-location Terms.	At the end of clause 46.1.2, insert the sentence “Notwithstanding any other provision of this clause 46, no conditions specified by the Access Provider may derogate from the Access Seeker’s rights otherwise provided under these Mobile Co-location Terms.
47.2	Permit to Work	It needs to be clear that any system put in place by an Access Provider in relation to Permit to Work should not derogate from the Access Seeker’s rights set out in the Mobile Co-location Terms.	<p>Insert a new clause 47.2 as follows:</p> <p><i>“Notwithstanding any other provision of this Part 14, nothing in the Access Provider’s Permit to Work requirements may derogate from the Access Seeker’s rights in relation to accessing the Relevant Facilities for the Mobile Co-location Services as provided by this Mobile Co-location Terms.”</i></p>
48	Work Procedure Overview	Any Access Provider Standards must be generally applicable, including as applicable to the Access Provider.	<p>In clause 48.1.1(a), delete the words “Access Provider Standards” and insert the words “generally applicable Access Provider’s Standards, being those which the Access Provider would apply to its own activities.”</p> <p>Similarly in clause 48.2.1, delete the word “relevant” in the first line and insert the word “reasonable”.</p>

5.8 Operations Manual Appendices

Appendix No.	Title	Comments	Proposed Amendments
Appendix A			Delete reference to Mobile Co-location Project Manager.
Appendix B	Escalation Protocol	If a matter cannot be resolved at an operational level, it should be the subject of only one escalation and that is to the Mobile Co-location Service Managers. If the Mobile Co-location Service Managers cannot resolve an issue, then it will need to be the subject of dispute resolution.	Delete items 4, 5 and 6 of Appendix B and insert the following text in its place: <i>“If an operational issue cannot be resolve at the BAU level within 5 Working Days of the date of the email referred to in item 3 above, the matter must be elevated to the Mobile Co-location Service Manager for each of the respective parties. If the those Mobile Co-location Service Managers are unable to resolve the matter within a further 2 Working Days, the provisions of clause 39 of the Mobile Co-location General Terms shall apply.</i>
Appendix E	Mobile Co-location Task	Relevant amendment should be made to reflect the comments of NZCL contained in the matrix regarding the Operation Manual.	
Appendices generally		To the extent of any inconsistency with our comments on the Operational Manual referred to above, the Appendices should be amended.	
Final Appendix	Standard Site Types	As indicated above, Standard Site Types and Standard Site Types Solution which currently exist should be included in the STD as at the date of its determination.	

5.9 Schedule 4 – Access Terms

Clause No.	Clause Title	Comments	Proposed Amendments
4.4.1	Basic Rights and Obligations	While the Access Seeker is not given an estate in the Relevant Facilities, it does have a contractual interest set out in the Mobile Co-location Terms.	Insert the words “other than as expressly provided in these Mobile Co-location Terms” at the end of the clause 4.4.1.
4.4.3	Basic Rights and Obligations	While the Access Provider will not be responsible for the Access Seeker’s business, the Access Seeker will also not be responsible for the Access Provider’s business.	Insert the words “and vice versa” at the end of clause 4.4.3.
4.5	Basic Rights and Obligations	Any additional rights provided by the Access Provider to the third party must be subservient to the rights given to the Access Seeker pursuant to the Mobile Co-location Terms.	Insert at the end of clause 4.5 the words “, provided that same does not adversely impact upon the rights of the Access Seeker as set out in these Mobile Co-location Terms, except to the extent permitted by these Mobile Co-location Terms or as expressly agreed in writing by the Access Seeker.”
4.7	Use of the Relevant Facilities	Any request or direction given by the Access Provider should not adversely impact on the rights of the Access Seeker given under the Mobile Co-location Terms.	At the end of clause 4.7, insert the words “, provided without limitation that such request or direction does not adversely impact the rights of the Access Seeker under these Mobile Co-location Terms.”
5	Things the Access Seeker Must Not Do	Certain of the things listed in 5.1 may occur as permitted by the Mobile Co-location Terms (such as some interference with the operation of the Access Provider’s Network).	After the word “following” at the end of the first line of clause 5.1, insert the words “except to the extent permitted by these Mobile Co-location Terms”.
5.1.4	Things the Access Seeker Must Not Do	The use of the word “strictly” is unnecessarily restrictive.	In clause 5.1.4, delete the word “strictly” and insert the word “reasonably”.
6.3	Things the Access Seeker Must Do – Health and Safety	Any access to the Relevant Facilities by Invitees of the Access Seeker is at the sole risk of the Access Seeker other than for the negligent or wilful acts or omissions of the Access Provider or as may arise from a breach by the Access Provider of the Mobile Co-location Terms.	At the end of clause 6.3, insert the words “provided however that nothing in this clause 6.3 shall absolve the Access Provider for any responsibility arising from the Access Provider’s negligent or wilful acts or omissions or any breach of these Mobile Co-location Terms by the Access Provider.”

7.1	Things the Access Provider Will Do	The wording in clause 7.1 should be consistent with the corresponding wording in clause 6 as it applies to the Access Seeker.	In clause 7.1, insert the words “impede or” before the word “interfere”.
7.3, 7.4 and 7.5	Things the Access Provider Will Do	In clause 6, a large number of matters are listed which regulate the Access Seeker’s use of the Site. In NZCL’s view, these limitations should also apply to the Access Provider to a greater extent than those things already listed in clause 7. Merely because the Access Provider owns the Site does not mean it has any lesser responsibility in relation to the Access Seeker’s Network than that which the Access Seeker has in relation to the Access Provider’s Network.	<p>Insert a new clause 7.3 as follows:</p> <p>“7.3 <i>The Access Provider must do and ensure its Invitees do all of the following at the Access Provider’s own expense:</i></p> <p style="padding-left: 40px;">Installation and Maintenance</p> <p>7.3.1 <i>to the reasonable satisfaction of the Access Seeker, maintain any Access Provider Equipment installed on or with the Relevant Facilities in good and proper repair and working order and employing suitably qualified people to do so;</i></p> <p style="padding-left: 40px;">No Danger to Others</p> <p>7.3.2 <i>take all reasonable steps to ensure that no part of the Access Provider’s Equipment becomes a danger to the safety of the Access Seeker, or the Access Seeker’s Invitees;</i></p> <p style="padding-left: 40px;">Prevention of Risks</p> <p>7.3.3 <i>at all times take all practical and proper precautions to the reasonable satisfaction of the Access Seeker for the prevention of risks at the Relevant Facilities;</i></p> <p style="padding-left: 40px;">Rubbish</p> <p>7.3.4 <i>remove all rubbish from the Relevant Facilities resulting from the Access Provider’s use of the Relevant Facilities;</i></p> <p style="padding-left: 40px;">Compliance</p> <p>7.3.5 <i>comply in all respects with</i></p>

			<p>(a) any law or requirement of any Authority that applies in relation to anything that is done or to be done by the Access Provider (including the Resource Management Act, 1991 and the Building Act, 2004), or its Invitees, under the Mobile Co-location Access Terms, or that relates to the Access Provider or the Access Provider's Invitees' use of the Relevant Facilities;</p> <p>(b) the Resource Management Act, 1991 and any relevant District Plan or Regional Plan and the terms of any resource consent or any other applicable law;</p> <p>(c) the Mobile Co-location Terms; and</p> <p>(d) the Mobile Co-location Access Terms;</p> <p>Co-operation</p> <p>7.3.6 co-operate with any reasonable request made by the Access Seeker in relation to any inspection, installation, maintenance, repair, alteration, removal or replacement in connection with the Access Seeker's Network or the Relevant Facilities.</p> <p>7.4 The Access Provider must comply with its obligations under the HSE Act and all approved codes of practice under the HSE Act. In particular the Access Provider must establish procedures to ensure compliance with the HSE Act for anything it does or allows to be done on or around the Relevant Facilities. If the Access Seeker asks, the Access Provider must give the Access Seeker</p>
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			<p><i>details of those procedures and of how they are being implemented.</i></p> <p>7.5 <i>Any access to the Relevant Facilities by Invitees of the Access Provider is at the sole risk of the Access Provider and the Access Provider has the sole responsibility for identifying and advising its Invitees of all existing and potential hazards on or around the Relevant Facilities which its Invitees could encounter provided, however, nothing in this clause 7.5 shall absolve the Access Seeker for any responsibility arising from the Access Seeker's negligent or wilful acts or omissions or any breach of these Mobile Co-location Terms by the Access Seeker."</i></p>
8.2	Rights of Relevant Occupation	The provisions of clause 8.2 do not limit the provisions of clause 7.1.2.	At the commencement of clause 8.2, insert the words "Without limiting clause 7.1.2,".
8.3	Rights of Relevant Occupation	The Access Seeker can only comply with obligations regarding the Access Provider's right of occupation if it knows the terms of that right of occupation.	In clause 8.3, insert the words "and subject to the Access Provider having made known to the Access Seeker the terms of the Access Provider's rights of occupation of the Relevant Occupation" on the second line.
10.3.1(a)	Rights and Obligations	The Access Seeker may require the Access Provider's assistance in obtaining relevant consents and permits to a revision or extension of the Mast.	At the end of clause 10.3.1(a), insert the words "and obtaining all relevant consents and permits in relation to same".
10.6	Project Plan	In seeking to agree on assigned places on the revised or extended Mast, both parties must act in good faith.	In clause 10.6, after the word "Mast" appearing on the third line, insert the words "in good faith seek to".
10.7	Project Plan	While this is acknowledged by NZCL, such further use must not adversely impact upon NZCL's use.	At the end of clause 10.7, insert the following words " , provided however that the Access Provider shall not do anything in relation to same which may adversely impact the rights of the Access Seeker as set out in these Mobile Co-location Terms."

10.9	Implementation of the Project Plan	The reinstallation of the Equipment should be at each party's respective cost.	At the end of clause 10.9, insert the words "at their own cost".
10.12	Implementation of the Project Plan	The provisions of clause 10.2 are, of course, subject to the relocation provisions of the Access Terms.	Insert the words "or as anticipated by these Mobile Co-location Terms" after the word "Access Provider" on the third line.
11.3.1(a)	Rights and Obligations	The Access Provider must provide co-operation not only in relation to the designing and construction of the replacement Mast but also in obtaining of necessary consents or permits.	At the end of clause 11.3.1(a), insert the words "and obtaining all necessary consents or permits in relation to same."
11.3.1(b)	Rights and Obligations	It may be that the Access Seeker chooses to re-use the original Mast.	In the last sentence of clause 11.3.1(b), insert the words "or re-use" after the word "disposal".
11.4	Rights and Obligations	In the event that an Access Seeker undertakes the replacement of the Mast, the Access Seeker should be entitled to 50% of any subsequent Co-location Rental Revenues from other Access Seeker or, alternatively, an abatement of its own rental in the same amount.	Delete clause 11.4 and insert the following in its place: <i>"The Access Seeker shall be entitled to 50% of any subsequent Co-location Rental Revenues from other Access Seekers or, alternatively, an equivalent abatement of its own rental."</i>
12.1.5	De-commissioning	The indemnity provided to the Access Seeker should not only be in relation to the Access Provider's use of the Relevant Facilities but in relation to all liability which arose prior to the date of novation.	Delete clause 12.1.5 and insert a new clause 12.1.5 as follows: <i>"12.1.5 indemnify the Access Seeker against any claims by the landlord or any third party in respect of the Access Provider's use of the Relevant Facilities or otherwise relating to that period prior to the date of assignment or novation to the Access Seeker (except to the extent that liability arises out of acts or omissions of the Access Seeker)."</i>
14	Suspension	This appears very severe. Surely the Access Seeker's Equipment does not need to be turned off, rather any maintenance rights etc the Access Seeker may have are suspended. Even that should not apply in the event of an emergency.	In clause 14.1.1, delete the word "use" and insert the word "maintained". Delete clause 14.1.2.

16.1.2	Termination	Make good activities must be to the Access Provider's reasonable satisfaction.	Insert the words "reasonable" before the word "satisfaction" in the third line of clause 16.1.2.
16.2	Termination	The Access Provider's rights should be to remove the Access Seeker Equipment at the Access Seeker's costs and store same. It is too severe for the Access Provider to own the Equipment.	At the end of clause 16.2, delete the words "will be entitled to treat the Access Seeker Equipment as its own and may retain or dispose of all or any part of it as the Access Provider sees fit", and insert the words "will be entitled to remove the Access Seeker's Equipment and store same at the Access Seeker's reasonable cost and must, as soon as practicable thereafter, notify the Access Seeker of those reasonable costs incurred by the Access Provider and the location of storage of the Access Seeker's Equipment and enable the Access Seeker to make payment for the Access Provider's costs and for the collection of the Access Seeker's Equipment."
16.3	Termination	16.3 is now redundant.	Delete clause 16.3
16.4	Termination	The provision of the Notice referred to in clause 16.4 should not discharge either party from any liability under the Mobile Co-location Terms so accrued.	Delete the last sentence of clause 16.4 and insert the words "such Notice will not discharge either party from any liability under the Mobile Co-location Terms agreed up to that date that the Access Seeker vacated the Relevant Facilities".

5.10 Schedule 5 – Interference Management Design

Clause No.	Clause Title	Comments	Proposed Amendments
3.2	Radiocommunications Act, 1989	NZCL does not agree that this is a correct statement.	Delete clause 3.2.
3.3	Radiocommunications Act, 1989	The word "therefore" in the first line is now redundant.	In clause 3.3, delete the word "therefore" in the first line.
5.1.2	Objectives – General Overview	In some circumstances the design principles, testing protocols and requirements need to be met by the Access Provider.	In clause 5.1.2, delete the words "and Access Seeker" at the end of the second line and insert the words "the parties" in its place.
5.2.1(d)	Specific Objectives	This clause is redundant and covered by clause 5.2.1(c).	Delete clause 5.2.1(d).
5.2.1(e)	Specific Objectives	This clause is redundant and covered by clause 5.2.1(c).	Delete clause 5.2.1(e).

5.2.1(f)	Specific Objectives	This clause is not relevant to the Mobile Co-location Service.	Delete clause 5.2.1(f).
6.1	Unacceptable Performance Degradation	Performance degradation issue would apply equally to both parties as a result of Mobile Co-location Service.	In clause 6.1.1 insert the words “or Access Seeker” after the words “Access Provider” on the second line.
6.2	Unacceptable Performance Degradation	<p>NZCL contends that co-location of radio systems is a commonplace activity that already occurs with many radio technologies. In most OECD regulatory environments, co-location is a service that was regulated when competition was introduced and therefore in most competing environments this marginal service differential is experienced by all operators.</p> <p>NZCL also contends that with careful engineering the service differential (degradative effects) of co-locating radio systems can be made minimal in nature (but not entirely eliminated) and therefore is of no material disadvantage to the access provider.</p> <p>NZCL believes that all operators should be required to use all measures such as antenna minimisation technology and RF filtering etc, to maximise the number of systems that can be co-located at any given location.</p> <p>NZCL believes that the above position is reasonable as:</p> <ul style="list-style-type: none"> A) all operators will be operating their networks within similar performance constraints; B) all operators will incur an equitable performance degradative effect; C) it will achieve the co location principle of “like for like “ coverage; D) it meets Part 2 of the Act. as its impact promotes competition in the telecommunications market for the long term benefit of end users of telecommunications services; E) the context of the service differential is absolutely marginal in the context of urban sites. F) The concept of “service differential” is similar to many other changes when competition starts in a market – such as: 	<p>NZCL is not in a position to propose new wording on clause 6.2 at this time. The issue is far more complex than is currently represented in this clause. Different levels will apply to rural, city and suburban sites. It is also the case that the concept of unacceptable degradation should also reflect a situation where inevitable degradation does not affect each network operators network equally.</p> <p>As indicated in the MUIL, it would greatly assist the industry if the Commission engage an independent expert assistance in the dealing with the content of clause 6.2.</p> <p>NZCL will continue to work on a proposed solution for use at a later stages in STD process</p>

		<p>(a) spectrum allocation (the same argument can be had when spectrum monopolies are broken up); and</p> <p>(b) Loss of 100% market share (this alters EBITDA margins).</p>	
7.2.2(c)	Design Principles	There should not be a blanket restriction on Azimuths.	Delete the last 2 sentences of clause 7.2.2(c) and figure 5B.
7.4.5	Antenna Separation		<p>Delete clause 7.4.5(a) as it is satisfactorily dealt with elsewhere.</p> <p>Delete clause 7.5(d) and (e).</p>
7.5	Co-location Issues	Clause 7.5 should be deleted. The Access Seeker should be able to request an Access Provider to move, decrease or change the Access Provider Equipment to facilitate co-location.	Delete clause 7.5.
8.1.4	Measurements and Testing	Any agreement between the parties should be reached in good faith.	At the end of clause 8.1.4, insert the words “, at all times acting in good faith”.
8.1.5(a)(i)	Measurement and Testing	The examples provided are technology specific and not required.	<p>Delete the examples contained in clause 8.1.5(a)(i).</p> <p>In clause 8.1.5(b), delete the word “exhaustive” on the second line and insert the words “reasonable” in its place.</p>
9	Access Provider Forecasting	<p>NZCL contends that the Access Provider may reserve infrastructure for an actually available or well defined technology for a period of no more than 18 months.</p> <p>NZCL believes that the same principle of Antenna Minimisation previously expressed should be applied to the Access Provider before any additional infrastructure reservation is sought.</p> <p>Furthermore, the Access Provider should be required to disclose all such reservations, when made, by way of a record in the Common Format Site Database. It should also not be possible for an Access Provider to make a space reservation subsequent to receiving co-location application from an Access Seeker.</p> <p>Lastly, any Access Provider’s space reservation should be able to be challenged by any Access Seeker and if necessary subject to dispute resolution procedure.</p>	<p>In clause 9.3, delete reference to “5 years” and insert “18 months”.</p> <p>At the end of clause 9.4, insert the following sentence: <i>“For the avoidance of doubt, the Access Provider shall not be entitled to rely on any Access Provider’s Forecast to restrict the Access Seeker from accessing any Relevant Facility after the date on which the Access Seeker makes the relevant application to use those particular Relevant Facilities”.</i></p> <p>Delete clause 9.7.</p>

10	Procedures for Interference Management in Mobile Co-location	In clause 10 the time frames should be reduced as, in the view of NZCL, they are excessively long.	<p>In relation to all time frames expressed in clause 10, other than those which are for only one working day, all time frames should be halved and rounded up to the next full Working Day.</p> <p>Delete clause 10.1.4 as it is a repetition of concepts discussed more fully elsewhere.</p> <p>At the end of clause 10.1.6, insert the words “within 10 Working Days of the Access Seeker solution proposal”.</p> <p>In clause 10.1.9(a), insert the words “, at all times acting in good faith,” after the word “agree” in the first line.</p> <p>In clause 10.1.9(b), insert the words “, acting in good faith” after the word “Access Provider” on the first line.</p> <p>In the second line of clause 10.1.10, insert the words “in good faith” after the word “discussed”.</p> <p>In clause 10.1.13(a) and (b), insert the words “at all times acting in good faith” after the word “agree” on the first line.</p> <p>Delete clause 10.3.25. The dispute resolution clauses should deal with this issue.</p> <p>In clause 10.4.3, insert the words “, both parties acting in good faith” after the word “agree” in the second line.</p> <p>In clause 10.4.16, insert the words “acting reasonably” after the word “satisfy” on the first line.</p> <p>At the end of clause 10.4.16, insert the words “at all times acting reasonably”.</p> <p>In clause 10.4.19, insert the words “at all times acting reasonably” at the end.</p> <p>In clause 10.4.21, delete all words after the words “up to and including”.</p> <p>In clause 10.4.24, delete all words after the words “up to and</p>
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			including”. In clause 10.4.27, delete all words after the words “up to and including”. In clause 10.4.30, delete all words after the words “up to and including”. Delete clause 10.4.35. This will be subject to any dispute resolution between the parties.
11	Protocol for Ongoing Interference Management	In NZCL’s view, clause 11 is not required and any issues arising can be dealt with pursuant to the provisions of the Radiocommunications Act.	Delete clause 11.
13	Licensing	NZCL believes that this clause is not required as this matter is dealt with as a matter of law.	Delete clause 13.

5.11 Implementation Plan

Clause No.	Clause Title	Comments	Proposed Amendments
		<p>Having reviewed the Implementation Plan, NZCL is of the view that it has limited or no value. When NZCL raised the prospect of a soft launch, or trial agreement, in the context of the TCF workshops, it did so on the understanding that same would occur on and from 28 April 2008 to test the terms of the STP as proposed by Vodafone, and to enable Sites to be acquired by NZCL on an urgent basis between April and October 2008. It is now a matter of public record that Telecom and Vodafone refused to entertain this idea.</p> <p>For there now to be the concept of a soft launch that does not commence until after the Standard Terms Determination is determined (i.e. in or about October 2008) and which further limits the ability of NZCL to obtain whatever benefit it may obtain under the STD is unacceptable. The terms of the STD must be available immediately upon its determination in full. If anything, our proposals in relation to the Rapid Multi Access Period indicated our wish that not only are all the benefits of the STD available immediately, but a 24 month period of heightened activity should occur immediately.</p>	Delete the Implementation Plan.

APPENDIX 1

PROPOSED NEW SCHEDULE 8

This Schedule has been prepared by NZCL operational staff and provides an indication of the concepts which would be required to facilitate Rapid Multi Access in an initial network build period.

APPENDIX 2

RESPONSE IN RELATION TO OUTCOME OF TELECOMMUNICATIONS CARRIERS FORUM PROCESS

APPENDIX 3

RESPONSE IN RELATION TO VODAFONE'S COVERING SUBMISSIONS OF 28 APRIL 2008

APPENDIX 4

Photographs