



COMMERCE COMMISSION

**CLARIFICATION OF THE STANDARD TERMS DETERMINATION FOR CO-LOCATION ON CELLULAR MOBILE TRANSMISSION SITES****DECISION NO. XXX**

Clarification under section 58 of the Telecommunications Act 2001 (the 'Act') of Decision 661

**The Commission:**

Paula Rebstock

**Summary of Application and Initiation:**

In response to amendments to Decision 661 proposed by Telecom, Vodafone, NZ Communications and Woosh, the Commission clarifies, on its own initiative, that Decision in accordance with section 58 of the Act.

**Date of clarification:**

XXXX

## Background

1. The Commerce Commission (the '**Commission**') is a body corporate established under the Commerce Act 1986 having its head office at Wellington. The Commission has various functions and powers under the Telecommunications Act 2001 (the '**Act**').
2. On 11 December 2009, the Commission issued a standard terms determination ('**STD**') under section 30M of the Act in respect of the specified service of co-location on cellular mobile transmission sites ('**the Mobile Co-location Service**').
3. On 17 February 2009, Telecom, Vodafone, NZ Communications and Woosh ('**the Parties**') wrote to the Commission proposing a number of amendments to the Mobile Co-location STD.<sup>1</sup> The Parties consider that these amendments are necessary to prevent building and rooftop sites which are not practically capable of enabling co-location from being included in each access provider's Common Format Site Database.
4. The Commission considers that the appropriate mechanism for addressing the issues raised by the proposed amendments is a clarification under section 58 of the Act. Therefore, on its own initiative, the Commission amends Decision 661 in accordance with section 58 of the Act.
5. On 10 March 2009 the Commission invited submissions from interested parties, including the Telecommunications Carriers' Forum ('**TCF**'), on the draft clarification of the Mobile Co-location STD.
6. On XX XXXX 2009, the Commission received [details of submissions to be inserted].

## Jurisdiction

7. Under section 58 of the Act the Commission may amend a determination for the purpose of making a clarification if:
  - at any time the Commission, on its own initiative or on the application of any person, considers that a determination requires clarification; and
  - no appeal is pending in respect of the determination.
8. Under section 19(c) of the Act, the Commission is required to make a decision that best gives, or is likely to best give, effect to the purpose set out in section 18 of the Act.

## Proposed Amendments

9. The amendments proposed by the Parties are as follows:

### General Terms

- **Clause 1.1**, definition of "Mast" should be amended as follows:

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<sup>1</sup> A copy of this letter is available on the Commission's website at:

<http://www.comcom.govt.nz/IndustryRegulation/Telecommunications/StandardTermsDeterminations/MobileCoLocationServiceStandardTermsDet/DecisionsList.aspx>.

“means any tower, pole, mast or other similar structure...and that is the subject of a Relevant Occupation by the Access Provider. For the avoidance of doubt, a Mast may include a Rooftop Site, but shall not include any other building, or part of a building.”

- **Clause 1.1**, add a new definition of “Rooftop Site”:  
“means a building or the rooftop of a building which in either case is subject, in its entirety, to a right of Relevant Occupation by the Access Provider.”

### Implementation Plan

- **Clause 1.8**, remove definition of “Rooftop Site” but leave all other wording as it is currently drafted.

### Analysis

10. The Commission has considered the amendments proposed by the Parties, [the subsequent submission received from XXX], the wording of the relevant standard terms determination, and the purpose set out in section 18 of the Act. The Commission has also considered whether any consequential changes need to be made as a result of the proposed amendments.

11. In the STD, the Commission accepted the principle that specific site types which are not likely to be suitable for the Mobile Co-location Service should be excluded from each access provider’s Common Format Site Database. This is reflected in clause 30.1.1 of the Mobile Co-location Operations Manual, which states that:

The Access Provider will maintain a database (in the form of a Microsoft Excel spreadsheet) containing information on all of the Access Provider’s Relevant Facilities *excluding only those specific types of Relevant Facilities that are listed in clause 30.3.2 that are deemed to not be reasonably and/or practicably capable of supporting the Mobile Co-location Service* (the **Common Format Site Database**).

12. The Commission notes the view expressed by the Parties that the current wording of the STD will result in a large number of sites being included in an access provider’s Common Format Site Database that are not likely to be practicably capable of enabling co-location because of the limited size of any Relevant Occupation. The Commission agrees that clarification of the Mobile Co-location STD is required to prevent rooftop sites that are not practically capable of facilitating co-location from being included in each access provider’s Common Format Site Database, and considers that such an exclusion would be consistent with, and clarify the effect of, the principle outlined in paragraph 11 above. However, for the reasons set out below, the Commission does not support the specific amendments proposed by the Parties.

13. Specifically, rather than simply excluding buildings and rooftops that are not capable of supporting the service from the Common Format Site Database, the Parties have proposed a definition of “Mast” that includes Rooftop Sites (i.e. buildings or rooftops which in either case are subject, in their entirety, to a right of Relevant Occupation by the access provider), but excludes “any other building, or part of a building”. Therefore, under this proposal, any building or rooftop that is used for the transmission or reception of telecommunications via a cellular mobile telephone network, but is *not* subject, in its entirety, to a right of Relevant Occupation by the access provider, would no longer be regarded as a Relevant Facility.

14. The Commission considers that the proposed amendment to the definition of Mast is inconsistent with the principle outlined in paragraph 11 above, and the treatment of other Relevant Facilities that are not capable of supporting the service (such as lamp posts). The Commission considers that the STD recognises that although an access provider's right to occupy or possess a building or rooftop site may be limited, this in itself does not prevent co-location from occurring in principle within the area of the Relevant Occupation. Accordingly, the Commission's view is that building and rooftop sites that are not likely to be practically capable of facilitating the Mobile Co-location Service are still Relevant Facilities in accordance with the Act (and the Mobile Co-location STD) and, as such, should be captured by the definition of Mast.
15. The Commission notes that clause 30.3.2 of the Mobile Co-location Operations Manual includes a list of Relevant Facilities that are deemed not to be reasonably and/or practicably capable of supporting the Mobile Co-location service (and therefore, are to be excluded from each access provider's Common Format Site Database). The Commission considers that an amendment to this clause is the most appropriate way of excluding Rooftop Sites that are not capable of supporting the service.
16. The Commission clarifies the Mobile Co-location STD by making the amendments set out in the attached Schedule 1. This draft clarification addresses changes proposed by the Parties, as well as changes developed by the Commission on its own initiative. The Commission considers that such amendments will ensure cost-effective and efficient delivery of the Mobile Co-location Service, and are likely to best give effect to the purpose set out in section 18 of the Act.

### **Decision**

17. The Commission considers that the clauses of the Mobile Co-location STD set out in column 1 of the attached Schedule 1 (**'References'**) require clarification under section 58 of the Act. Further, it notes that no appeal is pending in respect of the determination.
18. The Commission clarifies the References by making the amendments identified in column 2 of the attached Schedule 1 (**'Amendments'**). The reasons for the Commission's clarifications are set out in this decision and in column 3 of the attached Schedule 1.
19. The Commission considers that the clarifications set out in Schedule 1 are likely to best give effect to the purpose set out in section 18 of the Act. In terms of section 18(2), the clarifications will promote efficient delivery of the Mobile Co-location Service.

## Schedule 1

Reference	Amendment	Reason
Changes to Mobile Co-location Operations Manual (Schedule 3 of STD)		
Appendix A - Glossary	<p><b>Add new definition:</b></p> <p>Rooftop Site means a Relevant Facility where the Mast is:</p> <ul style="list-style-type: none"> <li>(a) a building where the building is subject, in its entirety, to a right of Relevant Occupation by the Access Provider; or</li> <li>(b) the rooftop of a building where the rooftop is subject, in its entirety, to a right of Relevant Occupation by the Access Provider.</li> </ul>	This replaces the previous definition of "Rooftop Site" contained in the Implementation Plan, and limits Rooftop Sites to those buildings or rooftops where the Access Provider has a right of Relevant Occupation over the entire area.
Clause 30.3.2	<p><b>Delete:</b></p> <p>30.3.2 For the purposes of clause 30.1.1, the following types of Relevant Facilities shall be deemed not to be reasonably and/or practicably capable of supporting the Mobile Co-location Service:</p> <ul style="list-style-type: none"> <li>(a) structures commonly referred to as "roadside" or "lamppost" poles (generally located within road reserves);</li> <li>(b) signs; and</li> <li>(c) artificial trees.</li> </ul> <p><b>Replace with:</b></p> <p>30.3.2 For the purposes of clause 30.1.1, the following types of Relevant Facilities shall be deemed not to be reasonably and/or practicably capable of supporting the Mobile Co-location Service:</p> <ul style="list-style-type: none"> <li>(a) structures commonly referred to as "roadside" or "lamppost" poles (generally located within road reserves);</li> <li>(b) signs;</li> <li>(c) artificial trees; and</li> <li>(d) any buildings, or rooftops of buildings which are not Rooftop Sites.</li> </ul>	This will ensure that buildings or rooftops of buildings which are not reasonably and/or practicably capable of supporting the Mobile Co-location Service are omitted from each Access Provider's Common Format Site Database.

Reference	Amendment	Reason
Clause 16.2.1	<b>Delete</b> the word “Site” in the first line and <b>replace with</b> “Relevant Facility”.	<p>Under the current drafting, the Access Provider obligations set out in clause 16.2.1 only apply where the Initial or Full site Application relates to a <u>Site</u> which is subject to a right of Relevant Occupation other than by way of ownership.</p> <p>The Commission considers that clarification of this clause is necessary to ensure that the obligations set out in clause 16.2.1 also apply where a <i>Mast</i> is subject to a right of Relevant Occupation other than by way of ownership. This is necessary to help facilitate co-location on Rooftop Sites (where landlord consent may be required).</p>
Changes to Mobile Co-location Implementation Plan		
Clause 1.8	Remove definition of “Rooftop Site”.	Definition of Rooftop Site now contained in the Mobile Co-location Operations Manual.