MOBILE CO-LOCATION CONFERENCE

9-10 OCTOBER 2008

---

9 OCTOBER 2008

CHAIR: All right, I'd now like to convene this session please. This is a popular event, we don't have enough chairs. All right, good afternoon everyone, I'd like to welcome you to the Commerce Commission's conference on mobile co-location standard terms determination. I'm Paula Rebstock, the Chair of the Commerce Commission, and I will be chairing this conference. Sitting here with me today are two other Commissioners dealing with this Determination, Gowan Pickering on my right and Anita Mazzoleni on my left. Commerce Commission staff and a radio communications expert will also be assisting us during the conference.

The Commission has released the draft Standard Terms Determination for the specified service of co-location on cellular mobile transmission sites. The draft sets out the Commission's preliminary views on the non-price terms for the mobile co-location service. Interested parties have had the opportunity to make submissions and cross-submissions. Those submissions are available on the Commission's website. Some of the parties who have made written submissions have chosen not to make further submissions or presentations either today or tomorrow.

I'd just like to make a few points on the procedures that we will follow throughout the course of the conference. The Commission has considered parties' submissions and cross-submissions on the draft STD. The conference is intended to focus on the elements where the Commission wants to deepen its understanding and to clarify the differences between parties. The conference has been organised around a series of topics or themes. The Commissioners will move through these topics and ask questions about them. I think you've been provided with a copy of some of the issues that we wish to address. Commission staff and our expert will also follow-up on some of these issues.

While the conference is focused on particular areas where we want to drill down, the fact that we may not refer to other issues in our questioning does not mean that we have reached a final view on any matter. Following the conference we will consider these proceedings along with other material that we have before us in making a final decision.

As with previous conferences we intend that there should be as little formality and technicality as possible. I'm sure you'll be gentle with me in particular on the technicality, but the conference is not meant to be adversarial and there will be no cross-examination by any parties. During each topic session we will expect the relevant representatives and experts of the parties to sit around the horseshoe table in front of us. Commissioners, Commission staff, and our expert will ask questions. We may, on some matters, direct the question to a specific person. On other occasions we may simply address a party in which case we will leave it open to that party and its representatives to decide who will answer the question. We do discourage cross-comment between experts and advisors. Any comments should be directed through the Chair.

The conference proceedings will be recorded. We do ask that you speak into the microphones when making your presentations and identify yourself at the beginning of each presentation. You need to speak clearly and slowly so we do not have problems taking the transcript. From time-to-time I will interrupt you if you're speaking too quickly. There will be a break for afternoon tea today. There will also be a lunch break from 12.30 to 1.30 tomorrow as well as breaks for morning and afternoon tea. The conference room will not be closed during the breaks and we will have a staff member here in case you want to leave papers behind. We have previously circulated the agenda which I assume all interested parties have.

Finally I just want to mention a few housekeeping arrangements. Tea and coffee is available throughout the day at the rear of the room and we just ask that you help yourself. In the event of an emergency, fire exits are located through the main entry doors and also the door to my right which is just here. Bathroom facilities are located out the door and to the right of the lifts. You will need an access card and they are on the back table by the entrance. We ask that you return those cards for the convenience of others.

Before I move on to the opening statements I'd like to ask if there are any questions from any participants on the conference procedure? **[No comments]** If not we will move to the formal agenda.

Before I turn to Vodafone who will present the first opening statement, I would like to take the opportunity to remind parties what the objectives are for this co-location conference. The Commission noted in its Schedule 3 investigation which was completed this time last year that despite co-location agreements having been in place for many years co-location has occurred in less than half a percent of available towers. That is about 7 out of an estimated 2,000 towers. One year on from that conference my understanding is that this number has not substantially changed.

In the Schedule 3 investigation the Commission considered that co-location had not occurred because incumbent operators had control over optimal co-location sites and incumbents had no or limited incentives to support co-location by competing networks. The Commission did not find that price for co-location was a barrier, but we did, however, indicate that should the situation change we would move quickly to reconsider designation on price.

The Commission did find that a lack of robust implementation plans, including the lack of targets and KPIs co-location agreements, meant that negligible co-location also been achieved. Our objective for this conference is to clarify issues, and that will lead to the completion of a robust co-location STD that will remedy these implementation issues. Based on what parties have indicated in their submissions we expect the STD to result in a significant number of actual co-locations occurring within the next 12 months and on into the future.

With that background, and I hope we are all very clear what the objective and the ultimate outcome is that we're here to discuss and to ensure happens, I will turn to Vodafone to make the first opening address. At the end of that opening comment the Commission may ask a few questions before we proceed on to Telecom. So I'll hand over to Vodafone please and invite you to introduce yourself and to start when you're ready.

OPENING STATEMENT BY VODAFONE

MR YORK: Thank you, Commission Chair, Commissioners, Commission staff, fellow industry participants and interested parties; my name's Richard York, I'm the Regulatory Manager at Vodafone New Zealand. Next to my me on the table I've got Ken Tunnicliffe, he's our Technology Director; on my left I have Justin Rae who's our Site Acquisition Manager; to his left is Juliet Jones, who's our Senior Corporate Counsel; and next to Juliet is Dr Arasaratnam Sathyendran who's our Spectrum Manager.

Thank you for the opportunity to provide an opening statement at today's conference. Clearly tomorrow we will be talking in a great deal of detail about a number of specific terms and conditions in the STD process. What I'd like to do is not so much talk about any of the detail of those terms and conditions at this point, but really make two high level overarching points that I think will help us when we go to consider the issues of detail tomorrow.

The first point I'd like to discuss is really to set out the context within which mobile co-location sits in terms of how it might be useful in terms of promoting competition in the mobile space in New Zealand, but also to indicate it is one of many measures that have been undertaken to do so, and to reflect perhaps on the progress of those other measures over the last year.

The reason I think it's important to do that is when we come tomorrow to consider whether particular terms and conditions are likely to promote competition to the long-term benefit of end-users, I think it's important that we recognise that there are a number of other measures that are in place that will be having that effect, and what we really need to be considering when we have a look at a particular term and condition, is the incremental benefit that particular term and condition will generate in terms of helping to promote competition for the long-term benefit of end-users, and to understand the broader context within which co-location operates is important for that function.

The second point I'll go on to talk about relates really just at a very high level to looking at, I suppose, a number of specific terms and conditions and just touching on the broader issue of whether or not we think some of the terms and conditions perhaps go a little bit too far and whether some of those terms and conditions are generating costs perhaps in terms of network performance degradation, perhaps in terms of increasing the amount of resources that parties have to devote to the process, and to question whether or not those additional costs are being outweighed by incremental benefits that are promoting competition for the long-term benefits of end-users.

So to go to the first point when we look at the context of mobile co-location; we tend to think that there are four main things that a network operator needs to provide mobile services. The first of these is that the network operator will need spectrum, it needs a frequency range over which it can transmit and receive signals between its network equipment and between customer equipment. And in that sense we've seen in the last year both Telecom and Vodafone selling management rights to spectrum to NZ Comms. And so in that sense a new entrant already has that very first key element, being the spectrum. And it's noteworthy that, at least in Vodafone's case, we have sold that spectrum management rights to NZ Comms at a

57% discount below the effective per megahertz price we're paying for that same spectrum. So the first of the four key elements is there in place that goes towards promoting competition in the market space.

The second key element is that a network operator will need a network of cells and will need to establish cell sites within that in order to transmit and receive signals over the spectrum range. And again in the last year we've seen a lot of work done by NZ Comms to commence rolling out its cell sites. When we were coming out from our offices yesterday out to the airport in Auckland we saw many of the cell sites that NZ Comms are starting to construct and we congratulate you on that and look forward to those continuing to come.

The third key element that a network operator needs, or might need if it wants to get itself going in the market, is a national roaming agreement. That is where it doesn't have its own cell sites at this point and doesn't have its own network coverage. It can roam on to another operator's network so that its consumers can send and receive voice and SMS services and other mobile services.

And again in the last year another great development's happened on that front where NZ Comms and Vodafone have been able to sign a commercial national roaming agreement. Indeed, in the last week we've seen, following a concern raised by NZ Comms with the Minister, Vodafone offer to change the charging structure for national roaming services it provides to it from a minute plus second regime to a second plus second regime. Whilst we don't necessarily agree with NZ Comms' estimations on this point, it itself would tend to suggest that leads to a reduction in the roaming price it faces of about a third; so it's good news on that front too.

And fourthly the other - I suppose the final key element that a network operator would need is an interconnection agreement; that is an ability to send and receive voice and SMS services between its network and those of other operators. And you may have seen over the weekend that the report's out indicating that Vodafone and NZ Comms have signed an interconnect agreement.

Due to the commercial and confidence nature of that agreement I can't tell you too much more about it, but I can indicate that we're more than happy, if NZ Comms is happy to, for it to reveal the prices contained in that interconnection agreement. It's our belief, and we've provided that agreement to the Commission to have a look at that, the agreement is a good one and that it should provide NZ Comms with the interconnection agreement it might need to be able to launch its services.

So why do we raise all of these issues, why do I set all of that out? I guess the main reason I do that is to indicate that there is much good work that has occurred in the last year, a lot of it with the help of the Commission, with the Minister and between the parties to try to help promote competition. And I think we are in a much better state now than we were at the last conference a year ago. In addition to that, new entrants, if they wanted to enter the market, have mobile number portability available to them.

So where does co-location fit into this? What additional benefit might we expect to get from co-location in the market? I guess the key point is that co-location, I guess, helps with that second key element, it helps with the parties' ability to roll-out its own network. And certainly there are benefits there to co-location for both a new entrant and for existing operators; it enables both parties to lower their costs of production by sharing some of their costs.

But the key point I guess we'd like to make, is that there are many other factors that have been going on in the background that have been driving the promotion of competition in the last year. And in that context we must be very careful that when we consider the extent to which co-location will incrementally promote competition and the extent to which a particular term in the STD might promote competition, we must be thinking of the extent to which it will incrementally do so. It would be a mistake when we consider such terms to attribute all the benefits that we might get from competition to what's going on with co-location, or to a particular term in the STD.

With that context in mind I guess what we would be indicating is that yes, there are benefits that arise from co-location, but we have to be mindful that they're not perhaps as significant as all the benefits that have gone from what has occurred in the last year or so.

When we look in the next day or so at particular terms and conditions, one of the key observations we have in the draft STD is that many of the terms and conditions that are in there come with a cost. They might come with a cost of increased performance degradation, they might come with a cost of increased resources for access providers, they might come with increased resources to meet tight timeframes and other conditions in the STD. And I guess the key question we would have is whether the particular terms and conditions that we're looking at are giving rise to incremental benefits that outweigh those costs.

So let's perhaps have a look at a few of the key issues that we will look at tomorrow. The first of them is the issue of interference. I guess the question we would ask on that front is, is it worth it to set the maximum allowable level of performance degradation at a 1 dB loss in the link budget compared to a 0.5 dB loss in the link budget? How much is it worth it to have that incremental addition in the link budget?

We've indicated in our submissions that when parties co-locate and where you have an increase in the performance degradation of 1 dB, it can give a rise to a number of undesirable effect for end-users. As compared to 0.5 dB, whilst a loss of 1 dB will mean that 1,400 consumers in rural areas may not be able to receive mobile services in and around their homes, the incremental increase from 0.5 to 1 dB will lead to a 2.7% further reduction in the maximum theoretical data rates that consumers can experience at the cell edge.

An increase in the performance degradation from 0.5 dB to 1 dB will lead to a further loss of potentially as many as 2,280 emergency calls per annum in rural areas. These are significant detrimental effects that can occur just by setting one particular term in the STD. The question we would ask is whether it is worth it, whether or not you are going to get a significant boost to competition and a significant benefit for consumers by raising the performance degradation measure from 0.5 to 1 dB.

We'd ask whether also it's particularly worth it when we now have a situation where no access seeker or access provider, with the exception of NZ Comms, now believes that the maximum allowable level of performance degradation should be any greater than 0.5 dB, and indeed there are some parties who believe it should be less.

The second issue, one of the second issues that we think is key in this is the issue of forecasting. Is it worth it to put at jeopardy an access provider's ability to use its network, as it may plan to do now, beyond two years from the commencement of the STD? Is it really worth it to place at risk the kind of network roll-outs that might be occurring post two years from now? Is it really worth it, given we estimate network lead times from initial conception to full deployment of a network can take typically around five years, and is it really necessary to place a two year restriction on an access provider's ability to use its own network as planned, when an access seeker could be enabled to use spare and idle capacity within the five year forecast window period as we submit could be made possible via some changes to the STD?

With regard to antenna minimisation, are we going to see a massive boost to competition by empowering an access seeker to force access providers to minimise the number of antenna they use on their network to make room for a potential access provider? Is this necessary when as far as we're aware no Regulator anywhere else in the world gives access seekers this kind of power? And is it worth it, given the cost to all parties involved, costs which we will be able to detail and evidence over the next day or so, and the reductions in network performance that antenna minimisation can create? It must always be remembered that if you force a party to minimise its antennas and use less antennas on its network there will be reductions in the performance of those antennas that it uses.

And is it necessary, given we estimate that as many as 309 of our masts are structurally capable of co-locating, can allow access without compromising our future forecast requirements and can provide for sufficient vertical separation to ensure performance degradation is no greater than 0.5 dB and that all of this can occur without the need for antenna minimisation? So do we need antenna minimisation? How many more sites is it going to enable us to co-locate on, and are there going to be benefits that come from that that outweigh the negative consequences that can occur from it? It's also worth noting that with antenna minimisation you still will be unlikely to avert the need for an access seeker to get RMA consents to co-locate on our sites, and it doesn't make issues around landlord lease arrangements go away in the vast majority of cases.

With regard to penalty regimes, is it appropriate within this context to have a perfect penalty regime, or performance penalty regime, that punishes an access provider who fails to meet individual service levels at a rate of 20% of the monthly charge when a rate of only 7% is set for similar service level faults for other STDs applying to fixed line services such as Telecom's UCLL and UBA STDs?

I struggle to understand why when you have the fixed line situation where you have one potential access provider of services, and you compare that to the mobile situation where we have two very strong access providers and a number of other access providers specified by the Commission, I struggle to understand why you need to have a performance penalty regime that punishes parties at three times the rate you punish the single access provider in the fixed line space. Is that necessary? What's going to be the consequence of it? What's going to be the consequence of that and some of the other arrangements in the STD that put pressure on the timeframes around which an access provider must provide access, that increase the SLAs above those set out in other STDs? Is doing that necessary and is it going to promote significantly greater competitive benefits for consumers?

Finally with regard to the soft launch period there's a similar issue. Here in the mobile co-location draft STD access providers will have a five day soft launch period. This is significantly less than those set for other STDs for fixed line services. In the first instance I think it's going to be very hard for an access provider to operate in that framework. It's not going to know what the STD is until the day it comes out and it's not going to know all the requirements that will be on it until the day it comes out. Yet the regime that is currently being considered would mean that within five days potentially of that regime coming out, your soft launch period is over and that you start to get penalised if you're not meeting the stringent performance level requirements in there.

The consequence of that is that parties in order to avoid the high penalties and in order to get the soft launch period happening - to, sorry, be in a position to move beyond the soft launch within a short timeframe, are going to have to incur probably significant resources. And all the access providers that you've specified will probably need to consider being in a position to have those resources available. And I wonder the extent to which doing that is going to materially lead to more co-locations happening quickly and provide significantly greater benefits for consumers.

So overall I think the main theme, I guess, that I think we need to have regard to when we look at the specific terms and conditions in the next day or so, is whether we are putting in place some terms and conditions that may generate or may be so, I suppose, stringent that they may generate significant costs, and whether or not imposing them is going to generate a benefit to outweigh them.

We certainly think that co-location can do a lot to help promote competition. We also think there is much in the draft STD that is good. Certainly the issues around the cumulative delay days regime are ones that we think are favourable. But again, in some places, perhaps a limited number of places, we are concerned that perhaps the draft STD has gone too far, and we look forward to discussing whether or not the benefits from certain conditions are going to be so sufficient as to outweigh the costs that they will generate. Thank you.

CHAIR: Thank you very much Mr York for those introductory comments. I will exercise the Chair's prerogative and ask a few questions before we proceed further. I was quite interested in your notion that what we need to consider here is that we have a range of tools, not just co-location, but to achieve certain outcomes, and what we need to ask ourselves is what marginal contribution will this make to the whole. And I really want to just test whether this is about a marginal contribution, because while I would generally agree with you you want to look at the whole and there are other components that matter, there's no question about it.

But when I see a pattern of, and you took us through the requirements and you told us how things had so significantly improved over the last 12 months and that's great, no question about it, it's great. But ultimately the test on whether those things have achieved what ultimately needs to be achieved is whether we see greater competition in the marketplace and everything that that brings with it. Certainly increased co-location has to be some component of it. But despite all the progress that you mentioned I can't see that when we actually try to measure the outcome of it in terms of what it is we're trying to achieve that we've gotten anything. In fact, in terms of measuring outcomes you can't measure any improved outcomes despite all that effort over the last 12 months.

So when I think about what might happen going forward, and I don't hear you disputing the fact that we are likely to see more co-location and probably more competition, it doesn't suggest to me that the changes that we're currently considering are going to make a marginal contribution, it seems to suggest they're going to make a step change contribution. And while I don't know if that's material to the discussion we have to have tomorrow, I think we shouldn't fool ourselves about the situation we find ourselves in despite all the efforts that you've all made, when you look at the actual outcome of it you couldn't materially see any change over 12 months ago.

So is this really about considering the marginal contribution that this will make? That's my question to you.

MR YORK: Yeah, I would suggest it is, with due respect. I think a couple of points I would raise. One is the outcomes that we see in the market are to some extent dependent on the regulatory settings but not totally. So I think the main thing I guess you're concerned about is you're not perhaps seeing the third entrant in the market straight away, and perhaps you're concerned that maybe you're not seeing, you know, rapidly changing market outcomes in that period. But I guess there's only so much that the regulatory settings and parties such as ourselves can do to help ensure a third entrant can come in. We've sold the spectrum to NZ Comms, we've signed a roaming agreement with them, we've signed an interconnection agreement with them, and we have also signed a heads of agreement around co-location that enables them to co-locate on up to 116 sites.

Now even if it doesn't co-locate - even if it isn't able to co-locate today, there are still all those other features in place that should enable it to enter. If it had rolled out sites of its own sufficient to launch its network it would be able to use the roaming agreement to cover those areas where it didn't have its network. It has the spectrum to do so, it has the interconnection agreement that enables them to do so. It's up to it, I guess eventually, to decide when it will come in. There's only so much that we can do and that you can do. You can lead a horse to water but you can't make it drink.

So I think in that context there is enough there to suggest the conditions are in place so that a new entrant could come along. Co-location may help that entrant to lower some of its costs of entering, but it is not the silver bullet that will determine whether or not it can come in or not. In any case, as I've said, we have indeed in the last week or so seen indications, that we have signed a heads of agreement with NZ Comms that will enable it to co-locate on up to 116 sites.

I guess the final point I would make is that we're not dealing here with short-term change and behaviour issues, we're dealing with structural change issues, and changing the structure of an industry through regulatory processes, that isn't something that will yield results overnight. I think it is fair to say, though, that we're in a much better position now in terms of providing a pathway for NZ Comms to come in, or a third entrant to come in, than we were a year ago. So I think significant progress is being made.

CHAIR: I'm not sure that you've actually answered the question about marginal as opposed to step change, but I suspect we can come back to it if we need to. But I -

MR YORK: I suppose my point on the marginal issue would be there are all those other things in place that should enable it to come in, co-location of itself shouldn't be the tipping point, I think at this stage, to determine whether it comes in or not.

CHAIR: So you wouldn't agree that possibly your ability to reach an agreement on interconnection last week, you might have actually reached that point because you were to a tipping point on co-location that's being determined before us right now?

MR YORK: No.

CHAIR: You don't think maybe that was kind of critical to getting you to see some incentive to reach an agreement?

MR YORK: No, I think they're unrelated issues.

CHAIR: Okay. I'll just turn to my colleagues and see if they want to ask any questions at this point, thank you very much.

MR PICKERING: Richard, you made a lot of play on the cost, you said nothing about the benefit. Do you believe that these sort of, what you would call restrictions, could lead to significant innovation and change? Because often times given a restriction you find a way around it.

MR YORK: What restriction, are you meaning in terms of -

MR PICKERING: Well, you would claim either in terms of cost or whatever that the interference forecasting, the terms laid out today would cause all sorts of cost.

MR YORK: Yeah.

MR PICKERING: I put it to you there's a possibility that it also might lead to some benefits, but you made no comment about that at all.

MR YORK: So you're thinking interference between network signals can be of benefit?

MR PICKERING: Well in the sense that given that there is some "restriction", people find ways of improving the situation.

MR YORK: Yeah. Any innovation that might come to improve that situation, if it were possible - and I'm probably not the right person to ask in terms of whether it is - still of itself would come at cost.

MR PICKERING: True, but -

MR YORK: And the question I think you have to go back to is to ask yourself firstly, will co-location of itself generate significant benefits to outweigh those detriments; and will the additional co-locates that occur as a result of going from 0.5 to 1 dB, will that - I don't know how many they might be, would they be 20 or 30 co-locates - is that of itself going to be something that's going to drive significant price reductions in the market that generates benefits for consumers to overcome the reductions in network coverage area, to overcome the detriment from losses in emergency services? I think that's the question that has to be answered.

To some extent, you know, we've provided evidence on the costs and to this point they haven't been contested as far as I'm aware, but they may well be over the next day or so. But I think it's incumbent on good regulatory practise that if you're going to impose terms and conditions that will give rise to those costs and you're not challenging that those costs exist, that you should be sure that that particular term, doing it that way, will give rise to incremental benefits to outweigh those costs.

MR PICKERING: There are a lot of other questions in there, but we'll leave that for tomorrow.

CHAIR: Now I'll ask Commissioner Mazzoleni if she has any questions for you.

MS MAZZOLENI: Yeah, just one sort of general question and you touched on it before in terms of your agreement on the 116 sites; but firstly thank you for reminding us of the issues in relation to the long-term benefits to end-users from co-location generally, which I think were pretty well canvassed in the Schedule 3 investigation. And if I just take us back to the Schedule 3 investigation for a moment, I think we concluded there that there were about 2,000 sites between Telecom and Vodafone in New Zealand, and I guess roughly you'd probably have around half each, I'm not sure of that, but roughly around half.

Now at that time Vodafone said that approximately half of your sites would be available for co-location, and of that half another half would not need any structural alteration. So just roughly that would be around about 250 sites by my off the top of my head calculations, and that was a year ago.

MR YORK: Yeah.

MS MAZZOLENI: So, you know, 250 sites available for co-location. You've announced recently that you've entered into an agreement with NZ Comms for up to around 116 sites. So I'm just sort of interested when that's likely to happen and whether that's the ceiling or other co-locations are to be expected.

MR YORK: Yeah, I think as I indicated in the opening address there, we believe that we have approximately 309 sites that are structurally capable of co-locating in a way that protects our future forecast requirements for the next five years, and that doesn't require antenna minimisation, and that are of sufficient height that you can have the antennas vertically separated a sufficient distance apart to ensure you won't get more than 0.5 dB. Now they're 309 sites that we think can meet those characteristics, and the 116 that I have referred to.

Now whether or not parties will seek to make applications to co-locate on some of those additional sites is, I guess, a matter for them to decide, and it's really how the market plays out in terms of whether or not you will see co-location on those sites. All I can say is that at this point we haven't had applications put forward to us for all of those 309 sites, but certainly once the STD process - or even now today parties are able to come and make applications to us for those sites.

MS MAZZOLENI: So the 116 is not a ceiling then?

MR YORK: No certainly not, no, they're just, I guess - you'd have to ask NZ Comms why those particular 116 have been targeted.

MS MAZZOLENI: I understand. And there's no timeframes within the agreement?

MR YORK: Yeah, co-location is something that doesn't quite happen overnight. There are stages you have to go through. There can be issues around landlord consent issues, there can be issues around, if I'm right in saying, RMA consent issues, yeah, and all of those still need to be sorted out even when a party comes to co-locate on your network, and they're things we ourselves don't have control over. So we can make available a site for a party to co-locate with us, but they still have to go through other processes with independent third parties before they'd be able to finally get up. Those things don't happen overnight, they can typically take six to nine months to happen.

MS MAZZOLENI: I guess, just as the Chair mentioned in the address, that, you know, we've seen a number of agreements probably over the last six years in relation to co-location, and one of the things specifically that the Schedule 3 investigation was intending to address through this STD process was to ensure that further agreements did manifest in actual co-locations by having targets and timeframes in them. So I was interested to know in terms of the agreement that we have before us whether -

MR YORK: Like I say, I think it's fair to say you can't co-locate overnight, we can only co-locate when parties make applications, I guess, to us, or come to us to try and co-locate. Is there anything else you thought you wanted to add?

MR RAE: I can answer all those questions. Justin Rae from Vodafone. I worked negotiating the heads of agreement with NZ Comms. The sites were actually selected by NZ Comms. They'd probably be referred to as low hanging fruit. There's quite a lot of due diligence that went on with them, and it's fair to say that in general they all have sort of favourable attributes towards co-location, in that they're typically quite large sites, they have a high degree of structural capacity, NZ Communications conducted due diligence on all the lease agreements, and generally there's rights within the leases to permit co-location. So an awful lot of work went into choosing the sites that went into that agreement.

And the agreement does two things, it's actually a rapid access framework because these sites have some very good qualities towards co-location. We're able to work out a streamlined process to get to the end, which is actually building them. So there are target timeframes in the agreement, and I'm pleased to say that so far the initial phases we've met all of those timeframes. We've completed what we call site data packs, detailed information on all the sites. We've written to the landowners of each of those sites introducing them to co-location and to NZ Communications, and at this stage all of the sites are in the design phase. That also has a target timeframe.

And the other part of the agreement is that's also a framework for the future, it includes some provisions about negotiating towards another agreement called a PPA, a project and pricing agreement I think it's referred to, and that's also got a target timeframe in that document to work towards. So of the 30 odd sites that Richard mentioned that have these basic qualities that are conducive towards co-location, these are the first tranche of them.

MS MAZZOLENI: Thank you.

CHAIR: All right, I'll just check with Vodafone if there's any further opening remarks you want to make.

MR YORK: That's it from me.

CHAIR: Thank you very much for the presentation and for taking questions. I'll turn now to Telecom please and invite you to make your opening comments.

OPENING STATEMENT BY TELECOM

MR WESLEY-SMITH: Good afternoon Commissioner, my name's John Wesley-Smith, I'm head of Regulatory Affairs at Telecom. Commission staff, industry colleagues, what I wanted to do today was just talk you through a bit of the progress that we've made with co-location in the last few months, touch on our key positions on matters that the Commission has set down for discussion in the conference, and just at the end go through some pretty pictures of our network site architecture just to give it a bit of an illustration of the problems that we're trying to solve at the conference today.

So six months ago we instituted a bottom-up review of all of our co-location operational processes and policies. That review showed that there were a number of areas where we could make improvements in our processes and in our customer service to be frank. As a result of that review we have created an entirely new team in our Chorus division to manage co-location applications. Telecom Wholesale has instituted a new approach to the management of the co-location service and of co-location customers. That has included workshops with our largest co-location access seekers, consulting on our key co-location policies, and as a result of that we have issued an RF radio frequency specifications guidelines document; and through the course of that review we have shifted in our commercial policies on antenna minimisation. We have also agreed and committed to live field testing to check those RF specifications and antenna separation policies with any of our access seekers that want to take that offer up.

And incumbent in all of that is a commitment to investing significant capex in supporting growing our co-location revenues. So one of the concrete examples, or the outputs of all of this is our first common site format database. We have the first version of that live on our website which covers a number but not all of our sites, and we are adding to that. So all of this is ahead of the STD.

And I guess one of the things that is very apparent to us, and I guess we'll touch on at a number of stages in the conference, is just how collaborative and iterative mobile co-location processes are. So when we compare them to, for example, our key fixed line regulated products UCLL or UBA, UCLL and UBA are typically homogenous outputs and the key is designing scalable automated processes which can provision and spit out the outputs in as quick a period of time as possible, often days.

Comparing that to mobile co-location, it is not unusual for a mobile co-location application to take between 6 and 12 months to progress between the access seeker and the access provider and the landlord and the local district authority. For every mobile co-location application there is site-specific structural and technical analysis that needs to be completed. The access seeker and the access provider have to agree on the technical specifications that optimise each of their positions.

So a common theme that you will hear from Telecom throughout the conference is that mobile co-location is complex, it does require close collaboration; we think it's entirely achievable with sensible commercial bounds. And the question for us as an industry is how much complexity can we accept? How much complexity is it worthwhile adding to the process before the costs start exceeding the marginal benefits that Richard's been talking about.

So in terms of concrete outputs in the last three months we have received over 46 co-location applications from eight different parties. We've approved 44 co-locations, 12 of those subject to mast replacement, and we have declined four. We have also approved six co-location applications to the build stage which are now awaiting access seeker action. And to put that in perspective, in that last three month period we have processed and accepted more applications than in the entire

12 month period beforehand.

We're also starting to explore co-location opportunities ourselves. We've made public commitments to exploring greenfield site sharing. In the past month we've initiated discussions with one other party on five co-locations of joint builds, and we continue to co-site in large numbers. Co-siting is slightly different to co-location. At a very layman's level co-siting is putting your site on the same building structure as another party's site.

So what we think this means, what Chorus and Telecom Wholesale think it means, is they have both strong commercial incentives to get as much co-location revenue as they can within sensible bounds, and we now have the proper internal structures and processes to facilitate that.

So from our perspective, our focus at this conference will be on achieving workable and sustainable co-location rules. Now what does that mean? On key issues we think workable and sustainable for service levels, it means penalties and service levels which incent the right behaviours by the access provider and the access seeker but which don't go so far as to simply add cost to the product. We had this conversation in the UCLL and the UBA STDs and there is a line that needs to be drawn there. We think the UCLL and UBA STDs got that balance about right. We think it might have tipped too far into adding cost in the draft STD mobile co-location.

For greenfields sites we support a voluntary greenfields process. We think that it is probably best facilitated through the TCF.

For interference we do support 0.5 dBs of interference. We think 1 dB, the costs in terms of end user impacts are too high to be supportable. And I think Vodafone and other parties and ourselves will point to the ITU guidelines which also put interference at around that level.

Forecasting, we've said from the start we think five years is best practise. That is consistent with the use it or lose it rules that the MED applies in spectrum allocations, and it's also consistent with our commercial practises. So to give you an example of that, we acquired our first site for a potential WCDMA roll-out in

2004. That roll-out is underway now and it will be launched early next year.

We are already now undertaking planning for what sites we may need to acquire for the next evolution in mobile network technologies, LTE being the most common long-term evolution, which is likely three or four years out.

On temporary use of space which has been reserved, we have significant workability concerns with that entire concept. The concept in theory is a good one, but we think in practice reversing temporary use it will be almost impossible. What I mean by that is when another party gets on one of our cell sites, which is serving 10% or a third of a suburb, and builds end-users which are relying on that cell site for service, and increasingly they will be using mobile communications as their primary form of communications; from a pragmatic PR and from a legal perspective we think it's almost impossible at that stage to forcibly remove the access seeker.

For site alterations, and site alterations is perhaps the best illustration of where we're trying to draw the line between when we're getting into marginal benefits; we support mast replacement and mast extension as a form of site alteration to enable co-location. We think those are the best long-term solutions. They minimise end user impacts, they enable all parties concerned to incorporate future forecast requirements, and they have minimal interference issues.

Antenna minimisation, we have a commercial policy of supporting antenna minimisation of one form, or cross pole in urban areas. Beyond that, though, we do not support antenna minimisation. Very simply we are concerned that blanket rules around antenna minimisation just lay a complexity and cost and fail to solve what is a long-term issue.

So if I point you to slide 3 in the slide pack that we've distributed and as a way of illustrating what types of sites we are talking about when we discuss site alterations. Now the numbers on slide 3 are approximate, don't quote me on them, but we have in the order of 8 or 900 sites, of which only a percentage will realistically be co-location capable.

So turning to the next slide, the first slide with pretty pictures on it, sites that are building mounts, bridge mounts or mounts on existing structures, it's of the order of 20% of our site total. These are reasonably common in urban areas, typically leased or licensed from a landlord, and they are not co-location capable, they are co-site capable. So it is reasonably common; I think we have in the order of 100 co-sites for one party to put antenna on the same structure as another, and often times the existence of one party on a building or one party who has an agreement with the landlord will facilitate a second agreement, because the landlord has experience with co-location.

Turning over the page to the second set of sites which we've called special sites. These are sites to which we've applied unique designs, usually as a result of specific community or RMA constraints. These are things like clock towers, lighting poles, indoor or shielded antennas where we've put a chimney or a similar facade on a building to minimise the visual impact. And again these are typically not co-location capable. Theoretically you could do a mast replacement here, but the sites have been designed with the absolute minimum specifications necessary for RMA or community reasons. And similarly, the chances of getting a co-locatable mast approved by the community and by the authorities in these areas is typically low.

Moving into our masts and poles, we have a slightly different network architecture to Vodafone. One of the reasons for that is we tend to use DMR as a backhaul technology less than Vodafone does. So what that means is we have less structurally capable masts as a general rule than Vodafone will. And in particular these slim line masts and poles, again we have moved progressively to this type of structure to minimise for visual impact. What that means, though, is typically they will require a mast replacement in order to be co-location capable. In rare occasions where we've only got one set of antenna in the cluster frame up the top you could get one more set of antenna on there, but that is a small minority of these sites.

So finally we get to the sites that we're really talking about here today, which in Telecom site hierarchy these are called standard types 1 and 2 or lattice towers. These are the far bigger structurally capable towers. We have approximately 300 1H, 2H - H stands for heavy, L stands for L - 2L and lattice towers which are the sites in our network which are most readily co-location capable, approximately 300 of those. And we have 88 what we call standard 1 light masts, which in certain circumstances will be capable of co-location but in others will require a mast replacement. That's because, as the phrase light implies, they are less structurally capable than the heavy ones, so adding on more antenna or structures on to the masts has structural implications.

So it's these types of sites that we are trying to determine the form of co-locations that should be available. And I guess if you turn the page, which is a picture of an actual co-location in our network, I think this is with Woosh; as Vodafone have already discussed we think there are a good number of these sites where access seekers can co-locate on the mast below the existing head frame. That type of co-location has minimal impacts on end-users, on the access provider and on any other co-locater that might already be on the mast.

Antenna minimisation is really about asking ourselves just how perfect a position do we want the access seeker to get on these structures. And there is a real question, given the complexity that antenna minimisation adds to co-location, where you're starting to see end user impacts such as cell site shrinkage and reduced data capabilities, just how much benefit are we going to see from antenna minimisation; because I can tell you there are very real costs and complexities that we see as an access provider and a provider of retail services.

So that's the scope of the problem, if you like; that's what we're trying to solve for. And we are absolutely serious about making co-location work. We've invested capex in it now and we need to see revenue from that investment. We've put what we think are sensible commercial bounds on our service. But even with the greatest will in the world, as an industry we have to be up-front about the fact that co-location is not a silver bullet, it is complex, and the more complex forms of it have real costs and implications for coverage and service capabilities.

We think the bounds that we've put on our commercial service strike that balance right, and we have very real concerns about antenna minimisations which, in effect, are offering a short-term fix to what are really long-term issues. We have deployed and decommissioned TDMA antenna on our masts. We've deployed CDMA antenna. We are deploying GSM and WCDMA at 2,100 antenna. We are now considering deploying 850 WCDMA antenna.

So as you start to add increased complexity and cram on more and more antenna on to a single mast that just wasn't designed for it, you're just pushing out the issues that we're all going to face when the next set of antenna or technologies have to be deployed. Thank you.

CHAIR: Thank you very much for that introduction, and again we might ask you a few questions if we can; and I will start. You've talked to us a little bit about what's happened in the last three months, it seems to have significantly stepped up, at least in terms of approvals. I take it nothing is actually being co-located yet out of the 44 that you mentioned?

MR WESLEY-SMITH: Yes, we have six that are good to go, so to speak. We had hoped that the first of those would have started work in July, but the access seeker has had issues which have delayed that build. But we are hopeful, we are waiting to get some runs on the board.

CHAIR: All right. What I'm interested in is you've mentioned that you've got capex commitment to grow the co-location sites, and I wonder if you could give us a sense of what you're projecting over the next 12 to 24 months; not in terms of the level of capex but in terms of you did 44 in three months, what sort of profile are you looking at going forward?

MR WESLEY-SMITH: It is difficult to answer it. We wrote to the Minister a month ago and said that we hoped to have of the order of 50, by the end of the year, applications processed. That was based on a forecast that we had had from access seekers at that time. Since then the forecast demand has not shown itself as we would have expected and I think we are now expecting to have lower numbers than that. Look that's a real concern for us. A major concern for Telecom is that we build the capability for what is a really resource intensive complex service, and we've already started making those investments, and we just don't see the volumes to support it.

MR PICKERING: Does the 50 include the 46 that you've already got, or is this 50 additional?

MR WESLEY-SMITH: We were forecasting 20 at that stage for September, so it included 20 in September which are included in the current numbers and another 30.

MR PICKERING: Okay.

CHAIR: All right, I'll just turn to Commissioner Pickering and see if he has any further questions at this time.

MR PICKERING: Just a general question. You talk about how complex the process is involved in mobile versus line; against best practise overseas are you up to speed or not?

MR WESLEY-SMITH: It's not a question I know the answer to. Telecom has always struggled to get good international information. I think we have seen and studied a number of the Australian documents that are published, the ACCC codes and the like, but we have little insight into the real world practise. And if I tried to pretend to know how we stack up I'm sure my Australian colleagues across the table will catch me out. So I'm sorry, but I don't have a knowledgeable answer to that.

MR PICKERING: Do you have to invent from the start these processes or are you using well tried and proven practises?

MS HASKILL: Perhaps I could talk to that. My name is Tonia Haskill, I'm the Manager of Co-location, been in this job for three months so the figures are produced by my team who are sitting at the rear here. We are basing our existing practise on a number of things; one is the mobile co-location code that the industry agreed was it earlier this year, last year. We are basing it on where the STD is likely to take us. We are also basing it on what other practises contain in fixed line co-location for UCLL. So we understand that they line up as best they can within those practises.

As far as they fit with overseas standards we don't actually know. We do know we've got peculiar constraints with the RMA in New Zealand that does affect timelines, but as far as our work is concerned we do believe we are instituting best practise now. We can come clean and say we haven't always complied with that.

MR PICKERING: Okay.

CHAIR: Commissioner.

MS MAZZOLENI: Just a couple of questions. Just in relation to your description on page 3, so those standard site types I guess, they show up in your database like that, do they, they're categorised as standard sites?

MR WESLEY-SMITH: They're categorised, I think, in a little bit more granularity than that. What we've done with the database is to start with those type 1s and 2s in the lattice towers which we think are the most available for co-location today. But yes, whether it's a 1H or a 1L or a 2H or a 2L, that's all contained in the database.

MS MAZZOLENI: It just seemed to me that they had quite a strong cross-over with the NZC's submission in terms of their classification of atom 1, 2 and 3, but I guess we can get NZC to maybe answer that when we come to them.

MR WESLEY-SMITH: Yeah, what I will say is those are standard mast types. Every site will have different soil or environmental conditions and therefore different foundations, different wind loading requirements. So yeah, this is the rough level of categorisation that we apply. But it doesn't mean that you can put in an application for all site type 1Ls and that they'll all perform exactly the same and be capable of the same structural loading.

MS MAZZOLENI: Because of those geographical conditions each site then becomes individual?

MR WESLEY-SMITH: That's right.

MS MAZZOLENI: Just one other point, again just picking up the numbers that you and the Chair have just mentioned. With your, I guess, 46 applications over the last three months, and subject to what you said about the access seeker, or your forecasts manifesting in applications from access seekers, I mean that number seemed to have quite a nice symmetry with Dr Reynold's statement at ICT9 that you were expecting within a year, that was June, so by end of June next year to have about 200 co-locates with NZC. So I mean there doesn't seem to be, from your end certainly, an issue with processing that number of applications in that sort of timeframe.

MR WESLEY-SMITH: No, I guess we're going good to date, but it will depend on how complex each of the applications are. At the moment we can say we're ahead of demand, that we've cleared the backlog, and now access seekers are considering what to do. But I'm sure at some point in time the onus could flip. But yeah, we are - we back ourselves to apply best practise and get these applications out in the shortest realistic time possible.

MS MAZZOLENI: Thank you.

CHAIR: All right, thank you, is there any further comments that Telecom would like to make at this point?

MR WESLEY-SMITH: No thank you.

CHAIR: Thank you very much for your presentation and for taking those questions. We're a little bit ahead of schedule and I propose to not start with New Zealand Communications yet because I don't want to interrupt your presentation, so we will take that after the tea break. But I will ask whether Woosh would be able to come forward and do their presentation at this time. Is Woosh here, is Mr Kearney here?

OPENING STATEMENT BY WOOSH

MR KEARNEY: Certainly, yes. Madam Chairman good afternoon. My name is Paul Kearney, I represent Woosh here today. And I accepted the invitation to make some opening remarks simply because I was concerned that this would become a New Zealand Comms versus Vodafone and Telecom debate. And it's not. We're looking at the future of this industry and this industry is not confined to three players. Going from a duopoly to a triopoly is not really competitive. We're looking at providing a co-location regime that fosters innovation for the future.

Woosh is a small company, we have 150 sites, we have a customer base, we've been in business for five years, and we figure we understand the wireless business. We are potentially an access provider and an access seeker, and I'd just like to make one or two remarks about both sides of that. As an access provider I have not resourced, nor have I had any approval from my shareholders to resource a co-location function within Woosh; because that means a change of business from a wireless operator to a tower company, and I can't make that jump overnight from wireless operator to tower company.

It's a change in mentality, it's a change in business. And I'm making that remark really because I feel there's a need for a soft launch period. It's not that I object to co-location, I think it will eventually work in my favour, but I can't go overnight from wireless operator to tower company, and for that reason in my submissions I've looked for something like that six month soft launch period.

I would also echo Telecom's point of view that towers in New Zealand are built for a purpose. Typically we would have received permission from an RMA authority to put a tower at, let's say, 15 metres and we designed that tower using the minimum amount of steel that would hold a structure in place safely at 15 metres. If we are to - this is a very general comment but it echoes what Telecom has said - if we are to put more antennas on that tower it will need strengthening or expansion of some sort and that probably means going back for RMA. And if I have a theme running through my thought process it is that the RMA is potentially a problem.

As an access seeker then, Woosh has plans to roll-out a nationwide network. And I envy my colleagues in other countries who can do their planning, get their financing organised, and go down the road to a tower company and say "Mr Tower company please can I have 200 sites". I know that it's not as trivial as that, but that's potentially what can happen in, let's say, Australia, where you have a disinterested tower company whose sole purpose in life is providing the likes of me with space for my antennas.

And I ask why are there no tower companies in New Zealand? It's not the fault of Telecom, it's not the fault of Vodafone, I would say it's the fault of the RMA that people who put up towers, like indeed Woosh, have every incentive to build the minimum sized tower consistent with RMA, so therefore they were not building in any excess capacity.

So as an access seeker I would certainly urge the Commission and the Government of New Zealand to somehow foster the growth of tower companies. Because, as I say, today's debate, or tomorrow's debate will revolve around New Zealand Comms, Telecom New Zealand and Vodafone; but true competition should encompass the prospect of maybe four or five more wireless companies. And if we put extra antennas on to the Vodafone towers, they become loaded such that a fourth and fifth and sixth operator has nowhere to go. Thank you very much for your time.

CHAIR: Thank you very much for that Mr Kearney. I guess your points could almost lead us to different directions depending on which way we look at your issues from that of access seeker or access provider.

MR KEARNEY: Yes.

CHAIR: And I think as tomorrow unfolds we'll be interested to see then how you come down on particular points in terms of how to resolve some of the key matters.

MR KEARNEY: I think we're probably in a unique position because we have been an operating company for five years, but we don't have, let's say, a monopolistic point of view. We dearly want to expand our network and we need co-location. And on the other hand, as the access provider it's not that we're prevaricating, we would have genuine difficulties facilitating co-location overnight.

CHAIR: Because of capital constraints?

MR KEARNEY: I'm sorry?

CHAIR: Because of capital constraints?

MR KEARNEY: That's correct.

CHAIR: I'll see if my colleagues have questions, thank you.

MS MAZZOLENI: You'll just have to remind me, do you have any co-locates on your current sites?

MR KEARNEY: Yes, we have accommodated New Zealand Comms on two sites, and I think we co-locate with both Vodafone and Telecom.

MS MAZZOLENI: On their sites?

MR KEARNEY: As seeker on their sites.

MS MAZZOLENI: But in terms of on your sites?

MR KEARNEY: On our sites we have New Zealand Comms.

MS MAZZOLENI: Are they recent, how long did they take?

MR KEARNEY: In the last four months.

MS MAZZOLENI: Thank you.

CHAIR: All right, Mr Kearney, any further remarks you want to make before we break?

MR KEARNEY: No, I think everyone's looking forward to a cup of tea.

CHAIR: It's not very fair of me to put you between that, everyone and their cup of tea, is it. Okay, well thank you very much for being willing to go a bit earlier in the programme than planned. I propose that we now adjourn this session and we are due to be back at 3.50, so I'll ask everyone to please be back promptly at 3.50 at which point we will hear from New Zealand Communications. Thank you very much.

Adjournment from 3.27 pm to 3.49 pm

CHAIR: Thank you very much, we'll now reconvene this session and I would like now to welcome New Zealand Communications, and Mr Edwards I'll ask you to introduce your team please and begin your presentation when you're ready.

OPENING STATEMENT BY NEW ZEALAND COMMUNICATIONS

MR EDWARDS: Before I introduce my team I'd be grateful if we could have a 1 minute prayer for Commissioner Patterson. Dear God, the telecommunication community prays for the return, health and vitality of Commissioner Patterson. We all look forward to seeing the industry referee back on the field as soon as possible and ensuring that he's recovered and refreshed. God bless, Amen.

Our team here today is complemented by Andrew Davis, a long-standing member of the NZ Comms team. We have Professor Reg Coutts from Australia who's joined us, joined the team. We have Emma Lanigan from Concept

Economics, Hamish Fraser from Truman Hoyle in Australia, a long-standing member of the team. And we also have Mike Lancaster from Melbury Group behind me, joined by Bevan Murphy from our RF engineering team.

CHAIR: Just before you ask, we're getting interference from cellphones. So if you leave them on the radio has to be turned off. So I don't know why you need to leave them on if the radio's off, but can we please turn cellphones off, otherwise the speaker will continue to get the feedback on the intercom. All right, thank you.

MR EDWARDS: Our organisation has 156 people working for it. We've built 136 new cell sites this year. We've offices in Auckland, Wellington and Christchurch, and the objective of our organisation is to create competition in the mobile phone market. We've a quality management team with a thirst and desire to get the job done quickly. We're well capitalised with more shareholders' funds than Vodafone at the time. I've worked for the company for eight years. October the 14th is my eight year anniversary and it's Andrew Davis' ten year anniversary.

It's noteworthy to just understand the components of a network that we've managed to achieved. We have a roaming agreement, we have spectrum and we have interconnection; but my colleague Andrew Davis reminded me that those agreements have taken us over six years on average to conclude. We'd also argue and discuss later the background and context in how those agreements have come about.

We have an obligation to deliver a product to Kiwi consumer, and we have an obligation to the telecommunications community to deliver a network service. But we also have an obligation to communities to minimise the impact on the environment of our infrastructure build. We'll talk later in the afternoon, but we'll circulate, and part of our submission has a series of newspaper articles which really are of concern to all of us in the industry that we're annoying local communities by our infrastructure footprint. The communities are telling us that they want us, they want lower prices but they want less cell towers.

Simply put in one word, if we had our time again we would advocate that this conference be called the incentive conference. It's because we're gathered here today because there's been a lack of incentives for co-location; not because it's not possible from an engineering perspective, or not possible because individual people don't want to deliver a service for an amount of money; sell us a co-location service.

I'll be joined by my colleague Emma later in this introduction and she'll share a couple of expert witness perspectives on the lack of incentives for co-location. We believe that there's no problems that are facing this conference that can't be broken down by regulatory re-alignment. There's no serious engineering problem that hasn't been solved anywhere else in the world.

Co-location does have a difficult history and I would ask that the Commission consider that when they're reviewing the STD before us. Personally I've worked on the 2001 Select Committee that inserted co-location into the 2001 Act. I worked on the TCF from 2002 to 2006 with my colleague Andrew Davis presenting ideas on co-location protocols, and I've also worked on the 2007 Schedule 3 inquiry. And again earlier this year I worked with the TCF on an industry forum where we debated co-location protocols.

It's a signal to me and in this new environment of the 2006 Telecommunications Act it was a very big signal to our organisation in New Zealand telecommunications which had been freshly capitalised and absolutely desperate to build infrastructure, that the TCF co-location protocol in the first quarter of this year failed to generate an outcome that the industry could agree on. We thought that the signalling that a Schedule 3 investigation would be underway would change behaviours inside the TCF protocol earlier this year. And in fact I think it's a point of evidence amongst our team that as a consequence of that failure resource allocations and footprint allocations of our radio plan have changed as a consequence.

We all believe in commercial negotiation at NZ Communications. That's how we secured our capital, that's how we secured the arrangements with Huawei, that's how we've hired all our staff, and we believe in commercial negotiations with Telecom and Vodafone. I won't catalogue the long list of meetings we've had at different places, from Hong Kong, to the Viaduct, to Wellington, to Auckland, to

Hamilton, to Australia, but I do want to assert with the Commerce Commission that there has been a long audit trail of negotiations on pretty much everything.

Later in the questioning, or later in our submissions in the course of tomorrow we would like to talk about commercial agreements that have been bounced around and we would like to give you our perspective on the pros and cons of those agreements or heads of agreements that have been in place.

Something that I've learned as an entrepreneur as I've grown with an organisation from two guys to 156, is that to solve a problem institutionally is different from solving a problem entrepreneurially. And I mention this with due emphasis, that somebody branded us as just a small bunch of entrepreneurs with a photocopier. As an institution now with 156 employees with 50 contractors spending $132,000 an hour, when we ask the Commerce Commission to consider the STD before them we ask them that it's produced in a format that can suit an institution. We're not an entrepreneurial company, we're a growing New Zealand institution with a massive reservoir of experience. And this alters thinking because in something as complex as co-location it refocuses your mind on the big hairy gorilla incentive, to get the process done amongst a large organisation.

It's with great regret that part of our submission this time on this effort is a small document that just actually catalogues how uncompetitive the New Zealand mobile market's become. It's actually with complete shock in our organisation, and our shareholders in fact, that we found out that in some market segments there is 92% concentration and entrenchment with the large GSM operator, Vodafone, in some market segments; but also the 30th of June quarterly statistics show that 72% of all mobile phone minutes in New Zealand are on the Vodafone network, and it shows that 65% of all the mobile phone revenues are on Vodafone. We catalogue that because it has a disposition when we discuss incentives, and it's something that we were unaware of before this time.

The evidence that we'll present to the Commerce Commission over the next two days will support the Commerce Commission STD. We do highlight two issues that we think could improve the STD before the conference today. Two of those issues, one are incentives, which I'll let my colleague Emma talk about; but the other one is the rapid multi-access protocol.

At a later stage I would like to break out and explain exactly what we mean by rapid multi-access protocol, and that is a choosing of a standard cell tower type atom 1, atom 2, atom 3; scud 1, scud 2, scud 3. And then for scud 1 or atom 1 having a bulk rapid multi-access singular application for that type of tower over a whole radio access network. So that would enable and facilitate 30 tower co-locate engineering protocols to be wrapped up into one, and that gives network overlay. And I'd like to stress that with the Commission today because there was a jolly well written letter on June the 20th 2005 by the then Commissioner, Douglas Webb, who in paragraph 14 stated that he would like to see co-location protocol that facilitated rapid multi-access.

I put it to the Commerce Commission that unfortunately the STD before us has the rapid multi-access process going back to another industry forum and there is a protocol envisaged which would start the whole process again. So we'd have industry consultations as to is it really atom 1, or is it atom 1.a, is it really scud 1. And it concerns me that there could be any debate, any debate about the database outcomes once this is proceeded.

It's also with great regret that I inform the conference today that there's been a breakdown in negotiations on price. We are stunned by the pricing that's being placed on our table and we would defer discussion on pricing to another time. But our analyses compares the pricing schedule on November the 7th given by the Commerce Commission on LLU, November the 7th 2007, and this co-location pricing and protocol for inserting a DSLAM into a Telecom exchange of which Vodafone is the major beneficiary of, is completely different from the practical commercial reality that we have before us in negotiations on co-location at the moment.

Simply put, it's a matter for incentives. To date the only company that's benefited from co-location in New Zealand is Vodafone. We understand they have co-located in 36 exchanges, and from a network and competition footprint every exchange rule of thumb is it equals ten cell towers. So effectively Vodafone have 360 co-locations on Telecom but aunty New Zealand Communications hasn't yet built one co-location with either Telecom or Vodafone.

Enough from Tex Edwards, I'd like to introduce Professor Reg Coutts who's quickly got a good understanding of our organisation and the challenges before us, thanks Reg.

PROF COUTTS: Thank you very much Tex. I've got a hand-out of my presentation but it's reasonably at top level. Yes, it's a pleasure to come across here and visit the eastern island and just do a quick look at the New Zealand marketplace. My credentials is that I worked for Telecom Telstra and I was in the sort of - had that regulatory role in Telecom Telstra before, so I must say I do recognise some of the arguments from 20 years ago.

And I'd like to just make a few comments on my perspective of when I look at the New Zealand mobile market compared to Australia and also compared to what's certainly happening in other markets. But then pretty quickly I think to put the technical issues in terms of a framework around that about how important are the technical issues in terms of barriers to achieving co-location. Because essentially I can say it's not a technical issue.

The New Zealand mobile market, I mean it's quite unique in the sense that there aren't too many markets in the world that could be characterised by a duopoly structure with two different technologies. And I've been acquainted with some of the history of that, in fact we were having a discussion over coffee about that subject. But it has amazed me, here we are in 2008 still with a duopoly, that site sharing that is common outside New Zealand in Australia, from the figures we've seen it's of the order of 75% of co-location.

Now that's been a two stage process from the early 90s through to the late 90s when I think there was a degree of perhaps over regulation. But that certainly created the incentives for the industry parties to come together and develop a more workable structure with, for example, low impact sites etc. So each country's different; I respect that and I wouldn't claim to be an expert on your New Zealand situation. But site sharing can be done, and it is a very important feature of achieving a more competitive landscape, but certainly agree it is one of the aspects required for a competitive landscape.

On mobile termination, from my observations I think every country in terms of the telco industry is in good company, so to speak, in terms of there's a lot of sharing of arguments and counter-arguments. I note that mobile number portability is finally coming into New Zealand. Well, as you probably know it occurred in most other markets well over five, six years ago. And national roaming, we'll make some comments on that, that the Australian situation was interesting, I was involved in that.

The ACCC in the Australia in the late 90s actually held an inquiry whether to mandate national roaming, or intercarrier roaming as it was called then. It then had a good consultant - it was me - and they came to the conclusion that it was going to generate a whole new subregulatory industry. So they basically, I'd call it, foreshadowed potential regulation. And that actually had a very positive effect on the industry. But as we've seen with the 3G market essentially commercial negotiation has been the way it's been done in Australia. Whereas in Europe, as we'll hear tomorrow, it has been called for a more regulatory intervention.

So the roaming issue in terms of changing the incentives has certainly been important in a number of the markets. Because the classic problem of to what degree do you want to build infrastructure, where do you build it as opposed to essentially taking advantage of the incumbents and working with them to provide like for like coverage.

The thing that I think stuns me when I come to New Zealand and from my just brief analysis, is that the high call costs compared to Australia. I notice the Commerce Commission report that you note that it's on a par with Europe. I suspect if you look a bit deeper that's an optimistic conclusion. Very high international charges. Tex warned me, he said "when you come to New Zealand do not make calls unless you really have to", and I appreciate his advice. And a number of other aspects, unique aspects, shall we say, about the nature of the

New Zealand landscape that have taken me a little while to get my head around.

But I think from my perspective the Commerce Commission seems to be heading in the right direction. But I don't think the issue of co-location is going to be solved without changing incentives.

I'd like to finish with the point, you get a bunch of RF engineers from Vodafone sitting with New Zealand Comms or BT and they'll solve the problem before morning tea, right? So it's not rocket science, that's not the problem; the problem's the incentives. Thank you.

MR EDWARDS: Thanks Reg, I'll now introduce my colleague Emma Lanigan from Concept Economics.

MS LANIGAN: Hi, my name is Emma Lanigan, principal consultant with Concept Economics, an Australian based economics consulting firm, though I'm the only employee in New Zealand. I'm a regulatory and competition policy economist. I've more than ten years working in the telco industry, having worked on quite a diverse range of competition policy and regulatory issues across fixed and mobile markets; covering, for example, market power analysis, cost modelling, access pricing and so on in a number of countries, New Zealand, Australia, the EU, Pacific and Middle East.

Now NZ Comms has asked us to provide some comments on the incentives of Vodafone and Telecom to facilitate the provision of access to co-location services. Our findings are that a profit maximising firm in either the position of Vodafone or Telecom under the current arrangements has a strong incentive to delay the provision of co-location to a new entrant. This is because it would lead to, via strengthening of competition, to the erosion of mobile market share and margins, and in the case of Vodafone also potentially some national roaming cannibalisation. The desire to delay co-location provision may help explain the kind of the lengthy process and the lengthy protocol that has been developed in New Zealand so far.

Now to illustrate the incentive effects I've looked at some indicative numbers to kind of just see what it looks like using some, what I'd consider to be reasonable assumptions. I've documented these in a note which will be distributed later along with the results. Now if one of the incumbent operators were to engage in co-location with NZ Comms it would expect to receive a capital contribution, and possibly some opex savings. For the purposes of these calculations I assume that the total benefit is unlikely to exceed around $10 million a year.

Now as a profit maximising firm Vodafone, for example, would set against these benefits the opportunity costs of providing co-location. I understand that Vodafone presently enjoys, as Tex said, around 65% of mobile market revenues, and that then for them for them amounts to around $1.4 billion a year. So on the basis of those figures, and providing co-location, its opportunity cost would include a reduction in mobile prices as a result of the stronger competition that comes from facilities-based competition, a reduction in market share and national roaming margins foregone.

So in the numerical example that I'm about to present I assume that in the absence of an effective co-location arrangement NZ Comms would enter and would build some of its own sites and would use commercial and national roaming agreements elsewhere. And that it would achieve, just for example, a market share of, say, 5% and would have some impact on the market price.

In the alternative scenario where co-location is made available in a timely fashion and perhaps subject to some changes to incentives - sorry, let me start that again. In the alternative situation where co-location is made available we assume that around 33% of the entrant's traffic will be substituted to national roaming, that the NZ Comms market share would increase to around 10% and market prices would fall by around kind of 5 to 20%. I've provided some international evidence of the sorts of price declines that may occur with an entrant. I've also made some assumption on the market elasticity of demand. This is because when the mobile price falls as a result of entry the incumbents will obviously benefit from an increase in the market size.

So on the basis of these assumptions I calculate that Vodafone would likely lose between $100 million to $215 million per annum if co-location was provided.

In other words, for every month of delay in supplying co-location Vodafone would be better off by $8 million to $18 million. So clearly in an unregulated setting it's just not in the interests of Vodafone as a profit maximising firm to provide co-location, and it's interesting also to take those figures and compare them against the proposed penalty, the delay penalty.

So what I've done is I've looked at the case where a delay penalty of $500 a day is applied for, say, 500 cell sites, and that leads to a penalty of around $90 million a year. So this illustrated example shows that co-location delay would still be the profit maximising outcome, even when you have these penalties and, you know, using some quite extreme assumptions there in terms of Vodafone, say, incurring a penalty for 500 cell sites for a year.

The conclusion regarding Telecom is similar, though the figures are smaller. Their situation is different, they have a smaller share of the mobile market so there's kind of less at stake there. They also don't have the national roaming revenues to lose, but however there is the effect of their lost profit margins on fixed services that would result from a fixed to mobile substitution when the ratio of mobile to fixed price is reduced.

Now this analysis assumes that each of Telecom and Vodafone consider that the other party would delay co-location, but this seems to be consistent with the incentives of each party because really a $10 million payment per year is unlikely to motivate either party to beat the other in co-location supply.

Now clearly the incentives of Vodafone and Telecom to provide co-location are very different to what would be expected in the competitive market. Were competitive forces stronger we would see an efficient combination of separately owned cell sites, co-location, and national roaming.

That site sharing is indeed efficient is borne out by international evidence. Overseas, particularly at the time of the 3G roll-out, operators - incumbents and entrants alike - had a very keen interest in infrastructure sharing to reduce costs, and that's certainly my experience in working with incumbents overseas. There's also been the emergence of independent suppliers overseas which indicates that there aren't significant vertical integration efficiencies that would be lost through site sharing.

Now NZ Comms has suggested that a solution to the incentive problem could be the use of national roaming; well, price control on national roaming to a very low cost at sites where there were delays in provision of co-location. This would largely eliminate the incentives for them to delay co-location.

And to consider how that happens, if NZ Comms were to go to Vodafone and Vodafone didn't achieve the target delivery timeframe, it would be required to sharply reduce its national roaming price losing the rents that it receives on that. And it would mean that New Zealand Communications could compete effectively in the down-stream market with both Telecom and Vodafone in that location.

So the retail and national roaming monopoly rents that would have been earned would no longer exist and therefore no longer factor in the decision of whether to delay or not. Importantly Telecom's incentives will also dramatically change even though in not such a direct way. This is because New Zealand Communications will get very cheap access to the Vodafone network. I'd like to finish there, thanks.

CHAIR: Can I just, before we go on, I believe - and you'll correct me if I'm wrong - that some of the numbers that you discussed early on in your stylised were new evidence, is that right?

MS LANIGAN: Well they're just very stylised, just to provide - I guess the point that we want to bring out is that if you're comparing the potential revenues that can be gained from co-location by the incumbent operators, those are just swamped by the costs, the opportunities costs. I just wanted to try and kind of bring that out. I don't -

CHAIR: I understand the point, I'm not questioning you on that. What I want to cover, however, is that the conference is not normally a place for new evidence. So what I would ask you to do, before I decide whether we will allow the new evidence, I will ask you to make available the calculations and the assumptions this evening to the other parties and then I will allow them an opportunity to respond if they wish tomorrow, otherwise I can't allow the new evidence into the record. So are you able to do that to provide those stylised -

MS LANIGAN: We've got this paper, you've got some copies to hand out.

MR EDWARDS: We can do that, yes.

CHAIR: All right, thank you.

MR EDWARDS: I would mention, Commissioner Rebstock, that we have referenced incentives in our 2007 submissions and socialised some framework to that.

CHAIR: I understand that, but economic evidence based on calculations that we haven't seen are hard to deal with for us and for other parties. So simply to allow it into the record now, I must ask that it's provided to other parties today so they can have an opportunity to consider it if they wish.

MR EDWARDS: I understand, thank you. Let me close out for the last ten minutes. As you've heard from my two colleagues we're very grateful for Woosh's comments on the independent third operator and how that would impact the resolution of the challenge we have before us as an industry. And obviously I'd like to make some advocacy comments from third party tower companies, but also third party database companies, and highlight the fact that some of the answers to the questions we have before us are actually in the annual reports of the American tower companies. In the document we have submitted we've got the SSE 10 K annual report and risk warranties of the American tower companies which shows that antenna minimisation is an accepted American protocol and it's a threat to revenue in those companies. It's something we could perhaps pick up tomorrow.

I'll touch on our main points before quickly closing off. Incentives, we've heard from Emma, it's something that's been in our submission since day one. We've always talked about this imbalance. We felt hurt that we would give Vodafone or Telecom 5 or $10 million a year, but in fact the impact of us being in the market had an exponential impact.

Rapid multi-access. I reiterate my comments earlier and highlight Commissioner Webb's letter of the 20th of June 05. It's of concern to us that this isn't included in the STD, and in our cross-submission we referenced concern about rapid multi-access.

Degradation. You'll hear a lot about is it 1 dB, is it half a dB? What engineering protocol should be run with, what engineering protocol we shouldn't run with. I defer to my colleague Professor Coutts' colleagues, which is really that it's incentives that will solve those engineering protocol problems.

And it would be dangerous to get captured by an engineering battle, and I reference tomorrow when we have our Australian lawyer, Hamish Fraser, answering questions that the Australian code is circa 88 pages, the New Zealand co-location protocol is blown out to circa 1,200 pages, and it's because the engineers have been told not to mobilise co-location.

Antenna minimisation is something close to our heart. We are where we are. As Kiwis we've had to cope with the frustration of getting new networks built in 2008 not 1998 or early 90s. So all the existing tower footprints are up. We have to work with the environmental footprint we have. Part of our evidence is the recent public fracas as a consequence of more cell towers in the community. Antenna minimisation is one of the easiest ways to expand and mobilise our existing tower footprint that we have in the country.

It's very important that the Commerce Commission note that getting an RMA on an existing cell tower is almost an informality, very easy, we haven't seen one refused. However, if you had to replace a tower, that very attractive head frame which to an RF engineer is a Godsend, has to be removed and a single mono pole go up. Tomorrow we'll have our engineer whiteboard it for you, but simply put the beauty of the existing cellphone tower head frames is that they're a scarce asset, and antenna minimisation enables a new entrant to use those judicially to create competition.

We actually challenge Telecom's comment in their cross-submissions that there's no commercial or legal principle to justify antenna minimisation. Lots of industries have different carbon footprint requirements, changed safety standards, new building codes, new competition protocols, and antenna minimisation to us is just another one of those.

On databases we've got concern about databases. Databases are extremely important, and we are excruciatingly frustrated that on October the 9th 2008 we still haven't seen the universal comprehensive database and engineering picture of the Telecom and Vodafone sites to a quality engineering degree. The issue here is that there's been some discussion, is it 309 sites, is it 116 sites, is it 500 sites? Look, Mr New Zealand Communications, what is your co-location ambitions? The issue is without quality databases we just can't plan. We're spending $132,000 an hour, and we need databases. We're frustrated that there might be any delay in production of those databases, and we reiterate the requirement to have quality comprehensive databases.

We reference the American Tower Company site, it's in our documents that we've presented on the table, there's a series of PowerPoints there; where if you look at the American Tower Company, one company's called American Tower, one's called SBA Sites, one's called Crown Castle. My industry colleague from Woosh's comments are very well placed. Three working days and they guarantee you access.

Site alterations. We believe again we are where we are. Competition requires accommodating people. I highlight the fracas that Budget Rental Cars had in New Zealand when they tried to break into the rental car market in the 1980s, there wasn't space at the airport. We all know what impact Budget had in the 1980s as the third operator. So site alterations are just another change to the airport configuration to facilitate competition.

Agreement on charges. I notice that it's a question and we're talking about service level incentives. I reference our frustration with that and defer to the DSLAM code.

Greenfields. It's iconic that the word green is part of the greenfields discussion and we've labelled it as an industry. Greenfields means new sites, because as a Kiwi I must question the green credentials of Telecom and Vodafone with the current co-location protocol. We've seen that we've had a community after community outrage that we need a lot more towers, a lot more new towers. They want lower prices, they want a third operator, but greenfield sites is an easy win for the Commerce Commission which would be an entry point for a third party tower company if there were to be mandatory greenfield co-location.

And of course there would be some arrangement and some conditions on that to facilitate real competition where Vodafone and Telecom couldn't quarantine a new entrant by making every new entrant have to build a co-located tower when a lot of slim line towers are going on. We touch more on that tomorrow, but I highlight the problem with greenfield sites and the impact that will have on the environment.

Service level and penalties. The key point here from NZ Communications is that we do believe a dual penalty system must exist, it's been quite well canvassed in cross-submissions, and I do put to the Commission that co-location at its best means coverage. There's a very big hole in our network out in Howick at the moment. In Howick there's a lovely little valley of high value residential properties and in the middle of that is a telephone exchange. We've been refused access to that telephone exchange.

Co-location would enable us to cover that area, and it would mean that we'd have a hole in our network fixed. It's actually where co-location is best articulated because it's a difficult RMA territory and we should have statutory right to co-location on that exchange. And if we only have one level of penalty rather than two levels of penalties, it means that that the access provider could meet their targets but stuff around on that absolutely critical hole in our network. And so I put to you that that's a very strong contributory reason why we need that dual penalty system inside the original STD.

In closing up, I'm very grateful for the Commission making time to hear the NZ Communications perspective. I'm very grateful for the Woosh comment that we do need to hear from more potential aspiring fourth operators. In closing out, it's in the public interest to regulate, regulation must include incentives, regulation must ensure like for like competition. I urge the Commerce Commission and the whole industry to rise a level and look at an incentive because that will suddenly sort out the engineering differentials that could become overly absorbing.

I believe that proper regulation will see a third party tower company come to New Zealand, and I think that that could be one of the KPIs of effective regulation here. Regulation must include rapid multi-access incentives, degradation antenna minimisation, databases, but most of all a sense of urgency, because that's how we feel when it comes to servicing New Zealand customers. We have a large team of people and we want to be debating the products and marketing outcomes of our service rather than access. Thanks very much.

CHAIR: Thank you very much Mr Edwards on behalf of New Zealand Communications, and I would like to allow Commissioners an opportunity to ask a few questions before we move forward. And first up you indicated that you would want an opportunity to come back and make comments on some of the pros and cons of the heads of agreement that you've entered into with, I believe, Vodafone and I think the Commission would be interested in hearing that briefly at this time if you would please.

MR EDWARDS: Certainly. We've got two agreements, if you can call them that. We commenced negotiating with Telecom with the new Telecom credentials. I think it's important that the Commission observe that NZ Communications rearranged its executive bench and sent a completely fresh new team with no historical disposition to any failed previous agreements to these meetings to secure a new protocol. We started negotiating in September 2006, by May 2007 we had a frame agreement which was very much a master master agreement.

The features of this agreement was that it required individual site licenses, so every site needed a licence. We signed it because we felt that the new credentials of the then freshly unbundled Telecom would quickly see that it was important to them that they get some runs on the board and that they quickly build 100, 150, 200 co-locations. That didn't occur.

The agreement is bizarre - I'm just looking for an appropriate word - on pricing perspective when you look at the WACC capital cost and you compare it with the local loop unbundled pricing. It's an agreement to agree and it's an agreement to get ready to get ready. It was something that we thought would be a constructive step. It doesn't agree degradation, it doesn't agree antenna minimisation, it doesn't agree the difference in protocol between a pole swap out and it doesn't agree price. It was rational to sign it because we had to get going.

We submitted to the Commerce Commission earlier this year in March where, I can't quite remember every number on the spreadsheet, but I think it was that we had 124 co-locations budgeted to be built by October 2008 and the only co-locations we have built, we have one built with Woosh - two built with Woosh thanks very much, and one built with Compass Communications my colleague, Mike Lancaster, will talk more about tomorrow. Interesting to note that the Compass tower took eight weeks and I think we had the Woosh deal all tidied up inside 11 weeks.

The problem with the master co-location agreement from Telecom is that it doesn't work and there's no incentive. Our organisation has signed a conditional heads of agreement for 116 sites which might be 50 sites, it could be 65 sites, which is for less than a total of 2.5% of the total universe of sites, very small. We've done that without databases.

There isn't a rapid multi access protocol in there. Let me just define it, it is called a rapid site agreement or something, but it doesn't facilitate the branding of one site type A or type B or atom 1 or atom 2 and then singular applications for multiple sites.

It doesn't have horizontal access and horizontal access is something that's very strategic. We urge the Commerce Commission to take a look at it, and we're very concerned that in fact the debate and the he said she said he said about degradation, and whether it's half a dB or one dB camouflages, camouflages the order of magnitude issue that we haven't got horizontal access; simply meaning that we haven't got our antenna next to Vodafone or Telecom's antenna, we've actually got it down on the pole. Our RF engineers will explain the financial and like for like impact that that has.

These two agreements illustrate that we've had no bargaining power. These two agreements illustrate a frustrated third entrant who has no bargaining power.

CHAIR: Thank you for that, I'll just ask my colleagues if they have questions at this time.

MR PICKERING: Emma, I was a bit intrigued at your solution. Are you suggesting that the solution to this imbalance is roaming not antennas on towers?

MS LANIGAN: I'm not suggesting that the use of national roaming is the outcome that we want to achieve widely, I mean the goal is to drive the correct incentives to provide co-location in a timely and efficient fashion. I was asked to consider the case here where the national roaming price would reduce to, say, marginal cost for sites where there were significant delays until the co-location was available. So it would be - what I've considered and what I talked about earlier was kind of a temporary reduction in the national roaming price.

MR PICKERING: Okay. We'll now go back to Tex. Are you then saying that apart from the conditions that you want to see improved, the STD will give the incentive or not?

MR EDWARDS: No, we don't believe that the STD will generate the incentive. When we're talking about service levels, SLAs and penalties, I think we advocated that in our cross-submission - I can't quite remember the paragraph - but I think we advocated that we move from $500 SLA penalty fee per cell site to $2,000. And even when you do the math on the fact that we might have 200 co-location applications, the penalty cost versus the incentive of having a like for like third entrant and the impact that this would have on the price and the actual impact on free cashflow, free EBITDA coming out of Vodafone is just an order of magnitude different. And it's something that we feel we're getting so down into detail, which is important of course which needs to be sorted, but the penalty regime is just still not an incentive enough to deliver rapid multi-access.

MR PICKERING: I guess given that we're trying to get a more competitive landscape I'm really searching for what do you think is the right incentive?

MR EDWARDS: The right incentive is to have a penalty and punitive roaming agreement if 25% of Vodafone cell sites aren't co-located by April 31 next year.

MR PICKERING: April 30th or 31?

MR EDWARDS: 31 March sorry. But a definite date.

CHAIR: All right, I'll ask Commissioner Mazzoleni if she has any questions.

MS MAZZOLENI: Tex, you've said in your submission that you've lodged 360 RMA applications. Does that cover - I presume that covers your own cell sites your own builds?

MR EDWARDS: Yeah, that covers Auckland, Wellington, Christchurch. It's very material that we haven't had any co-locations inside the main blocks of Auckland, Wellington, Christchurch. It's very strategic and it's regulatory gaming that the co-location agreement sign is for cell sites outside our core Auckland, Wellington, Christchurch. We're an organisation under intense pressure to launch and the 360 sites are in Auckland, Wellington, Christchurch. Approximately 200 in Auckland, 200 of those 360 are in Auckland, the others are in Wellington and Christchurch. And I'm just thinking from memory, in Auckland, Wellington, Christchurch cumulatively out of those 360 we've got something like 180 outstanding RMA applications because we've got this type of media coverage and frustration in the community.

MS MAZZOLENI: You also said in your submission that you expected to have, or you'd budgeted for around 20 co-locates by the end of this year and 400 target by April next year.

MR EDWARDS: That's correct, yeah, we published a budget line in February of this year which we submitted in a previous submission and we stated - it was a direct lift out of our 2007 financial model that captured the big chunk of equity that we got into the company.

MS MAZZOLENI: So once common databases are set up how quickly, I guess, are your resources able to be deployed, subject obviously to the capacity limits, which seem to me they're even close to where some of the submissions were that would enable a catch-up for those targets?

MR EDWARDS: I appreciate you mentioning that, because as you know technology resource in New Zealand is quite constrained. Out of 156 people about 60 of them are internationals. My earlier comment referenced the fact that we need an institutional protocol. I didn't bring our CTO here because I couldn't trust him to use appropriate language. **[Laughter]** The issue here is that we need - I'm sorry - the issue here is that we need a protocol that we can take out to a third party contracting firm.

Inside our organisation we have 156 people on the payroll, but we have five very large contractors. The people pouring the concrete and steel isn't Andrew Davis and Hamish, it's actually third party engineers. The Transfields of this world, the Sky Towers, the Infratils, and we've got two Australian contractors that we can subcontract the entire footprint to. So for ease of conversation, something like a six to nine month roll-out period is workable if the protocol works because we will subcontract it.

MS MAZZOLENI: Two other questions. I'm quite interested to know about Churton Park, and I know that questions probably should be directed to Mr Ronald who put the submission in, but your submissions also had a note from I think it was the local Parliamentarian about the Churton Park situation. Why were there two towers there?

MR EDWARDS: The two towers were there is that when we couldn't get any of our test co-locations mobilised quick enough, and when a negotiation stalls for what was going to be a cell tower purchase and 800 sites, 600 sites, the pressure in our organisation at $132,000 an hour - which is our cost of running our organisation from 9 in the morning until 5 at night - we had to put in an application because we couldn't trust a co-location protocol in our Wellington launch. I'm going to ask Andrew Davis to make an observation.

MR DAVIS: Where tier one is Auckland, Wellington, Christchurch, quite some time ago we gave up on using co-location for all of our tier one roll-out, it simply wasn't going to work in the timeframes that we're working to.

MS MAZZOLENI: Thank you. And could I ask one last question, just in terms of you mentioned pricing before, and I'd just like to clarify whether that's a pricing dispute or the inability to negotiate pricing.

MR EDWARDS: Inability to negotiate, it's an ideology. It comes from the WACC rate.

Of course we're happy to pay rent, of course we're happy to pay an economic cost. Our team, to be able to mobilise this institutional activity, which isn't a silver bullet and it's something we genuinely agree with Vodafone and Telecom; it's something that we need to mobilise to play catch up, and it might get us 20%, 25% of the sites, it's budgeted to get us 33% of the sites. But the issue is that it will impact the cost structure. So where we're going with this is that the catch-up time will change the pricing.

MS MAZZOLENI: Is it site-specific or is this an issue common to all of your site negotiations?

MR EDWARDS: It's common to all of the sites, because it's a cumulative issue. The pricing problem is that it starts off with our componentry cost of their capital, the site rentals, is it a sublease or is it a new lease, and then it just rolls along like a snowball.

MS MAZZOLENI: So are you suggesting that even where you could catch up in the six to nine month timeframe, under the terms of the STD pricing will now be an issue, is that what you're indicating?

MR EDWARDS: Yes, absolutely. The Commerce Commission papers submitted for discussion on co-location and the STD said if there was a problem with price please wave the flag. We've reluctantly not waived the flag on that because we figured that price would sort itself out. But at this late stage the flag is up to the top of the mast, price is going to be a problem because it's the cumulative effect, it's the cost of the RF engineers, and it's as complex as DSLAM co-locations under LLU.

We've actually got the 7th of November LLU pricing wrap schedule sheet and we've compared it to what we're paying to what we should be paying and there's an order of magnitude difference. How that impacts catch up is that, as any rational firm would say, if we get priced out of co-location then it's actually cheaper to build our own sites. So we can't mobilise that internal resource.

Why we don't want to do that, something we agree with Vodafone, in our PowerPoint presentation you'll see that we've quoted Vodafone Australia. Vodafone Australia have submitted to the ACCC on the March of 2007, and they've said in the WIK report, that co-location impacts 1 cent difference on termination. And Vodafone Australia have catalogued the three reasons why co-location must happen and impact on termination. And the impact here is that unless co-location is at an economic price it won't happen, and it will further frustrate the city and give the industry a bad name.

CHAIR: All right, thank you for that. We're not going to deal with the price issues now, but I was happy enough to allow some limited discussion on that, but as we all know it's not the purpose of this conference. I would now like to thank Mr Edwards and his team from NZ Communications for their opening comments. I have let this go on longer than scheduled because we were slightly ahead but now we're slightly behind.

MR EDWARDS: Apologies.

CHAIR: So we will turn please to TeamTalk, and we will invite you please to introduce your party and begin your opening submissions when you're ready, thank you.

OPENING STATEMENT BY TEAMTALK

MR HESLOP: Thank you. I'm Langford Heslop, I'm the Chief Operating Officer of the mobile radio part of TeamTalk. Net text to me is Bruce Harding who is our Chief Technology Officer, we do trust him to say the right things.

Just to give you a little background because some of you may not be that familiar with TeamTalk. We're a mobile radio operating company. We've got 40 people, we run about six different mobile radio technologies, and we operate across something in excess of 250 sites throughout New Zealand. Of those, 20 of them might be under our direct control, where we're the primary leaseholder, all the rest are co-sited co-located. And we've been able to operate very successfully on that basis.

I only want a couple of points in this session. The first issue for us is really the definition of a cellular mobile telephone network. I have to admit I was very surprised to see that we were identified as an access provider. We've never associated ourselves with cellular. There are some fairly fundamental differences between mobile radio and cellular services. The first one technically is mobile radio tends to operate from a small number of high sites. If we take Auckland as an example, we can provide service in Auckland from six sites compared to several hundred for a cellular network.

The market is also quite distinct from the cellular market, it's very niche. We're talking about tens of thousands of connections rather than millions. In fact the Commission's already determined that previously when they were looking at TeamTalk's acquisition of the Fleetlink network where they confirmed that cellular was not a direct substitute for radio services.

It has some different technical characteristics, it's the traditional you push a button you talk, lots of people can hear you. It has some annoying features; the operation tends to be half duplex which means that if I'm talking to you you can't talk back to me, you've got to wait until I've finished, quite different from cellular.

Looking at the definition the Commission's used for cellular networks, none of TeamTalk's existing radio technologies actually meet that definition. The key thing is that they don't do hand-over which is where you can transfer the call from one site to another during the call, which is obviously a fundamental characteristic of cellular. Interestingly there is a new radio technology coming into the market called TETRA which does support that functionality and it also supports for duplex calls.

Our view, though, would be that because TETRA also has all the characteristics of the other mobile radio services, it should probably be excluded from the definition of a cellular service. We've suggested that the definition might be more appropriately based on the spectrum that's allocated for cellular services. So otherwise we're in danger of finding that you have a large number of small players like, well, and large players like the police and about 20 or 30 dealers throughout the country that can offer digital radio services that could be captured within this regime.

Our second issue is primarily around the interference management. Our reading of the Draft Determination is that it focuses primarily on interference with other cellular providers. It doesn't take into account the fact that there are other services provided on those same towers. As I said we're on about 250 sites, most of those are provided by other cellular operators, a large proportion of them. And I believe the Determination needs to take into account the fact that there could be an effect on other services besides just the cellular operators, make sure that any damage there is mitigated.

Also on the interference there's some reference to making a distinction for emergency services. Obviously you've got the police, fire, ambulance. But there are other services like New Zealand Surf Lifesaving, Coast Guard, Civil Defence, and Maritime Safety that also depend on radio services for critical applications. Beyond them we also have people like Ministry of Fisheries officers, Ministry of Justice bailiffs, and security companies in general that also rely on radio services for health and safety purposes. So we would not want to see a significant degradation in service that's provided to them. We'd like to see the same services applied to those services that are applied to emergency services.

And my only other comment is I'd just echo Woosh's comments about the resources required to comply with this regime. If we were part of it we would struggle to make sure we have the systems and processes in place to be able to comply with the Determination. So thank you very much.

CHAIR: Thank you. You indicated that you have a large number of co-located sites.

MR HESLOP: Yeah.

CHAIR: Who's that primarily with?

MR HESLOP: For our Fleetlink network the majority of them are Telecom. I'd say, what' that, 150?

MR HARDING: About that.

MR HESLOP: About 150 sites. Most of the rest of the sites are with Kordia. We also have agreements with people like Johnson Dick & Associates. We're flexible.

CHAIR: And can you tell us something about your experience with negotiating those agreements, how long have they been in place?

MR HESLOP: I'll have to ask Bruce to answer that one.

MR HARDING: We have two major agreements, one with Telecom. We have a national co-siting agreement with them and we have a whole bundle of sites in there and there's provision in there for adding new sites, and when we want to add a new site we have a very definite process we go through with Telecom to ensure that all their stakeholders are involved in it, and that works pretty smoothly. We also have another agreement with Kordia and we have a process we go through with them, and that also works quite smoothly. Those would be our two main ones overall.

CHAIR: How long does it take to reach those agreements?

MR HARDING: The Telecom ones a few weeks, depends on the site. Some towers may need strengthening or altering, other ones are quite straightforward, but it would vary from two to three weeks to probably ten weeks at the outside.

CHAIR: Do you think your experience is due to the fact that you don't happen to be a direct competitor with them or is it because the technical requirements are so significantly different to, say, what a third mobile operator would have?

MR HARDING: I think the requirements are somewhat similar. We put up microwave dishes the same as Vodafone might do, we put up panel antennas, we put up collinear antennas. There's just a process to go through and we've found that all the issues that are raised are all sensible engineering issues that need to be solved and they get solved.

CHAIR: But you're not a direct competitor with the parties are you?

MR HARDING: Not really a direct competitor, it's a different type of service.

CHAIR: Yeah. And on price, just as a matter of curiosity, has price been a difficult issue to negotiate?

MR HARDING: Pricing with Telecom is fairly straightforward, we have a formula in there that determines the price. So the formula is just applied and there's virtually no negotiation required. With Kordia it's somewhat more difficult, their prices are considerably higher than anybody else in the market that we've experienced, and we have quite a few negotiations with them. But at the end of the day we still come to an agreement at the end of it all.

CHAIR: So you have a heads of agreement that these individual agreements sit under, is that correct?

MR HARDING: Correct.

CHAIR: And do you address in your agreements the raft of technical issues that we're going to talk about over the next few days?

MR HARDING: Yes, pretty much, yes.

CHAIR: Does the Commission have copies of those agreements?

MR HARDING: Probably not.

CHAIR: Would you be prepared to provide them to us on a confidential basis?

MR HARDING: As long as Telecom are happy we would be happy to provide it.

MR WESLEY-SMITH: That's fine.

CHAIR: You're willing to - yes, we would like to see them, because I think this is an interesting situation where for some reason - and I'll be interested to hear at some point from Telecom and Vodafone - for some reason it's much easier to negotiate and get agreements when you're dealing with someone who's not a direct competitor than when you are. And if there are technical reasons why there's a difference I'd like eventually to come back to that issue. So I'd be very interested to see what the detailed agreements are that you've been able to negotiate, that would be most helpful indeed.

Can I ask my colleagues if they'd like to ask questions at this point in time?

MR PICKERING: I don't have anything else, no.

MS MAZZOLENI: No, very useful though, thank you.

CHAIR: I just have one matter that I'd like to raise with you. We've had the possibility of dealing with some of the issues you've raised around definitions and who is an access provider and access seeker. We could move that up in the agenda tomorrow if you wish, but I don't know if you're planning to be here for the entire session, but I give you that option.

MR HESLOP: From my point of view that would be very helpful. I think Bruce could usefully contribute to some of the other discussions, but if we could address it earlier we'd appreciate that.

CHAIR: If other parties don't have any objection to that then I would propose we'll start with that in the morning, because I think it's the major issue that TeamTalk has.

MR HARDING: Thank you.

CHAIR: Okay. All right, any further comments you'd like to make before we move on?

MR HESLOP: No thank you.

CHAIR: All right, thank you very much for that. It was very brief but actually quite - I found it quite fascinating some of what we learned. So I'd like to now turn to TUANZ. I think, Mr Newman, you won't realise that we have taken things out of order, but you're next on the agenda, so we're not too far behind. I'd like to welcome you to the conference and for the record please introduce yourself, though you're well-known to all of us, and please start with your opening comments when you're ready.

OPENING STATEMENT BY TUANZ

MR NEWMAN: Thank you Commissioners. I'm Ernie Newman, I'm Chief Executive of TUANZ, and we appreciate the opportunity to make a brief statement here. I guess by way of opening it's interesting to contrast in the regulatory process the speed and momentum which we've seen in fixed line issues compared to those in mobile. And looking at the Commission's website around this vexing subject of co-location, the ratio of submissions and conferences and paper to outcomes is actually quite extraordinary.

Our members are very very anxious to see a third mobile entrant, and indeed a fourth and fifth one for competitive reasons, and we do hope that we can see this brought to a conclusion very very rapidly. As users of course we are a step away from the main game and so we cannot comment on every issue that's in the list of key issues. But we would like to make a brief comment on some of them, and I'll work through those in the sequence in the key issues paper.

Performance degradation is not something we wish to make a further comment on.

We would like to comment on the matter of site alterations. Our view is that the best approach on site alterations for each situation would be one that is agreed between the access provider and the access seeker, and the role and context of regulation should be to encourage that process of agreement by minimising the incentives for disagreement. We feel the process should be that the access seeker should have the right to propose which method it seeks, provided that the access seeker is prepared to meet its fair share of costs, and that the proposal is also consistent with the other technical conditions.

And in that circumstance the access provider could decline that proposal only on grounds that were consistent with the limits to access principles set out in the Telecommunications Act. So the decision on which approach to use should be subject to reasonable time limits, and to a disputes resolution process so that lack of agreement on that issue could not become a way to evade or unnecessarily delay the progress of an application.

On forecasting, we note that access providers who are also competitors to the access seekers will actually be tempted to exaggerate their own forecast needs so as to restrict the scope of the competitor's access. The Commission seems to us to be suggesting a capacity for the access provider to offer co-location for a limited period, I think five years if the access provider forecasts that it might need the capability at that facility within that time.

TUANZ would be concerned if that situation had the effect of shortening the timeframe for a co-location access seeker to get a return on its investment, because that could well restrict the capacity of the access seeker to raise finance for the investment. The proposal would seem to give the access provider every incentive to maximise their forecast needs for the five year end point and thereby place further restriction, or at least uncertainty on access seekers.

In our earlier submissions on this issue we were sceptical that technical forecasting is at all reliable at a distance of five years in this very rapidly evolving industry. As an example, it seems to us that forecasts for technologies like WiMAX seem to have been wildly optimistic, while 3G take up, particularly for data services, seems to have gone a lot faster than forecast. So we are very sceptical about putting that five year limit on.

On greenfields co-location, we've previously advocated the need to make sure that greenfields sites are not designed by the first mover operator in such a way as to limit options for future co-location access seekers. It would be consistent with the purpose of this regulation for any potential access seeker as defined in the Act to have the right and opportunity to object to any aspect of the design of a greenfields site which could potentially limit co-location opportunities at a site where its registered an interest.

So for that reason we believe greenfields sites should be retained within the scope of the regulated access service. The existence of that regulated right will increase the likelihood of a commercial agreement being reached, and conversely the absence of a regulated right will make the commercial agreement less likely. This, we see, is particularly important for 3G which of course has a high geographic density of sites than 2G and therefore a higher proportion of greenfields site even where the existing sites may provide full 2G coverage.

On the other hand, because 3G transceivers may have smaller engineering footprints than 2G, some roll-outs may reasonably designed in ways that make co-location impractical, such as on utility poles and towers and pylons; and in those circumstances we feel that that issue is best dealt with under the provisions of co-siting.

On service levels and penalties we have no comment, neither on common format site databases and nor on implementation timeframes.

We do have a comment to make under agreement on charges. TUANZ would regret any decision by the Commission to give access providers the right to delay provision of access simply by declining to come to terms on price. The Commission seems to suggest that the threat to review the status of mobile co-location may be sufficient incentive for parties to come to a reasonable agreement.

TUANZ considers that while this long-term sanction is essential, it's not in itself sufficient to prevent price agreement gaming and brinkmanship on the part of the access provider. Any delay, of course, is much more costly to a market entrant than to an incumbent and this factor can severely damage the business case for competitive market entry and investment.

So we believe it would be fair to both parties if access seekers were assured of market entry on interim pricing conditions pending final agreement. An interim pricing agreement can provide for adjustment to final pricing in arrears for the period between the commencement of the service and the agreement on final pricing, together with interest and administration costs agreed to either party as a result of adjustment in those arrears.

And we note that interim pricing of that kind is quite common in relation to other services, including in some cases termination, and effectively removes any perverse incentive for obduracy on the part of either the access seeker or the access provider in coming to a pricing agreement. That's all we have to add, Commissioners, happy to answer any questions.

CHAIR: Thank you very much for that, Mr Newman. I'll just start with a question, if I may, and then I'll turn to my colleagues. Are you suggesting to us that we have the jurisdiction within this Determination to put in place interim pricing?

MR NEWMAN: Sorry, between this Determination?

CHAIR: To put in place an interim pricing decision.

MR NEWMAN: I had hoped so. Am I wrong, are you suggesting we're wrong that you don't have that jurisdiction?

CHAIR: Well I'm asking you.

MR NEWMAN: Our interpretation was that you do, but we may stand corrected on that. We believe you should.

CHAIR: Is that our understanding?

MR WILLIS: I would want to consider Ernie's suggestion in a bit more detail before I came to a final view on that I think Paula.

CHAIR: All right. Well I wouldn't want to ask you to come a legal opinion on it right now, but with my knowledge of things as it stands now I think there'd at least be a question about it.

MR BORTHWICK: Paula, on the face of it this is a Determination in relation to non-price terms as a designated service, so unless you mean something a bit different from what we're reading, there's no capacity for us to do price setting on a capital service in this context.

MR NEWMAN: Our advice was that you do, but we're not infallible.

CHAIR: All right, well I mean if you've got that advice and you're willing to share it with us -

MR NEWMAN: Certainly.

CHAIR: - we'd be interested in seeing it if that's possible please. All right, I'll turn to Commissioner Pickering and see if he has any questions.

MR PICKERING: No, my question was very similar to yours.

MS MAZZOLENI: No, I don't have any, thank you.

CHAIR: All right, any last comments at this point, Mr Newman, that you'd like to make?

MR NEWMAN: No thank you.

CHAIR: All right, thank you very much for that. The Commission has indicated that if we finished early we might go on to discuss the greenfield matter. Are parties happy to do that? **[Agreed]**

MR CHIVERS: Commissioner, could I just make a few comments first?

CHAIR: I'm sorry, I apologise.

MR CHIVERS: That's all right.

CHAIR: After I promised you I'd give you the opportunity I missed it.

MR CHIVERS: Thank you Commissioner Rebstock, look just a few comments -

CHAIR: Just for the record -

MR CHIVERS: Sorry, Ralph Chivers, Chief Executive of the Telecommunications Carriers Forum. As a passionate, red blooded Kiwi I almost feel compelled to respond to the Professor's eastern island crack but I'll pass over that for now. Telecom mentioned the possibility of supporting a greenfields approach to co-location through the TCF. As I understand it the question of greenfields it primarily one of jurisdiction currently as between the Commission's draft proposal and some of Telecom and Vodafone's views.

In the event that you reach the view that greenfield sites are not within jurisdiction we obviously have an opportunity to establish a voluntary code of practice around co-location covering those things, covering greenfield sites. We've a precedent for doing that with our customer transfer codes where we have one code covering regulated services and a practically identical code for non-regulated services. So there is an opportunity to cover that off and I would expect if that was the outcome for greenfields that we would make minor modifications to the co-location protocol, the Standard Terms Determination to encompass greenfields.

In terms of Mr Edwards made some comments about the TCF process, I'm not sure whether he was referring to the sort of entire history of this issue within TCF or the process this year. I just make the observation that the process we undertook this year was at the Commission's request. And we did within a very short period of time, I think it was not much more than three elapsed weeks produced the documents that became incorporated in Vodafone's standards terms proposal.

So I think in terms of the effort applied, and it was a good effort from all the companies represented here today, to do as much as we could within that time, I think it's fair to say that the outcome didn't give all parties what they want, not everything was agreed, and that's a fair observation, but in terms of what we were able to agree on I think was a substantial majority of volume of the principles around co-location that we did make some very good process on in that compressed timeframe. That's all I have to say, thank you Commissioner.

CHAIR: Thank you very much for that Mr Chivers. Can I just ask you then, let's say you were to make some minor modifications to the current protocol, that's what you're suggesting you could do?

MR CHIVERS: Sorry, just to clarify, if the outcome of this process is that greenfields sites are not within jurisdiction and therefore not covered by the Standard Terms Determination we'd be willing to do a piece of work to develop a code of practice if parties are willing, obviously if our members are willing, to adapt that for

greenfields and it would have the nature of being a voluntary code of practice.
CHAIR: Sure. So what do you think the likely timing would be to complete something like that?
MR CHIVERS: It's difficult to say, I'm not imagining that very many modifications would be required at all. The one example I gave where we've done something similar, the customer transfer code, there was one regulated code agreed with the Commission. The code covering unregulated services was completed fairly quickly after that because it was practically identical.
CHAIR: Are we talking weeks or months or years?
MR CHIVERS: It depends how different the greenfields requirements are to the standard terms themselves. But I'm not imagining it would be more than weeks.
CHAIR: All right, I'll turn to my colleagues and see if they have questions for you. **[No questions]** All right, thank you very much.
MR CHIVERS: Thank you Commissioner.
CHAIR: I still propose to make a start on the greenfield issue if all parties are comfortable with that. Don't hesitate to say you're not if you -
MR YORK: Sorry, could I just raise one issue? We received a note from one of your staff yesterday indicating there'd be some questions asked of us in relation to, I guess, the history of co-location. We've obviously provided some answers to that in the questions you gave to us following our opening. But there's some additional material that we have prepared in response to answering those questions and have been indicated to us that those questions would be put to us at this point in the agenda.
CHAIR: We put those questions as we went, we decided not to do it in one go, but put to you the questions we had up to this point so -
MR YORK: Right. There's some additional information we have that might be of interest and use to you, would it be a good time for us to just quickly cover off those issues?
CHAIR: Sure, I think that would be fine. Is everyone happy with that if I allow that?
MS MAZZOLENI: Did other parties also respond to the Commission's request? It would be useful to see all of the responses that we've got.

CHAIR: If you haven't had an opportunity to raise any response to the current situation in recent past history, is there any other party that would like to have a further opportunity to make comments on that? I'll check after Telecom has given us the additional information if that's all right. All right, please.

MR RAE: Justin Rae, Vodafone.

CHAIR: Sorry, Vodafone.

MR RAE: We're the ones with ties I notice, a little better dressed. **[Laughter]** So we have prepared answers to the questions that were sent to us yesterday and I'll go through them all as quickly as I can. The first question was about what progress has been made in relation to co-location since the last conference in 2007. I've worked in the mobile industry for over ten years in New Zealand and I think it's fair to say that this year has been quite unprecedented in the amount of effort that's gone into co-location. Pretty much everybody in this room I'm sure has spent a lot of time working on it over this year.

For us, key outputs that we're very satisfied with are firstly the heads of agreement that we've signed with New Zealand Communications that my legal colleague has pointed out to me that that does contain confidentiality provisions, so we can't go into all the terms and conditions of that, and that a restricted information version's been provided to the Commission.

As we mentioned earlier that provides a platform for at least 116 sites and really sets up a framework for further. It does contain price and non-price terms. The definitive contract is well advanced with that and that probably sets the basis for the future. Also that contained an inventory which is in fact an extract from our database that we've been preparing in the last few months.

We've almost concluded a master co-location agreement with Telecom which I believe Telecom have signed and are going to table today. It's been a year of an awful lot of inquiries about sites and a lot of exchange of information, and as an access seeker I can attest that certainly from a customer service point of view dealing with parties like Telecom has certainly improved this year.

Most of the year we've spent enormous amount of resource working on preparing the database and gearing up for the STP. Currently our database is probably about 80% complete and we'll be working hard to get that ready in time for the implementation timeframe.

Also co-siting, which Telecom mentioned earlier, very active. This is where operators are near to each other, not necessarily sharing the same tower. We've processed more than 70 of those this year.

In terms of new co-located sites we haven't built or had built upon any of our sites any new sites. It does take quite a long time to work through a process. I note that the process in the STD contemplates a timeframe of around a year from when a proposal commences. We have progressed a number of greenfield applications with other parties as well.

One of the other questions is what are the impediments to co-location? Fundamentally really there is a limited pool of sites that are suitable for co-location. Quite similar to Telecom we have a similar percentage of larger masts, these tend to be in rural areas away from people. Primarily the sites that are near people in urban areas are severely limited by the RMA which was enacted in 1991, so every site in our network certainly was established under that regime.

It's an effects based statute, it essentially drives you to build the smallest structure that you can to do the job. And certainly I've appeared at a number of hearings in New Zealand over the years where I've had to prove that very fact. The Churton Park site was mentioned today, it's quite an interesting example. I note that there are a number of the media items that have been provided about concerned residents. These principally involve roadside sites which are put on lamppost and roof top sites. I have to note really that they're not really options for co-location, so unlikely that any of those techniques would assist with those issues.

One of the other, perhaps not impediments but reality really, is that until very recently there hasn't been a very sustained demand for a sufficient, or a high volume of co-location sites in this country. Certainly sporadic attempts and from our own company's perspective limited interest in that sort of thing, but I think we are seeing things changing now that there are significant volumes to drive the process improvements that you need to do it properly. That's all.

CHAIR: Do any other parties want to make any further comments on the basic factual situation that we find ourselves in? I'm sort of intrigued by this notion that the RMA has forced you to minimise the build as much as you possibly can and you've had to demonstrate that, because without going back to my notes, I believe you told us that you had several hundred sites where you had 329 masts where presumably you can cope with co-location. I'm having trouble understanding the two points. Can you explain that to me?

MR RAE: Yes, I think my point is certainly in New Zealand is that the pool of sites that may be suitable for co-location is probably smaller than you might see in other countries - I have worked in the UK and Australia - and primarily I think that is driven by the RMA. But notwithstanding that there are 300 sites or more in our network that probably will suit co-location. But those are typically, certainly not in suburban areas, they're primarily in rural areas, and in some industrial areas.

CHAIR: I just want to ask one further question which I'll direct to Vodafone first, and that is both you and Telecom have done, it seems to me, quite a bit of work in at least the last six months on getting yourselves ready to in some sense compete to be the provider of the co-located sites once, it seems to me, there will be a tipping point, which is inevitable for you, and at that point some of the dynamics changes a little bit.

My question really is, is have you done calculations on business case on what's at stake in terms of being the one who provides the co-located sites? Do you have a sense of what the return is for you on being the one who gets the contract? Say for instance if it's NZ Comms, have you done those sorts of calculations? Once co-location becomes almost inevitable do you know what the dynamics are in terms of needing to be the chosen supplier?

MR RAE: We have a wholesale team that's been newly set up and we have a Service Manager now for mobile co-location, so they're very much developing it as a business proposition, they're safely away in Auckland at the moment. We have been involved in modelling the volumes that we'd expect and certainly we are treating it very much as a serious revenue stream. In terms of volumes, we are hoping and expecting for between 2 and 300, which mathematically going on some of the estimations of the proportion of co-located sites, a new roll-out would be about our share. So certainly we're taking it seriously, we'd like to get as much of that revenue as possible.

CHAIR: I'd just put the same question to Telecom. It sounds to me like you do know, you've put the case up for the capex so you must have put up how much return there would be for you once this co-location hopefully gets underway, the move towards co-location; is the business case developed for that?

MR WESLEY-SMITH: Our Commercial Manager for co-location will be speaking tomorrow. And I don't know the details of the business case. What I will say is we have driven our process review with an objective of being able to show that we are operating best practise on co-location and facilitating co-location wherever it is feasible.

CHAIR: That's kind of a different - I mean that sounds almost like you're doing what you think you have an obligation to do. What I'm asking you is have you got a business case that says it's in your commercial interest at some point? And I take the delay point, I don't really have too much difficult accepting that there's strong incentives to delay, but there is a tipping point at some point which if it's going to be mandated by regulatory intervention possibly both the terms and could be the price - I don't know, I can't speculate on that now - but at some point if it becomes inevitable, is it the case that there is a strong business case then for you to compete vigorously to be the supplier, to be the access provider? Have you done that analysis and am I correct that at some point that kicks in?

MS HASKILL: I currently work for a start up business called Chorus that has taken over the function of providing this service delivery. As part of that my role has been firstly to set it up so that we're compliant with the co-location code. The second part of that will be looking at revenues, getting forecasts from our customers and then projecting a business case as to the right level of resourcing etc going forward. So yes, it's in mind, no, it's probably not currently done now. Our capex that John has been talking about has been a compliancy exercise, but certainly in terms of the new order of Telecom we will be doing a business case for this going forward.

CHAIR: All right, I think at some point, I'll talk to my colleagues, but it might be quite interesting for us to see what financial analysis has been done to date on the economics of being the access provider if and when we get to a point where somebody's motivated to move on this. So I'll give that some thought and I may come back on it. I'll now ask if there - on these points that we've been just discussing, does any party want to raise any matter please?

MR DAVIS: Andrew Davis, NZ Comms. The original question was what progress has been made since 2007. With Vodafone we haven't built any co-locations. Yes, we've signed a heads of agreement with them in the last few weeks. Yes, they've put confidentiality provisions in there that prevent us from disclosing all of the details now. But it's fair to say that it's missing a fair bit of operational and technical detail. It's a heads of agreement only, it's non-binding and it's certainly not what you'd call a contract. It's not nailed down.

What we found with Telecom, we had a similar agreement with them where we thought we had a master agreement, but it was missing a lot of the technical and operational detail, and what we've found is the devil is in the detail. We signed that agreement almost 18 months ago, we still have not built one co-locate with Telecom, and we have been trying. We are a willing buyer, but what we've found is we're not dealing with willing sellers.

With other parties we have built. With Compass we've built a co-location, and with Woosh we've built two co-locations, but with Vodafone and Telecom we've not built any co-locations ever, not since 2007 ever.

CHAIR: Let me see if either of my colleagues want to follow-up anything with New Zealand Comms on that point. **[No comments]** Vodafone please.

MS JONES: Just a couple of things I think I need to correct. The first is that the heads of agreement is a legally binding document, so I'd just like to correct that that's actually incorrect that allegation. And secondly, the Commission does have a copy of that heads of agreement, so the confidentiality terms are something both parties wanted but we've both now agreed to disclose that to the Commission, so you do have a copy of that.

CHAIR: Yes, I have it sitting on my desk, so thank you very much for making that available, and we will be taking a close look at it. All right, are there any other matters relating to these issues that anyone would like to raise? **[No comments]** We attempted to get ahead of schedule but we didn't quite get there, but I thank you all very much for what has been a very insightful start to the conference, and I'm grateful to you for assisting me and efficiently getting through the agenda for today.

We will reconvene tomorrow morning at 8.30 I believe. And as I indicated earlier we will deal with the issues in a slightly different order. In order to assist TeamTalk we will deal with the definition of cellular mobile telephone networks in the list of access providers and access seekers at 8.30 in the morning. So I look forward to seeing you then, have a very nice evening, and the meeting is adjourned for the day, thank you.

Conference adjourns at 5.33 pm to
Friday, 10 October at 8.30 am