

COMMERCE COMMISSION

**Notice by the Commerce Commission under section 30F of the  
Telecommunications Act 2001 for Vodafone to submit a standard terms  
proposal for co-location on cellular mobile transmission sites**

Order made by: Dr Ross Patterson, Telecommunications Commissioner

Date of order: 8 February 2008

**Notice by the Commerce Commission under section 30F of the  
Telecommunications Act 2001 to submit a standard terms proposal for  
co-location on cellular mobile transmission sites**

1. The Commerce Commission (the '**Commission**') is a body corporate established under the Commerce Act 1986 having its head office at Wellington. The Commission has various functions and powers under the Telecommunications Act 2001 (the '**Act**').
2. The Commission has initiated a standard terms development process under section 30C of the Act in respect of the specified service described as 'Co-location on cellular mobile transmission sites' in Part 3 of Schedule 1 of the Act (the '**Mobile Co-location Service**').
3. On 10 January 2008 the Commission gave public notice under section 30D of the Act that it has initiated the standard terms development process in paragraph 2 above.
4. The Commission has conducted a scoping workshop under section 30E of the Act which was open to all parties to the standard terms determination.
5. Under section 30F of the Act the Commission must give written notice to 1 or more access providers of the specified service, requiring them to submit to the Commission a standard terms proposal for the Mobile Co-location Service that complies with section 30G.
6. Under Part 3 of Schedule 1 of the Act, an 'Access provider' of the Mobile Co-location Service is "[e]very person who operates a cellular mobile telephone network".
7. Vodafone New Zealand Limited ('**Vodafone**') is a duly incorporated company having its registered office at Auckland.
8. Vodafone operates cellular a mobile telephone network and therefore, is an 'Access provider' for the Mobile Co-location Service.
9. The Commission gives notice to Vodafone under section 30F of the Act to submit a standard terms proposal for the Mobile Co-location Service ('**the Proposal**'), to the Commission by **5.00pm, Friday, 25 April 2008**.

**Requirements for standard terms proposal**

10. The Proposal must comply with section 30G of the Act and the additional requirements specified by the Commission. Section 30G, and other relevant sections of the Act, are included as Schedule 1 to this notice.

11. Section 30G(1)(e) of the Act requires that the Proposal must be consistent with the applicable access principles and any limits on those applicable access principles. The applicable access principles for the Mobile Co-location Service are the standard access principles set out in clause 5 of Schedule 1 of the Act. The limits on the application of access principles for the Mobile Co-location Service are the limits set out in clause 6, subpart 1, Part 1, Schedule 1 of the Act and the additional "Limits on access principles" listed under the Mobile Co-location Service in Part 3 of Schedule 1 of the Act which states that:

The limits set out in clause 6 and additional limits, which must be set by taking the following matters into account:

- (a) the access provider's current and reasonable forecast requirements for capacity on the relevant facilities;
- (b) the management of existing or potential radio spectrum interference arising from use of the relevant facilities;
- (c) all relevant requirements under the Resource Management Act 1991;
- (d) all relevant health and safety requirements under any enactment;
- (e) all existing contractual obligations to third parties, including lessors of land on which relevant facilities are located; and
- (f) the interests of third parties who use the relevant facilities

#### **Additional requirements under Section 30F(2)**

12. The Commission makes the following additional requirements under section 30F(2) of the Act. The Proposal:

- a. must, where practicable, take account of the style, form and content of existing standard terms determinations;
- b. must include all non-price terms of supply that have been unanimously agreed to by the relevant Telecommunications Carriers Forum ('TCF') working parties between the date of the receipt of this notice and the date of the receipt by the Commission of the Proposal;
- c. must include all of the terms required to provide relevant facilities for, and the installation and maintenance of, an access seeker's equipment, including the access seeker's rights and obligations when accessing co-location sites;
- d. must include general terms that include terms concerning all of the following matters:
  - i. dispute resolution procedures;

- ii. the consequences of a breach of the determination (including provision for off-set or withholding rights, or liquidated damages);
  - iii. suspension and termination of the Mobile Co-location Service, including terms that address the rights of an access seeker or an access provider to terminate access to a particular co-location site or relevant facility; and
  - iv. procedures for, or restrictions on, assignment of the Mobile Co-location Service;
- e. must include a 'Service Description' detailing all components of the Mobile Co-location Service, including a description of all relevant facilities that are able to be co-located. Specifically, the Service Description must provide for:
- i. co-location on or with any towers, poles, masts or other similar structures;
  - ii. co-location on or with all sites, buildings, or utility services that are associated with the kinds of structures referred to in (i); and
  - iii. all feasible variants, or combinations, of co-location on or with these relevant facilities;

In addition, unless impracticable, the 'Service Description' must set out various 'standard site types', ensuring that the differences between these site types are clearly defined. Where appropriate, terms and conditions reflecting differences between standard site types must be included throughout the Proposal;

- f. must include an 'Operations Manual' setting out the operational processes and procedures, in as much detail as possible, for the provision of the Mobile Co-location Service. The Operations Manual must, as a minimum, include processes and procedures for:
- i. ordering and provisioning of Mobile Co-location Services (including 'order acknowledgement', 'notification of expected completion date', 'notification of rejection', 'confirmation of completion');
  - ii. billing;
  - iii. sharing of information regarding existing sites ('initial site readiness'). This information must include, but is not limited to, available land area, space on towers, poles and masts, existing access tracks and utility services. The Operations Manual must also include a process to ensure that this information remains current;
  - iv. completion of any preparatory work required to be performed by the access provider before the access seeker is able to install its equipment at a site ('footprint readiness');
  - v. fault management;
  - vi. forecasting requirements including processes to ensure that the various forecasts are based on real anticipated needs;

- vii. a process for addressing prioritisation of access seekers, including processes for dealing with capacity constraints on the relevant facilities; and
- viii. access seeker and access provider deliverables;

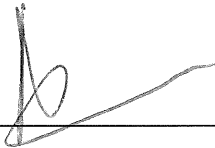
In addition, processes and procedures specific to individual access providers of the Mobile Co-location Service, if appropriate, are to be included as appendices to the 'Operations Manual'. These appendices are expected to include any company or site specific health and safety instructions;

- g. must include 'Service Level Terms' ('SLA') that specify performance levels in relation to the supply of the Mobile Co-location Service. The service levels defined in the SLA must be based around the corresponding operational processes or procedures set out in the Operations Manual. The Service Level Terms must include proposed remedial actions and outcomes where the access provider does not meet its SLAs;
- h. must include terms for an 'Implementation Plan' to be followed by the access providers after the day on which the standard terms determination comes into force. This implementation plan must include, but is not limited to:
  - i. a timeline for delivery of the Mobile Co-location Service to access seekers, including a list of all sites where the service could be implemented and the proposed delivery date (the day on which an access seeker can make a business as usual request for access to the Mobile Co-location Service under Section 30S of the Act) for the service at each site;
  - ii. key performance indicators (KPIs);
  - iii. a mechanism whereby the access provider is required to report to the Commission and access seekers on whether KPIs have been met;
  - iv. incentives for compliance with KPIs;
  - v. proposed remedial actions and outcomes where the access provider does not meet its KPIs; and
  - vi. a soft launch, if necessary, of the Mobile Co-location Service prior to its full implementation; and
- i. must include, as a schedule to the Proposal, terms relating to interference management, taking into account all relevant requirements under the Radiocommunications Act 1989 and Radiocommunications Regulations 2001.

**Date and Place of Response**

13. Vodafone must supply the completed Proposal to the Commission's Wellington office at **Level 6, The Vector Building, 44-52 The Terrace, Wellington** by no later than **5.00pm, Friday, 25 April 2008**.

**DATED** at Wellington this 8 day of February 2008



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Dr Ross Patterson  
Telecommunications Commissioner  
Commerce Commission

## **Schedule 1: Relevant extracts from the Telecommunications Act 2001**

### Sections 30F to 30H

#### **30F Call for standard terms proposal**

- (1) After giving public notice under section 30D and conducting a scoping workshop under section 30E, the Commission must –
  - (a) give written notice to 1 or more access providers of the designated access service or specified service requiring them to submit to the Commission, by the date specified in the notice, a standard terms proposal that complies with section 30G; and
  - (b) give public notice of that requirement.
- (2) The Commission may include in the written notice under subsection 1(a) any additional requirements that it thinks fit to specify, having regard to any relevant matters (for example, the terms and conditions of any commercial agreement or regulated terms for any service in New Zealand or overseas).
- (3) An access provider of the designated access service or specified service to whom written notice is given under subsection 1(a) must comply with the requirement or requirements contained in that notice.
- (4) The written notice under subsection 1(a) must be accompanied by a copy of –
  - (a) section 30G; and
  - (b) any additional requirements that the Commission specifies under subsection (2).

#### **30G Requirements for standard terms proposal**

- (1) A standard terms proposal must –
  - (a) specify sufficient terms to allow, without the need for the access seeker to enter into an agreement with the access provider, the designated access service or specified service to be made available within the time frames specified under paragraph (c); and
  - (b) provide an explanation of, and reasons for, those terms; and
  - (c) state the time frames within which the access provider must make the service available to –
    - (i) every person who is already an access seeker when the standard terms determination is made; and
    - (ii) every person who becomes an access seeker after the standard terms determination is made; and
  - (d) be consistent with the description of service in Part 2 or Part 3 of Schedule 1, as the case may be; and
  - (e) be consistent with the applicable access principles and any limits on those applicable access principles; and
  - (f) comply with any additional requirements that the Commission has specified under section 30F(2).

- (2) The terms referred to in subsection 1(a) –
  - (a) must include the price payable for the supply of the service if that price has been determined in accordance with the applicable initial pricing principle or the applicable final pricing principle in a previous determination made under section 27; or
  - (b) must not include that price if that is not the case.
- (3) The Commission may refuse to consider a standard terms proposal that –
  - (a) fails to comply with this section:
  - (b) is submitted late.

### **30H Failure to submit standard terms proposal**

- (1) If an access provider of a designated access service or specified service fails to submit, in response to a notice under section 30F, a standard terms proposal that complies with section 30G, the Commission may –
  - (a) give written notice to another access provider, or an access seeker of the service requesting that access provider or, as the case may be, that access seeker to submit to the Commission, by a further date specified in the notice, a standard terms proposal that complies with section 30G;
  - (b) prepare a draft standard terms determination under section 30K even though it has not received a standard terms proposal from an access provider or an access seeker of the service.
- (2) The written notice under subsection 1(a) must be accompanied by a copy of –
  - (a) section 30G; and
  - (b) any additional requirements that the Commission specifies under section 30F(2).

## Clauses 5 and 6 of Schedule 1

### **5 Standard access principles for designated access services and specified services**

The following standard access principles apply to designated access services and specified services:

- (a) *principle 1*: the access provider must provide the service to the access seeker in a timely manner;
- (b) *principle 2*: the service must be supplied to a standard that is consistent with international best practice;
- (c) *principle 3*: the access provider must provide the service on terms and conditions (excluding price) that are consistent with those terms and conditions on which the access provider provides the service to itself;
- (d) *principle 4*: the access provider must, if requested, provide an access seeker with information about a designated access service or specified service at the same level of detail, and within the same time frame, that the access provider would provide that information had it been requested by one of its own business units.

## **6 Limits on application of standard access principles set out in clause 5**

- (1) Principles 1 to 4 set out in clause 5 are limited by the following factors:
  - (a) reasonable technical and operational practicability having regard to the access provider's network;
  - (b) network security and safety;
  - (c) existing legal duties on the access provider to provide a defined level of service to users of the service;
  - (d) the inability, or likely inability, of the access seeker to comply with any reasonable conditions on which the service is supplied;
  - (e) any request for a lesser standard of service from an access seeker
- (2) Principle 4 set out in clause 5 –
  - (a) does not extend to any information about identifiable individual customers of the access provider; and
  - (b) is subject to the requirement that any confidential information provided to the access seeker, in accordance with that principle, must be kept confidential to that access seeker.

