

COMMERCE COMMISSION

Please refer to:  
13.1/J10943  
655878-1

24 January 2008

To all Parties to the Standard Terms Determination

### **Mobile Co-location Standard Terms Determination: Scoping workshop**

Further to my letter of 21 December 2007, the Commission has now finalised the arrangements for the scoping workshop for the specified service described as 'Co-location on cellular mobile transmission sites' in Part 3 of Schedule 1 of the Telecommunications Act 2001 (the '**Mobile Co-location Service**').

#### **Purpose**

The purpose of a scoping workshop is to provide the Commission with information to assist it to specify:

- (a) a reasonable period of time within which an access provider must submit a standard terms proposal; and
- (b) any additional requirements for that proposal.<sup>1</sup>

The agenda (attached) for the workshop lists a range of technical, operational and other issues that might give rise to any 'additional requirements'. One of the objectives of the workshop is to seek your views on what type of additional requirements, if any, are necessary in relation to those issues. Another objective is to seek your views on which party (or parties) the Commission should require to submit a standard terms proposal.

The Commission has attached a draft notice requesting submission of a standard terms proposal for the Mobile Co-location Service, which indicates some of the additional requirements which it proposes to include (and these are also identified on the agenda).

The Commission has prepared an overview of the standard terms determination process, which is attached for your information. After conducting the scoping workshop, the Commission will consider the views expressed and then give notice to one or more access providers, with any additional requirements, to submit a standard terms proposal by the date specified.

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<sup>1</sup> See *section 30E, Telecommunications Act 2001*

#### **AUCKLAND:**

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135 Albert Street  
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AUCKLAND 1143, NEW ZEALAND  
Tel: (09) 920 3480 Fax: (09) 920 3481

#### **WELLINGTON:**

L 6, Vector Building  
44 The Terrace  
P.O. Box 2351,  
WELLINGTON 6140, NEW ZEALAND  
Tel: (04) 924 3600 Fax: (04) 924 3700  
**Main Office**

#### **CHRISTCHURCH:**

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31 Victoria Street  
P.O. Box 25-193  
CHRISTCHURCH 8144, NEW ZEALAND  
Tel: (03) 964 3450 Fax: (03) 964 3451

## **Administration**

The workshop will be held on 31 January 2008 at the Commission's Conference Room:

Vector Building  
Ground Floor  
44-52 The Terrace  
Wellington

The workshop will be open to all parties to the determination and any other persons with a material interest in the matter. The workshop will be recorded and a transcript will be posted on the Commission's website. Although the precise number of participants has yet to be confirmed, I anticipate that the venue will accommodate three speakers from each party (if required). Additional seating will be available at the rear of the room for observers.

Tea and coffee will be provided but participants will need to make their own lunch arrangements.

**Please contact Matthew Bailey on [matthew.bailey@comcom.govt.nz](mailto:matthew.bailey@comcom.govt.nz) by 4pm Tuesday 29 January 2008 to confirm your attendance.**

Yours sincerely



Tom Forster  
Manager  
Telecommunications Branch

### Attachments:

Mobile Co-location Service scoping workshop agenda  
Draft Notice for the Mobile Co-location Service  
Overview of the standard terms determination process

**Mobile Co-location Service  
Scoping Workshop  
31 January 2008**

**- AGENDA -**

**Commerce Commission Conference Room  
Ground Floor  
Vector Building  
44-52 The Terrace  
Wellington**

Chairperson: Bruce Officer, Chief Adviser, Telecommunications Branch

Welcome and introduction	9.30am
Technical issues	9:45am
<ul style="list-style-type: none"><li>▪ Service description/scope of the service (clause 12(e)<sup>1</sup>)</li><li>▪ Technical parameters</li><li>▪ Interference management (clause 12(i))</li></ul>	
Morning Tea	10:45am
Implementation plan	11:00am
<ul style="list-style-type: none"><li>▪ Timeline for delivery of the Mobile Co-location service (clause 12(h)(i))</li><li>▪ Key performance indicators (clause 12(h)(ii))</li><li>▪ Prioritisation of access seekers (queuing policy) and processes related to capacity bottlenecks (clause 12(h)(vi))</li><li>▪ Soft launch (clause 12(h)(vii))</li></ul>	
Lunch Break	12.30pm
Operational delivery	1.15pm

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<sup>1</sup> Clause references in this agenda are references to clauses in the attached *Draft Notice for the Mobile Co-location Service*

- Operations manual (clause 12 (f))
  - Forecasting requirements
  - Ordering
  - Provisioning
  - Billing
  - Fault management
- Operational Support System (OSS) integration
  - There are multiple access providers for the service, but only one standard terms determination. How can the STP cater for the different operational processes and procedures of the access providers?
- Service levels (clause 12(g))
- Access terms
  - Access rights (clause 12(c))
  - Suspension/termination (clause 12(d)(iii))
- Other information requirements
- Post implementation performance reporting

Existing standard terms determinations 2:15pm

- Relevance of the style, form and content of existing standard terms determinations to the Mobile Co-location STD (clause 12(a))

Afternoon tea 2:45pm

Submission of proposal 3.00pm

- Party or parties required by the Commission to submit a standard terms proposal (clause 9)

Timeframe for proposal 4.00pm

- Reasonable period within which the standard terms proposal must be submitted (clause 9 and 13)

Any other matters 4:30pm

Close 5.00pm



COMMERCE COMMISSION

**DRAFT FOR DISCUSSION PURPOSES ONLY**

**Notice by the Commerce Commission under section 30F of the Telecommunications Act 2001 for [XXXX] 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: **XX XXX** 2008

**DRAFT – FOR DISCUSSION PURPOSES ONLY**

**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 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. **XXXX** is a duly incorporated company having its registered office at **XXXX**.
8. **XXXX** operates cellular a mobile telephone network and therefore, is an ‘Access provider’ for the Mobile Co-location Service.
9. The Commission gives notice to **XXXX** 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, [XXXXXX]**.

**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.

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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 in 2008, prior to 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; and

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- ii. the consequences of a breach of the determination (including provision for off-set or withholding rights, or liquidated damages); and
  - 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; 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, including sites, buildings or utility services that are able to be co-located. Specifically, the Service Description must provide for co-location of:
  - i. towers, poles, masts, or other similar structures; and/or
  - ii. sites, buildings, and utility services that are associated with the kinds of structures referred to in (i);
- 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;
- g. must include ‘Service Level Terms’ (‘SLA’) that specify quality and performance levels in relation to the supply of the Mobile Co-location Service. The SLA must, as a minimum, include defined service levels for:
  - i. Initial site readiness (provision of information regarding available land area, space on towers/poles/masts, existing access tracks and utility services);
  - ii. Footprint readiness (completion of any preparatory work required to be performed by the access provider before the access seeker is able to install its equipment at the site);
  - iii. Provisioning of Mobile Co-location Services (including ‘request acknowledgement’, ‘notification of expected completion date’, ‘notification of rejection’, ‘confirmation of completion’);
  - iv. Fault management;
  - v. Forecasting requirements;
  - vi. Access seeker and access provider deliverables;
  - vii. Proposed remedial actions and outcomes where the access provider does not meet its SLAs.

The service levels defined in the SLA must be based around the corresponding operational process or procedure set out in the Operations Manual;

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- h. must include terms for an ‘Implementation Plan’ to be followed by the access provider 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 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;
  - vi. a process for addressing prioritisation of access seekers, including where there are capacity constraints on the relevant facilities;
  - vii. a soft launch 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.

### Date and Place of Response

13. **XXXX** 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, [XXXXXXX]**.

**DATED** at Wellington this **XX** day of **XXXX** 2008

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Dr Ross Patterson  
Telecommunications Commissioner  
Commerce Commission

## **DRAFT – FOR DISCUSSION PURPOSES ONLY**

### **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).

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- (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.

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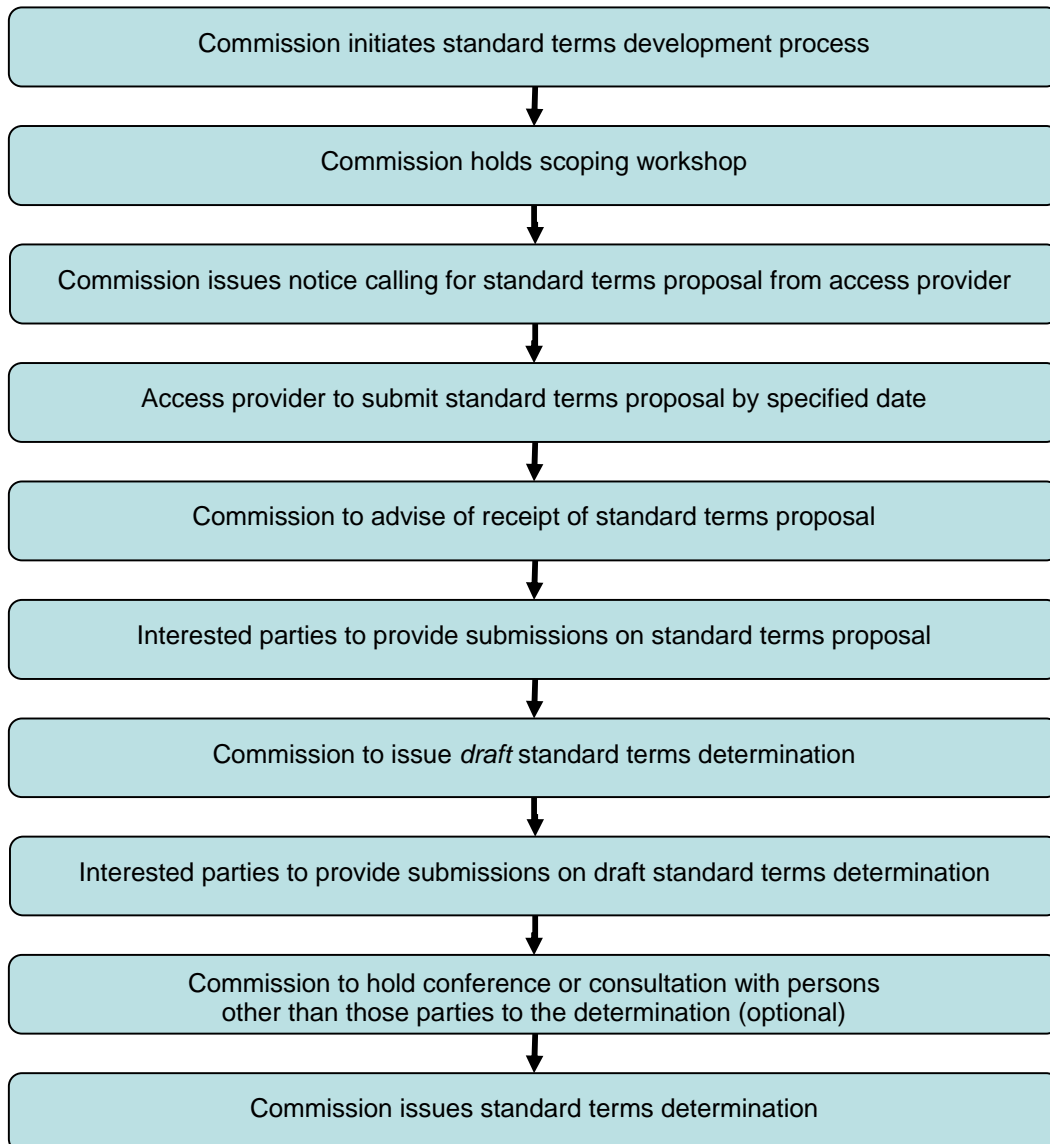
### **6 Limits on application of standard access principles set out in clause 5**

- (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.

## The Standard Terms Determination process

The administrative and substantive requirements for developing an STD are set out in sections 30A – 30Q of the Act. The application and effect of an STD are set out in sections 30S and 30T and section 30R provides for the Commission to be able to review, vary or replace an STD

Below are the key events in the STD process.



These key steps are briefly explained on the following pages. An indicative timeframe for some of these steps is also included.

## **Overview of key steps in the STD process**

### *Commission initiates STD process*

The Commission may initiate a standard terms development process for a designated access service or specified service (s. 30C).

Within ten days of initiating the STD process, the Commission must give public notice that the STD process has been initiated (s. 30D). The Commission will give such notice by notice in the Government Gazette and on its website; and will usually issue a media release and write to industry participants.

### *Commission holds scoping workshop*

The Commission must hold at least one scoping workshop in relation to the designated access or specified service (s. 30E(1)).

The purpose of the scoping workshop is to assist the Commission in understanding what is a 'reasonable period' to allow for an access provider to submit a standard terms proposal (STP) and to assist the Commission in specifying any requirements for the STP additional to those in section 30G of the Act (s. 30E(2)). These matters (ie the due date for the STP and any additional requirements that the access provider must include in the STP) must be specified in the notice the Commission gives the access provider calling for an STP (s. 30F(1)).

Practically, the scoping workshop must be:

- (a) open to all parties to the STD; and
- (b) conducted by an employee or agent of the Commission in a manner, and within the time, that the Commission sees fit (s. 30E(3)).

### *Commission issues notice calling for standard terms proposal from access provider*

After conducting the scoping workshop the Commission must give written notice to the access provider, who supplies the service, requiring the access provider to submit to the Commission a standard terms proposal (STP) by a specified date. The written notice may include any additional requirements that the Commission thinks fit to specify. The notice must be accompanied by a copy of section 30G which sets out the requirements for an STP and any additional requirements the Commission has specified. The Commission must also give public notice of that requirement (s. 30F).

### *Access provider to submit STP by specified date*

After receiving the relevant notice from the Commission, the access provider must then prepare the STP and submit it by the date specified in the Commission's notice

(s. 30F(3)). The access provider's STP must comply with the requirements specified in section 30G, including any additional requirements the Commission has specified in the notice to the access provider. The STP must not include the price for the service unless it has previously been determined by the Commission in accordance with either the initial or final pricing principle in the context of an access determination (s. 30G(2)).

*Commission to advise of receipt of STP*

As soon as practicable after receiving the access provider's STP, the Commission must notify all parties to the STD (in writing) and give public notice that the STP has been received. In giving public notice the Commission must include details of how the STP may be obtained and viewed and specify the closing date for submissions on the STP (s. 30I).

*Interested parties to provide submissions on STP*

Interested parties may provide submissions on any matter to which the STP relates. However, if a submission proposes an additional or alternative term to be included in the STD, the submission must set out the wording of that alternative term (s. 30J). Parties should lodge their submissions by the date specified by the Commission in the notice of receipt of the STP.

*Commission to issue draft STD*

Within 60 (working) days of the closing date for submissions on the STP from interested parties, the Commission must make "reasonable efforts" to issue a draft STD to all parties to the STD (s. 30K(1)).

The draft STD must set out the terms on which the service(s) must be supplied (ss. 30K(1)(a) & (b) & 30K(2)).

The Commission must give public notice of the draft STD and specify the closing date for submissions on the draft STD (s. 30K(1)(d) & (e)).

*Interested parties to provide submissions on draft STD*

Interested parties may provide submissions and cross submissions on the draft STD by the dates specified by the Commission.

*Commission to hold conference or consultation with persons other than those parties to the STD (optional)*

If, in the Commission's view, persons other than parties to the STD have a material interest in the STD, then the Commission must either consult those persons or hold a conference in relation that matter, before the Commission prepares the STD (s. 30L).

*Commission issues STD*

As soon as practicable after receiving submissions from interested parties or after holding a conference with persons not a party to the STD, the Commission must prepare an STD and provide a copy of it to the parties to the determination (s. 30M).

Where the Commission has considered 2 or more services during the standard terms development process, the Commission is entitled to set terms of general application to all services in one STD and include a separate schedule for each service, with specific terms for that particular service. Alternatively, the Commission may prepare a separate STD for each designated or specified service (s. 30N).

The matters which the Commission must or may include in an STD are set out in section 30O. In particular, the STD must specify sufficient terms to allow, without the need for the access seeker to enter into an agreement with the access provider, the service to be made available within the time frames specified in the determination.

Additional matters to be included in an STD for designated access services, such as price, are set out in section 30P.

An STD must *not* include an expiry date (s. 30Q).

## Indicative timeline

Below is a general *indicative* timeline for an STD process.

Step	General	Mobile Co-location STD
Initiation of STD process		21 December 2007
Scoping workshop	Within 2-3 weeks of initiation	31 January 2008
Commission issues notice calling for STP	Within 2 weeks of holding workshop	Early February 2008
Access provider to submit STP	To be discussed at scoping workshop <sup>1</sup>	TBD
Commission to advise of receipt of STP	1 day	
Submissions on STP due	2-4 weeks <sup>2</sup>	
Commission to prepare and issue draft STD	4-6 weeks <sup>3</sup>	
Interested parties to provide submissions & cross submissions on draft STD	4 weeks + 2 weeks	
Conference or consultation with persons other than parties to the STD (optional)	2 weeks preparation + 1-2 days conference <sup>4</sup>	
Commission prepares and issues STD	4-6 weeks after close of submissions/conference	

### Notes

1. The time required for an access provider to submit an STP will be discussed at the scoping workshop. It is likely to vary depending on factors, such as, whether there is currently a commercial offer for a similar service already in the marketplace, and the extent to which industry working parties have already agreed on terms.
2. Submission times may vary depending on, for example, the complexity of the service, the extent to which non-price terms vary from an existing commercial offer, and the extent to which industry working parties have already agree to terms.
3. The Commission must make reasonable efforts to prepare a draft STD within 60 working days of closing date of submissions.
4. Depending on response (if any) from persons not party to the STD, this may be held during the period that parties to the STD are preparing their submissions and cross submissions.