

DETAILED SUBMISSION ON THE GENERAL TERMS

SECTION/CLAUSE of the DRAFT COMMERCE COMMISSION STD	COMMENT
<p>General Comments</p>	<p>Overall, Telecom believes that the General Terms are suitable for the Service. However, Telecom has the following key concerns:</p> <ul style="list-style-type: none"> • The definitions of Mast and Building include Buildings and Masts that are to be used for the transmission or reception of Telecommunications via a Cellular Mobile Telephone Network. The definition of Mast also includes buildings that are not associated with a tower, pole, mast or other similar structure. Telecom submits that this is impracticable and outside the scope of the Telecommunications Act. • The definition of Antenna and Other Service Provider do not protect third party co-locators who do not operate Cellular Mobile Telephone Networks. As discussed in Telecom's detailed submission on the Interference Management and Design Document, Telecom has many third party co-locators who do not operate Cellular Mobile Telephone Networks. These co-locators should be protected by the STD. This is consistent with the limits on the access principles in the specification of the Service in the Telecommunications Act. <p>Telecom proposes some other minor drafting changes to the General Terms to ensure that the General Terms reflect the Service.</p>
<p>GENERAL INFORMATION</p>	
<p>Structure of the Mobile Co-location Terms</p>	
<p>MOBILE CO-LOCATION GENERAL TERMS</p>	
<p>1 Definitions</p>	<p>Antenna</p> <p>Telecom submits that the Commission should amend the definition of "Antenna" to include all equipment that receives or transmits radio communications. Without this change third parties who co-locate on an Access Provider's Relevant Facilities, but who do not operate a Cellular Mobile Telephone Network, will not be given any protection from Access Seekers under the Terms.</p> <p>The definition of Antenna covers equipment that "transmits or receives radio communications signals in a Cellular Mobile Telephone Network". This definition is restrictive because it limits antenna to equipment used for a Cellular Mobile Telephone Network.</p> <p>Some of Telecom's Customers that co-locate at Telecom's Relevant Facilities do not have Cellular Mobile Telephone Networks. These Customers include Airways and local councils amongst others. Instead, they provide radiocommunications services. These Customers will be excluded from the protection in the Mobile Co-location Terms and, in particular, the protections in the Interference Management and Design Document if the definition of Antenna is limited to Antenna used in a Cellular Mobile Telephone Network. Without this protection, these operators will rely on Telecom to protect them from interference. The STD as drafted, however, will not enable Telecom to protect third party operators and as a result Telecom may unwillingly breach its agreements with operators and have no means to remedy that breach. This is inconsistent with the limits on the access principles in the specification of the Service in Schedule 1 of the Telecommunications Act.</p> <p>Telecom believes that the STD needs to ensure all users of Relevant Facilities are protected from harmful interference and not just those who are mobile operators.</p> <p>Therefore, Telecom submits that the definition of Antenna should be "equipment that transmits or receives radiocommunications signals".</p>

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	<p>Building and Mast</p> <p>Telecom does not support the Commission's inclusion of the phrase "or that is to be used" in the definitions of Building and Mast. The inclusion of the phrase "or that is to be used" will significantly broaden the Relevant Facilities subject to the Service beyond those contemplated by the specification of the Service in Schedule 1 of the Telecommunications Act.</p> <p>Ultra Vires</p> <p>The specification for the Service in the Telecommunications Act only regulates Buildings and Masts that currently exist and that are currently used for the transmission or reception of telecommunications via a cellular mobile telephone network. The Commission therefore has no jurisdiction to regulate Buildings and Masts that do not exist or which are not currently used for the transmission or reception of telecommunications via a cellular mobile telephone network.</p> <p>In the Service Description the Relevant Facilities are described as those structures which are used, and are owned, managed or leased by the Access Provider. The specified service does not include any towers, poles, masts or similar structures:</p> <ul style="list-style-type: none"> • which are not used for the transmission or reception of telecommunications via a Cellular Mobile Telephone Network; or • which are not owned, managed or leased by the Access Provider. <p>The scope of the specified service is clearly limited to the relevant facilities which are owned, managed or leased by the Access Provider, and used by the Access Provider for the transmission or reception of mobile telecommunications. Thus, when an Access Provider builds or acquires a new tower, pole, mast or similar structure, and uses that structure for transmitting or receiving mobile telecommunications, that structure then falls within the scope of the specified service. Again, a structure does not fall within the scope of the specified Service at any stage before it is built or acquired, and used.</p> <p>In the draft STD the Commission has defined a Mast as:</p> <p>"any tower, pole, mast or other similar structure that is used or that is to be used for the transmission or reception of Telecommunications via a Cellular Mobile Telephone Network."</p> <p>Similarly, the Commission has defined a Building as:</p> <p>"any building (or part thereof) on a Site, that is associated with a Mast and that is the subject of a Relevant Occupation by an Access Provider that is used or that is to be used to house equipment in connection with a Cellular Mobile Telephone Network..."</p> <p>The Commission's argument for extending the scope of the specified Service to include structures that may be used in the future is that:</p> <p>"The Commission considers that Vodafone's interpretation of the description of service in the Act fails to take into account the broader context of the description of service, including its purpose to promote competition in telecommunications markets for the long-term benefit of End Users of telecommunications services within New Zealand, and the public policy arguments raised by Kordia and TUANZ."</p> <p>The Commission argues that such an interpretation is based on a purposive approach to the Telecommunications Act. However, Telecom disagrees there is an issue of interpretation here. Part 3 of Schedule 1 of the Telecommunications Act clearly sets out the requirement that the structures "are used", and "are owned, managed or leased" by the Access Provider. There is no provision which states that this includes structures which are likely to be used for transmitting or receiving mobile telecommunications in the future, or structures which are likely to be owned, managed or leased by an access provider in the future.</p> <p>In other aspects of Part 3 of Schedule 1 of the Telecommunications Act clearly contemplates a distinction between actual use and likely use. This distinction is made in the definition of an access seeker, which is defined as:</p>

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	<p>"any person who—</p> <ul style="list-style-type: none"> (a) operates, or is likely to operate, a cellular mobile telephone network; and (b) seeks access to the service" <p>This definition shows an intention to include users and likely users of the relevant facilities as Access Seekers. However, the exclusion of:</p> <ul style="list-style-type: none"> • the likely use of structures which an Access Provider owns, manages or leases; or • the likely use of structures which an Access Provider does not own, manage or lease, <p>from the description of service for co-location on cellular mobile transmission sites demonstrates a lack of intention to include such structures within the specified service.</p> <p>With no clear intention to include such structures within the specified service, the words of the Telecommunications Act may not be circumvented, or the rights of an Access Provider encroached, by a STD made in relation to a specified Service. In <i>A-G (Canada) v Hallet & Carey Ltd [1952] AC 427 HL</i> Lord Radcliffe states at 450:</p> <p>"[T]here is a well-known general principle that statutes which encroach upon the rights of the subject, whether as regards personal or property, are subject to a "strict" construction. Most statutes can be shown to achieve such an encroachment in some form or another, and the general principle means no more than that, where the import of some enactment is inconclusive or ambiguous, the Court may properly lean in favour of an interpretation that leaves private rights undisturbed."</p> <p>In "Constitutional and Administrative Law in New Zealand" (2nd ed, Brookers, 2001) Philip A Joseph states:</p> <p>"The courts insist on clear statutory authorisation in order to uphold delegated legislation that encroaches on personal rights. They will not readily construe the requisite authority as implied or residing in the general grant of legislative power. The courts will construe such a power only where the whole object of the enabling Act would be defeated without a power to override individuals' rights."</p> <p>There is no clear intention that structures which are not used for transmitting or receiving mobile telecommunications are to be included within the meaning of specified Service under Part 3 of Schedule 1 of the Telecommunications Act. The definitions of a Mast, Building and Utility Service proposed in the STD are outside the scope of the specified service, and are therefore ultra vires.</p> <p>From a practical point of view, if such structures were within the scope of the description of Service, the specified Service would only require consultation from existing Access Providers, and not from likely Access Providers. Part 3 of Schedule 1 of the Telecommunications Act defines Access Provider as:</p> <p>"every person who operates a cellular mobile telephone network."</p> <p>Therefore, any party who does not operate a cellular mobile telephone network, but is likely to do so, is excluded from the definition of an Access Provider. If the scope of the specified service was to include structures that are not being used for transmitting or receiving mobile telecommunications and structures not built or acquired by the access seeker, then a party who is not, at the time, a service provider, can build or acquire Masts and Buildings without the need to consult under the Greenfields process, whereas an existing service provider would be required to. This distinction appears to produce an unreasonable position, contrary to any efficiency arguments, and an unnecessary disadvantage for existing network operators.</p> <p><i>Impracticable</i></p> <p>The inclusion of Buildings and Masts to be used or acquired is also impractical because:</p> <ul style="list-style-type: none"> • It is unclear when a Building or Mast will be used for the transmission or reception of telecommunications via a Cellular Mobile Telephone Network. Any of Telecom's current assets could consequently be used for this purpose

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	<p>including commercial or other non-mobile related buildings. The inclusion of these assets was not intended by the regulation of mobile co-location. Therefore, the definitions of Building and Mast should not include these assets.</p> <ul style="list-style-type: none"> • The Commission is regulating Access Providers' investment planning and the decisions that go into developing and designing Access Providers' Cellular Mobile Telephone Networks by regulating Buildings and Masts that are to be used for the Service. The Commission has not regulated the development of networks in other STDs. • An Access Provider's ability to develop its network in an efficient manner and will be reduced if the Commission chooses to regulate Buildings and Masts before they are built. An Access Provider is the best person to decide where and how to build their network. Therefore, the development of an Access Provider's network should not be regulated and the phrase "to be used" removed from the definitions of Building and Mast. <p>Access Providers will lose control of decisions about their own Cellular Mobile Telephone Networks as they will be required to consider Access Seekers at every stage. This will be complicated and add additional costs to investment. It may deter Access Providers from rolling out new sites.</p> <p>Telecom also does not support the Commission's inclusion of the phrase "for the avoidance of doubt, a Mast may include a building, or part of a building".</p> <p>It is unclear whether the Commission intended to refer to Buildings as defined by the General Terms or buildings generally. The definition of Mast becomes circular if the former was intended. The definition of Building is "any building (or part thereof) on a Site, that is associated with a Mast [a building or part of a building]...". Telecom suspects that the inclusion of the wording was an attempt to make clear that tower like structures associated with buildings are also captured by the definition of Mast. An example of this would be the brick chimney structure at the Unitec site in Auckland that has been subject to a co-location request from New Zealand Communications. It is Telecom's view that the inclusion of the additional wording is not necessary to accomplish this outcome because such a structure is already covered in the definition of Mast in the General Terms by the phrase "or other similar structure". We also note that Telecom's view of the Unitec example was that the chimney was a Mast and therefore included within the scope of the Service.</p> <p>Telecom is concerned that the proposed definition unnecessarily increases the scope of the Service in a way contrary to the purposes of the Telecommunications Act. The result is that any "building" used or to be used for the transmission or reception of Telecommunications in a Cellular Mobile Telephone Network is included within the definition of Mast. This includes Telecom's corporate property such as the Telecom buildings on Jervois Quay and Hereford Street. Telecom owns or leases approximately 3,500 buildings, which could all become subject to the STD. This increase in the STD's scope will affect Telecom's ability to deliver the Common Format Site Database in a timely fashion amongst other things. In addition, we do not think that any Access Seeker would, in reality, want access to these sites.</p> <p>Furthermore, the increase in scope of the definition of Relevant Facilities will result in the compulsory greenfields process applying to decisions to acquire new corporate buildings. This is clearly outside the scope of the Service as intended by the Act. Telecom opposes the compulsory Greenfields process as set out in its submission on the Operations Manual.</p> <p>The Telecommunications Act makes a clear distinction between Masts and Buildings. A Mast is different from a Building. A Building is only regulated by the specification of the Service if it is associated with a Mast (ie if the Building is used as a shelter for equipment associated with the Cellular Mobile Telephone Network). It is clear from the drafting of the Telecommunications Act that a Building cannot be a Mast by itself. This distinction is not reflected by the Commission's drafting of the definitions of Mast and Building in the General Terms.</p> <p>Telecom will not be able to provide the Service on many buildings that it owns. In many cases Telecom does not have rights of occupation over the space used. Telecom is unable to pass these rights on to Access Seekers where Telecom does not have rights to co-locate. The additional wording proposed by the Commission is inconsistent with the limits on the access principles set out in the specification for the mobile co-location service in the Telecommunications Act.</p>

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	<p>Therefore, Telecom submits that the definitions of Building and Mast proposed in Vodafone's STP should be used. If the Commission chooses not to use the definitions of Building and Mast proposed in Vodafone's STP, the Commission should include the phrase "and that is the subject of a Relevant Occupation by the Access Provider". The Relevant Occupation concept was intended to ensure that Access Providers were not obligated to provide the Service where they had no rights to facilitate that co-location. Access Providers are unlikely to own all buildings that they use. Therefore, the Commission should include the Relevant Occupation concept in the definition of Mast, if Mast also includes buildings, to ensure that Access Providers are not obliged to offer the Service on buildings where they have insufficient tenure to do so.</p> <p>Customer</p> <p>Telecom submits that it is unnecessary to use the definitions of both Customer and End User throughout the STD. The two definitions were introduced in earlier STDs to differentiate different parts of the Service. Differentiation is not required for this Service. Telecom also notes that there is no place in the STD where the two terms are used separately. Telecom submits that the definition of Customer should be retained and the definition of End User deleted because the term "Customer" includes "End Users" and no distinction between a Customer and an End User is required for the Service.</p> <p>Telecom submits that the definition of "Customer" should be amended by adding a paragraph (c) which provides that: " in relation to any Other Service Provider with facilities on or at a Relevant Facility, means any person who has a contractual relationship with that Other Service Provider for the supply of such services or to whom that Other Service Provider is supplying such services and, where that Other Service Provider uses such services itself, that Other Service Provider."</p> <p>This amendment is intended to capture the fact that:</p> <ul style="list-style-type: none"> • the Customers of an Other Service Provider do not use the Mobile Co-location Service, but use services provided by the Other Service Provider using the Mobile Co-location Service; and • other parties co-locating on a site may themselves make use of the services they provide (eg New Zealand Police). <p>Telecom's proposed definition is consistent with the definition of Customer for Access Providers and Access Seekers and provides the customers of third parties with protection under the Mobile Co-location Terms in accordance with the limits on the access principles set out in the specification of the Mobile Co-location service in the Telecommunications Act.</p> <p>End User</p> <p>The definition of "End User" is unnecessary in this STD. It was used in the UCLL Co-location Standard Terms Determination to differentiate a particular part of the UCLL service. This issue is not relevant to the Service.</p> <p>Therefore, the definition of "End User" may be deleted as the term "Customer" already covers "End Users" and no distinction between a Customer and an End User is required for the Service. The term Customer includes the End Users of both the Access Provider and the Access Seeker.</p> <p>Therefore, Telecom submits that "End User" should be:</p> <ul style="list-style-type: none"> • deleted from the Mobile Co-location Terms where it is used with the word "Customer"; and • replaced with Access Seeker Customers (or words to that effect) where it is used on its own. <p>In addition, the term "End User" could be interpreted to mean only the End Users of the Access Seekers because only Access Seekers use the Mobile Co-location Service. However, the Commission has used the term End User throughout the draft STD in a way that was intended to include the End Users of both the Access Provider and the Access Seeker. End User should include the End Users of both the Access Provider and the Access Seeker because the draft STD would otherwise give preference to the End Users of Access Seekers at the expense of an Access Provider's End Users.</p>

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	<p>Exchange</p> <p>The definition of Exchange affects the Access Seeker's liability and insurance requirements. At the TCF and in earlier STDs, it was recognised that Telecom exchanges are important parts of the national communications network and house core equipment that all parties use to receive services from Telecom. Due to the importance of these sites they require more protection and insurance than other sites.</p> <p>The Commission has also recognised this in the STD by including higher liability and insurance requirements for access to an Exchange. The Commission has removed "and includes all of the Telecom owned, leased or licensed property on which the building is situated" from the first limb of the definition of Exchange. Telecom submits that this phrase should be included in the definition of Exchange.</p> <p>Telecom's Exchanges take a variety of forms. Equipment, including core network equipment, is not always located in the building and may be located on the property around the building which Telecom owns, leases or licences. For example, important cables are likely to be underground and equipment may be outside the Exchange in containers or on its own. This equipment will not have the protection of the increased liability and insurance requirements that it has had in all other STDs with the Commission's current drafting.</p> <p>In addition, Relevant Facilities available for co-location at Exchanges are often located in the area surrounding the Exchange and not in the Exchange itself. The increased liability and insurance requirements for Exchanges will not apply to co-location on these Relevant Facilities despite the significant risk of damage to Telecom's core network equipment from Access Seekers co-locating at these Relevant Facilities. The increase in the liability and insurance requirements included in the STD are ineffective as a result.</p> <p>Furthermore, Telecom submits that the definition of Exchange should be consistent across STDs. The phrase including the property on which the Exchange is located has been included in all previous STDs that have defined "Exchange" and has been submitted as part of Chorus' Standard Terms Proposal for the sub-loop services. There is no reason why the Commission should depart from this definition at this stage.</p> <p>Other Service Provider</p> <p>The definition of "Other Service Provider" refers only to providers of "Telecommunication Services". Telecom submits that this definition is too narrow because, for example, it excludes broadcasting services that may be provided from the Relevant Facilities. The appropriate reference should be to "radiocommunications services".</p> <p>The draft STD provides Other Service Providers with protections from the activities of the Access Seeker, particularly interference caused by an Access Seeker. Access Seeker Equipment may interfere with the equipment of a third party which does not provide Telecommunication Services in the same way as it may interfere with Access Provider Equipment. The draft STD does not provide these protections to third parties consistently and is therefore inconsistent with the limit on the access principles which requires the Commission to take account of "the interests of third parties who use the relevant facilities".</p> <p>The protections provided by the Mobile Co-location Terms will be afforded to the customers of all service providers located at a Relevant Facility if "Telecommunications Services" is replaced with "radiocommunications services".</p> <p>Relevant Occupation</p> <p>Telecom notes that the Commission has moved the definition of Relevant Occupation from the General Terms to the Operations Manual and included a similar concept in the definition of Relevant Facilities.</p> <p>Telecom submits that the concept behind Relevant Occupation should be included in the definition of Mast if Mast includes any building. An Access Provider is likely to own the mast that is used for the Service, but is unlikely to own all buildings. The Access Provider may not be able to provide access to Mast (and the Service) as a result. Therefore, the Relevant</p>

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	Occupation concept should also be included in the definition of Mast.
2 Guiding Principles	
3 Interpretation	
4 Request to access the Mobile Co-location Service	
5 Application of the Mobile Co-location Terms	
6 Prerequisites to the Mobile Co-location Service being made available	<p>The Commission has removed the prerequisite for the Access Provider and Access Seeker to reach agreement on the charges payable before the Service will be provided.</p> <p>Telecom submits that some acknowledgement of an agreement between the Access Provider and Access Seeker on the charges to be paid for the Service should be included in the STD.</p> <p>An Access Provider should not be required to provide the Service without an agreement on the charges to be paid. Without including an acknowledgement as suggested in Vodafone's STP it is possible to read the STD as requiring an Access Provider to provide the Service without a prior agreement on price. While many parties to the co-location code have already agreed charges for the Service, these may need to be changed because of the different service specifications in the STD and the additional costs in providing those specifications. This may require parties to renegotiate previously agreed price terms. This is consistent with what is envisaged by a specified service. Therefore the STD should acknowledge that charges should be agreed before the Service is provided.</p> <p>There would be no incentive for the Access Seeker to agree the charges to be paid if the Service was required to be provided without an agreement on charges. Furthermore, the Access Provider could be left in the situation where it is required to provide the Service on the terms set out in the STD, but has no guarantee that its costs from providing the Service will be recovered. Telecom submits that this is inconsistent with the principles of a specified service.</p> <p>Telecom does not agree with the Commission's associated contention that an acknowledgement of the Access Provider's ability to charge for the Service and the dispute resolution provisions should be removed from the STD because they should be unnecessary. The Commission noted at paragraphs 48 and 49 of its determination that it did not expect disputes over price to arise because price was not a barrier to mobile co-location, and that the Commission would immediately consider designating the Service if disputes did arise. Telecom believes the parties can agree price where they both have incentives to do so. However, if Access Providers are required to deliver the service prior to an agreement on price, there is no incentive on the Access Seeker to agree. This in itself creates a barrier to agreement. As such, an acknowledgement of this further agreement recognises that the STD does not and cannot include all of the terms on which the Service is provided because the Service is specified and charges are a significant term for the supply of any service.</p> <p>Therefore, Telecom submits that clause 7.2 and 14.5 of Vodafone's Standard Terms Proposal should be included in the STD.</p>
Security requirements	
Insurance requirements	
Operational requirements	

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GENERAL RIGHTS AND OBLIGATIONS	
7 General	
Supply of the Mobile Co-location Service	
The Access Provider's relationship with Customers and End Users of the Access Seeker	
Rights not excluded	
8 The schedules to the Mobile Co-Location General Terms	
Compliance	
Procedures and technical specifications	
9 Change mechanism for Mobile Co-location Operations Manual and Mobile Co-location Service Level Terms	
Notice of change	
Objections to change	<p>All Access Seekers and Access Providers are required to negotiate if there is an objection to a change in the Mobile Co-location Operations Manual under clause 10.5. Negotiation will be administered by a TCF administrator.</p> <p>Telecom submits that negotiation on changes to the Mobile Co-location Operations Manual should be administered by the TCF Chairperson.</p> <p>The negotiation is likely to be a complex process because:</p> <ul style="list-style-type: none"> • the ability to change the Mobile Co-location Operations Manual is extremely important; • the process involves all parties; and • parties may have more than one view (ie be both an Access Seeker and Access Provider). <p>Therefore, the process needs to be effectively managed. The TCF process leading up to Vodafone's Standard Terms Proposal was managed by the TCF chairperson. This process only was successful because of the effective management by the TCF chairperson and the respect the TCF Chairperson has from the industry.</p> <p>The negotiation process in the General Terms is likely to be similar to the TCF process leading up to Vodafone's Standard Terms Proposal. Therefore, the negotiations should be carried out by the TCF Chairperson. This process may be ineffective if the Commission does not ensure that the right person is nominated as the chairperson for the negotiation process.</p>
Referral to the Commission	
Notice of approval process	

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THE ACCESS SEEKER'S RIGHTS AND OBLIGATIONS	
10 General	<p>Telecom is pleased that the Commission has accepted Telecom's submission that sub-clause 10.1.1(b) requires a threshold. The Commission has chosen "material to the quality of service to the Access Provider's Customers" as the standard to apply to this sub-clause. However, it is not clear what "material" means as this is not a defined term. It is clear, however, that material is a higher threshold than the threshold originally proposed.</p> <p>Telecom is concerned that the high threshold inserted into sub-clause 10.1.1(b) may suggest that some interference greater than Unacceptable Performance Degradation (as defined in the Interference Management and Design Document) is acceptable. Telecom submits that any Unacceptable Performance Degradation is material to the quality of service to the Access Provider's Customers.</p> <p>As explained in Telecom's detailed submissions on the Interference Management and Design Document, interference greater than 0.5 dB will have significant effects on the quality of service provided to an Access Provider's Customers:</p> <ul style="list-style-type: none"> • it will cause a reduction in the effective service area from the site. Customers located at the edge of the coverage area are affected when they drop outside the reduced coverage or service area; and • it will have a significant impact on all Access Provider Customers serviced from the site using high speed broadband data services (such as CDMA-EVDO, UMTS-HSPA and GSM-EDGE etc). <p>As a result of these concerns, Telecom submits that sub-clause 10.1.1(b) should be amended to:</p> <p style="padding-left: 40px;">"material to necessary to maintain the quality of service to the Access Provider's Customers, the Access Seeker's Customers or any Other Service Provider's customers"</p>
11 The Access Seeker's responsibility for Customers and End Users	
CHARGES, PAYMENT, NON-PAYMENT AND INVOICE ERROR DISPUTES	
12 Payment principles	
13 Invoicing and payment of Charges	
Invoices	
Payment	
Electronic invoicing and billing reports	
Time limit for invoicing	
14 Non-payment	
Suspension following Non-Payment Notice	<p>Telecom submits that the Access Provider should be able to suspend all of the Service at a site under clause 14.3 rather than a part of it.</p> <p>It is impractical for an Access Provider to suspend part of the Service at a site. In reality suspension of a part of the Service may result in the whole Service being suspended. For example, an Access Seeker would not be able to operate its equipment if an Access Provider suspended electricity supply to a site. Furthermore, it is unclear which part should be</p>

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	<p>suspended and who determines which part should be suspended.</p> <p>Telecom believes that the Commission intended to limit the suspension of the Service to a particular site. Telecom supports this position. Therefore, Telecom submits that clause 14.3 should be amended to:</p> <p style="padding-left: 40px;">"The Access Provider may Suspend supply to the particular part (or site) of the Mobile Co-location Service at the site subject to the Non-Payment Notice that relates to non-payment when the Access Provider gives the Access Seeker a Non-Payment Notice and the amount due (including any interest charged) is not paid within 20 Working Days of the Non-Payment Notice being given."</p> <p>Telecom has proposed a similar change to the Access Terms.</p>
15 Invoice Disputes	
Dealing with Invoice Error Disputes	
Other invoice Disputes	
Interest on unpaid amounts	
LIABILITY	
16 Access Seeker's liability	
Limitation of the Access Seeker's liability	
Exclusion of the Access Seeker's liability	
Time bar	
Exceptions to the limitation and exclusion of the Access Seeker's liability	
Costs of recovering Charges	
Access Seeker's indemnity	<p>The Commission has limited the Access Seeker's indemnities in clause 16.6 of the General Terms by removing the indemnities to the extent they are permitted by law for breach of:</p> <ul style="list-style-type: none"> • any law or requirement of any Authority that applies in relation to anything that is done or to be done by the Access Seeker (including the Resource Management Act 1991 and the Building Act 2004), or its Invitees, under the Mobile Co-location Access Terms, or that relates to the Access Seeker's or the Access Seeker's Invitees' use of the Relevant Facilities; • the Resource Management Act 1991, and any relevant district plan or regional plan and the terms of any resource consent and any other applicable law; • its obligations under the HSE Act and all approved codes of practice under the HSE Act; • the Access Seeker's sole responsibility for identifying and advising its Invitees of all existing and potential hazards on or around the Relevant Facilities which its Invitees could encounter; • the requirement for the Access Seeker to obtain the necessary consents from the Landlord in the manner set out in the Mobile Co-location Operations Manual; • the requirement for Access Seekers to not, and to ensure that its Invitees do not, permit or do any act or thing on or in relation to the Relevant Facilities which would or may cause the Access Provider to be in breach of its covenants

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	<p>or the conditions contained in the terms of any right of Relevant Occupation or which if done by the Access Provider would or may constitute a breach of the terms of any right of Relevant Occupation.</p> <ul style="list-style-type: none"> the Access Provider's reasonable requirements for security and health and safety when working at the and Relevant Facilities. <p>Telecom submits that these indemnities should be included in the General Terms. They are standard indemnities agreed in commercial contracts. These indemnities have been included in other STDs and should be retained for consistency.</p> <p>The indemnities were included to recognise the real risks in relation to those other services. The indemnities are particularly important in relation to this Service because they include all the things an Access Seeker should be doing and complying with before installing a site. There is more risk that the Access Seeker will breach these requirements when co-locating on Relevant Facilities than inside an Exchange (ie it is unlikely an Access Seeker will be required to gain a resource consent to co-locate in an exchange).</p> <p>Furthermore, it is reasonable to require Access Seekers to give these indemnities because the actions or omissions indemnified are within the Access Seeker's control. It is unreasonable to expect the Access Provider to suffer a loss where the Access Seeker has not complied with the Terms and the Access Provider has no opportunity to influence the Access Seeker's compliance.</p>
17 Access Provider's liability	<p>The General Terms should clearly state that an Access Provider is not liable for interference to an Access Seeker caused by another Access Seeker or Other Service Provider. Although the Access Provider is the site owner, it should not be responsible for arbitrating interference issues at Relevant Facilities between Access Seekers.</p> <p>It is inappropriate for the Access Provider to be left with the liability in this situation because the Access Provider is not the best party to reduce or manage the risk of interference between the parties. The Access Provider does not have any mechanism to manage the risk of interference under the STD or to enforce any agreement between the parties. Without the clause the Access Provider may find itself liable for something it has not caused and has no means to control.</p> <p>Therefore, Telecom submits that the following should be inserted as clause 17.5A:</p> <p>"No liability for interference caused by Access Seekers or Other Service Providers</p> <p>The Access Provider shall have no liability to any Access Seeker for any interference caused to that Access Seeker by any other Access Seeker or any Other Service Provider. For the avoidance of doubt, in such circumstances, an Access Seeker shall only have rights against the Access Seeker or Other Service Provider causing such interference."</p>
Limitation of the Access Provider's liability	
Exclusion of the Access Provider's liability	
Time bar	
Exceptions to the limitation and exclusions of the Access Provider's liability	
Costs of recovering Performance Penalties	
Access Provider's indemnity	
18 General	

SECTION/CLAUSE of the DRAFT COMMERCE COMMISSION STD	COMMENT
19 Force Majeure	
SERVICE DISRUPTION	
20 Outages	<p>The Commission has inserted a new sub-clause 20.3.2(b) into section 20 "at least within the timeframe set out in the Mobile Co-location Service Level Terms".</p> <p>Telecom is concerned that this sub-clause will make a breach of the Service Level Terms a breach of the General Terms, and therefore the STD, as well. Access Providers will be penalised twice if this sub-clause is included in the General Terms:</p> <ul style="list-style-type: none"> • for breaching the STD; and • a performance penalty for breaching the Service Level Terms. <p>Telecom submits that an Access Provider should only be penalised once for not notifying an Access Seeker within the timeframe set out in the Service Level Terms and that the appropriate penalty is under the Service Level Terms. Therefore, Telecom submits that this sub-clause should be deleted.</p>
Planned Outages	<p>The phrase "and where such work is in compliance with health and safety standards and guidelines" should be added to the end of sub-clause 20.3.1 to provide greater clarity and consistency. It is also clear that due to health and safety guidelines some work will have to be carried out outside those hours (ie where it involves climbing of Masts which must be done in daylight). Without this acknowledgement essential work necessary to deliver services over the Access Provider's network will be compromised affecting the service provided to End Users.</p>
Unplanned Outages	
FAULTS	
21 Responsibility for faults	<p>Clause 21.1 makes the Access Seeker responsible for faults which affect the Service caused by an End User of the Access Seeker.</p> <p>Telecom does not believe that it is possible for an End User to damage the Service. The Service is the co-location of antenna at Relevant Facilities. An End User will not be able to damage this Service by using their cellular equipment. Therefore, Telecom submits that the phrase "End User of the Access Seeker" should be deleted. This is related to our previous point about the definition of End Users and Customers and supports our argument as to why it is unnecessary to have both definitions.</p>
22 Diagnosing faults	
23 Reporting faults to the Access Provider	
24 Fixing faults	

SECTION/CLAUSE of the DRAFT COMMERCE COMMISSION STD	COMMENT
RELEVANT FACILITIES, EQUIPMENT AND PROPERTY	
25 Safeguarding the Access Provider's Relevant Facilities and Access Provider Equipment	<p>As amended by the Commission, section 25 requires the Access Seeker to help safeguard the Access Provider's "Relevant Facilities". There are good reasons to require Access Seekers to protect the Access Provider's Network as the network may (especially in the case of Telecom) be used to provide a wide range of regulated and unregulated services to Access Seekers and End Users.</p> <p>This change limits the Access Seeker's obligation to safeguarding only a small part of the Access Provider's Network. The Access Provider's and other Access Seekers' End Users have little protection from the activities of the Access Seeker without this requirement. There does not seem to be any good public policy reason to alter the obligations of the Access Seeker to protect the Access Provider's network.</p> <p>Telecom also notes that the Commission has required Access Seekers to safeguard the Access Provider's Network in all other STDs. In Telecom's view, this provision should be consistent across all STDs and consistent with the principles in section 18 of the Telecommunications Act.</p> <p>Therefore, Telecom submits that the reference to "Relevant Facilities" should be amended to "Access Provider's Network".</p>
26 Responsibilities for Access Provider Owned Equipment	
27 Responsibilities for Access Seeker Owned Equipment	<p>The Commission has included a new section 27 dealing with the responsibilities of Access Seeker Owned Equipment. It is unclear what this section is intended to cover because "Access Seeker Owned Equipment" has not been defined in the General Terms.</p> <p>Telecom believes that the Commission may have intended Access Seeker Owned Equipment to be equipment leased by the Access Provider from the Access Seeker. Telecom submits that section 27 is unnecessary if this is the case. Telecom cannot imagine a situation where it would need to lease equipment from the Access Seeker to provide the Service. Therefore, Telecom submits that section 27 should be deleted.</p>
28 Property rights	
Access Provider's property rights	
Personal Property Securities Act 1999	
29 Intellectual Property	
30 Software and Access Provider Systems	
INFORMATION	
31 Confidential Information	
32 Access Seeker Information	
DEFAULTS OTHER THAN FOR NON-PAYMENT AND SUSPENSION OF SUPPLY	
33 Default Notice	

SECTION/CLAUSE of the DRAFT COMMERCE COMMISSION STD	COMMENT
34 Suspension of supply	
Suspension of supply following consultation and Default Notice	
Suspension or restriction following Default Notice	
Immediate Suspension or restriction	
TERMINATION OF SUPPLY	
35 Termination of supply	
Termination of supply by the Access Seeker	
Termination of supply by the Access Provider	<p>Telecom is pleased that the Commission has accepted Telecom's submission that the Access Provider should be able to terminate the Service where the Access Provider intends to decommission a Relevant Facility and has been unable to reach a commercial agreement with an Access Seeker to take over the Relevant Facility under the Access Terms.</p> <p>However, Telecom submits that the drafting of sub-clause 35.5.5 should be amended to better reflect this right of termination. Telecom proposes that the following clause should be inserted as sub-clause 35.5.4A:</p> <p>"the Access Provider intends to decommission the Relevant Facilities and commercial agreement cannot be reached with any Access Seeker under section 9 of the Mobile Co-location Access Terms."</p> <p>An Access Provider may be required to give the Access Seeker a Default Notice in order to terminate the Service when the Access Provider intends to decommission the Relevant Facility without this change. However, the Access Provider cannot give a Default Notice in these circumstances. Therefore, the Access Provider will be unable to terminate the Service where it intends to decommission the Relevant Facility without this change.</p>
DISPUTES	
36 Dispute resolution	
General	
Notice of Dispute	
Response to Dispute Notice	
Negotiations	
Dispute resolution options where negotiations fail	
Mediation	
Expert Decision	
Arbitration	

SECTION/CLAUSE of the DRAFT COMMERCE COMMISSION STD	COMMENT
Interlocutory or injunctive relief	
Good faith and continuity	
Remedies under the Act	
GENERAL	
37 Health and safety	
38 Consumer Guarantees Act 1993	
39 Assignment	
40 Representations	
41 Subcontracting	
42 No waiver	
43 Notices	