

DETAILED SUBMISSION ON THE OPERATIONS MANUAL

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<p>General Comments</p>	<ul style="list-style-type: none"> • Telecom has reviewed the Commerce Commission's ("Commission") drafting of the Operations Manual and while generally agreeing with the drafting, has sought to further improve and streamline the processes based on its practical experience gained over the past few months in offering the Mobile Co-location Service on commercial terms. • Where Telecom agrees with the Commission's drafting, it has not provided a comment. <p><u>Consistency across the STDs</u></p> <ul style="list-style-type: none"> • The Commission has recognised throughout its reasoning on its draft STD that consistency across the STDs is of great value to all parties as it provides them with certainty and tested processes and concepts. Telecom notes that the Commission appears to have both included and omitted from its drafting of the Operations Manual clauses and terms with tested legal meaning. Telecom considers that some of these changes do not appear necessary and that consistency across the STDs should be preserved. <p><u>Removal of Site Agreement</u></p> <ul style="list-style-type: none"> • The Commission has removed the requirement for a Site Agreement (clause 17.5 of the draft Vodafone STP). • The Site Agreement is a key component of the provision of the Mobile Co-location Service. • Purpose of the Site Agreement: Common practice in the real estate industry is to ensure that any sub-tenant complies with terms, conditions and restrictions on the head tenant, as set out in the lease. The Site Agreement is an established mechanism of achieving this. It ensures that the terms of the lease are not breached. • The STD cannot factor in all the variable terms and conditions that might be included in rights of occupation across all Sites (for example health and safety requirements, rights of access in lambing season etc). In order to protect the tenure of each Site, the Site Agreement is required to allow the Access Provider to notify the Access Seeker of relevant terms and conditions attaching to each specific Site. • Not an agreement outside the STD: Telecom recognises the fact that the STD has to take into account all the necessary terms required to deliver the Mobile Co-location Service. Telecom submits that the Site Agreement is not an additional agreement outside of the scope of the STD, rather it is a notice of Site specific terms and conditions. • Consistent with this approach, Telecom has argued in its submission on the draft Vodafone STP that the more appropriate name for the Site Agreement is a "notice" and that all references to the execution of the "agreement" should be removed. • Telecom submits that the clause should be retained as proposed in Telecom's submission on the draft Vodafone STP with the removal of the words "Site Agreement" and replacement with: "Schedule of Site specific terms and conditions". • Risks of not complying with Site specific terms: Where the Access Provider does not supply the Access Seeker with the Site specific terms and conditions, this may result in Access Seekers being prevented entry onto the Site by the landlord where such terms and conditions are not complied with. The Access Provider could be regarded as being in breach of their rights of relevant occupation, such breach resulting in early termination for both the Access Providers and the Access Seekers on the Relevant Facilities. In addition, a breach may result in financial loss to the Access Provider where legal proceedings result from such a breach. • Where the Access Seeker is relying on the Access Provider's tenure it has to comply with the relevant terms and conditions as imposed by the landlord in relation to a particular Site. The "Schedule of Site specific terms and conditions" therefore has to be provided as a notice to the Access Seeker on a Site by Site basis.

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	<p><u>Access Seeker Timeframes</u></p> <ul style="list-style-type: none"> • The Commission has inserted a number of timeframes on the Access Seeker tasks throughout the Operations Manual. It is important for the Access Seeker to be subject to timeframes at those stages of the process when it is in the Queue in order to ensure that other Access Seekers are not prevented from co-locating due to delays. Access Seeker timeframes prior to the Queue however are not relevant as no negative consequences would result from their non-compliance, and it imposes an unnecessary constraint on the timeframes within which they must roll out their network. <p><u>Access Seeker Timeframes - Prior to the Queue</u></p> <ul style="list-style-type: none"> • Telecom submits that Access Seeker timeframes where the Access Seeker is outside of the Queue are not relevant since: <ul style="list-style-type: none"> ○ No negative consequences arise where these timeframes are not met. It is up to the Access Seeker to drive the process. For example, in sub-clause 15.4.1 the Commission has placed a requirement on the Access Seeker to make a decision on a Site Data Pack within ten Working Days and proceed to either Initial or Full Site Application. Where the Access Seeker decides not to proceed within ten Working Days, but at some later stage, no negative consequences would result on either party. ○ The Access Seeker may find it impractical and difficult to follow these timeframes as they may not coincide with the reality of a network rollout. Network rollouts are generally not planned on a Site by Site basis, and set timeframes may act as a hindrance on the Access Seeker to plan and conduct its rollout. For example, being required to proceed to either the Initial or Full Site Application within ten Working Days from receiving the Site Data Pack could be overly restrictive and require the decision to be made in isolation of other Sites. • To illustrate the above arguments, an Access Seeker may, over a period of time, apply for fifty Site Data Packs, following which it may spend several months assessing the Sites and the risks involved while planning its network rollout. Following such assessment it may submit its Applications. The decision when to lodge its Applications should be the Access Seeker's. The only risk to the Access Seeker is that the longer it postpones lodging its Application, the greater the possibility of information in the Site Data Pack becoming inaccurate. However, as this risk and decision lies within the Access Seeker's control without negative impacts on any other party, Telecom submits that the Access Seeker should be the one to make the decision on when it proceeds. • Telecom also notes that where there are no timeframes and the Access Seeker's Application is rejected, the Access Provider will provide the Access Seeker with detailed reasons for such a rejection, based on which the Access Seeker may resubmit its application. <p><u>Access Seeker Timeframes - In the Queue</u></p> <ul style="list-style-type: none"> • Where the Access Seeker is in the Queue, Access Seeker timeframes are critical for ensuring the Access Seeker does not block other Access Seekers in the Queue. • However as currently drafted, these Access Seeker timeframes have no impact, weight or practical effect since no consequences flow from failure to meet them. As such they provide no real incentives on the Access Seekers. • The only potential consequence where the Access Seeker fails to meet a timeframe would be dispute resolution for breach of the STD. Dispute resolution however would not provide an incentive on the Access Seeker to comply with the timeframes, since once the timeframe has lapsed, no practical benefit would result for the Access Provider or other Access Seekers in the Queue from taking that breach through a lengthy dispute resolution process. • There are no Service Levels on the Access Seeker to report and monitor their compliance with the timeframes. The resourcing and costs of such monitoring are therefore likely to fall on the Access Providers, who will have to ensure that additional systems and tools are in place to monitor and report what is essentially an Access Seeker obligation.

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	<ul style="list-style-type: none"> • Telecom submits that in order to give force and weight to these Access Seeker timeframes, the Commission should adopt one of the following: <ul style="list-style-type: none"> ○ Include service levels with reporting and monitoring requirements on the Access Seeker; ○ Insert exceptions to Access Provider Service Levels; or ○ Require the Access Seeker to resubmit the relevant application where they haven't met their timeframe. • Telecom favours the latter approach, namely that each clause which includes an Access Seeker timeframe clearly states that, where the Access Seeker fails to meet that timeframe, the relevant Application will lapse, and the Access Seeker will fall out of the Queue and be required to resubmit that Application. • Where the Commission does not provide an obligation on the Access Seekers to monitor and report on their timeframes, these will be measured based on the receipt times in the relevant provisioning system used by the Access Provider. • Telecom further submits that Access Providers should take into consideration the Access Seeker's record of compliance with timeframes while in the Queue when assessing whether to grant them an exemption under clause 11.4. The following sub-clause (d) should therefore be inserted in clause 11.4.4: <p style="margin-left: 40px;">(d) the Access Seeker's record of compliance with its timeframes.</p> <p><u>Drafting note - Immediately and Promptly</u></p> <ul style="list-style-type: none"> • Telecom submits that the use of "immediately" and "promptly" throughout the Operations Manual does not provide sufficient clarity for the Access Seekers and Access Providers. The words "immediately" and "promptly" do not have any established legal meaning and are entirely open to interpretation. Including a tested legal term or a specific timeframe does away with any ambiguity for parties' compliance and reliance on the process. • Telecom submits that these terms should be replaced either with "as soon as reasonably practicable" or a specific timeframe, as suggested in particular clauses below. "As soon as reasonably practicable" does not leave scope for misinterpretation as it has an established and tested legal meaning. <p><u>Drafting note - Subject to Mobile Co-location Terms</u></p> <ul style="list-style-type: none"> • Telecom submits that the insertion of the phrase "subject to the obligations set out elsewhere in the Mobile Co-location Terms" and variations thereof create ambiguity in the drafting. Where the Commission considers that a particular clause may conflict with another clause in the STD, this should be pointed out specifically by the reference to the relevant conflicting clause. The general statement invites the implication that an inconsistency exists without providing the relevant reference, and has the effect of placing the Operations Manual at the bottom of the priority list. Telecom submits that these references should be removed in the interest of clarity. <p><u>Appendix Z: Preliminary Site Notice</u></p> <ul style="list-style-type: none"> • Telecom notes that the TCF working parties have attempted to use template appendices to the greatest extent possible, as such templates standardise the process. It appears that the template for a Preliminary Site Notice has been omitted, and Telecom proposes it should be included. The form should be for a standard Preliminary Site Notice to be provided by the Access Seeker to the Access Provider upon the satisfaction of all the conditions set out in the Preliminary Site Approval. Please refer to the draft form provided by Telecom at the end of this detailed submission. Inclusion of this form would streamline the process, given the Final Site Approval refers to this Notice.

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PART 1 - DOCUMENT INFORMATION	
1 Introduction	
1.1 Purpose	
1.2 Relationship with the Mobile Co-location Terms	
1.3 Change mechanism and distribution	
1.4 Definitions	
2 People and contact details	
2.1 General	
2.2 People and contact details	
3 Technical manuals and user guides	
3.1 Status of external documents	
4 Good faith and Dispute resolution	
4.1 General	<ul style="list-style-type: none"> Telecom submits that the inclusion of "including a dispute, question or difference under section 3 above" in sub-clause 4.1.2 does not add any additional obligation or right to the parties and is therefore superfluous. The remainder of the clause sets out that "any dispute...that arises between the Parties..." (emphasis added) and thus covers the disputes under any provision of the Operations Manual. This additional drafting should therefore be deleted as it creates ambiguity without creating an additional right and/or obligation.
5 Communications	
5.1 General	
	<ul style="list-style-type: none"> Telecom submits that the insertion of the word "promptly" into sub-clause 5.1.3 should be replaced with "as soon as reasonably practicable", consistent with our general comment above.
6 Prerequisites	
6.1 Overview	
6.2 Operational prerequisites	

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7 Overview of the Mobile Co-location Service	
7.1 Overview	
7.2 The Mobile Co-location Services	<ul style="list-style-type: none"> Telecom submits that the words "subject to the obligations set out in the Mobile Co-location Terms" at the start of sub-clause 7.2.2 creates ambiguity and should therefore be deleted, consistent with our general comment above.
7.3 Procedure for supply of the Mobile Co-location Service	<ul style="list-style-type: none"> Telecom agrees with the Commission's drafting of sub-clause 7.3.1 and submits that, consistent with our submission in the general comments above, the "Site Agreement/Schedule of Site specific terms and conditions" step is reinstated.
PART 2 - FORECASTING, PRIORITISATION AND QUEUING	
8 Access Seeker Forecasting	<ul style="list-style-type: none"> Access Seeker forecasting is vital for enabling Access Providers to align resources in order to meet their service levels. The geographic granularity of these forecasts must be sufficient to allow such alignment of resources.
8.1 Access Seeker Co-location Forecasts	<ul style="list-style-type: none"> The Commission has included a requirement in sub-clause 8.1.4(b) that Access Seeker Forecasts are done on a per Region basis, where Region is defined as comprising of Auckland, Wellington and Christchurch. The Commission's requirement that the Access Seeker forecasting is done on a per Region basis, where Region is defined as comprising of Auckland, Wellington and Christchurch appears to be based on the Telecom service company patches that were used in previous STDs which is irrelevant for the purposes of Mobile Co-location. In the context of previous STDs, Telecom was the party doing the provisioning and the build for the service orders, and the definition was appropriate for that purpose. In the case of Mobile Co-location it is not the Access Provider or their service company that does the build but the Access Seeker, while the Access Provider is only responsible for processing Access Seeker Applications. When processing the Access Seeker Applications, the Access Provider utilizes specialist resources which are not aligned with the three regions, but are more closely arranged per Territorial Authority. The Access Seeker forecasting therefore needs to be at a level that assists the Access Provider to efficiently process Access Seeker Applications. Telecom proposes that the reference to a Region be replaced with Territorial Authority. Territorial Authority is better aligned with Mobile Co-location in terms of: <ul style="list-style-type: none"> District plans; Common Format Site Database categorisation; and Network rollout alignment. Networks are generally rolled out by city, or subgroup resembling city size. Territorial Authority best reflects regional breakdown by cities, or subgroups which resemble city size. Forecasting by Territorial Authority is not onerous on the Access Seekers since they will already know what region Territorial Authorities relate to as they need to have this knowledge for RMA purposes. Telecom therefore submits that sub-clause 8.1.4(b) is amended by replacing the word Region with Territorial Authority (amended words in bold): <p style="text-align: center;">8.1.4(b) Interference Desktop Studies, Site Data Packs, Initial Site Applications and Full Site Applications forecasted by Territorial Authority.</p>

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8.2 Feedback	
8.3 Underforecast / Overforecast	
8.4 BAU Requirements	
9 Access Provider Forecasting	
9.1 Access Provider's Forecasts	<ul style="list-style-type: none"> • Telecom notes that the purpose of clause 9.1 is to achieve the three key objectives as agreed in the TCF document, namely: <ul style="list-style-type: none"> ➢ Set forecast period: that the Access Provider's forecast shall not "extend more than an agreed period from the date when the forecast requirement was last updated in the site database"; ➢ Ability to update forecasts: that the forecast "can be up-dated by the Access Provider as necessary to take into account changing requirements and technology development"; and ➢ Prevent anti-competitive behaviour: that the "process should not be used in an anti-competitive manner by the Access Provider to prevent realistic access to Access Seekers and reasonable justification for these future requirements should be provided by the Access Provider if requested by the Access Seeker." • Telecom considers that while the Commission's drafting achieves these objectives to a certain extent, a number of issues need to be addressed to ensure clause 9.1 is sufficiently comprehensive. <p><u>Expansion of coverage to other sites</u></p> <ul style="list-style-type: none"> • It is unclear why the Commission has deleted sub-clause 9.1.2(b) from Telecom's submission on Vodafone's draft STP which provides: <p style="margin-left: 40px;">(b) any plans for the future deployment of Telecommunications Services that are provided by the Access Provider elsewhere but that are not provided at the Relevant Facilities.</p> • Telecom submits that it is required to have all three clauses, namely <ul style="list-style-type: none"> ○ Sub-clause (a) which provides for expansion of existing site with existing capability; ○ Sub-clause (b) which provides for expansion of coverage to other sites of technology currently deployed elsewhere, thus allowing growth and supported by the Access Provider's desire to expand services to end-users; and ○ Sub-clause (c) which provides for deployment of new advanced services. • The effect of removing sub-clause (b) is that the Access Provider will be prevented from expanding its deployment of new technologies beyond an existing geographical region. For example, in the case where Telecom deploys WCDMA in three cities, we would be precluded from expanding this to other cities. Such restrictions would result in negative effects on end-users. • All three scenarios as set out above must be covered by sub-clause 9.1.2 and since it is unclear why the Commission has removed one of them, Telecom submits that the above sub-clause 9.1.2(b) be reinstated. <p><u>Forecasting Period</u></p> <ul style="list-style-type: none"> • Telecom does not consider that a forecast horizon of two years in sub-clause 9.1.3 is sufficient for deployment of new

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	<p>technology.</p> <ul style="list-style-type: none"> • Telecom supports the principle of a forecasting period of five years. As discussed in our submission on the draft Vodafone STP, a forecasting period of five years is consistent with the five year "use it or lose it" period applied by the Government to recent spectrum acquisitions. • The timeframe of five years also takes into account the time period required to plan and deploy new technology and services on a regional or nationwide basis. It is unworkable for any service provider to rollout new services across New Zealand within two years. • New services are generally rolled out in stages, usually starting with areas of highest density and then moving to areas of lower density. They may also start in selected areas which would serve for testing of new technology, before continuing to rollout the service to other regions. • Normally, in order to plan and deploy a rollout of new technology, a service provider has to prepare the business case and establish the project to design and deploy the new network. This is followed by an order contract for deployment of new network which needs to be signed with a relevant vendor. It then takes a further few months for designs for overlay solutions to deploy the new technology on existing sites to be completed and submitted for RMA and landowner approval. It would usually take a further year to launch the service for the initial number of sites, before proceeding to rollout the service beyond the initial launch. This entire process may also include long term plans to upgrade existing technologies. • Telecom is well placed to comment on this issue because of its recent experience in planning its WCDMA rollout. Initial planning for the roll out began in 2001 and site acquisition and detailed planning work began in 2004. The detailed planning work resulted in the Telecom Board giving approval for Telecom's WCDMA rollout in June 2007. The next key date was September 2007 when the order contract for deployment of the new network was signed with Alcatel Lucent for a progressive launch starting in late 2008. The progressive launch will be in three cities for WCDMA2100 and the full nationwide rollout is expected to be completed by 2011. • Telecom's experience with the WCDMA rollout demonstrates the requirement for staged rollouts of new technologies and services. Telecom considers that for any effective rollout of a new technology, a five year period is required. Two years would not even be a sufficient timeframe for completing one stage of a rollout. • Shortening the timeframe and placing additional constraints on the Access Providers will prevent the Access Providers from running an effective business case to introduce new technologies. Preventing the Access Providers from introducing new technologies and making new rollouts would not ensure effective competition and would be inconsistent with the Commission's purpose. <p><u>Expiry of the Access Provider's Forecast</u></p> <ul style="list-style-type: none"> • Telecom notes that section 9, as currently drafted, does not provide a mechanism for dealing with the detail around the expiry of the Access Provider's Forecast, namely, how does the Access Provider demonstrate that they have, or have not, acted on their forecast so as to ensure it does not lapse? • It appears from the drafting of sub-clause 9.1.3 and sub-clauses 9.2.1 to 9.2.3 that the implication is the Access Provider has to complete the build relating to the forecast within this forecast period. • Telecom submits that requiring the Access Provider to complete the build within the forecast period is not practicable. The process of forecasting space, preparing a business plan, planning a rollout, obtaining relevant consents, creating and approving project plans, negotiating with external parties and commencing the build is altogether a lengthy process which may be subject to interruptions and delays. As noted above, rollouts are carried out in stages. Telecom does not

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	<p>think five years will always give it enough time to complete a full nationwide network build.</p> <ul style="list-style-type: none"> • Moreover, it would not be practical, where the Access Provider has commenced acting on its forecast, but may not have completed or even commenced the physical build, to deem the forecasted space as no longer reserved for that build. This would result in Access Provider's resources being wasted over a lengthy period of time with the result of any build and rollout being precluded. • Telecom considers that in order to address this issue, the Access Provider should be required to show they are acting on their forecast on the expiry of the forecast period, and demonstrating such actions would have the effect of reserving that space for the Access Provider, thus enabling it to proceed with the physical build. • Telecom submits that the mechanisms in the RMA apply analogous principles, as set out below. • RMA analogy "substantial progress or effort has been, and continues to be, made towards giving effect to the consent": Under clause 125 of the RMA, a consent granted to a party expires after 5 years unless: <ul style="list-style-type: none"> ○ The consent is given effect to (i.e. the build has been complete); or ○ An application has been made that the 5 year period should be extended. • The option to apply to extend the application is available where: <p style="margin-left: 40px;">substantial progress or effort has been, and continues to be, made towards giving effect to the consent</p> • The courts have considered the meaning of words "given effect to", "substantial" and "continuing". There is a vast amount of case law dealing with these terms, in particular <i>GUS Properties Ltd v Blenheim Borough 24/5/76</i>, <i>Goldfinch v Auckland CC</i> [1997] NZRMA 117 (HC), <i>Robinson Developments Ltd v Marlborough DC</i> EnvC W74/04, <i>Marchant v Marlborough DC</i> EnvC W22/97, <i>Rowell v Tasman DC</i> W66/94 (PT), <i>Ashburton BC v Clifford</i> [1969] NZLR 927, and <i>Body Corporate 970101 v Auckland CC</i> (2000) 6 ELRNZ 183; [2000] NZRMA 202 (HC). • The key principles from these cases are summarised below. • "Given effect to": It was initially held that "given effect to" means "full compliance or completion of the thing envisaged", thus equivalent to a completion of the build of the Mobile Co-location Service. However, the courts have moved further from this meaning, reasoning that establishing whether consent has been given effect to is a question of degree, with the answer varying from case to case. Some of the questions the court may take into consideration include: <ul style="list-style-type: none"> ○ What is the nature of work authorised by the consent? ○ What in fact has been done? ○ Why has it not been completed? ○ Why has it been discontinued? ○ Was this discontinuation voluntary and justified? • It has been held that this term would apply in situations where little or no work has been carried out on the site, but the consent holder has been doing its best to get the work under way without success. It would follow that what is required is full compliance with the conditions of the consent rather than full completion of what is permitted by the consent. • "Substantial": the courts have held that "substantial" is used in the context of continuing progress and does not require the majority of the work to be completed. Establishing whether the progress is "substantial" in any given case must depend on all the circumstances, including the relationship of the time taken to the total time envisaged, and the degree of attainment of the ultimate aims.

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	<ul style="list-style-type: none"> • "Continuing": the courts have held that "continuing" cannot be used to describe something that is a little more than real inactivity. There must be continuity between past, present and the predictable future, although there can be interruptions which would not break the continuity of progress. However, the addition of the words "or effort" assist the consent holder who, while making substantial efforts towards giving effect to the consent, has been unable to make substantial progress for some reason. Moreover, there is an express reference to past substantial progress or effort as well as that which is presently being made. Accordingly, while continuity of progress or effort is required, there may be reasonable interruptions that do not break the overall process of continuing towards the end in view. The council is entitled to take into account the practical and economic realities of constructing and completing major developments including fluctuations in market demand and a need to raise finance. • Telecom proposal: Telecom submits that, as illustrated above, the words "substantial progress or effort has been, and continues to be, made towards giving effect to [the consent]" have established legal meaning through vast amount of case law. Moreover, this phrase and its interpretation are analogous to the situation where an Access Provider has submitted a forecast, where such a forecast is for a limited period of time, and where the Access Provider needs to show it has commenced work in acting on that forecast, thus the rights attaching to the space will not be lost at the expiry of the fixed time period. • The words "substantial progress or effort has been, and continues to be, made towards giving effect" carry sufficiently defined meaning, but import the necessary certainty for the purposes of a reasonable future forecast and the complexity and length of build completion for new technologies. • Telecom therefore submits that sub-clause 9.1.3 be amended to read (amended words in bold): <p style="margin-left: 40px;">9.1.3 The Access Provider's Forecast shall not extend for more than five years from the date when the Access Provider's Forecast was last updated in the Common Format Site Database (Forecast Timeframe). Where substantial progress or effort has been, and continues to be, made by the Access Provider towards giving effect to the Access Provider's Forecast at the expiry of the Forecast Timeframe, the Access Provider will be deemed to have deployed that Access Provider Forecast.</p> <p><u>Sub-clauses 9.1.7 and 9.1.8</u></p> <ul style="list-style-type: none"> • The Commission has accepted that the Access Seeker should go into the Queue at the Full Site Application stage. However, it appears that sub-clauses 9.1.7 and 9.1.8 have the effect of creating the Queue at the Site Data Pack Application stage. Telecom considers that this was not the intent of the Commission. • These clauses are inconsistent with the requirement that the information in the Site Data Pack remains correct for ten Working Days following the issuing of that Site Data Pack, as well as the general principle that the Access Seeker should not be placed in a Queue or reserve space before they have made a commitment to their Application. • Telecom therefore submits that these two clauses should be deleted.
9.2 Access Seeker's use of Access Provider's Forecast space	<ul style="list-style-type: none"> • Telecom acknowledges that with the inclusion of clause 9.2 the Commission is trying to achieve the objectives agreed in the TCF document and set out in our initial comment on clause 9.1 above. Telecom considers that its submission on clause 9.1 gives sufficient clarity to the forecast periods. It appears that the Commission has not considered all the negative impacts and consequences of allowing an Access Seeker to co-locate despite an Access Provider's forecast ("camping").

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	<ul style="list-style-type: none"> • Lack of certainty: Allowing an Access Seeker to camp on a Site despite an Access Provider's forecast is an inefficient process as it would not provide the Access Seeker with any certainty as to the time it can spend on the Mast, except in relation to the six month Access Provider notice period. The Access Seeker would have to go through the same application process for the purposes of camping as for actual Mobile Co-location Service. Therefore an additional risk is that the Access Seeker's time on the Mast would be even shorter than the six month notice period where the notice is given while the Access Seeker is still in the process of applying for camping in relation to the Mobile Co-location Service. The Access Seeker may not actually have any time to operate on the space in a camping capacity by the time they have gone through the Application process and have passed all the necessary testing. • Access Provider forecast gaming: The Commission has addressed the issue of gaming in clause 9.1 by including provisions to ensure that any such gaming is prevented through forecast periods, forecast updating requirements and prevention from using forecasts for anti-competitive behaviour. Telecom's proposal in our submission on clause 9.1 above, which ensures that safeguards are placed around the expiry of the forecasting period further reinforce these principles and leave no room for gaming forecasts. • The only potential advantage of camping to an Access Seeker would be in the circumstances where the Access Provider's forecast was not genuine. However, as noted above and in our submission on clause 9.1, this issue has been adequately dealt with by the Commission already, rendering the camping requirements obsolete. • Negative impact on end-users: Allowing the Access Seeker to camp on the Mast which has been forecast by the Access Provider places the Access Provider in a difficult position where it has to request the Access Seeker to remove their equipment from the forecasted space, thus cutting off services for the Access Seeker's live end-users. Any Access Provider would be most reluctant to remove equipment which is serving live end-users. Moreover, this arrangement places the Access Seeker into an unnatural position of power by giving them the option to request an injunction for any such request for removal of equipment from the Access Provider's forecasted space and escalate the issue to the Commission, the likely outcome of which would be a general reluctance to cut off services to end-users. • Public Relations damage to Access Providers and Access Seekers: In addition to, and as the likely result of, the negative impacts camping would have on end-users by cutting off their services, it is likely to result in negative PR on both Access Seekers and Access Providers. • Access Seekers are likely to suffer a bad reputation for running their services short term and subsequently switching them off. • Access Providers run the risk of disputes relating to any notice to relinquish the space, negative PR for claiming their forecast space and delays to the rollouts of Access Provider's new technology. • For example, where an Access Provider requests the Access Seeker to remove their camping Equipment pursuant to the terms of the STD, and the Access Seeker communicates to its end-users that the loss of service is a result of actions by the Access Provider, thus implying blame on the Access Provider for the loss of service, the Access Provider would suffer major PR damage in the mass market. • The Access Seeker's reputation would also suffer among its end-users should its services cease. • Time and Cost: The concept of camping is also inefficient because it requires the Access Seeker to go through the entire Application process as though they will co-locate on a particular Site and in the Access Provider's forecast space, with no guarantee, except for the six month notice period, as to how long they will be able to remain in that space. • As an Access Seeker, Telecom would not consider the option of camping due to time and cost associated with obtaining relevant consents, e.g. RMA, getting through the entire application process and completing the build only to be required to relinquish the Mast space and go through the entire process from the beginning for another space. This would require

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	<p>reconfiguring and adjusting the business case at the end of the process, meaning there may not be a business case to start with.</p> <ul style="list-style-type: none"> • Mast replacement, extension or revision: Camping overlooks the fact that Mast Replacement would be the more efficient solution for both Access Seekers and Access Providers. • In the time it takes the Access Seeker to go through the full application process for camping, plus the time and cost associated with the full process to co-locate in a different space, Mast replacement, extension or revision would be a much more time/cost efficient process to have used in the first place. Within the time and cost required for camping, the Access Seeker could build a new Mast, thus ensuring all parties are accommodated in optimal spaces in the long term. • Telecom submits that clause 9.2 should be deleted in its entirety.
10 Prioritisation	
10.1 Prioritisation: "first come, first served"	
10.2 Disputes	
11 Queuing policy	
11.1 Overview	
11.2 Placement in the Queue: "first come, first served"	<ul style="list-style-type: none"> • Telecom submits, consistent with our general comment above, that the word "immediately" in clause 11.2.2(b) should be replaced with "as soon as reasonably practicable".
11.3 "Use it or lose it"	<ul style="list-style-type: none"> • The Commission has inserted a new sub-clause 11.3.6 which appears to be based on the presumption that the Access Provider's forecasts are in the Queue. • The purpose of the Access Provider forecasts is to exclude any space reserved for future Access Provider reasonable use from the space available for Access Seeker's co-location. This purpose effectively excludes any Access Provider forecasts from the Queue, as any such space will be outside the Access Seeker application process. The Access Provider's reasonable future forecasts reserve Mast space which is not then available for the Mobile Co-location Service. • Telecom submits that the words "and it will be removed from the Queue" should be deleted. • Moreover, consistent with our submission on clause 9.2 above, the reference to sub-clause 9.2.1 should be deleted. • The lapsing of the Forecast Timeframe should be in accordance with sub-clause 9.1.3. • Sub-clause 11.3.6 should therefore state: <p style="margin-left: 40px;">11.3.6 In the event that an Access Provider does not use the Relevant Facility for the purposes of its reasonable forecast requirements for capacity on that Relevant Facility within the Forecast Timeframe as notified on the Common Format Site Database, that forecast will lapse in accordance with sub-clause 9.1.3. To the extent that the Access Provider wishes to continue to reserve that capacity, it must re-notify those forecast requirements in the Common Format Site Database but such reservations will not take precedence over any other Access Seeker Application in the Queue prior to that date that the forecasting requirements were re-notified in the Common Format Site Database.</p>
11.4 Extension Applications	

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11.5 Access Provider requirements	<ul style="list-style-type: none"> It appears that clause 11.5 is consistent with the point that Access Provider forecasts will become subject to the Queue once the Forecast Timeframe has lapsed and the Access Provider has re-submitted a forecast. However, the drafting of sub-clause 11.5.1 is mostly implicit. For the avoidance of doubt, Telecom proposes that sub-clause 11.5.1 is subject to 11.5.2, to state: <p style="text-align: center;">11.5.1 The queuing policy set out in this section 11 applies to the Access Provider's current and reasonable forecast requirements for capacity on the Relevant Facilities, subject to sub-clause 11.5.2.</p>
11.6 Disputes	
PART 3 - GREENFIELDS CO-LOCATION CONSULTATION	<ul style="list-style-type: none"> Telecom submits that the Greenfields process should be a voluntary process. Making this a compulsory process would be ultra vires and outside the scope of the Telecommunications Act 2001 ("Telecommunications Act"), which only relates to regulating access to existing equipment and facilities. <p><u>Ultra Vires regulation of Future Assets</u></p> <ul style="list-style-type: none"> The Commission's power to make a STD for co-location on cellular mobile transmission sites is restricted to the scope of the specified service under Schedule 1 of the Telecommunications Act. Part 3 of Schedule 1 of the Telecommunications Act defines the specified service for co-location on cellular mobile transmission sites as <p style="text-align: center;">A service that enables co-location of cellular mobile telephone network transmission and reception equipment (including any necessary supporting equipment on or with the following facilities (relevant facilities)):</p> <p style="text-align: center;">(a) any towers, poles, masts, or other similar structures—</p> <p style="text-align: center;">(i) that are used for the transmission or reception of telecommunications via a cellular mobile telephone network; and</p> <p style="text-align: center;">(ii) that are owned, managed, or leased by the access provider:</p> <p style="text-align: center;">(b) all sites, buildings, or utility services that are associated with the kinds of structures referred to in paragraph (a)</p> Part 3 of Schedule 1 of the Telecommunications Act states that the relevant facilities are those structures which are used, and are owned, managed or leased by the Access Provider. Under paragraph (a), above, the specified service does not include any towers, poles, masts or similar structures: <p style="text-align: center;">(a) which are not used for the transmission or reception of telecommunications via a cellular mobile telephone network; or</p> <p style="text-align: center;">(b) which are not owned, managed or leased by the access provider.</p>

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	<ul style="list-style-type: none"> • Therefore, the scope of the specified service is 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. However, that structure does not fall within the scope of the specified service at any stage before it is built or acquired, and used. • The Commerce Commission's argument for extending the scope of the specified service to include structures that may be used in the future is that: <p style="margin-left: 40px;">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> • The Commission's view is that there is an issue of interpretation in Part 3 of Schedule 1 of the Telecommunications Act, and an expansive approach should be taken to interpreting the meaning of the description of service for co-location on cellular mobile transmission sites. The Commission argues that such an interpretation is based on a purposive approach to the Telecommunications Act. However, there is no real issue of interpretation here, as 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. • 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 an Access Seeker, which is defined as <p style="margin-left: 40px;">any person who—</p> <p style="margin-left: 80px;">(a) operates, or is likely to operate, a cellular mobile telephone network; and</p> <p style="margin-left: 80px;">(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, by not including 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, within the description of service for co-location on cellular mobile transmission sites, this demonstrates a lack of intention to include such structures within the specified service. • 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</i> [1952] AC 427 HL Lord Radcliffe states at 450: <p style="margin-left: 40px;">[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</p>

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	<p>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> <ul style="list-style-type: none"> • There is no clear intention that structures which are not used for transmitting or receiving mobile telecommunications, and are not owned, managed or leased by the Access Provider 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 and a Building proposed in the STD are outside the scope of the specified service, and are therefore ultra vires. • 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 style="margin-left: 40px;">every person who operates a cellular mobile telephone network</p> <ul style="list-style-type: none"> • 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. • Telecom submits that if the Commission is to include the definitions of a Mast and a Building as proposed in the STD, it must do this through an amendment to Part 3 of Schedule 1 of the Telecommunications Act. This amendment would then be able to address the concerns Telecom has with the proposed Greenfields process, as discussed below. • Telecom further submits that regulating processes outside the scope of the Telecommunications Act is also inconsistent with all previous STDs. For example, in the case of UBA backhaul, the service does not exist until the fibre is backhauling traffic. • Telecom also notes that, to the best of its knowledge, the Greenfields process is not compulsory in any other jurisdiction. <p><u>Greenfields in Australia</u></p> <ul style="list-style-type: none"> • Telecom notes that the Greenfields process in the draft STD is based on the ACCC Code of Access to Telecommunications Transmission Towers, Sites of Towers and Underground Facilities ("ACCC Code"). • The Greenfields process in the ACCC Code is voluntary, and consistent with its voluntary nature, is drafted in broad terms. • Adopting such broad and general drafting from a voluntary code regime into a compulsory STD regime is inappropriate since the requirements, the detail and the thresholds of a compulsory, STD-regulated process are much higher than those needed for a voluntary code. The voluntary code is more of a guideline on the parties, rather than a prescriptive and exclusive contract. Moreover Australia does not have the constraints of the RMA which can potentially have a negative effect on the benefits of the Greenfields process. <p><u>TCF agreement and the voluntary Greenfields process</u></p> <ul style="list-style-type: none"> • The TCF document agreed to include Greenfields only as a voluntary process, with an ability to opt-out. Consistent with that agreement, the draft Vodafone STP included a voluntary Greenfields process, explicitly excluded from the terms and

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	<p>the scope of the STP, and including an opt-out clause.</p> <ul style="list-style-type: none"> • Telecom considers that the process as drafted in our submission on the draft Vodafone STP is workable so long as it remains voluntary, completely outside the scope of the STD, and includes an opt-out provision. • Drafting distinction - voluntary versus compulsory: A voluntary process would have the effect of providing general guidelines and incentives on the parties to co-operate in those situations where it is mutually beneficial for them to do so, while leaving the detail to be negotiated on a case by case basis and on commercial terms. • Where the Commission provides a compulsory, regulated process which has to be followed by <i>all</i> parties in <i>every</i> situation, a broad, guideline approach to drafting would only frustrate the parties by locking them into a dysfunctional process each time they consider making a new investment. • Such a dysfunctional and insufficiently defined process will likely result in numerous disputes and make it difficult for the parties to comply with the regulated requirements. • A compulsory process lacking in comprehensive and exhaustive detail, but preventing the parties from negotiating and deciding on such detail will result in frustration with new builds, risk of disputes and costly delays as a consequence of which the parties will be discouraged from making new investments. • Ability to opt-out: Including an opt-out provision is of paramount importance to ensure that the parties to the process are not locked into the process each time a new Site is envisaged, regardless of whether the time and cost of such a joint build is beneficial on either one or both of the parties. • Situations may arise where it is quicker and cheaper for the parties to separately build two roadside poles next to one another, rather than undertake a joint build. The parties should have the freedom to make their own decisions. • A compulsory Greenfields process which discourages Access Providers and Access Seekers from making new investments would not have any benefits for end-users. <p><u>Requirements for a compulsory Greenfields process</u></p> <ul style="list-style-type: none"> • As noted above, the process as drafted by the Commission, if compulsory, does not contain all the necessary components which would ensure its workability. • The Greenfields consultation process is a separate process to application for and provision of a Mobile Co-location Service and is relevant to the parties prior to any of the clauses of the STD having any relevance. • In order to include Greenfields as a compulsory process within the STD framework, its structure and detail must be agreed by the industry, and this should be achieved through the TCF. • A compulsory Greenfields process would require the industry to agree on significant detail, namely: <ol style="list-style-type: none"> 1) When does the process come into effect in relation to the STD? Does it come into effect the moment a party envisages a new Site, starts looking for a new Site, or when they obtain landowner agreement or RMA consent? It is important to bear in mind that once landowner and RMA consents are obtained it may be too late to co-locate as these may preclude co-location as an option. Consequently, if the process comes into effect at the early stages, i.e. where a party envisages a new Site and/or starts looking for a new Site, these would be prior to any of the processes in the STD and would therefore need a separate framework of terms and conditions developed to ensure their workability. 2) Opting-out of the process: the parties should not be locked into the process each time a service provider decides to build a new facility, with no way of opting out of it. There will be times when co-locating on existing facilities or building new facilities separately is more favourable for the parties than going through a

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	<p>Greenfields process. There are important time and cost considerations to be weighed in each case, and the process has to allow for parties to opt out of it where the time-cost tradeoffs penalise them.</p> <ol style="list-style-type: none"> 3) The tenure structure with the landlord must be determined prior to parties entering into the process. 4) The parties have to decide on how to approach the relevant council and the RMA requirements. Parties will have to agree tradeoffs where the council does not grant the full application, for example, where the parties apply for 10 antennas but the council only grants 8. The process will have to set out how these tradeoffs will be made and how the costs of the RMA application will be divided between the parties. 5) The process must include the consequences of one party to the process not finalising and submitting their plans on time, or where the submitted plans from one party are not of required quality, or where one party decides not to complete the process. 6) Ensuring that all parties will put their money in and up front, and providing consequences where a party does not pay. 7) How to decide which party will take the lead on the build of the facilities. 8) How to decide which party makes the decision as to what equipment will be placed on the facilities. 9) How to decide the standards of the mast build. 10) Which party will decide which of the parties' equipment will be placed in which part of the mast, and what the consequences will be if any reshuffling of equipment has to occur? 11) How to deal with any future upgrades, and who would be responsible for dealing with any future co-location applications. 12) What happens when one of the original parties leaves the site at a later date, i.e. step-up rights? 13) How would the maintenance of the Site be taken care of? 14) Whether the equipment will be jointly owned or otherwise. <p><u>Conclusion</u></p> <ul style="list-style-type: none"> • Telecom submits that the Commission can either: <ul style="list-style-type: none"> ○ Reinstate the voluntary process as included in our submission on the draft Vodafone STP, and ensure it is explicitly excluded from the terms and the scope of the STD; or ○ Not include a Greenfields process in the STD, since such a process would be outside the scope of the Telecommunications Act, and therefore outside the scope of the Commission's regulatory powers.
12 Greenfields Co-location Consultation	
12.1 Overview	
12.2 Greenfields Site	
12.3 Greenfields parties	
12.4 Sharing Proposal	
12.5 Greenfields Co-location	

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Agreement	
Scope	
PART 4 - PROVISIONING AND MOBILE CO- LOCATION TASKS	
13 Provisioning System	
13.1 Overview	<ul style="list-style-type: none"> Sub-clause 13.1.6(b) states that the existing Applications can be updated up to the time they are accepted. It appears that the intention was to allow for such updates to occur up until the time the Access Seeker receives the acknowledgment of acceptance from the Access Provider. Any other meaning would be unworkable as it would involve constant reworking of Applications with no certainty as to their content. Telecom therefore submits that, for the avoidance of doubt, sub-clause 13.1.6(b) is amended to ensure that such updates can be made up until the time of acknowledgment, namely (amended words in bold): <p style="text-align: center;">13.1.6(b) update existing Applications (up to the time the Access Seeker receives acknowledgment of receipt of the Application from the Access Provider).</p> Telecom notes that the Commission has inserted the words "mutually convenient" in sub-clause 13.2.2. It is unclear why this change should be made as it deviates from the equivalent clause as agreed in the previous STDs. For example, the equivalent sub-clause 11.4.2 in the UCLL Co-location STD only requires the workshop to be held at "a Telecom location". Introducing a requirement for a mutual agreement of such a location creates further potential for disagreement by the parties over a relatively trivial point. For the sake of consistency and clarity, Telecom therefore submits that the words "mutually convenient" should be deleted.
13.3 Training and support	
13.3 Access to the Provisioning System	
13.4 Terms of use	<ul style="list-style-type: none"> Telecom submits that sub-clause 13.4.5 should be amended to reflect that the email may be sent to either the Service Manager or any other person as notified under this STD in accordance with section 2. Telecom proposes that this clause is amended by inserting at the end the words: "or any other person as notified under section 2 of this STD".
13.5 Additional functionalities within or enhancements to the Provisioning System	
13.6 Costs	
13.7 Provisioning System Application processing	<ul style="list-style-type: none"> Sub-clause 13.7.3 requires the Access Provider to provide a notification of receipt of an Access Seeker's Application within <i>the first Business Hour</i> of the following Working Day where such an Application was submitted after hours. Telecom notes that this is inconsistent with the minimum of four Business Hours response time for acknowledgments of receipt of Applications. Moreover, it does not reflect the intent of the sub-clause, which is to ensure that the service level timeframe begins within the first Business Hour of the following Working Day. Telecom therefore submits that this sub-clause should be amended to read:

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	<p>13.7.3 For the purpose of determining whether the Access Provider has met any relevant Service Level Terms in relation to any Application(s) submitted to the Access Provider outside of Business Hours, the relevant Service Level Term timeframes for such Application(s) will be measured from the first Business Hour of the following Working Day.</p>
13.8 Rejection of an Application	
13.9 Access Provider progress reports	
13.10 Access Seeker tracking reports	
13.11 Irregularities	
<p>14 Multi-Site Application Project</p>	<ul style="list-style-type: none"> • Telecom agrees with the Commission's inclusion of the Multi-Site Application Project. Telecom agrees with the Commission's view as expressed in paragraph 154 of its reasoning on the draft STD, that "given there are multiple Access Providers of the Mobile Co-location Service each of whom have a number of common site types (which may change over time)... it would be impracticable to specify certain standard site types in the STD". • Telecom submits that this process allows for efficient regional applications regardless of site types and is the best way to achieve any multiple site applications.
14.1 Overview	
14.2 Process for Multi-Site Application project	<ul style="list-style-type: none"> • Telecom notes that in sub-clauses 14.2.7(b) and (c) the Commission has not capped the amount of Multi-Site Applications the Access Seeker may submit, but it has capped the time within which the Access Provider has to process such an unlimited amount of Applications. • Access Providers should not be required to resource for the absolute peak of Applications, but the STD should set sensible levels of resources for BAU levels of Applications. Unlimited numbers (for example 80 or 100 at one time) processed within 15 Working Days is not a BAU level of resourcing and is not efficient. • The drafting needs to include either of: <ul style="list-style-type: none"> ○ A cap for both the number of Applications and processing time; or ○ Uncapped number of Applications and uncapped processing time. • According to present drafting, the Access Provider may be placed in a situation where 60 or 80 or 100 Applications are received, and they all must be processed within 15 Working Days. This would be impossible to deliver. Lead times provided in Telecom's draft of the Multi-Site Application process are based on the estimate of actual work required in order to produce the Project Plan, which, according to Telecom's estimates, would be half a Working Day per Relevant Facility. • Telecom therefore submits that the timeframes provided in its original draft of the Multi-Site Application process should be reinstated, namely: <ul style="list-style-type: none"> ○ 5 Working Days for up to 10 Relevant Facilities; ○ 10 Working Days for up to 20 Relevant Facilities; ○ Anything above 20 Relevant Facilities - to be agreed between the parties depending on the actual amount.

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15 Site desktop assessment - Stage 1	
15.1 Site Data Pack Application	
15.2 Site Data Pack	<p><u>Requests for Additional Information</u></p> <ul style="list-style-type: none"> • Other Access Seeker information: Telecom submits that in sub-clause 15.2.4(d) the words "including without limitation details of all other Applications the subject of any Queue applicable to that Relevant Facility" should be substituted with: "including without limitation informing the Access Seeker of the number of Applications that are in any Queue applicable to that Relevant Facility." • This change ought to be made to reflect the fact that Access Providers are not authorised to give out information relating to Access Seekers and their Applications. Access Providers are authorised to state whether and how many other Access Seekers are in the Queue only. Any further information may include customer confidential information and any additional information is not relevant for another Access Seeker's application. It would be sufficient for an Access Seeker to know if there is someone else in the Queue in front of them. • Service Levels: Sub-clause 15.2.6 allows an Access Seeker to request additional information in its Site Data Pack, but does not exclude such "additional information" from the timeframe within which the Site Data Pack Application has to be processed. • Service Levels can only apply for standardised processes. The term "additional information" has not been qualified in any way and leaves the scope of potential requests broad and open. There is no way for an Access Provider to predict what information an Access Seeker may request. Where an Access Seeker requests detailed and specific information, under the current drafting the Access Providers would have to provide it within 5 Working Days, which would be unreasonable and overly onerous. • Timeframes should be set for inputs and outputs which can be controlled by the Access Provider, however anything outside of that process that may be additionally requested by the Access Seeker and which lacks the relevant pre-set parameters should not be subject of the timeframes and should fall outside the Service Levels. • Telecom proposes that, in order to provide an obligation on the Access Provider to provide the Access Seeker with further information in a timely manner, the words "as soon as reasonably practicable" are added to this clause. It would be unworkable to provide a fixed timeframe as there is no certainty around what information may be requested. • Telecom submits that sub-clause 15.2.6 should be amended as set out below (amended words in bold): <p>If the Access Seeker has included in its Site Data Pack Application a request to receive specified additional information in the Site Data Pack, the Access Provider will use its reasonable endeavours to respond to such a request as soon as reasonably practicable if the Access Provider reasonably believes that the additional information is relevant to the Access Seeker's Initial Site Application or Full Site Application, and the timeframes set out in clause 15.2.1 will not apply to the Access Provider providing such additional information. (For example, where the Access Seeker anticipates that it will require certain levels of power capacity at the Relevant Facilities, this information may be requested by the Access Seeker in the Site Data Pack Application for the Access Provider to include specific information (where relevant) on power capacity in the Site Data Pack.)</p>

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	<p><u>Site Data Pack information - 10 Working Days lock down</u></p> <ul style="list-style-type: none"> • Telecom agrees with the principle that the Access Seeker should be able to rely upon the information in the Site Data Pack. Telecom notes, however, that as currently drafted sub-clause 15.2.7 is impractical as there are various aspects to the information in the Site Data Pack, the change in some of which is outside the Access Provider's control. • Restricting the Access Provider's ability to update the Common Format Site Database does not negate the fact that these aspects will have changed. For example, these may include rights of occupation, health and safety hazards or other Access Seekers submitting Applications. • One element in the Site Data Pack which is within the Access Provider's control is its reasonable future forecast requirements. Telecom acknowledges that the purpose of this sub-clause is to ensure that the Access Providers do not change their forecasts within those ten Working Days. Accordingly Telecom proposes that this sub-clause is deleted and replaced with the following: <p style="text-align: center;">Access Providers will not change their forecasts for a period of ten Working Days from the issuing of the Site Data Pack.</p>
15.3 Letter of notice to Landlord	
15.4 Initial site Application	
16 Detailed Site Design - Stage 2	
16.1 Overview	
16.2 Detailed Site Design Visit	<ul style="list-style-type: none"> • The Commission has included a ten Working Days timeframe in sub-clause 16.2.1 for the Access Seeker and the Access Provider to conduct the Detailed Site Design Visit. • The Detailed Site Design Visit will be subject to availability of both the Access Seeker's and the Access Provider's engineers to go on site within those ten Working Days. The notes will have to be agreed by the various specialists of both the Access Seeker and the Access Provider, including for example, the Site Manager, RF interference engineer, electrical and power supervisor, or a structural engineer. • The engineers may be required to go on site anywhere in New Zealand. Telecom currently requires its engineers to have one week notice for going on site, making the ten Working Day timeframe achievable. Nonetheless, the coordination of both parties' engineers may not prove to be achievable and/or practical in each instance. There may be situations where the parties cannot agree a mutually suitable time within the ten Working Days, or where the Access Seeker is not looking to conduct the visit for a period of time, for example one or two months. Telecom therefore proposes that a more flexible timeframe is introduced, and that sub-clause 16.2.1 be amended to read (amended words in bold): <p style="text-align: center;">Access Seeker and Access Provider will use best endeavours to conduct the Detailed Site Design Visit within ten (10) Working Days of receipt of the Initial Site Application, or where ten (10) Working Days is not practical for either the Access Seeker or the Access Provider at such a time as mutually agreed on by the Access Seeker and the Access Provider, the Access Provider and the Access Seeker will jointly conduct...</p>

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	<ul style="list-style-type: none"> • Telecom submits that the timeframes proposed in sub-clause 16.2.7 (5 Working Days) and sub-clause 16.2.8 (3 Working Days) are too short and are inoperable. Telecom submits that both of these timeframes should be 10 Working Days. • Telecom submits that, consistent with our general submission above, the term "immediately" in sub-clause 16.2.9 is replaced with either "three (3) Working Days" or "as soon as reasonably practicable".
16.3 Full Site Application	<ul style="list-style-type: none"> • Consistent with Telecom's submission on Access Seeker timeframes prior to the Queue in our general comments above, Telecom submits that the 20 Working Days timeframe in sub-clause 16.3.1 should be removed. • Telecom notes that, although it is implicit that an Access Seeker may elect to lodge its Full Site Application irrespective of whether it has obtained a Site Data Pack for a Relevant Facility or not, this is currently not clear from the drafting of sub-clause 16.3.1. Telecom submits that a new sub-clause 16.3.2 is inserted to clarify this point. The new sub-clause 16.3.2 should provide: 16.3.2 Notwithstanding anything in sub-clause 16.3.1, the Access Seeker may file a Full Site Application at any time.
16.4 Preliminary Site Approval	<ul style="list-style-type: none"> • Timeframe for approval/rejection of Access Seeker's Full Site Application: The Commission has reduced the timeframe on the Decision on the Access Seeker's Full Site Application to 10 Working Days from 20 Working Days. • The TCF Co-location of Radiocommunication Services Regulated under the Telecommunications Act 2007 Code ("Code") provides 20 Working Days for the Access Provider's decision on the step equivalent to the Preliminary Site Approval in the draft STD. • Preliminary Site Approval is the most important step in the process. Rushing this step would only result in negative consequences for both Access Providers and Access Seekers and could lead to further delays in the overall process. • This step requires a minimum timeframe of 20 Working Days due to its complexity. There are a number of variables which need to be considered by a number of both internal and external experts, including external specialists, vendors, structural or RF engineers. • The Preliminary Site Approval process is an iterative one which involves a number of sequential as well as concurrent steps. • Once all the variables are considered by all the relevant experts and all of the information has been sent back to the Access Provider for consideration, conflicts, inaccuracies or deficiencies may arise which will need to be resolved between the Access Provider and the external resources. The external resources required are scarce and specialised and it is difficult to guarantee that they will be available as soon as they are required. • Processing Full Site Applications is a complex process involving multiple external parties and multiple actions and processes while leaving little scope for flexibility. Telecom's experience has shown that the full 20 Working Days are required for this step. • Drafting note: The Commission has inserted the words "where it has an express right to do so pursuant to these Mobile Co-location Terms" in sub-clause 16.4.3(b). Telecom submits (consistent with general comment) that these words are superfluous in that they do not add an additional legal obligation to the Access Providers rights of rejection and should therefore be deleted. • Agreed/Disagreed Solution: Telecom notes that inclusion of a condition at the Preliminary Site Approval stage in sub-clause 16.4.4(iii) would be inconsistent with the requirement that the Agreed or a Disagreed Solution is provided as part of the Full Site Application. We note that we have inserted this clause in our mark up of the draft Vodafone STP, and this was done in error. Agreed or a Disagreed Solution has to be provided in the Full Site Application and all related testing must occur at that stage.

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	<ul style="list-style-type: none"> • The requirement that an Agreed or a Disagreed Solution is provided at the Full Site Application stage is important because testing of interference and structural capacity will not be possible without it. It would not be possible to obtain approval without first seeing a plan; a good analogy would be obtaining approval from the City Council to build a house prior to providing the relevant building and foundation plans. • Rejection of a Full Site Application for non-compliance with the Manual: Telecom notes that the Commission has not included the Access Provider's right to reject a Full Site Application where the Access Seeker has not included either an Agreed Solution or a Disagreed Solution, although this is implicit in the drafting of sub-clause 16.4.2. Telecom submits that this should be explicitly stated in sub-clause 16.4.2 for the avoidance of any doubt. • Loss of place in the Queue: Telecom notes that, although the intention in sub-clause 16.4.2 is that the Access Seeker will lose its place in the Queue where their Full Site Application is rejected in accordance with this sub-clause, this should be explicitly stated. • The clause should therefore be amended to provide (amended words in bold): The Access Provider will notify the Access Seeker within five (5) Working Days of receipt of the Full Site Application whether that Full Site Application complies with the Manual (for example, if it contains insufficient or incorrect information, or whether it includes either an Agreed Standard Solution or a Disagree Solution). Where the Full Site Application is invalid, it will be rejected, and the Access Provider will provide reasons of such rejection. For the avoidance of doubt, if the Access Seeker's Full Site Application has been rejected in accordance with this sub-clause 16.4.2, that Access Seeker will lose its place in the Queue.
17 Landlord and third party approvals - Stage 3	
17.1 General	
17.2 Access Provider obligations	
17.3 Access Seeker obligations	
17.4 Right of Relevant Occupation	
17.5 Access Seeker Agreements	
18 Resource Management Act 1991 consents - Stage 3	
18.1 General	
18.2 Access Provider obligations	
18.3 Access Seeker obligations	
18.4 RMA consents	
18.5 Shared RMA consent applications	

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19 Final Site Approval - Stage 3	
19.1 Preliminary Notice	
19.2 Demonstration of fulfilment of conditions	<ul style="list-style-type: none"> Telecom submits that the term "promptly" in sub-clause 19.2.2(b) should be replaced with "as soon as reasonably practicable", consistent with our general submission above.
19.3 Final Site Approval	<p><u>End of the Queue and the "use it or lose it" timeframes</u></p> <ul style="list-style-type: none"> In order to ensure that an Access Seeker who has received its Final Site Approval does not block other Access Seekers in the Queue from commencing their build by delaying the start of the build phase indefinitely, Telecom submits that a new sub-clause 19.3.4 should be inserted following current sub-clause 19.3.3 to note that the Queue will end on receipt of the Final Site Approval and the "use it or lose it" period of six months will commence (subject to clause 11.4 Extension Applications). The six month "use it or lose it" timeframe should allow sufficient time for the Access Seeker to commence build, while ensuring that other Access Seekers who are next in the Queue, or have subsequently received their Final Site Approval, are not prevented from going onto the Mast upon the expiry of that six month period. The six month "use it or lose it" timeframe should only apply where there are other Access Seekers in the Queue. Where only one Access Seeker has applied for a particular Site, this principle will not apply. Telecom considers that it would be unfair to force an Access Seeker to commence build within six months where no other Access Seekers have applied for that Site. However, Telecom considers that where more than one Access Seeker has applied for a particular Site, excluding this component would be unfair to other Access Seekers who have also received Final Site Approval and are ready to commence build were they to be pushed down into less optimal spaces on the Mast, while an Access Seeker who received their Final Site Approval earlier effectively reserves a more optimal space on the Mast but does not commence build in a timely manner and such space remains empty. To illustrate, Access Seeker A may go through the approval process, obtain their Final Site Approval and Approval to Build at which point they are removed from the Queue and the six month "use it or lose it" period starts. Access Seeker A decides that the space is no longer the priority for them but they might commence build in six months. Meanwhile, Access Seeker B is in the Queue and is awaiting their Final Site Approval. Access Seeker B cannot obtain their Final Site Approval because the space on the Mast is blocked by Access Seeker A. Including this "use it or lose it" mechanism prevents Access Seekers from locking up resources and prevents anti-competitive behaviour without being prescriptive about specific step-by-step timelines. This provides an overall timeframe within which the Access Seeker must commence physical work on the space or another Access Seeker will gain access to that space. Telecom therefore proposes that the following new clause 19.3.4 is inserted: <p style="margin-left: 40px;">19.3.4 Upon receiving Final Site Approval the Access Seeker will drop out of the Queue and, where other Access Seekers are in the Queue at the time of such Final Site Approval, will have six (6) months from the date of receipt of the Final Site Approval to commence the Access Seeker Build Period, subject to any Extension Application pursuant to clause 11.4. Where the Access Seeker fails to commence their Mobile Co-location Site Build within six (6) months of receiving Approval to Build in accordance with this sub-clause 20.3.5, that Approval to Build will lapse.</p>

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	<p><u>Updating the Common Format Site Database</u></p> <ul style="list-style-type: none"> • Telecom submits that the Common Format Site Database should be updated once the Access Seeker receives their Final Site Approval to reflect that the Access Seeker has dropped out of the Queue and to show the amount of available capacity remaining at that time. Consequently, there is no need to update the Common Format Site Database at the end of Project Closure, because at that stage no change to available capacity will occur. • Telecom submits that the new sub-clause 19.3.5 is inserted to read: <p style="padding-left: 40px;">19.3.5 After the Access Seeker has received their Final Site Approval, the Access Provider will update the Common Format Site Database regarding the Mobile Co-location Implementation at the Relevant Facilities.</p>
<p>20 Project Plan - Stage 4</p>	
<p>20.1 Overview</p>	
<p>20.2 Project Plan</p>	
<p>20.3 Approval to Build</p>	<ul style="list-style-type: none"> • Approval of Project Plan timeframe: The Commission has included a seven Working Day timeframe in sub-clause 20.3.1. The review of the Access Seeker's Project Plan is a key step in the process. Where this step is not completed thoroughly, the consequences would be major and have flow on effects to the Site Build, which would disadvantage both the Access Seeker and the Access Provider. • The work involved in assessing and approving the Access Seeker's Project Plan is outsourced to specialists and thus requires external resources. Telecom's experience to date shows that the entire 10 Working Days are required. • Reducing the timeframe by 3 Working Days does not seem to outweigh the risk of rushing this task. • The timeframe in Decision on Access Seeker's Project Plan should be ten Working Days rather than seven. Moreover, it is difficult to see why the timeframe should be reduced from two weeks to one week and a half. • Drafting notes: Telecom does not propose substantive changes to sub-clause 20.3.2, but proposes the following drafting changes to improve the process. • Telecom notes that two steps in sub-clause 20.3.2 seem to be missing from the drafting, namely a timeframe within which the Access Seeker should submit the amended Project Plan and a timeframe for the Access Provider's acknowledgment of such an amended Project Plan upon receipt. • Telecom also notes that sub-clause 20.3.2(d) would be better suited as a stand-alone sub-clause, and should therefore become sub-clause 20.3.3. • In order to implement the above suggestions, Telecom proposes that clause 20.3 should be amended to read (changes in bold): <p style="padding-left: 40px;">20.3.1 After the Access Provider receives the Project Plan, it will review the Project Plan. Within ten (10) Working Days of receipt of the Project Plan, the Access Provider will either:</p> <p style="padding-left: 80px;">(a) approve the Project Plan and issue the Access Seeker with approval of the Project Plan (the Approval to Build); or</p> <p style="padding-left: 80px;">(b) notify the Access Seeker that the Access Provider does not approve the Project Plan,</p>

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	<p>including reasons for rejection, provided such rejection is only given in circumstances where the Access Provider reasonably believes that:</p> <p>(i) the Project Plan is not sufficiently complete and/or specific; or</p> <p>(ii) the Detailed Site Design in the Project Plan is materially or substantially different from the Detailed Site Design approved by the Access Provider in the Final Site Approval</p> <p>20.3.2 If the Access Provider rejects the Project Plan under clause 20.3.1(b) above the Access Provider will:</p> <p>(a) request the Access Seeker to submit an amended Project Plan within ten (10) Working Days following the rejection under clause 20.3.1(b);</p> <p>(b) provide the Access Seeker with reasonable assistance if requested by the Access Seeker in order to amend the Project Plan; and</p> <p>(c) acknowledge receipt of amended Project Plan within four (4) Business Hours;</p> <p>20.3.3 the Access Provider will review the amended Project Plan and:</p> <p>(a) if the Access Provider approves the amended Project Plan (approval not to be unreasonably withheld), within ten (10) Working Days of receiving the amended Project Plan, issue the Access Seeker with the Approval to Build; or</p> <p>(b) if the Access Provider does not approve the amended Project Plan, reject the Project Plan, including reasons for rejection.</p> <p>20.3.4 The Approval to Build must be in the form set out in Appendix N.</p>
21 Mobile Co-location Site Build - Stage 5	
21.1 Overview	
21.2 Mobile Co-location Pre-build Phase	
21.3 Mobile Co-location Build Period	
21.4 Project Closure	
21.5 Phase 1: Build Closure	<ul style="list-style-type: none"> Telecom notes that nowhere in sub-clause 21.5.2 is it reflected that the Access Seeker will be able to switch on their equipment and "go live" once they have completed Phase 1 of their Build. The Access Seeker will be transmitting during Phase 2, although because Phase 2 is a necessary interference testing period, the Access Provider will have the right to switch off Access Seeker's transmission at any point for interference testing reasons.

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	<ul style="list-style-type: none"> Telecom therefore submits that sub-clause 21.5.2 is amended to read (amended words in bold): <p>21.5.2 Once the Access Seeker has provided the Project Closure Checklist, completed in accordance with clause 21.5.1 to the Access Provider, and the Access Provider has approved that Project Closure Checklist in respect of all Phase 1 matters, the Access Seeker may commence radio transmission and proceed to Phase 2 of Project Closure, and undertake all procedures and requirements for interference management in accordance with clauses 9.4.21 to 9.4.27 (in relation to Agreed Standard Solutions) or 9.5.38 to 9.5.47 (in relation to Disagreed Solutions) of the Interference Management and Design document. The Access Provider will be able to switch off the Access Seeker's Equipment at any time during the Phase 2 Probationary Period in accordance with clauses 9.4.28 and 9.5.47 of the Interference Management and Design document.</p>
21.6 Phase 2: Probationary Period	
21.7 Project Closure Checklist	<p><u>Go Live date</u></p> <ul style="list-style-type: none"> Telecom notes that, although there is implicit approval in clause 23.4 to allow the operation of the Access Seeker's Equipment upon Project Closure, there is no explicit clause in the STD stating this. Sub-clause 21.6.1 refers to the Interference Management and Design document, and the relevant clauses of the Interference Management and Design document refer back to the Operations Manual. Telecom therefore proposes that a new sub-clause 21.7.6 is inserted providing explicitly for the "turn-on" of the Access Seeker's Equipment upon Project Closure. <p>21.7.6 After the Access Provider issues the Access Seeker with Project Closure, the Access Seeker will be allowed to commence radio transmission ("Go Live"). For the avoidance of doubt, any switching on of the Access Seeker's Equipment prior to Project Closure and the Go Live date will be for the purposes of completion of all procedures and requirements for interference management in accordance with clauses 9.4.21 to 9.4.27 or 9.5.38 to 9.5.47 of the Interference Management and Design document and the Access Provider will be able to request switching off of the Access Seeker's Equipment at any time until the Go Live date.</p> <p><u>Project Closure Checklist</u></p> <ul style="list-style-type: none"> Telecom notes that sub-clause 21.7.2(b) allows the Access Provider to reject a Project Closure Checklist and require the Access Seeker to rectify any items to enable its approval. Telecom notes that this sub-clause would be strengthened by inserting a requirement on the Access Seeker to resubmit the Project Closure Checklist once these issues have been rectified. Telecom proposes the following amendment to sub-clause 21.7.2(b) (amended words in bold): <p>21.7.2(b) notify the Access Seeker that it does not approve the Project Closure Checklist, including reasons for rejection, and require the Access Seeker to rectify any items to enable the Project Closure Checklist to be approved by the Access Provider, and upon rectifying such items, resubmit the Project Closure Checklist to the Access Provider for its approval.</p>

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	<p><u>Updating the Common Format Site Database</u></p> <ul style="list-style-type: none"> Consistent with our submission on clause 19.3 above, Telecom submits that sub-clause 21.7.4 should be deleted, since no change to available capacity will occur at the Project Closure stage, and the appropriate point for updating the Common Format Site Database is at the Final Site Approval stage.
22 Record keeping	
22.1 General	
PART 5 - SITE ALTERATIONS	<ul style="list-style-type: none"> The Commission has included provisions to allow for antenna minimisation. Telecom does not consider that Access Provider's should be forced to rearrange their existing antenna or use antenna minimisation technology. Antenna minimisation will interfere with an operator's network. For example, dual band antenna minimisation will remove a network operator's ability to optimise their network. This will result in inefficiencies that were not present when the network was rolled out. In the past the Commission has recognised network operator's property rights to ensure that regulation does not distort investment decisions. Such recognition is equally important in the case of mobile co-location. Telecom has confirmed to the Commission that in certain circumstances it will be commercially possible to agree to certain types of antenna minimisation. However, for reasons set out below, Telecom still considers that in the majority of cases antenna minimisation will not be the best or most cost effective solution. <p><u>Disadvantages of Antenna minimisation</u></p> <ul style="list-style-type: none"> One of the key disadvantages of Antenna minimisation is that it only offers a short term solution to what should be seen as a long term issue. Telecom submits that regulation on this issue should take a long term approach that reflects the desire to find a long term, fair solution that ensures New Zealand continues to have a high standard of infrastructure. Antenna minimisation is inconsistent with this goal for three key reasons: <ul style="list-style-type: none"> All existing infrastructure has a finite amount of space to support new equipment. This inevitably means that a party that co-locates on an existing Mast through Antenna minimisation does so at the expense of the next party that wants to co-locate (as it reduces the space available for the next Access Seeker). Antenna minimisation can also create interference issues due to increased (and unwanted) interaction of new equipment as it is added to the Antenna. Telecom believes that mandating Antenna minimisation will lead to a downgrade in services to end users of mobile services. New Zealand already has a number of parties wanting to co-locate; mandating Antenna minimisation will incentivise a solution that discourages investment in infrastructure improvements such as tower extensions, or the building of larger towers. These are the solutions that are used in other countries and these are the solutions that are necessary to accommodate multiple Access Seekers. Antenna minimisation is a short term solution that will likely bring unintended long term problems. As such, it is not a solution that will address the long term needs and long term interests of end-users of downstream mobile telecommunications. Other reasons for not regulating in favour of Antenna minimisation include: <ul style="list-style-type: none"> Antenna minimisation interferes with an Access Provider's property rights as well as restricting its right to operate its business. In the past the Commission has accepted that these property and business rights should not be restricted. Telecom considers that the Commission should take a consistent approach here, particularly in light of the fact that mast replacement, extension or revision provides an appropriate mechanism for creating space in a situation where Telecom does not agree to minimise Antennas commercially; mandating and Antenna minimisation would be a "world first" in that Telecom has not identified any jurisdiction in which it has been done despite most jurisdictions having regulatory frameworks in place that would enable such a requirement to be imposed.

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	<ul style="list-style-type: none"> • Telecom submits that the disadvantages discussed above support its submission that Mast replacement, extension or revision is a better, long term, alternative. <p><u>Advantages of Mast replacement, extension, or revision</u></p> <ul style="list-style-type: none"> • Telecom's view is that if the Commission felt that it was necessary to regulate a solution for making space available for Access Seekers, it should do so through mast replacement, extension or revision. Telecom submits that mast replacement, extension or revision will provide a long term solution that is free from the negative issues discussed above. • Unlike Antenna minimisation, Mast replacement, extension or revision will not result in degradation to the quality of service or coverage provided by Access Providers or existing co-locators to their customers and instead encourages forward-looking investment in infrastructure. • Telecom considers that Mast replacement, extension or revision is the appropriate option to be adopted by the Commission for the following reasons: <ul style="list-style-type: none"> ○ It is a method widely accepted and used in overseas jurisdictions, unlike Antenna minimisation; ○ It will not result in degradation to the quality of service provided by Access Providers or existing co-locators to their end-users, and is therefore consistent with section 18 of the Telecommunications Act 2001; ○ It is the only solution which increases the capacity of the Mast for future use, thus benefiting multiple parties, unlike Antenna minimisation which only uses the current space to its maximum capacity; ○ It is a long term solution, benefiting both present and future parties wishing to co-locate; ○ It gives Access Seekers considerable control in regard to the design and implementation of the mast replacement; ○ It will enable the Access Seeker and Access Provider to work together to ensure that they both achieve an optimal outcome; and ○ It provides the opportunity for an Access Seeker to receive a return on its investment. An Access Seeker would be entitled to split the rental charges that were paid by any subsequent Access Seekers. • Telecom considers that the Commission has overlooked the benefits of Mast replacement, extension or revision and has not given these options sufficient weight. In addition, Telecom is concerned that the disadvantages of Antenna minimisation have not been fully appreciated. • Telecom submits that this entire Part 5 should be reinstated to the drafting as proposed in Telecom's submission on the draft Vodafone STP.
23 Site Alterations	
23.1 Overview	
23.2 Purpose of Site Alterations	
23.3 Process of Site Alterations	
23.4 Mast replacement, extension or revision	
23.5 Access Provider's Forecast	

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24 Mast Revision/Extension	
24.1 Mast Revision/Extension	
24.2 Property rights	
24.3 Rights and Obligations	
24.4 Project Plan	<ul style="list-style-type: none"> Telecom submits that the words inserted at the end of sub-clause 24.4.2, namely: "provided however that the Access Provider..." introduce ambiguity to the clause. If the Commission considers this sub-clause conflicts with another provision of this STD then the reference should be explicitly made to such a provision.
24.5 Implementation of the Project Plan	<ul style="list-style-type: none"> Telecom submits that the insertion in sub-clause 24.5.5: "(or as anticipated by these Mobile Co-location terms)" introduces ambiguity to the clause and, consistent with our general comment above, should be deleted.
25 Mast Replacement	
25.1 Mast Replacement	
25.2 Property Rights	
25.3 Rights and Obligations	
25.4 Other Provisions	
26 Antenna Rearrangement/Antenna Minimisation	<ul style="list-style-type: none"> Consistent with our submission on section 23 above, this entire section should be deleted.
26.1 Antenna rearrangement/ Antenna Minimisation	
26.2 Property Rights	
26.3 Rights and Obligations	
26.4 Project Plan	
26.5 Implementation of the Project Plan	
PART 6 - TENURE	
27. Relinquishment	
27.1 Overview	
27.2 Relinquishment Application	
27.3 Relinquishment	<ul style="list-style-type: none"> Telecom agrees that it can accept three months as a reasonable relinquishment period.
28. Relocation	
28.1 Overview	

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28.2 Relocation	<ul style="list-style-type: none"> • Telecom submits that the words in sub-clause 28.2.2 "including, without limitation, circumstances where..." should be removed. Each situation where a relocation may be required is likely to be distinct from any other, however should the Access Seeker refuse to relocate, it will have to provide the Access Provider with comprehensive reasons for such a refusal. • By inserting the words "without limitation" the Commission has broadened the scope of Access Seeker rejection. The purpose of this sub-clause is to allow the Access Provider to manage the space on the Mast as efficiently as possible provided that it does not detrimentally affect Access Seeker's services. • "Without limitations" opens the scope to unlimited reasons for rejection, and this is not what was anticipated by this clause. These words should therefore be deleted.
28.3 Relocation procedure	<ul style="list-style-type: none"> • Telecom notes that sub-clause 28.3.1(e) allows the Access Provider to "amend" the Access Seeker's quote. Amending a quote would be inappropriate because the Access Seeker obtains such a quote from a third party, and Telecom submits that this should be replaced with "supply an alternative".
29. Termination	
29.1 General	
PART 7 - BILLING	
30. Billing	
30.1 Overview	
30.2 Invoicing	
30.3 Billing enquiries	
PART 8 - DATABASE AND SITE TYPES	
31. Common Format Site Database	<ul style="list-style-type: none"> • The TCF document states: "the purpose of the Common Format Site Database is to enable the Access Seeker to identify the sites that are suitable for the Access Seeker to apply to the Access Provider for the supply of the Mobile Co-location Service." • The purpose of the Common Format Site Database is not the same as that of the Site Data Pack and therefore the requirements for each of these components should be different, for example in relation to accuracy of information, timeliness of updates and content.
31.1 Overview	<p><u>Common Format Site Database to be in format of an excel spreadsheet</u></p> <ul style="list-style-type: none"> • Sub-clause 31.1.1 requires that the Common Format Site Database be in form of an excel spreadsheet. Telecom submits that this is not practical for various reasons. Excel does not have the control mechanisms of other database formats. Excel may be used as an interim means of presenting the data, but should not be the only compulsory means locked down by the STD going forward. Considering the Commission's change of scope to the Common Format Site Database, it would be difficult to guarantee what the Access Provider can deliver via an excel spreadsheet. • Telecom notes that nowhere else in the STD has the Commission prescribed a specific form for a software application. For example, the billing section only requires "electronic format", leaving it open to the parties to decide if they will use PDF invoices, web-based interface, B2B or any other format. The choice of delivery of the service lies with the Access Provider. This should be consistent in the case of the Common Format Site Database. Telecom submits that the content of the Common Format Site Database should be prescribed, whilst the format, presentation and storage of the data should be up to the Access Provider to decide on.

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	<p><u>Provision of information on Relevant Facilities</u></p> <ul style="list-style-type: none"> • Telecom accepts that the Access Providers should provide information on a wider number of facilities so that the Access Seeker can select the relevant ones, rather than leaving it to the Access Provider to decide what is suitable. If the definition of Relevant Facilities is as wide as the Commission has drafted it, the Common Format Site Database will be impractical to build and maintain because it will double or triple the number of Sites which will have to be included. This will also make it more difficult to use due to irrelevant Sites being included. • Telecom supports sub-clause 31.1.2 as a fair and accurate reflection of the intent of the discussion and outcome around the Common Format Site Database at the TCF forum. The TCF Working group discussed at length what the form of the database and the categories should be, and the consensus was that it must be simple, easy to maintain, and not onerous on any of the Access Providers.
31.2 Access Provider obligations	<ul style="list-style-type: none"> • The use of the term "completely" in sub-clause 31.2.2 is ambiguous and should be deleted. <p><u>Accuracy of the information</u></p> <ul style="list-style-type: none"> • The Common Format Site Database is meant to be indicative only. The "best endeavours" obligation increases the requirement of accuracy and therefore increases the costs of maintaining the database substantially. Not only do Access Providers need to update the information but also need to have integrity checks once a month which would significantly add to the costs of maintenance. • The intention in the TCF document was that the guaranteed accuracy of the information would apply to the Site Data Packs, and in that case, for ten Working Days only. • It is important to distinguish the different purposes of the Common Format Site Database and the Site Data Pack. The purpose of the Site Data Pack is to allow the Access Seeker to make an Application, while the purpose of the Common Format Site Database is to allow the Access Seekers to search for suitable Sites. • The purpose of the Common Format Site Database is not to provide sufficient information for an Access Seeker to submit a Full Site Application. The TCF working party agreed that the information should be indicative. • Telecom submits that Vodafone's initial use of the term "reasonable endeavours" best reflects the purpose of the database and the intention as agreed in the TCF document, and as such should be reinstated. <p><u>Implementation Plan deadline of STD plus 5 Working Days</u></p> <ul style="list-style-type: none"> • Telecom cannot deliver the Common Format Site Database within this timeframe. At present, the information required for the Common Format Site Database is held in nine different databases. These databases have to be combined in order to produce the Common Format Site Database. • The inclusion of buildings within the definition of Masts (and therefore Relevant Facilities) will dramatically increase the number of Relevant Facilities that Telecom must include in the Common Format Site Database. Telecom does not have information on all of these sites in its pre-existing databases. • Moreover, it is unreasonable to expect that, where the Commission's final STD changes requirements on the parties, they will be able to have operational requirements under that new document ready within 5 Working Days. <p><u>Accessibility 24x7</u></p> <ul style="list-style-type: none"> • Telecom notes that the requirement for accessibility of the database on a 24x7 basis is contained in the Service Level Terms, and as such sub-clause 31.2.3(b) is not required and should be deleted.

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31.3 Common Format Site Database	<ul style="list-style-type: none"> • Telecom notes that the requirement in sub-clause 31.3.1(g) for antenna configuration was not included in the TCF document. This requirement is not suitable for a database. The best way to explain the configuration of the antenna is by a photo or a plan and this is obtainable in the Site Data Pack. The Commission appears to have confused the concept of the Site Data Pack with the Common Format Site Database - this particular detail should only be available once the Access Seeker has made a specific request for information on a particular Site. • Expressing capacity as a percentage in sub-clause 31.3.1(k) does not indicate to the Access Seeker exactly how much room is available on the Mast, as space could be disparate, but an aggregate percentage would not reflect this. Telecom believes that the key structural parameter to be considered in Mast Capacity is the deflection criteria for the Mast. Deflection angles have a direct impact on RF transmission paths. Telecom believes that a measure providing the difference between a current deflection angle and a maximum engineering limit would provide Access Seeker with a more useful definition of spare Mast capacity. However, Telecom considers that it would be of value to further discuss this issue at the Mobile Co-location conference with the rest of the industry. • Sub-clause 31.3.1(m) requires "spare building room". Telecom would find providing this information extremely difficult as it is not currently monitored. As an Access Seeker, Telecom would not see any value in obtaining this information. Building space of itself is not a helpful determinant unless it is provided with spare air-conditioning, spare power and other environmental factors. Providing this information would be an onerous task for Telecom to undertake and would provide little benefit to the Access Seeker. In addition, other Access Seekers have indicated in their discussions with Telecom that they generally prefer to install their own shelter, rather than co-location with the Access Provider's shelter or buildings.
32 Standard Site Types	<ul style="list-style-type: none"> • Telecom considers that in light of adoption of a process for Multiple Site Applications and requirements for Agreed and Disagreed Solutions, section 32 is redundant. • There is no other reference or requirement for the use of Standard Site Types anywhere in the process in the draft STD, apart from one reference in sub-clause 9.1.3 of the Interference Management and Design document. As discussed in our detailed submission on the Interference Management and Design document, this reference should be replaced with "Standard Site RF Configuration". • This clause was initially included by Vodafone in order to provide guidance on identification of similar Sites for the purposes of assisting the Access Seekers when submitting multiple applications. In the current draft of the STD no other mention is made of Standard Site Types and as such they are currently completely outside the process. • Telecom therefore submits that this entire section 32 should be deleted, with all subsequent references in the Appendices.
32.1 Overview	
32.2 Identification of Standard Site Types	
32.3 Standard Site Type Solution	
32.4 Standard Site Type Solution development process	
32.5 Access Seeker's proposal	
32.6 Access Provider's response to proposal	
32.7 Exchange of technical information	

SECTION/CLAUSE of the DRAFT COMMERCE COMMISSION STD	COMMENT
32.8 Access Seeker's draft design	
32.9 Standard Site Type Solution design	
32.10 Review of Standard Site Type Solutions	
PART 9 - MOBILE CO-LOCATION UTILITY SERVICES	
33 Utility Services	
33.1 Overview	
33.2 Utility Services	<ul style="list-style-type: none"> • The Commission has changed the right to select which Utility Services will form the Utility Services in relation to the Relevant Facilities from an Access Provider obligation to an Access Seeker obligation. • The Commission's changes to sub-clause 33.2.1 are inconsistent with previous STDs and do not reflect the practical process. • Access Providers do not have an interest in preventing Access Seekers from using the Utility Services where these are available. • However it is important to recognise that Access Providers will be in the position to know and advise which Utility Services are available at the Relevant Facilities and which are not. For example, if air conditioning exists at the Relevant Facilities, this information will be available to the Access Seeker. • The clause should be amended to reflect that the Access Seekers can apply for Utility Services at the Relevant Facilities, and that the Access Providers will advise the availability of these Utility Services for Co-location, and the conditions relating to such Utility Services. • Telecom further submits that the words "acting reasonably and in good faith" in sub-clause 33.2.1 add ambiguity and should be deleted, as any actual requirements for a decision are set out in sub-clause 33.2.2. If any further grounds of rejection exist, other than those provided in sub-clause 13.8.2, then such specific grounds should be included in sub-clause 13.8.2.
33.3 Use and maintenance	
34 Replacement and upgrade of Utility Services	
34.1 Request for replacement or upgrade of Utility Services	
34.2 Costs and ownership	
35 Lighting	
35.1 General	
36 Air Conditioning	
36.1 General	
37 Power	

SECTION/CLAUSE of the DRAFT COMMERCE COMMISSION STD	COMMENT
37.1 Normal operating standards	
37.2 Power connection to the Access Seeker Equipment	
38 Access Track	
38.1 General	
38.2 Costs	<ul style="list-style-type: none"> This clause is outside of the scope of the STD because it relates to pricing and price-related issues, and should therefore be deleted.
39 Fencing	
39.1 General	
39.2 Extensions to fencing	
40 Electrical and lightning earthing	
40.1 Normal operating standards	
PART 10 - FAULTS	
41 Faults	
41.1 Overview	
41.2 Relationship with the Mobile Co-location General Terms	
41.3 General	
41.4 Training and Support	
41.5 Additional functionalities within or enhancements to the Fault Management System	
41.6 Terms of use	<ul style="list-style-type: none"> Telecom notes that it is implicit from the drafting of clause 41.6 that only trained and accredited employees of the Access Seeker will be allowed to use the Fault Management System. Telecom considers that this should be explicitly stated for the avoidance of doubt, since the consequences of unauthorised and unaccredited employees of the Access Seeker using the Fault Management System may be detrimental to the Access Seeker, the Access Provider and the end-users. This addition is necessary to ensure that Access Seeker's employees using the Fault Management System know how to use it, which minimises negative impacts on the system and ensures that costs of any repairs and errors arising as a consequence of incompetent use are not borne by the Access Provider and do not trickle down to end-users. Telecom submits that sub-clause 41.6.3 should be included to read: "Only trained and accredited employees of the Access Seeker may use the Fault Management System."
41.7 Costs	

SECTION/CLAUSE of the DRAFT COMMERCE COMMISSION STD	COMMENT
42 Diagnosing faults	
42.1 General	
43 Responsibility for faults	
43.1 The Access Provider's responsibility	
43.2 The Access Seeker's responsibility	<ul style="list-style-type: none"> • The Commission has inserted the words "except where a fault is the Access Provider's responsibility because it is due to any act or omission of the Access Provider or a customer or end user of the Access Provider". • A fault by its nature is the Access Provider's responsibility; the Commission's insertion in sub-clause 43.2.1 confuses the purpose of this sub-clause which is to ensure that the Access Seeker carries out repairs relating to faults for which it is responsible. Telecom submits that the Commission's insertion is redundant and should be deleted.
44 Reporting faults to the Access Provider	
44.1 Overview	
44.2 Reporting faults to the Access Provider	
44.3 Fault Management System fault processing	
44.4 Fixing faults	
44.5 Irregularities	
PART 11 - WORKING ON THE ACCESS PROVIDER'S NETWORK - THE ACCESS PROVIDER	<ul style="list-style-type: none"> • Telecom notes that the Commission has removed a number of key provisions from this Part 11. Although these provisions are still included in the General Terms, it is important that each part of the STD is a stand-alone document, ensuring that relevant staff, in this case the operations staff, can only refer to their respective document, in this case the Operations Manual. • The terms deleted by the Commission are standard terms, which have been included in the UCLL Co-location STD, and there is no reason why these should be removed in the present case. • All standard terms therefore have to be included in this Part 11, and reinstated.
45 Outages	
45.1 Overview	
45.2 Planned Outages	
PART 12 - WORKING AT THE ACCESS PROVIDER'S RELEVANT FACILITIES - THE ACCESS SEEKER	<ul style="list-style-type: none"> • Telecom submits, consistent with our submission on clause 41.6 above, a clause requiring that only accredited and trained employees of the Access Seekers use the Planned Work System should be included in this Part 12. This clause can be made subject to Access Providers providing training on the Planned Work System.
46 General	
46.1 Overview	
46.2 Terms of use and costs	

SECTION/CLAUSE of the DRAFT COMMERCE COMMISSION STD	COMMENT
47 Planned Work - Inside the Access Seeker Space	
47.1 Overview	
47.2 Requirements	
47.3 Planned Work	
47.4 Planned Work Application	
47.5 Planned Work Project Plan	
47.6 Planned Work Build	<ul style="list-style-type: none"> • Telecom submits that the word "promptly" in sub-clause 47.6.1 is replaced with "as soon as reasonably practicable", consistent with our general submission above. • In sub-clause 47.6.6, the Commission has included a five Working Day timeframe for approval or rejection of the Access Seeker Planned Work Project Closure Checklist by the Access Provider. In order to assess and approve/reject the Planned Work Project Closure Checklist, the Access Provider may require a Site visit and five Working Days would ordinarily be insufficient. This timeframe should be increased to ten Working Days.
48 Planned Work - Outside the Access Seeker Space	<ul style="list-style-type: none"> • Telecom notes that the Commission has retained this clause in its draft STD. Telecom does not consider that there will be any occasions where the Access Seeker would be required to conduct any Planned Work outside the Access Seeker space, namely on either the Access Provider's Equipment or the Equipment of third parties using the Relevant Facilities. • Telecom submits that this section 48 is not required and should be deleted.
48.1 Overview	
48.2 Work outside of the Access Seeker Space	
PART 13 - SECURITY AND ACCREDITATION	
49 General	
49.1 Overview	
50 Accreditation	
50.1 Overview	
50.2 Accreditation procedure	
50.3 Work type accreditation	
51 Security clearance	
51.1 Overview	<ul style="list-style-type: none"> • Telecom submits that the inclusion of the words "Notwithstanding any other provision of this clause 51, no conditions specified by the Access Provider may derogate from the Access Seeker's rights otherwise provided under these Mobile Co-location Terms" introduces ambiguity and should be removed in the interest of clarity. If the Commission considers that this clause conflicts with another clause in the draft STD, then the specific reference to that conflicting clause should be included.

SECTION/CLAUSE of the DRAFT COMMERCE COMMISSION STD	COMMENT
51.2 Access security	
51.3 Escorted access	
51.4 Access Control Device Application	
51.5 Security clearance	
51.6 Costs	
51.7 Lost or damaged Access Control Devices	
51.8 Surrendering Access Control Devices	
PART 14 - PERMIT TO WORK	
52 Permit to Work	
52.1 Overview	
52.2 General	<ul style="list-style-type: none"> • Telecom submits that the inclusion of sub-clause 52.2.2 introduces ambiguity and should be removed in the interest of clarity.
52.3 Permit to Work procedure	
52.4 Permit to Work applications	
52.5 When to apply for a Permit to Work	
52.6 After hours Permit to Work	
52.7 Service-impacting faults and Permit to Work requirements	<ul style="list-style-type: none"> • Telecom notes that the Commission has changed the reference to CMC in sub-clause 52.7.1 to NOC. Telecom notes that NOC is Telecom-specific and does not relate to the Mobile Network. It is therefore not appropriate for use in this STD. • Telecom proposes that references to NOC be replaced with a requirement that the Access Provider inform the Access Seeker of the organisation-specific contact for this purpose, in accordance with clause 2.1.
PART 15 - WORK PROCEDURES	
53 Work procedures	
53.1 Overview	
53.2 Work plan	<ul style="list-style-type: none"> • Telecom notes that the word "relevant" in sub-clause 53.2.1 has been changed to "reasonable". • Telecom considers that this change introduces subjectivity. The Access Seeker may consider required procedures to be "unreasonable", despite them being relevant and necessary. • Introducing such ambiguity, potential for disputes and misinterpretation was not the original intention of this clause. Moreover, introducing potential for dispute over subjective interpretation in a standard clause appears unnecessary.
53.3 Working on the Relevant Facilities	
53.4 Electric tools and appliances	

SECTION/CLAUSE of the DRAFT COMMERCE COMMISSION STD	COMMENT
53.5 Static electricity	
54 Health and Safety	
54.1 Overview	
54.2 Health and safety compliance	
54.3 Generic hazards	
54.4 Cumulative Radio-frequency effects	
APPENDIX A - GLOSSARY	
APPENDIX B - ESCALATION PROTOCOL	
APPENDIX C - MOBILE CO-LOCATION FORECASTING SPREADSHEET	<ul style="list-style-type: none"> • Telecom submits that the forecasts for the Initial Site Applications should be removed from the Service Levels and subsequently from this table. This would not reduce incentives for keeping to the timeframes, as any breach of the timeframes in the STD will constitute the breach of the STD, while Service Levels are only there to provide specific measurable for specific bottlenecks in the process. • Telecom submits that the references to Region should be substituted with the reference to Territorial Authority to ensure a more granular breakdown for forecasts.
APPENDIX D - MOBILE CO-LOCATION TASKS	<ul style="list-style-type: none"> • Telecom submits, consistent with our submission on the draft Vodafone STP, that this template should be adjusted to reflect the amended process and the breakdown of tasks.
APPENDIX E - SITE DATA PACK APPLICATION	<ul style="list-style-type: none"> • Telecom submits, consistent with our submission on Common Format Site Database above, expressing structural capacity as a percentage is inappropriate.
APPENDIX F - SITE DATA PACK	<ul style="list-style-type: none"> • Telecom submits that an extra field should be inserted to reflect sub-clause 15.2.4(e) - Access Provider Forecasts.
APPENDIX G - LETTER OF NOTICE TO LANDLORD	
APPENDIX H - INITIAL SITE APPLICATION	<ul style="list-style-type: none"> • Telecom submits that section 6 referring to Standard Site Types should be deleted as it is irrelevant to the process. This should be replaced with the field referring to Agreed/Disagreed Solution.
APPENDIX I - SITE DESIGN NOTES	
APPENDIX J - FULL SITE APPLICATION	<ul style="list-style-type: none"> • Telecom notes that this appendix was drafted by Vodafone on the basis that the Initial Site Application would be a compulsory step. In light of the Initial Site Application being a voluntary step, this appendix will need to include all the information which is currently contained in Appendix H. • Moreover, the first box referring to the Site Type Solution should be removed and replaced with the requirement for Agreed/Disagreed Solution.
APPENDIX K - PRELIMINARY SITE APPROVAL	
APPENDIX L - FINAL SITE APPROVAL	
APPENDIX M - PROJECT PLAN	
APPENDIX N - APPROVAL TO BUILD	

SECTION/CLAUSE of the DRAFT COMMERCE COMMISSION STD	COMMENT
APPENDIX O - PROJECT CLOSURE CHECKLIST	<ul style="list-style-type: none"> References to Site Agreement/Schedule of Site Specific Terms and Conditions should be reinstated, with changes as proposed in our general submission above.
APPENDIX P - PROJECT CLOSURE	
APPENDIX Q - COMMON FORMAT SITE DATABASE	<ul style="list-style-type: none"> Telecom notes that a category for "spare building capacity" has been inserted. This category is not relevant for the provision of the Mobile Co-location Service and should therefore be removed.
APPENDIX R - STANDARD SITE TYPE SOLUTION TASKS	<ul style="list-style-type: none"> Consistent with our submission on Part 12 above, this appendix should be deleted in its entirety.
APPENDIX S - PLANNED WORK TASKS	
APPENDIX T - PLANNED WORK APPLICATION	
APPENDIX U - PLANNED WORK PROJECT PLAN	
APPENDIX V - PLANNED WORK APPROVAL TO BUILD	
APPENDIX W - PLANNED WORK PROJECT CLOSURE CHECKLIST	
APPENDIX X - PLANNED WORK PROJECT CLOSURE	
APPENDIX Y - PROCEDURES AND TECHNICAL SPECIFICATIONS	

APPENDIX Z
PRELIMINARY SITE NOTICE

Access Provider (AP):

Access Seeker (AS):

AP Unique Identifier:

AS Project Number:

AP Project Number:

Preliminary Site Notice

Following the Access Seeker's satisfaction of the conditions set out in the Preliminary Site Approval, this form is to be completed by the Access Seeker and submitted to the Access Provider. All fields must be completed. If a field is not relevant to this particular approval mark as not applicable.

Access Provider (AP)	
Access Seeker (AS)	
Name of Relevant Facilities	
AP Unique Identifier	
AP Project Number	

Date of Issue of Preliminary Site Approval	
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Conditions	
The conditions imposed on the approval have been met as set out below:	
1.	
2.	

Access Provider (AP):

Access Seeker (AS):

AP Unique Identifier:

AS Project Number:

AP Project Number:

Issued by the Access Seeker's Mobile Co-Location Project Manager	
Name	
Signature	