

19 May 2010

Dr Ross Patterson
Telecommunications Commissioner
Commerce Commission
PO Box 2351
Wellington

By EMAIL

Dear Dr Patterson

**Commerce Commission Draft Mobile Termination Reconsideration Report
Recommendation to regulate Mobile Termination Access Service ('Draft
Reconsideration Report')**

1. TelstraClear welcomes the opportunity to comment on the Commission's Draft Reconsideration Report which recommends that the Minister regulate Mobile Termination Access Services (MTAS) under Schedule 1 of the Telecommunications Act 2001.
2. The movement to cost-based MTAS regulation requires resolution. Simply put, TelstraClear's view is that if regulation of MTAS is the only way to ensure that MTAS will move to reflect appropriate cost over the longer term, then the service should be regulated.
3. Since 2004, TelstraClear has supported cost-based MTAS rates. The Commission's international benchmarking study has consistently demonstrated that current rates within New Zealand are significantly above international estimates of cost. The Commission has now become concerned about the resulting negative impact high MTAS rates may have on downstream markets in New Zealand. Debate around this issue commenced many years ago. Throughout this time, MTAS rates have remained persistently, and significantly, above cost.
4. TelstraClear has supported the view, consistent with international best practice, that cost-based wholesale mobile termination will deliver end-user benefits, including by removing the competitive impediments in downstream markets.
5. We remain of the view that MTAS rates in New Zealand, including those provided by Vodafone and Telecom under the proposed undertakings, remain above cost (on a Total Service Long Run Incremental Cost basis).
6. In response to the Commission's recommendation that the Minister accept formal undertakings, rather than designate the service under Schedule 1, TelstraClear expressed general support for undertakings. This support was predicated, however, on the basis that, after protracted debate, the Minister

had the opportunity, by accepting the Commission's recommendation, to deliver significant competitive benefits to the market now.

7. The pro-competitive benefits of cost-based MTAS pricing have been evident since the Commission's initial Schedule 3 investigation in 2004. In TelstraClear's view, the Government at the time erred by accepting commercial agreements that sat outside the formal regulatory regime. The result has evidently been several more years of protracted debate, uncertainty for all parties and enduring above cost mobile termination rates.
8. The continuation of this situation has been to the detriment of all New Zealanders and is inconsistent with the express purpose articulated in the Telecommunications Act '*to promote competition in telecommunications markets for the long-term benefit of end-users of telecommunications services within New Zealand...*'.
9. If the Commission no longer has confidence that acceptance of the tabled undertakings would address its concerns relating to distortions in wholesale markets, the Commission should, consistent with its Draft Reconsideration Report, recommend that the Minister regulate MTAS under Schedule 1. Only in this way will the Commission be able to satisfy itself, through dynamic setting of cost-based MTAS prices over the duration of the regulation, that no distortions will occur as a result of above cost MTAS pricing and that retail providers will be able to compete.
10. TelstraClear looks forward to the rapid conclusion of this protracted debate around MTAS rates.

Yours sincerely



Rebecca Mitchell
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