



TelstraClear Limited

Local and Mobile Number Portability

Submission to the Commerce Commission on the multiparty application for determination of “local telephone number portability service” and “cellular telephone number portability service” designated multi-network services (Initial Submission)

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1. EXECUTIVE SUMMARY

- The table below summarises the sections of the Codes which the parties identified as matters they had not been able to agree, how those sections of the Codes correspond to the Commission's questions, and TelstraClear's responses.

Table 1: Sections of the Codes relating to the Commerce Commission Questions and summary of TelstraClear responses.

COMMERCE QUESTION	COMMISSION	CODE	CODE REFERENCE	TelstraClear Response ¹
What is the appropriate process for the requesting and granting exemptions and compliance relaxations?		Network Code LMNP Code	15.3.1, 15.5 2.1.4, 7.6.1	(a) Subject to (b) below, as per square bracketed wording in the Codes. (b) If a relaxation is approved, the TCF Management Committee must set out how the LMNP Code will be impacted (as per new wording proposed for clause 15.4.9 of Network Code).
Do the designated multinetwork number portability services in the Act allow for a local telephone number to be ported for use on a cellular network, and vice versa?		LMNP Code	2.1.8, 2.1.9	No: i.e. accept the square bracketed wording in the Code.

¹ In this submission, any references to sections or clauses in the Codes are a reference to the section or clauses in the Codes provided to the Commission on 18 February 2005.

COMMERCE QUESTION	COMMISSION	CODE	CODE REFERENCE	TelstraClear Response ¹
Is the Local Calling Area as defined in the code an appropriate geographic boundary for porting local numbers?		LMNP Code	2.2.1(b), Definition of Local Calling Area, 4.1.8	Yes: i.e. accept the square bracketed wording in the Code.
What is the appropriate enforcement mechanism for the functions and standards agreed amongst the parties?		Network Code LMNP Code	14.5.4, 14.5.5 (b) 7.5, 7.6.2	As per square bracketed wording in the Codes.
What is the appropriate process for terminating international SMS?		Network Code	6.7	As per square bracketed wording in the Code.

2. As the Codes will operate as a determination of the Commission, it will be necessary to specify a commencement date and an expiry date, and TelstraClear proposes the following dates for the determination (Table 2):

	Date
Commencement	Date of determination
Fixed number portability go-live date	May 2006
Mobile number go-live date	September 2006
TCF to commence review of the terms of the technical determination	12 months after the "go-live" date of mobile number portability
TCF to complete review of the terms of the technical determination	18 months after the "go-live" date of mobile number portability
Expiry	5 years from the date the determination is made (subject to renewal of designated services)

2. INTRODUCTION

3. This submission provides TelstraClear's views on the matters raised in the Commission's letter of 18 February 2005 relating to the functions and standards for local and cellular telephone number portability services, following its Decision to Investigate an Application for Multinetwork Services dated 28 January 2005 (**Decision to Investigate**).
4. On 24 December 2004, TelstraClear, Vodafone and Telecom applied to the Commerce Commission for a Determination in respect of Number Portability Functions and Standards² (the **Application**) based on the draft codes prepared by the Telecommunication Carriers Forum (**TCF**), namely the:
 - a) Network Code for Local and Mobile Number Portability (**Network Code**); and
 - b) Code for Local and Mobile Number Portability (**LMNP Code**)(the **Codes**).
5. In the Application, the applicants noted that there were a few matters in the Codes that the TCF had not agreed, which were indicated by square brackets. The applicants requested that the Commission seek submissions from the applicants and make a determination in respect of those issues accordingly.
6. The applicants also noted two matters in the Codes attached to the Application that were still under discussion within the TCF working parties³. The applicants undertook that if they could not reach agreement on those matters by 18 February 2005, they would submit their views to the Commission and seek the Commission to determine those matters. Accordingly, on the 18 February the applicants wrote to the Commission to advise that "the parties have reached agreement as to the majority of matters.....however the parties have not been able to agree 2 aspects within those sections of the codes." The parties

² Joint application for Determination in respect of Number Portability Functions and Standards, dated 24 December 2004.

³ clause 4.1.3 of the LMNP Code (version dated 24 December 2004) and clause 14.5 of the Network Code (version dated 24 December 2004).

requested that the Commission determine these matters.⁴

7. The letter to the Commission attached the updated versions of the Codes reflecting the additional wording agreed by the parties, and highlighting those areas for which agreement had not been reached, which were indicated by square brackets.
8. This submission is structured as follows:
 - a. Section 3 provides TelstraClear's response to each of the Commission's questions in its letter of 18 February 2005; and
 - b. Section 4 discusses the term of the Determination.
9. Unless specifically defined otherwise, terms used in this submission have the same meaning as those set out in the Codes.

⁴ Letter from Celine Hughes (Vodafone) to Douglas Webb, 18 February 2005, sent on behalf of Vodafone, TelstraClear and Telecom.

3. RESPONSE TO COMMISSION'S QUESTIONS

Question 1: What is the appropriate process for the requesting and granting exemptions and compliance relaxations?

Network Code

10. TelstraClear considers that the process set out in clause 15 of the Network Code, including the clauses marked with square brackets, is the appropriate process for the requesting and granting of a compliance relaxation exempting a Carrier from any requirement in the Network Code for a specified period.
11. In TelstraClear's view, the TCF Management Committee (as that term is defined in the Network Code) is a suitable body to consider applications for relaxations in the first instance. The Network Code also requires that the TCF Management Committee seek the opinion of one to two independent experts in reaching a decision regarding a relaxation, except where all members of the TCF Management Committee along with the Applicant Carrier agree that this is not desirable.
12. As set out in the Network Code, a relaxation cannot be granted without the unanimous agreement of the members of the TCF Management Committee and the agreement of the Telecommunications Commissioner.
13. Accordingly, the Commission retains the ability to ensure that relaxations are only granted when they are to the long-term benefit of end-users, whilst the TCF Management Committee handles the first instance evaluation of the technical and other aspects of the relaxation application (in consultation with independent experts where required).
14. Given the checks and balances inherent in this process, TelstraClear does not consider that any further restrictions on the scope of relaxation applications under the Network Code are required.
15. However, TelstraClear considers that the TCF Management Committee should be expressly required to address how, if at all, the relaxation impacts on the Carriers' obligations under the LMNP Code. Accordingly, TelstraClear suggests clause 15.4.9(a) of the Network Code (which sets out what the TCF Management Committee must set out in writing if a relaxation is approved) is amended to

add a new clause 15.4.9(a)(iv): “set out how, if at all, the relaxation impacts on the LMNP Code”.

LMNP Code

16. Clause 2.1.4 of the LMNP Code requires that all Service Providers and Carriers provide LMNP in accordance with the LMNP Code unless a compliance relaxation has been granted under the Network Code.
17. The concern discussed at the TCF working party was that if a Carrier is granted a relaxation under the Network Code for a particular network, for example Telecom is granted a relaxation in relation to their entire 025 network, a Customer with a phone number prefixed with “025” should still be able to out-port that number from Telecom and be supplied by an alternative Service Provider. In TelstraClear’s view, this would clearly be to the long-term benefit of end-users, and therefore a compliance relaxation granted under the Network Code for the “025” network should not exempt the Carrier from complying with the LMNP Code.
18. Accordingly, TelstraClear considers that the impact of a relaxation under the Network Code on the obligation of a party under the LMNP Code is correctly dealt with in the wording in square brackets in clauses 2.1.4 and 7.6.1 of the LMNP Code . However, to ensure the impact on the LMNP Code is considered when a relaxation is granted, TelstraClear considers that the TCF Management Committee should expressly state how the LMNP Code is impacted (see paragraph 15 above).

Question 2: Do the designated multinet network number portability services in the Act allow for a local telephone number to be ported for use on a cellular network, and vice versa?

19. TelstraClear generally supports the principle of all numbers being portable including portability between fixed and mobile services. While fixed and mobiles services are currently traded in different retail markets, it is widely anticipated that substitutability between them will accelerate in the medium term. Fixed-mobile portability is being introduced overseas, such as in the United States. In recognition of this likely future trend, industry discussion of long term number portability in New Zealand consistently has not distinguished between fixed and mobile numbers.
20. However, TelstraClear does not believe, on a fair reading, that the service

descriptions of local telephone number portability and cellular telephone number portability in Schedule 1 of the Telecommunications Act 2001 (the Act) support fixed-mobile portability. Although the definitions of “Access Seeker” and “Access Provider” are not expressly tied to fixed or mobile networks in either service description, the two service definitions seem to be network-specific. Local telephone number portability is described as “a service that enables an end-user of a fixed telephone network service to change providers of **that** service” (emphasis added). The service description of the cellular telephone number portability service follows the same format. As a result, the service to which the number is being ported must be the same type of network service as it is being ported from.

21. While the term “fixed telephone network” is not defined in the Act, the use of the term “fixed” distinguishes the term from “cellular” telephone networks. On their ordinary meanings, “fixed” telephone networks and “cellular” networks are mutually exclusive. Further guidance on what Parliament intended by its reference to “fixed telephone network” comes from the definitions in the Act of “fixed PDN”, “fixed PSTN” and “fixed telecommunications network”. A cellular network clearly could not fall within any of these “fixed” network definitions, and also should not be read into the definition of the term “fixed telephone network”. When Parliament intended to refer to both the cellular and fixed networks, it used the generic defined term “PSTN”. Parliament chose to be more specific in the service definitions for the local telephone number portability service and cellular telephone number portability service by limiting the services to “fixed” and “cellular” networks respectively.
22. TelstraClear would support an amendment to the service descriptions in the Act to permit fixed-mobile portability (and CLEAR argued for this approach when the Act was being drafted) if it was established that this was in the long-term benefit of end-users. However, TelstraClear are concerned that the long delayed efforts to introduce fixed number portability and mobile number portability should not become caught up in disputes over fixed-mobile portability. Prompt implementation of fixed number portability and mobile number portability is needed to bring the New Zealand market up to the point other developed markets reached years ago.
23. On the basis of the above, TelstraClear therefore accepts the wording in square brackets in the LMNP Code in the clauses identified in Table 1 of this submission which correspond with question 2. Once fixed number portability and mobile number portability are introduced, the industry can turn to address fixed-mobile number portability.

Question 3: Is the Local Calling Area as defined in the code an appropriate geographic boundary for porting local numbers?

24. The definition of “Local Calling Area” was square bracketed in the LMNP Code as part of the wider issue of whether the designated number portability services in the Act allow for fixed-mobile portability. In accordance with TelstraClear’s view that the service descriptions do not allow for fixed-mobile portability, TelstraClear considers that the Local Calling Area as defined in the Codes is the appropriate geographic boundary for fixed number portability. Accordingly, TelstraClear accepts the wording in square brackets in the Code for the clauses identified in Table 1 corresponding with question 3.

Question 4: What is the appropriate enforcement mechanism for the functions and standards agreed amongst the parties?

25. TelstraClear considers that the enforcement mechanism set out in clauses 14.5.4 and 14.5.5 of the Network Code is appropriate for ensuring compliance and dealing with instances of non-compliance with the Equivalent Service Criteria set out in clauses 14.1 to 14.3 of the Network Code.
26. Clause 14.5.3 of the Network Code largely follows the approach taken in Australia to instances of non-compliance with the Code.⁵
27. However, the Australian regime also includes a technical regulator in the form of the Australian Communications Authority (ACA) for issues of compliance with registered codes. In instances of non-compliance for number portability, the ACA has the power to formally direct a number portability access provider to comply.⁶ A party who fails to comply with an ACA direction may be subject to substantial fines.⁷
28. In TelstraClear’s view, in the absence of an ACA-equivalent in New Zealand, further consequences are required for ongoing non-compliance with either the Service Equivalence Criteria in the Network Code or the Service Levels under the LMNP Code. The square bracketed wording in clause 14.5.4 of the Network Code,

⁵ ACIF Industry Guideline: ACIF Code Administration and Compliance Scheme ref ACIF G514:2003.

⁶ See sections 121 and 122 of the Telecommunications Act 1997.

⁷ See Part 31 of the Telecommunications Act 1997.

and clause 7.5 of the LMNP Code seek to provide for this by barring the non-compliant carrier using the Industry Portability Management System (IPMS) for a period of time.

29. TelstraClear suggested barring use of the IPMS, as it already applies in Toll Free number portability in New Zealand where a TNAS client has repeatedly failed an audit over a 12-month period⁸, and because it would impact smaller and larger carriers in a similar way. However, TelstraClear is not wedded to these particular consequences. An alternative may be for the Commission to vary the cost allocation principles to reapportion costs in the event of ongoing non-compliance, such that a non-compliant party will contribute a higher proportion of the costs. In TelstraClear's view, the important thing is that there is an additional consequence for ongoing non-compliance prior to and distinct from the ability of a party to seek to enforce the determined Code in the High Court.

Non-Compliance and Relaxations

30. Under the square bracketed wording in clause 14.5.5(a) of the Network Code, and clause 7.6.1 of the LMNP Code, the Enforcement Agency may (at its discretion) determine that a compliance relaxation under the Network Code will prevent a non-complying Carrier from carrying out any sanctions imposed by the Enforcement Agency.
31. In TelstraClear's view, there are likely to be issues of interpretation as to whether and how a relaxation granted under the Network Code applies to the non-compliance of Service Equivalence Criteria under the Network Code or aspects of the LMNP Code. Accordingly, TelstraClear accepts the square bracketed wording set out in clause 14.5.5 (b) of the Network Code, and clause 7.6.2 of the LMNP Code which addresses this concern by giving interested parties a mechanism to dispute a decision by the Enforcement Agency on the applicability of a relaxation to the issue of the non-compliance.

Question 5: What is the appropriate process for terminating international SMS?

32. TelstraClear supports the wording in square brackets in clause 6.7 of the

⁸ Refer clause 14.7.3, TNAS Terms and Conditions (<http://www.tcf.org.nz/info/TNAS-TC-7-April-03.pdf>)

Network Code. TelstraClear considers that short message traffic from a foreign operator should be able to be delivered to a national network based on the number allocations by the Numbering Administration Deed (NAD). TelstraClear considers that this approach is consistent with the general principle of portability and should be implemented where practicable. It will then be the Donor Carrier's responsibility to determine if the destination mobile has been ported. If the mobile number has been ported the Donor Carrier should transit the short message to the Host Carrier, assuming a bilateral agreement is in place to enable this. If the mobile number has not been ported, the Donor Carrier should terminate the short message on its network.

4. TERM OF DETERMINATION

33. As the Codes will operate as a determination of the Commission, it will be necessary to specify a commencement date and an expiry date.
34. In the draft Cost Allocation Determination, the Commission has proposed that the determination expire 5 years from the date the determination is made (subject to renewal of designated services).
35. There is logic in the technical determination and the cost allocation determination having the same term. However TelstraClear believes it is possible that the technical and operational arrangements may need some adjustment in the light of practical experience. These adjustments are unlikely to affect the cost allocation approach as any additional costs in the common industry platform would be allocated in accordance with the mechanism set out in the cost allocation determination. However, there may be a need to vary the Codes to reflect the modified technical or operational arrangements. The Commission's powers to vary determinations under sections 58 and 59 are circumscribed.
36. Accordingly, TelstraClear proposes that while the expiry date for the technical determination should be the same as that proposed for the cost allocation determination, the Commission should require the TCF to undertake a review of the terms of the technical determination 12 months after the "go live" date of mobile number portability. This review should be completed 18 months after the "go live" date of mobile number portability. Any changes can be implemented by consent under section 58 of the Act or, if disputed, may require a determination under section 59.
37. In deciding the appropriate commencement date, the Commission needs to consider two time periods:

- a. the implementation phase during which the IPMS and the individual operation systems are built and tested; and
 - b. the “go live” date.
38. It is appropriate that the Codes have effect during the implementation phase to provide a binding framework for the parties’ joint and individual efforts in working towards the availability of number portability. However, the Codes also impose obligations on the parties which should only be binding from the “go live” date for fixed and mobile number portability and not from the commencement of the Code itself: the obligation to provide information about porting numbers obviously makes no sense until the IPMS is turned on. The Commission needs to set a date on which the Codes become effective and subsequent dates from which the actual obligation to provide mobile and fixed number portability takes effect (the “go live” dates).
39. The implementation of number portability in New Zealand has been considerably delayed, at significant cost to consumers.
40. Telecom’s undertaking to provide local number portability by June 2005 is only an interim step towards delivering local number portability and any suggestion that this means New Zealand will then have full local number portability should be disregarded. Full implementation requires the IPMS to have gone live, and for Telecom and other parties to be using the IPMS to port numbers.
41. For these further reasons, TelstraClear believes it is appropriate for the Commission to specify the dates by which full fixed and mobile portability must be available.
42. In deciding on an appropriate go-live date, the following needs to occur or be considered:
 - a. The IPMS technical specification being prepared by Hewlett Packard (HP) for the TCF needs to be finalized. This is planned for March 2005;
 - b. The Number Portability Cost Allocation Determination needs to be completed. Further, if the Commission adopts TelstraClear’s suggestion in paragraphs 18 and 19 of its response on the draft Cost Allocation

Determination⁹, the parties will need to have submitted agreed detailed terms for implementation of the Cost Allocation Determination to the Commission;

- c. The Number Portability Functions and Standards Determination needs to be completed or the outcome sufficiently certain as to enable the TCF to move forward on the statements of work with HP for the IPMS system hosting implementation and software development;
 - d. The period of time required for the Service Providers and Carriers to make the necessary changes to their local and mobile networks and internal operating systems ready to connect with and migrate across to the IPMS; and
 - e. The period of time required by HP to complete the IPMS system hosting implementation and software development ready for go-live.
43. With the exception of the item identified in paragraph 42(d), the period of time required for each of the above items is same for both local and mobile number portability.
44. The critical path for local number portability to go-live is being driven by how soon the Cost Allocation Determination will be issued, such that the TCF can then commence the system hosting implementation and software development statements of work with HP, and then the period of time it will take HP to complete the software development.
45. The critical path for mobile number portability to go-live appears to be being driven by the timeframes put forward by Telecom and Vodafone. On Telecom's proposed timeframes, full implementation of mobile number portability is still more than 24 months away. This time-frame is quite astonishing in the context of the long saga surrounding number portability and very disappointing for end-users. Telecom and Vodafone should have been progressing practical implementation issues for some time.
46. With these considerations in mind TelstraClear proposes the following go-live dates would be appropriate:

⁹ TelstraClear's response to the draft Cost allocation Determination, 7 February 2005.

- fixed number portability: no later than May 2006;
- mobile number portability: no later than September 2006.

47. In summary, TelstraClear proposes the following dates for the determination (**Table 3**):

	Date
Commencement	Date of determination
Fixed number portability go-live date	May 2006
Mobile number go-live date	September 2006
TCF to commence review of the terms of the technical determination	12 months after the “go-live” date of mobile number portability
TCF to complete review of the terms of the technical determination	18 months after the “go-live” date of mobile number portability
Expiry	5 years from the date the determination is made (subject to renewal of designated services)