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11 March 2005

Mr Osmond Borthwick  
Manager, Network Access  
Commerce Commission  
P O Box 253  
Wellington

**BY EMAIL**

Dear Osmond

**Nubmer Portability Functions Application**

I refer to your letter to Michael Goldfinch dated 18 February 2005.

Thank you for the opportunity to provide our views on the questions the Commission has on the Number Portability Functions Application. Our responses are attached to this letter.

We look forward to receiving the Commission's Draft Determination. Please contact me if you have any queries regarding this response.

Yours sincerely

**Vodafone New Zealand Limited**

Laura Chamberlain  
Public Policy

## Vodafone's response to Commission's questions

**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?**

Vodafone acknowledges that the description of the local telephone number portability service in Subpart 2 of Part 2 of Schedule 1 to the Telecommunications Act 2001 (the **Act**) is potentially ambiguous as to whether it allows a local telephone number to be ported for use on a cellular network, and vice versa. However, particularly when considered in light of the purpose of Part 2 of the Act, Vodafone believes the better view is that the description of the local telephone number portability service does allow a local telephone number to be ported for use on a cellular network, and vice versa.

The local telephone number portability service is described as:

“[a] service that enables an end-user of a fixed telephone network service to change providers of that service but to retain the same telephone number within a local calling area”.

An end-user wishing to change service providers but retain the same local telephone number is referred to as an end-user of a “fixed telephone network service”.

The focus of this provision is the service, rather than whether or not the service is provided on a fixed telephone network. Vodafone acknowledges that the service, which must refer to the service associated with a local telephone number, is typically provided on a fixed telephone network. However, Vodafone considers that the service need not be provided on a fixed telephone network. Vodafone's view is that such a service may be provided on a cellular network.

Consistent with Vodafone's position, the Number Administrator has allocated local numbers to Vodafone for use in accordance with the Number Allocation Rules, without any requirement that Vodafone establish a fixed network. The only requirement under the Number Allocation Rules is that geographic service code blocks (local numbers) are allocated for the provision of services with a geographic structure, which can originate or terminate calls over Public Switched Telecommunications Networks. A service can have a geographic structure while being provided on a cellular network.

The definition of an “access provider” is also a relevant consideration. An “access provider” is defined as:

Every person who operates-

- (a) a PSTN to which numbers have been allocated; and
- (b) a telephone service that relates to that number portability service.

If Parliament intended to limit the portability of local numbers to use on fixed telephone networks, it could have required an access provider to operate a “fixed PSTN”, which is a defined term in the Act. Instead, Parliament elected to use the broader term of a “PSTN”.

Accordingly, Vodafone satisfies the requirement of a person who operates a PSTN to which (local) numbers have been allocated. The only reason why Vodafone does not currently meet the definition of an access provider is because it has not yet launched a local telephone service.

Further, if a local number is not able to be ported for use on a cellular network, this would result in an outcome similar to that if the Commission had decided that TelstraClear was not able to port cellular numbers. In those circumstances, the Commission stated:

The Commission acknowledges that an outcome where a telecommunications provider has numbers under its exclusive control and use of that provider and is unable to port such numbers, while other providers are able to do so, would be inconsistent with the purpose of number portability; namely that end-users are able to port their numbers from one service provider to another.”<sup>1</sup>

Pursuant to sections 18 and 19 of the Act, in deciding whether the local telephone number portability service allows a local telephone number to be ported for use on a cellular network, the Commission must make the decision that best gives, or is likely to best give, effect to the promotion of competition for the long-term benefit of end-users of telecommunications services.

Without question, a technology-neutral interpretation of the local telephone number portability service, which allows a local telephone number to be ported for use on a cellular network, would best promote competition, as it would enable cellular network operators to compete with fixed network operators in the provision of a local service to end-users. An interpretation that is not technology-neutral would not promote competition.

Because of Vodafone’s view that the local telephone number portability service, although potentially ambiguous, allows a local telephone number to be ported for use on a cellular network, Vodafone has objected to certain provisions of the LMNP Code that may, once Vodafone has launched its local telephone service, prevent or restrict its ability to participate in local number portability. This submission will address each of these provisions, as they relate to the specific matters the Commission has requested comment on.

#### *Clauses 2.1.8 and 2.1.9 of the LMNP Code*

Clauses 2.1.8 and 2.1.9 of the LMNP Code suggest that the porting of a local number for use on a cellular network would require either a change to the Act or a decision of the Commerce Commission or a Court. Clause 2.1.9 provides that, in such circumstances, changes to the LMNP Code, or the development of new codes, would be required.

As outlined above, Vodafone’s position is that the local telephone number portability service, although potentially ambiguous, does allow a local telephone number to be ported for use on a cellular network. Accordingly, Vodafone believes that the LMNP and Network Codes must also be sufficiently flexible to allow for this.

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<sup>1</sup>

Commerce Commission, “Preliminary statement on eligibility of access seekers and access providers”, 19 March 2004, paragraph 31.

In fact, both the LMNP Code and the Network Code are already able to accommodate the porting of a local number for use on a cellular network. This is because the processes set out in the LMNP Code and the technical principles specified in the Network Code are designed to ensure a seamless end-user porting experience. Except for Short Message Services, no processes or principles are set out in either Code that apply solely in respect of fixed networks or cellular networks.

Vodafone is strongly of the view that the only changes that would be required to the Codes to enable a local number to be ported for use on a cellular network would be for new service levels to be specified in the LMNP Code and for a variation to the Equivalent Service Criteria to be specified in the Network Code. This would only require a very small amount of work.

**Is the Local Calling Area as defined in the Code an appropriate geographic boundary for porting local numbers?**

Vodafone supports the use of local calling areas as geographic boundaries for the porting of local numbers. However, Vodafone is concerned that the definition of “Local Calling Area” in the LMNP Code may undermine Vodafone’s ability to participate in local number portability.

A “Local Calling Area” is defined in the LMNP Code to mean:

“...that geographic area defined by the Donor Carrier within which Customers have access to a Local Service with a consistent set of attributes.”

Vodafone’s concern is that the requirement that a local service has a consistent set of attributes, which are not specified, may reinforce the paradigm that a local telephone service must be provided on a fixed network. Accordingly, Vodafone considers that the words “with a consistent set of attributes” should be deleted from the definition.

*Clause 4.1.8(a) of the LMNP Code*

Clause 4.1.8(a) of the LMNP Code requires a ported local number to “physically remain” within the Donor Carrier’s relevant Local Calling Area. As numbers do not physically exist anywhere, we have assumed the reference is to the point to which a particular local number is allocated.

Vodafone’s concern is that a Donor Carrier could seek to rely on this provision to prevent or restrict Vodafone’s ability to participate in local number portability by arguing that, where a local number is ported for use on a cellular network, the local number does not “physically remain” within the Donor Carrier’s Local Calling Area. Vodafone believes this is an unnecessary requirement that could be used as a barrier to entry to number portability.

Clause 2.2.1(b) of the LMNP Code also requires the ported local number to “remain” within the relevant Local Calling Area. This may be acceptable provided there is no requirement for the number to physically remain within the Local Calling Area.

### **What is the appropriate process for the requesting and granting of exemptions and compliance relaxations?**

From a process perspective, Vodafone is generally in agreement with the process set out in clause 15 of the Network Code for applications by Carriers for “relaxations”, and for the consideration of such applications by the TCF Management Committee. However, Vodafone is concerned about the scope of such relaxations.

Vodafone is strongly of the view, and has been so throughout the working party process to develop the Network Code, that a relaxation granted under the Network Code should only be available in respect of compliance with the Equivalent Service Criteria established in the Network Code.

In Vodafone’s opinion, there are two main requirements of a successful system to implement number portability. The first is the provision of a seamless customer experience of number portability and the second is the absence of any barriers to new entrants who wish to participate in number portability. Provided each Carrier delivers a seamless customer experience of number portability, it is irrelevant how each Carrier undertakes the necessary technical changes on its network to facilitate this. Under the Network Code, it is the Equivalent Service Criteria that are intended to ensure that each Carrier delivers a seamless customer experience of number portability.

In light of this, Vodafone believes there is no need to allow for relaxations to be granted under the Network Code in respect of compliance with any obligations of Carriers under the Code, other than the Equivalent Service Criteria.

Also of serious concern to Vodafone is the exception in clause 2.1.14 of the LMNP Code to the general obligation of Carriers and Service Providers to provide number portability. Clause 2.1.14 provides that, if a relaxation has been granted to a Carrier under the Network Code, the Carrier will be exempted from any relevant provisions in the LMNP Code that relate to the specific period and purposes, Customers or classes of Customers, or conditions for which the relaxation was granted under the Network Code.

Consistent with clause 2.1.4, clause 7.6.1 of the LMNP Code enables a Carrier to advise the Enforcement Agency of an approved relaxation under the Network Code. If the Enforcement Agency is satisfied that the relaxation will prevent the Carrier from carrying out any sanction imposed by the Enforcement Agency (for non-compliance by the Carrier with the Service Levels), the Enforcement Agency may suspend the sanction.

Vodafone believes there is no practical justification for these exceptions to a Carrier’s obligation to provide number portability in accordance with the processes and Service Levels established in the LMNP Code.

In broad terms, the Network Code requires a Carrier to make changes to its network so that it can meet the Equivalent Service Criteria, which include the criteria for post-dialing delay where a Carrier routes calls to or from a ported number.

By comparison, the LMNP Code sets out the processes whereby local and mobile numbers may be in-ported and out-ported by Carriers and Service Providers in conjunction with the IPMS System.

An example of how these exceptions could undermine the principle of number portability is in relation to Telecom's 025 customers. For example, if Telecom is granted a relaxation in relation to its 025 customers (and, therefore, is not required to meet the Equivalent Service Criteria in respect of calls to and from those customers), Telecom could then argue that it is not required to enable its 025 customers to port their mobile numbers to another carrier.

Vodafone can see no reason why the fact that a relaxation is granted under the Network Code should enable a Carrier to refuse to comply with the porting processes established under the LMNP Code. All that Telecom would be required to do, should an 025 customer wish to port its number to another carrier, is to approve the port request and confirm that it has activated the change in its network.

If Telecom will experience significant difficulties in routing calls to ported 025 numbers, it has the option of using a Contracted Service Deliverer to perform the role of identifying the Host Carrier and of routing voice calls to the Host Carrier.

In Vodafone's opinion, it is up to a Carrier to decide whether or not it wishes to in-port numbers, but every Carrier should be required to out-port numbers. The fact that a relaxation may only be for a specified period of time is no comfort as the first six months from when the IPMS System goes live will be the critical period as we expect to see an initial influx of customers wanting to port numbers when this service first becomes available.

### **What is the appropriate enforcement mechanism for the functions and standards agreed amongst the parties?**

Clause 14.5 of the Network Code provides a mechanism for auditing Carriers' compliance with the Equivalent Service Criteria. Clauses 7.4 and 7.5 of the LMNP Code provide the same mechanism for auditing compliance by Carriers and Service Providers with the Service Levels specified in that Code.

The audit mechanism has largely been borrowed from the Australian Communications Industry Forum's (**ACIF**) Code Administration and Compliance Scheme. It provides for the imposition by an Enforcement Agency of the following three levels of sanctions:

- a caution notice of breach;
- a warning notice of breach; and
- a public censure notice.

However, the notices do not adequately deal with ongoing non-compliance with the Equivalent Service Criteria and Service Levels. To address this, TelstraClear has proposed in clause 14.5.4 of the Network Code and clause 7.5 of the LMNP Code that the Enforcement Agency should be able to suspend a non-complying Carrier or Service Provider from using the IPMS System to in-port numbers.

Vodafone agrees with TelstraClear that further measures are required to address ongoing non-compliance, but does not consider suspension from the IPMS System an appropriate penalty due to its customer-impacting nature.

We note that, once ACIF has imposed each of the three levels of sanctions, it may refer breaches of registered industry codes to the Australian Communications Authority (the **ACA**) for consideration. Where the ACA is satisfied that a participant has contravened, or is contravening, a registered industry code, the ACA may direct the participant to comply with the code. Organisations who fail to comply with such a direction may then be subject to civil penalties.

While there is no equivalent of the ACA in New Zealand, Vodafone's view is that the imposition of fines would be a more appropriate sanction for ongoing non-compliance with the Equivalent Service Criteria and Service Levels, than suspension from the IPMS System.

TelstraClear has also proposed the addition of clause 14.5.5(b) of the Network Code and clause 7.6.2 of the LMNP Code. We understand that this arose from a concern that a Carrier may be granted a relaxation under the Network Code without members of the TCF Management Committee fully appreciating the consequences of the relaxation. The full extent of such consequences may only become apparent when a Carrier seeks to rely on the relaxation as exempting compliance with sanctions imposed by the Enforcement Agency.

However, rather than allowing an interested party to initiate the dispute resolution procedures in relation to a decision of the Enforcement Agency to exempt compliance with a sanction imposed by the Enforcement Agency, it may be more practical to require the Enforcement Agency to consult with interested parties before making a decision of this nature.

### **What is the appropriate process for terminating international SMS?**

Clause 6.7 of the Network Code provides hand-over and routing principles for the termination of international Short Message Services (SMS).

Vodafone's concerns regarding the process for terminating international SMS are best illustrated by way of an example.

At present, Vodafone has a commercial agreement with Vodafone UK (**VF UK**) for the delivery by VF UK to Vodafone of SMS traffic destined for Vodafone's number ranges.

Upon the introduction of mobile number portability, Vodafone intends to request VF UK to deliver to it all SMS traffic destined for New Zealand mobile number ranges. This will allow Vodafone to deliver international SMS traffic to its customers who have ported their mobile numbers to Vodafone from other mobile networks.

However, at some point, another mobile network operator (**MNO**) may enter into a commercial arrangement with VF UK for the delivery to that MNO of SMS traffic.

The best outcome in such circumstances would be for VF UK to deliver to Vodafone all SMS traffic destined for Vodafone's allocated number ranges, and for VF UK to deliver to the MNO all SMS traffic destined for the MNO's allocated number ranges. Otherwise, if VF UK delivered all SMS traffic destined for New Zealand mobile number ranges to the MNO, Vodafone would be required to enter into a commercial agreement with the MNO for the transit to Vodafone of SMS traffic destined for Vodafone

customers. If such a commercial agreement was not entered into, the MNO may drop SMS traffic from VF UK that is destined for Vodafone customers.

Once the MNO has entered into a commercial agreement with VF UK for the delivery to the MNO of all SMS traffic destined for the MNO's allocated number ranges, both Vodafone and the MNO should be required to transit SMS from VF UK to each other where a customer of either Vodafone or the MNO (the **first carrier**) has ported their number to the other carrier (the **second carrier**).

If this transit function is not undertaken, the second carrier would breach the principle of equivalent service, because the customer of the first carrier who ports their number to the second carrier would lose the ability to receive international SMS.

In Vodafone's opinion, clause 6.7 of the Network Code should be redrafted to ensure that equivalent service will be provided in such circumstances.