



**TELECOMMUNICATIONS ACT 2001: SCHEDULE 3 INVESTIGATION  
INTO AMENDMENTS TO THE ROAMING AND CO-LOCATION  
SERVICES**

**DRAFT REPORT 3 AUGUST 2007**

Submission by  
Kordia Group Limited

31 August 2007

## 1. **Introduction**

1.1 Kordia Group Limited (*Kordia*) thanks the Commerce Commission (*the Commission*) for the opportunity to make this submission.

1.2 Kordia's contact person for the purpose of this submission is:

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## 2. **Summary**

2.1 Kordia provides comments on the Draft Report on the Telecommunications Act 2001 (*the Act*) Schedule 3 Investigation into Amending the Roaming and Co-location Services, dated 3 August 2007

2.2 Kordia's submissions are directed primarily at:

2.2.1 Ensuring that the general approach of the regulation on roaming becomes more forward thinking in terms of technological advances;

2.2.2 Advocating the importance of ensuring that call handover is regulated;

2.2.3 Promoting the inclusion of regulation on price terms for roaming.

## 3. **Credit Cover**

3.1 In response to Question 6.1 (page 63), Kordia considers that the most efficient and commercial method of payment of access fees will be to pay in arrears with a letter of credit option. The proposal to pay for the service provision in advance reduces the incentives for the Access Provider to

provide the service to the standards which Kordia expects shall be set out by the Key Performance Indicators (*KPI*) in a Standard Terms Determination (*STD*).

- 3.2 Kordia also submits that payment in arrears by letter of credit enables a more commercial outcome in the event of a dispute. For the purposes of these submissions, Kordia defines a letter of credit as an undertaking by a bank to payment of the access fee in accordance with conditions expressed in the letter. If a dispute arises on whether the service has been adequately provided, the Access Seeker can effectively withhold payment by specifying that a condition of payment is the performance of adequate service as part of the terms on which payment can be made under the letter of credit.
- 3.3 The adequacy of the service should be measured to KPI standards that are agreed upon. Effectively, the payment after services is provided maintains the incentives upon the Access Providers to provide adequate service, and promotes the incentive to ensure prompt rectifications of any defaults in the service.
- 3.4 Standard commercial industries have benefited from the practice of payment in arrears as it recognises that service fees are paid pursuant to the provision of service with the implicit right of the consumer to deny or dispute payment of the full or part of the fees or cost of the service in the event that the service was unsatisfactory. A dispute resolution process relating to the access fee and provision of services should be stipulated as part of the STD.
- 3.5 Kordia notes that there are other possible mechanisms for credit cover, including a bond system comparable to that in tenancy law where the bond is held by an independent body (the Department of Building and Housing).

However, Kordia considers that credit cover would be adequately provided for in a letter of credit.

#### 4. ***Call Hand Over***

- 4.1 Kordia promotes regulation in the provision of call handover services and is concerned that Vodafone has proposed it should be subject to a separate unregulated commercial agreement. Efficient handling of call handover services (including aspects such as the elimination of call dropping, minimisation of co-channel interference, efficient use of transmission towers by ensuring traffic control between towers) form a fundamental aspect of quality in the provision of roaming services. For this reason, Kordia believes that call handover services should also be regulated by a STD in the same manner as a service level agreement.
- 4.2 Separation of this stream of the roaming service is an illogical conclusion as it suggests that separate contractual terms should apply. Kordia's view is that call handover is an *integral* part of the roaming service (albeit subject to a different costing and billing process) and directly impacts the quality of telecommunication available to all New Zealand consumers.
- 4.3 Another factor for consideration in call handover regulation is the risks associated with the potential mis-use of call handover services by the Access Provider as a mechanism to increase costs to the Access Seeker. This can be achieved by putting costs onto competitors by creating numerous handover points beyond what is necessary.
- 4.4 Given that call handover regulation is presently limited to *non price* terms, it would be detrimental to competition to exclude the call handover service from Vodafone's network to the Access seeker's network in Vodafone's undertaking. Accordingly, Kordia supports the Commission's views that the call handover arrangements must be subject to regulatory control.

## 5. ***Co-location***

5.1 Kordia observes that co-location and the annuity formula proposed by Telecom and Vodafone will likely be subject to vigorous debate by other parties. Kordia, in principle, supports the Commission's view that a dispute resolution mechanism and the services of independent valuations experts will be required in the undertakings by Vodafone. In particular, Kordia supports the consistent application of regulatory practices which encourage transparency and fair allocation of costs by incumbent dominant market parties.

## 6. ***Roaming Prices***

6.1 Kordia supports the Commission's view that prices for roaming must not be restricted to a particular technology and that further clarification on the evolution of roaming rates in an amended undertaking (page 73, para 397) would be useful. Kordia also supports the Commission in its comments regarding the need for regulation to be forward looking and agrees that the restriction of roaming so as to exclude technologies such as WiFi and WiMax will limit competition in the mobile markets (page 74, para 402). Accordingly, Kordia welcomes the opportunity to comment when a more definitive outline is provided in respect to the matter of roaming prices.

## 7. ***Initial Coverage Area***

7.1 Kordia supports the Commission's view that the applicable initial coverage area threshold should be the lower of either building 100 cell sites or having access to 10% population coverage.

## 8. ***Network Roll Out***

8.1 Kordia supports the Commission's preliminary view that competition is best promoted and served when there is no requirement for new entrants to roll out a national network. Accordingly, Kordia does not consider that the

definition of this term requires further comment at this stage. Kordia notes that the Commission considers that *if roaming price is efficiently set, this would limit the scope for free-riding on an access provider's network, and the level of roaming that occurs should be reasonably efficient in that it would take into account the actual cost of providing roaming in those areas where the entrant has not built a network* (page 81,para 447).

8.2 Kordia endorses this view and considers that the nature of reliance placed on efficient pricing of roaming, as discussed by the Commission and further commented on by Kordia below, form a strong basis for supporting the categorisation of roaming as a designated service and the regulation of price terms.

## 9. ***Inter-network Roaming***

9.1 Kordia supports the Commission's views that roaming services should be technology neutral and forward looking (to allow for future technologies) and permitted as long as technical interconnectivity and compatibility exists between the networks.

9.2 The Commission correctly asserts that broadband and mobile markets are moving targets (para 460). On this point, Kordia notes that in the area of national roaming the current duopoly Access Providers have access to a number of methods which potentially may be utilised to penalise new entrants and competitors.

9.3 Kordia is concerned there is potential for restrictive practices such as the disabling of chips and software for WiFi or WiMax, and the refusing to promote/import/include mobile handsets which enable the technology of competitors. Other exclusionary activity could include the refusal to "Type Approve" certain compatible mobile handsets. Kordia suggests that, given an extensive armoury of various clandestine anticompetitive methods

available to Access Providers which are difficult to detect, regulatory protection in the nature of prohibiting such tactics is necessary.

9.4 Inter-network roaming will be vulnerable to anticompetitive tactics given the technology has inherent complexities with detection of such methods of exclusion. The Commerce Commission should regulate to ensure this behaviour is prohibited and that suitable penalty fines operate as a genuine deterrent.

## 10. **3G Roaming**

10.1 Kordia supports the Commission's preliminary view that roaming should be technology neutral and should not be restricted to 2G services. Kordia maintains the view that New Zealand end users are best served when regulation and legislation is drafted in a manner that encourages future technology entrants in the first instance.

10.2 The opinion that regulation and legislation can be amended in the event technology outdates the drafting, fails to serve end users as a time lag exists and regulation and legislation will, in effect, perpetually play catch up to technological advances.

10.3 The Commission notes that 3G was an emerging technology at the time of the enactment of the Telecommunications Act 2001, and it is now a prevalent technology for any new entrant. As an example, this illustrates that the natural progression for a forward thinking regulator's response would be to draft in a manner that encompasses/predicts new technologies. This is a matter that must be contemplated at this point in time in the interests of economic efficiency in the immediate future of telecommunications.

## 11. ***Restricted "Access Seeker" Definition***

- 11.1 The term "Cellular Mobile Networks" referred to in the definition of Access Seeker for the purpose of the regulations is inherently technology limiting. In order to progress towards a technology neutral or technology forward approach, the definition needs to be drafted in a manner that promotes the introduction of future technologies. Generally speaking, the more new technologies introduced by new market entrants are absorbed into the mainstream market; the less regulation is likely to be necessary.
- 11.2 Further, Kordia submits that the Access Seeker definition set out in the Act does not describe Access Seekers in a manner consistent with the Commission's intent to apply the regulations in a technologically neutral manner. Kordia considers that the definition should cater for fixed – mobile convergence. Kordia notes that although mobility currently is linked to the concept of cellular technology, technology is fast changing and the future of roaming may operate in a non cellular environment. Accordingly, the current definition is likely to become dated quickly and will not serve to promote technology forward entrants to enter and progress in the New Zealand market.
- 11.3 The submissions made by other participants in the consultation process that the definition can always be amended in future, fail to consider that the purpose of the definition should be wide enough in the first instance to encourage technological advances. The new definition should be more inclusive of projected future technologies.
- 11.4 The current definition details a minimum requisite "sufficient level of spectrum quantum". This definition sets up a barrier to entry in the sense that potential entrants will refrain from entering if they know they are unable to access the regulation protection afforded to others with the

requisite level of spectrum. This barrier is exacerbated by the fact that spectrum is a limited resource.

11.5 The Commission has suggested that the appropriate applicable threshold be the same as described for the initial coverage period. Kordia reiterates its view that a threshold that requires 10% of the population for national roll out is unnecessarily prohibitive and discriminates against rural areas.

## 12. ***Pricing Principles***

12.1 Kordia supports the Commission's view that the final pricing principle for a designated roaming service should be the Total Service Long Run Incremental Cost (TSLRIC). Kordia also supports the Commission that the initial pricing principle should be benchmarked against mobile termination rates (MTR) in comparable countries where a forward-looking cost-based pricing methodology is used. Kordia agrees that given the similar network elements in providing termination and roaming services the pricing principles will correlate. Kordia considers that the New Zealand MTR is currently too high and accordingly should be revisited by the Commission.

12.2 Since the Commission undertook benchmarking of cost based MTRs, a number of those benchmarks from other countries have reduced. In June 2007, the ACCC announced that the MTR in Australia would be reduced from A\$0.12 per minute to A\$0.09. Ofcom reduced the UK MTR in March 2007 from £0.0563 per minute to £0.051. Kordia supports a reduction in the MTR in New Zealand and would advocate that the Commission's estimated 14cpm proposed (page 34, para 186) is still too high given that New Zealand's relatively high prices in the retail mobile services market have led to a poor performance on this front by OECD standards.

12.3 In addition, Kordia supports the Commission's views that both Access Seekers and Access Providers should bear their own costs to the extent possible. Kordia supports the view that cost based pricing is appropriate

for a roaming service as it should reflect the cost of supply (in terms of cost recovery) and should enable the Access Seeker to face appropriate build buy incentives. In determining the appropriate price there is a need to incentivise an Access Seeker to efficiently deploy its own mobile network and such deployment is generally promoted where the access price reflects the cost of supplying the access service.

- 12.4 The Commission has sourced significant evidence to suggest that the price terms for roaming services should be regulated and fall within the category of a designated service. Kordia considers that the data set out in the Draft Report is conclusive evidence that pricing of roaming has been a source of deterrent to potential entrants and that reduction in pricing and likelihood of entry would be materially enhanced by regulation or an appropriate undertaking.
- 12.5 The level of uncertainty with respect to pricing of the service must be addressed expediently to best service the goals of benefiting the end users in the long term.
- 12.6 Kordia notes that Vodafone is seeking to retain the discretion to include other (variable) costs attributable to the access network portion of the entire Vodafone network. Kordia endorses the view of the Commission that a degree of certainty is required to make appropriate build decisions with respect to the level of roaming prices for entrants. Accordingly, the price caveat proposed by Vodafone is unsatisfactory.
- 12.7 Kordia endorses the concern that the Commission expresses (para 403) regarding the discrepancy arising where Access Seekers bear all the costs of set up even though the benefits would be shared between the parties (Access Seekers and Access Providers) and the retail subscribers. Pricing principles must reflect a more balanced view on sharing of the costs where mutual benefits are received.

13. **Numbering**

13.1 Kordia agrees with the Commission that the numbering issues (page 64, para 350-352) are matters which should be within the management of the Number Administrator and pursuant to the Number Administration Deed and Allocation Rules. Vodafone should not be entitled to set out any specifications on this matter in its undertaking, and Kordia concurs with the Commission that the NAD and the ability to interconnect and be technologically compatible with the Vodafone network are the only relevant matters to the area of numbering.

ENDS