

VODAFONE NEW ZEALAND LIMITED



Telecommunications Act 2001

**Undertaking to the Commerce Commission under
Schedule 3A in respect of co-location services**

2 November 2007

Undertaking to the New Zealand Commerce Commission under Schedule 3A of the Telecommunications Act 2001

Dated 2 November 2007

Parties

1. **Vodafone New Zealand Limited** of Level 1, 20 Viaduct Harbour Avenue, Auckland (**Vodafone**)

in favour of;
2. **New Zealand Commerce Commission** being a Crown entity established by section 8 of the Commerce Act 1986 (**Commission**).

Background

- A. Vodafone is an Access Provider under the Telecommunications Act 2001 of co-location services.
- B. Vodafone gives this Undertaking pursuant to Schedule 3A of the Telecommunications Act 2001, as amended by the Telecommunications Amendment Act (No. 2) 2006.

1 Interpretation

Unless the context indicates otherwise, the following terms have the following meaning in this Undertaking:

- 1.1 **Access Seeker** means a telecommunications service provider:
 - i. meeting the criteria of an access seeker under the Telecommunications Act 2001 in respect of the co-location service; and
 - ii. where that telecommunications service provider operates a cellular mobile network in New Zealand, that makes available to Vodafone (or gives an undertaking to the Commission pursuant to Schedule 3A of the Telecommunications Act 2001 where Vodafone may become an access seeker) a telecommunications service in relation to its cellsites that is the same or substantially similar to the Vodafone Co-location Service on terms that are the same or substantially similar to the terms on which Vodafone makes available the Vodafone Co-location Service under this Undertaking.
- 1.2 **Radiocommunications Co-location Code** means the code relating to "Co-location of Radiocommunications Services Regulated under the Telecommunications Act 2001" (approved by the Commission on 7 December 2006).

1.3 **Undertaking** means this Undertaking given by Vodafone to the Commission under Schedule 3A of the Telecommunications Act 2001.

1.4 **Vodafone Co-location Service** means the service specified in Schedule 1.

2 Commencement and Term

2.1 This Undertaking takes legal effect immediately after it is registered by the Commission under Clause 6 of Schedule 3A of the Telecommunications Act 2001 and continues until 5 years from the date of registration.

3 Undertaking Terms and Conditions

3.1 Vodafone undertakes to the Commission that, during the period this Undertaking is in effect, it will provide the Vodafone Co-location Service:

- a) specified in Schedule 1;
 - b) at the prices specified in Schedule 2; and
 - c) on the terms specified in Schedule 3,
- to any Access Seeker.

4 Notices

4.1 Any communication in respect of this Undertaking should be made in writing to:

Attention: General Manager Corporate Affairs

Address: Vodafone New Zealand Limited, Level 1, 20
Viaduct Harbour, Auckland

Facsimile: (09) 355 2005

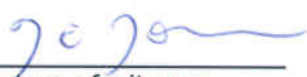
Copy to:

Attention: General Counsel

Address: Vodafone New Zealand Limited, Level 1, 20
Viaduct Harbour, Auckland

Facsimile: (09) 355 2005

Signed by **Tom Chignell** as
Authorised signatory for Vodafone
New Zealand Limited in the presence of:



Signature of witness


Signature of **Tom Chignell**

Name of witness (block letters): **JULIET JONES**

Place of abode: **AUCKLAND**

Calling or description: **SOLICITOR**

Schedule 1

Services Description

Vodafone Co-location Service

The Vodafone Co-location Service is defined as a service that enables co-location of cellular mobile telephone network transmission and reception equipment (including any necessary supporting equipment) on or with the Relevant Facilities.

Relevant Facilities means (in this Schedule 1, and elsewhere in this Undertaking):

- a) any towers, poles, masts, or other similar structures:
 - i. that are used for the transmission or reception of telecommunications via a cellular mobile telephone network; and
 - ii. that are owned, managed, or leased by Vodafone; and
- b) all sites, buildings, or utility services that are associated with the kinds of structures referred to in paragraph (a).

Schedule 2

Pricing

Vodafone Co-location Service

In respect of each Relevant Facility for which it requires provision of the Vodafone Co-location Service, the Access Seeker shall notify Vodafone which of the following two payment methods it wishes to apply to that Relevant Facility. However, for a specific Relevant Facility, once the Access Seeker has notified Vodafone of the method of payment, that method may not be substituted with the other payment method for that Relevant Facility.

In this **Schedule 2**, **Antenna** means a cellular mobile telephone network transmission and reception device that is co-located (in the case of any Access Seekers) or located (in the case of Vodafone) on or with the Relevant Facility, **provided that**, if that device is used to provide both 2G cellular mobile services and 3G cellular mobile services, then that device will be deemed to be two Antennae for the purposes of this **Schedule 2**.

1. Method One: Capital Contribution

1.1 The Access Seeker pays a proportion of the replacement capital cost of a Relevant Facility (excluding the costs of radio equipment, which each person pays for separately), and splits the shared operating costs of the Relevant Facility evenly across Vodafone and all Access Seekers on the Relevant Facility. Each party pays its own costs for power (the only non-shared operating cost).

- C is the replacement capital cost of the shared assets referred to above;
- k is the number of Antennae of the Access Seeker on the Relevant Facility, excluding all other Access Seekers' Antennae and Vodafone's Antennae;
- j is the number of Antennae of all other Access Seekers on the Relevant Facility, excluding the Access Seeker's Antennae and Vodafone's Antennae; and
- v is the number of Antennae of Vodafone on the Relevant Facility, excluding the Access Seeker's Antennae and all other Access Seekers' Antennae.

$$\text{Capital Contribution} = C \left(\frac{k}{k + j + v} \right)$$

2. Method Two: Monthly Rental

2.1 The Access Seeker makes no capital contribution, but instead pays a monthly operating fee on a portion of the capital costs of the Relevant Facility each year (excluding the costs of radio equipment, which each person pays for separately), and splits the shared operating costs of the Relevant Facility evenly across Vodafone and all Access Seekers on the Relevant Facility. Each

party pays its own costs for power (the only non-shared operating cost). The fee is calculated using the lifetime of the Relevant Facility, which is 20 years if Vodafone owns the Relevant Facility, or the remaining length of the lease if it is a leased site¹.

2.2 The operating fee is the amount as calculated using the formula below where:

- r is 15.7% pre-tax interest rate²;
- n is either 20 years if Vodafone owns the Relevant Facility, or the remaining length of the lease on the Relevant Facility if it is a leased site;
- C is the replacement capital cost of the Relevant Facility; and
- k is the number of Antennae of the Access Seeker on the Relevant Facility, excluding all other Access Seekers' Antennae and Vodafone's Antennae;
- j is the number of Antennae of all other Access Seekers on the Relevant Facility, excluding the Access Seeker's Antennae and Vodafone's Antennae; and
- v is the number of Antennae of Vodafone on the Relevant Facility, excluding the Access Seeker's Antennae and all other Access Seekers' Antennae.

$$\text{Monthly_Rental} = C \left(\frac{k}{k + j + v} \right) \left(\frac{r}{1 - (1 + r)^{-n}} \right) \div 12$$

2.3 Where Vodafone leases the Relevant Facility, and Vodafone renegotiates an increase in the length of the lease, then Vodafone will recalculate the monthly rental, by increasing n by the length of the lease as renegotiated and recalculating C as the replacement capital cost of the Relevant Facility at the time of renegotiation.

2.4 Replacement costs vary between Relevant Facilities. There are also specific assets associated with some Relevant Facilities that would need to be valued and included in the replacement cost estimate.

Audit of replacement capital cost calculation

3. The Access Seeker may, by notice to Vodafone, request an independent audit of Vodafone's calculations of C in **Clauses 1.1** and **2.2** above within 60 Working Days of being notified of these calculations. The audit will be

¹ Where the lease of a Relevant Facility contains one or more automatic rights of renewal by Vodafone, then the length of the lease will be deemed to be the period to the expiry of the final right of renewal.

² These percentage figures are provided in the specific circumstances of this Undertaking only. They are provided without prejudice to any percentage figures that Vodafone may provide for in any other circumstances unrelated to this Undertaking.

conducted by an independent valuer (**Valuer**), for him or her to confirm Vodafone's calculations of C .

3.1 Unless otherwise agreed in writing:

- a) Vodafone and the Access Seeker must endeavour to appoint a single Valuer. If, within 15 Working Days of the notice under this **Clause 3** being given, Vodafone and the Access Seeker are unable to agree on a single Valuer, the Valuer shall be appointed by the Telecommunications Commissioner;
- b) the Valuer must endeavour to complete the audit within one month of commencement of the audit;
- c) Vodafone will provide the Valuer with any information that the Valuer reasonably requires to complete the audit report; and
- d) Vodafone may identify information provided to the Valuer as being Confidential Information. The Valuer will not include information identified by Vodafone as Confidential Information in his or her audit report, and will not make it available to any person.

3.2 The audit report of the Valuer will only reveal the Valuer's opinion as to whether or not Vodafone's calculations of C is correct.

3.3 If the Valuer's opinion in the audit report is that Vodafone's calculations of C is not correct, then Vodafone will promptly recalculate C , taking into account the Valuer's audit report. The then current calculation of C will continue to apply until the date of recalculation by Vodafone under this **Clause 3.3**. An adjustment will be then made so that the recalculated C will apply from the date of notice given by the Access Seeker to Vodafone under **Clause 3** above.

4. All prices are exclusive of GST, if any.

Schedule 3
Terms and Conditions
Vodafone Co-location Service

The terms and conditions set out in the Radiocommunications Co-location Code and the Master Co-location Agreement (as set out in Annex 4 of the Radiocommunications Co-location Code), or on such other terms and conditions as Vodafone and the Access Seeker may agree.