

9 January 2009

Bruce Officer
Commerce Commission
PO Box 2351
Wellington

Dear Bruce

Mobile Co-location Standard Terms Determination - Clarification - Rooftops and Buildings

1. As discussed, we have identified an area of the Commission's Mobile Co-location Standard Terms Determination ("**STD**") that we consider contains some ambiguity and would be grateful if the Commission was able to provide some further interpretative guidance. The issue is what "rooftops" and "buildings" should be included in each Access Provider's Common Format Site Database.

The issue

2. The rooftops and buildings that are to be captured by the definition of "Mast" in the General Terms of the STD will ultimately be determined by the way the definition of "Relevant Occupation" is interpreted.
3. We consider there are two options for how "Relevant Occupation" could be interpreted:
 - (a) To include buildings and rooftops where an Access Provider's Relevant Occupation contains sufficient property rights which allow that Access Provider to facilitate co-location at a site (i.e on buildings that an Access Provider owns or where its Relevant Occupation includes a right to provide co-location). An example of where an Access Provider would have a right to provide co-location would be where an Access Provider leased a chimney and was able to sublease part of that chimney to a third party; or
 - (b) To include all buildings and rooftops regardless of whether the Relevant Occupation contains property rights which allow for co-location.
4. The second option would seem difficult to us to justify from a policy perspective. It would not result in any additional co-location because the sites would not be able to be co-located on. It would, however, add significant cost to Access Providers for no discernable benefit, since an Access Provider is not able to provide co-location to an Access Seeker where its tenure will not allow that. These sites would only be available for co-siting.
5. In the STP and in industry discussions preceding it, it had always been intended that the definition of Relevant Occupation would only apply to sites where an Access Provider has a right to "lease, sub-lease, licence or

sub-licence" to an Access Seeker. This is not explicit in the STD definition of Relevant Occupation as it currently stands. Our view is that such an interpretation should be read into the definition and this is consistent with the purposive approach to interpretation that the Commission has adopted.¹ As the Commission notes "The Mobile Co-location service is broadly intended to benefit end-users by enabling co-location of mobile network equipment..."² The inclusion of rooftop/building sites that are not available for co-location does not benefit end-users because it does not enable co-location. The most it could do would be to identify sites that are available for co-siting, which is distinct from co-location, and is not included within this STD. The Commission itself acknowledges the distinction between co-location and co-siting.³

6. We would appreciate you considering this matter and would welcome the opportunity to discuss it with you. As you will be aware, all Access Providers are required to include relevant rooftops and buildings in their Common Format Site Database during February 2009 and so we would be grateful if you were able to deal with this issue as soon as is practicable.
7. We look forward to hearing from you.

Yours sincerely



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Regulatory Manager
Vodafone NZ Limited

¹ Decision 661 – Standard Terms Determination for the specified service Co-location on cellular mobile transmission sites, para 183, page 37.

² Ibid.

³ Ibid., at para 75, page 16.