



COMMERCE COMMISSION

Determination for the designated multinetwork services of ‘local telephone number portability service’ and ‘cellular telephone number portability service’

Decision 705

Final Determination under section 39 of the Telecommunications Act 2001
(‘the Act’)

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NO PARTS OF THIS REPORT ARE CONFIDENTIAL

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LIST OF TERMS AND ABBREVIATIONS¹

Access Provider	means 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
Access Seeker	means any person who- (a) operates a PSTN to which numbers have been allocated; and (b) operates a telephone service that relates to that number portability service; and (c) seeks access to that number portability service
the Act	means the Telecommunications Act 2001
Bilateral Agreement	means an agreement between a party to this determination and another party (who may also be a party to this determination).
Capex	means capital expenditure.
Carrier	means an entity that operates a PSTN that originates, transits or terminates calls.
Donor Network Operator or DNO	means the operator whose customer is porting their number to the RNO
Donor Carrier	means the Carrier that has been allocated the Number by the Numbering Administration Deed ('NAD'), or that is recognised by the NAD as having been allocated the Number.
Industry Portability Management System or IPMS	means the system described in the LMNP Terms.
Local Calling Area	Means that geographic area defined by the Donor Carrier within which Customers of the DNO have access to a Local Service.
LMNP	means Local Number Portability and Mobile Number Portability
LMNP Terms	means the Terms for Local and Mobile Number Portability in New Zealand (attached as Appendix 3 to this determination).
Local Number Portability or LNP	means 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 DNO's local calling area.
Mobile Number	means a service that enables an end-user of a cellular telephone

¹ Where a term or abbreviation is defined in the Telecommunications Act, the statutory definition is adopted for the purposes of this list.

Portability or MNP	network service to change providers of that service but to retain the same telephone number (including the same cellular network access code).
Network	means the system comprising telecommunication links to permit telecommunication.
Network Terms	means the Network Terms for Local and Mobile Number Portability in New Zealand (attached as Appendix 4 to this determination).
Number	means a Local Number, a Mobile Number or both, as the case requires.
Number Portability Services	means the designated multinetwork services of “local telephone number portability” and “cellular telephone number portability” services that are listed under subpart 2 of Part 2 of Schedule 1 of the Act.
Opex	means operational expenditure.
Port or Porting	means a process which achieves LMNP.
PSTN	means Public Switched Telephone Network which is a dial-up telephone network used, or intended for use, in whole or in part, by the public for the purposes of providing telecommunication between telephone devices.
Recipient Network Operator or RNO	means the operator whose customer has ported their number from the DNO.
Service Provider	means any person providing a local service or mobile service to a customer and who has the billing relationship with the customer for that service. The same person may be both a Carrier and a Service Provider.
TCF	means the Telecommunications Carriers’ Forum

EXECUTIVE SUMMARY

- (i) The Commission's current determination in respect of the Number Portability Services expires on 19 December 2010, ("**Decision 554**").² In anticipation of the expiry of Decision 554, the Commission initiated a process under section 31AA of the Act on the basis that the pending expiry of Decision 554 qualified as reasonable grounds to initiate the process.³
- (ii) The Commission has reviewed the determination under subpart 3 of Part 2 of the Act to assess if the regulation should continue for a further period. The Commission has decided to continue the regulation of the Number Portability Services for six years beginning on 20 December 2010.
- (iii) The Commission has decided that a six year term is consistent with the framework of the Act which contemplates five yearly reviews of Schedule 1 services, and reflects the importance of the Number Portability Services in relevant telecommunications markets in New Zealand. A six year extension will maintain and secure the benefits arising from the Number Portability Services to access seekers, access providers and end-users of telecommunications services.
- (iv) The Commission believes that continuing the regulation will be likely to best give effect⁴ to the purpose set out in section 18 relating to promoting competition in telecommunications markets for the long-term benefit of end-users of telecommunications services within New Zealand. In particular, the IPMS (and the processes supporting number portability) have been working efficiently with very few concerns or disputes arising between the parties to the determination.
- (v) Decision 554 sets out the formula for allocating the cost of delivering the Number Portability Services between the access seekers and all access providers of the service, the functions that must be performed by the system ("IPMS") for delivering the Number Portability Services and the standard to which those functions must be performed. The terms of this determination are the same as those set out in Decision 554, enabling the regulation of the Number Portability Services to continue for a further six year period.
- (vi) On 23 March 2010, the Commission approved exemptions under clauses 14.2.1 and 14.2.3 of the Network Terms for Telecom New Zealand for the period 1 January 2013 until 31 December 2015. These exemptions are for Post Dialling Delay and In Ported Services and Features. For the avoidance of doubt, these exemptions are carried over and remain applicable under this determination
- (vii) The commencement date for this determination is 20 December 2010 which is the day after the expiry of Decision 554. The determination will expire on the earlier of

² Commerce Commission, *Determination on the multi-party application for determination of 'local telephone number portability service' and 'cellular telephone number portability service' designated multinet network services*, 31 August 2005 (**Decision 554**).

³ Section 31AA(2) of the Act.

⁴ Section 19 of the Act requires the Commission to make a determination, or a decision that the Commission considers best gives, or is likely to best give, effect to the purpose set out in section 18 of the Act.

19 December 2016 or the date on which the services cease to be designated multinetwork services under the Act.

- (viii) The Commission has made some consequential changes to the LMNP Terms and the Network Terms to remove outdated terms that are no longer required, to ensure efficient ongoing delivery of the Number Portability Services. The LNMP and Network Terms are in Appendices 3 and 4 of this decision.

INTRODUCTION

1. On 31 August 2005 the Commission issued a determination⁵ (known as Decision 554) in respect of the local and cellular telephone number portability designated multinetwork services ('Number Portability Services'). Decision 554 set out the formula for allocating the cost of delivering the Number Portability Services between the parties, the functions that must be performed by the system for delivering the Number Portability Services and the standard to which those functions must be performed. Decision 554 is due to expire on 19 December 2010.
2. On 9 July 2010, the Telecommunications Carriers Forum ('TCF') wrote to the Commission requesting that the Commission allow the current arrangements for Decision 554 to continue for a further period in their current form after the expiry of the determination on 19 December 2010.
3. The Commission considered that the pending expiry of Decision 554 qualified as reasonable grounds to review Decision 554 under subpart 3 of Part 2 of the Act
4. The Commission therefore initiated a process under section 31AA for a determination of
 - (a) the functions that must be performed by a system for delivering the designated multinetwork service and the standard to which those functions must be performed; and
 - (b) the formula for how the cost of delivering the service must be apportioned between the access seeker and all access providers of the service.
5. As required by section 34(c) of the Act, all parties to the determination were requested to comment on the issues raised by the Commission when it notified the parties of its intention to commence a process under section 31AA. Five parties⁶ to the determination responded to the Commission's notice and agreed that Decision 554 should be extended and the current terms should be maintained.
6. The Commission issued a draft determination on 11 November 2010. The TCF⁷ on behalf of Airnet, Telecom, TelstraClear, Vodafone and Woosh, submitted that the Commission should consider a more predictable and equitable level of depreciation of assets to avoid a very sharp rate of depreciation late in the determination's life. The TCF also submitted that the Commission should consider issues around New Access Parties to the determination and Resellers.
7. The Commission has asked the TCF to consider these three issues in conjunction with all the parties to the determination, and suggest potential solutions. The Commission will consider the solutions identified by the parties to the determination and, if they are likely to best give effect to the promotion of competition for the long-term benefit of end-users, will incorporate any changes recommended by clarifying this number portability determination.

⁵ Decision 554: Commission's determination of local and cellular number portability dated 31 August 2005 and the clarifications dated 17 May 2006, 30 March 2007, 22 June 2007, 20 December 2007 and 27 November 2009.

⁶ M2, TelstraClear, Vodafone, Telecom and 2degrees.

⁷ TCF, Submission on Draft Number Portability Determination, 6 December 2010

8. This determination is made with respect to the Number Portability Services, which are designated multinetwork services set out in Schedule 1 of the Act. The Commission considers that this determination on the Number Portability Services will best give effect to the purpose as set out in section 18.
9. The terms of this determination are likely to best promote competition for the long-term benefit of end-users by enabling customers to continue to switch service providers whilst maintaining their existing telephone numbers within the same Local Calling Area.

LMNP TERMS AND NETWORK TERMS

10. The Commission has reviewed the LMNP Terms and Network Terms (the **Terms**) incorporated in Decision 554 to assess if they remain suitable for inclusion as the terms and conditions on which this determination is made.
11. The Commission notes that the Terms have served the industry well in terms of delivering and maintaining the system for delivering the Number Portability Services.
12. The LMNP Terms detail the processes that enable end-users to port their numbers and set out the rights and obligations of the parties to these terms who are using the Number Portability Services. These processes are based around the IPMS which facilitates number portability between service providers and carriers but relies on carriers to configure and update their networks and support systems to ensure calls to and from ported numbers are correctly routed.⁸
13. The Network Terms set out what is required of participating parties in the development of their own network solutions and specify the optional and mandatory requirements necessary between networks for the supply of the Number Portability Services.⁹
14. The Commission has decided that the LMNP Terms and Network Terms¹⁰ should form part of this determination in the form attached as Appendices 3 and 4 of this determination.
15. The LMNP and Network Terms (as attached to this determination) adequately cover the regulation of the Number Portability Services and have proven to do so since 2005. The Commission believes that these Terms qualify as the “terms and conditions on which the determination is made” under section 40(1)(f) of the Act and are likely to best give effect to section 18 of the Act.
16. The Commission has made some changes to the LMNP Terms and Network Terms in the form that were included in the last clarification of Decision 554.¹¹ The amendments change terms that include dates that are now historical and are of no relevance during the term of this new determination.
17. On 23 March 2010, the Commission approved exemptions under clauses 14.2.1 and 14. 2.3 of the Network Terms for Telecom New Zealand for the period 1 January 2013 until 31 December 2015. These exemptions are for Post Dialling Delay and In Ported Services and Features. For the avoidance of doubt, these exemptions are carried over and remain applicable under this determination.
18. The Commission has not made any other substantive changes to the LMNP and Network Terms.

⁸ Explanatory Statement to the LMNP Terms.

⁹ Explanatory Statement of the Network Terms.

¹⁰ The version of the LMNP Terms and the Network Terms that are incorporated in this determination are based on the Terms that were clarified by Decision 684 (Clarification Number Five of Decision 554) and were dated 27 November 2009.

¹¹ Decision 684 (Clarification Number Five of Decision 554).

Relevant Access Seekers and Access Providers

19. Under the Act, and for the purposes of this determination, the Commission is required to determine the eligibility of Access Seekers and Access Providers of the Number Portability Services.
20. Access Seekers and Access Providers of the Number Portability Services are persons who operate a PSTN to which numbers have been allocated and operate a telephone service that relates to the number portability service.
21. Where an applicant is determined to be an eligible Access Seeker (including by seeking access to a Number Portability Service), that eligible Access Seeker is also an Access Provider for that service.
22. For the purposes of this determination, the Commission has interpreted the statutory criteria for Access Seekers and Access Providers in the same way set out in Decision 554 and subsequent decisions. The relevant passages are incorporated by reference in this decision.
23. Decision 554 assessed the eligibility of parties as Access Seekers and Access Providers and required that those parties be bound by the Determination. The Commission also monitored the eligibility of Access Providers and Access Seekers throughout the term of Decision 554 and issued updated statements where necessary.
24. The Commission considers that the list of access seekers and access providers issued on 30 September 2010 remains applicable for the purposes of this determination.
25. The list of eligible access seekers and access providers is outlined below.

Party	Access Provider eligibility	
	Local telephone number portability service	Cellular telephone number portability service
Telecom	Yes	Yes
TelstraClear	Yes	Yes
Vodafone	Yes	Yes
CallPlus	Yes	Yes
Compass	Yes	Yes
IHUG	Yes	No
WorldxChange	Yes	No
Woosh	Yes	No
Airnet	Yes	No
Orcon	Yes	Yes
2degrees	No	Yes
M2	Yes	Yes

Symbio	Yes	No
LinkTel	Yes	No
TeleTraders	Yes	No
Digital Island	No	No
Telcoinabox	No	No
Snap	No	Yes

26. There is potential for entry into and exit from the local and cellular telecommunications markets throughout the term of the determination. The Commission will therefore continue to monitor the eligibility of Access Providers throughout the term of the determination in order to ensure that an accurate register of Access Providers is maintained. In addition, the Commission will continue to issue updated statements which will serve as an authoritative record of the eligibility of Access Providers in relation to the Number Portability Services.
27. Any party that is determined by the Commission to be an eligible Access Provider after the date of this determination is bound by this determination from the date at which they are determined to be an eligible Access Provider.

COST ALLOCATION FORMULA

28. The Commission is required under section 40(1)(b) to determine “the formula for how the cost of delivering the service must be apportioned between the parties to the determination and every person who becomes an access provider after the determination is made.”
29. Further, in accordance with section 40(1)(d), this determination requires that “any party to the determination must make payment to an access provider of amounts calculated in accordance with the formula set out in the determination”.
30. In Decision 554, the Commission considered the impact of allocating costs incurred in the provision of number portability to the various market participants based on:
- the incentives of operators to compete with each other for customers; and
 - the switching costs faced by customers, i.e. the cost to a customer of porting a number.¹²
31. The Commission remains of the view that the guiding principles relevant to determining the cost allocation formula (as outlined in Decision 554) remain appropriate. The reasoning set out in Decision 554 relating to the cost allocation formula is incorporated by reference into this determination.¹³
32. In allocating the costs associated with the Number Portability Services, the Commission is guided by the promotion of competition for the long-term benefits of end-users under section 18 by lowering the switching costs incurred by customers when changing service providers. The Commission has adopted four guiding principles to allocate costs, namely: cost minimisation, cost causation, alignment of costs with benefits and practicality. On this basis, the Commission has concluded that:
- *Industry common system costs*: Allocated amongst all providers of local and cellular telephone number portability services on the basis of market share based on active numbers.
 - *Per-operator set-up costs*: Each operator will bear its own costs.
 - *Per-line set-up costs*: Recoverable by the donor network operator from a recipient network operator.
 - *Additional call conveyance costs*: Each operator will bear its own costs.
33. The Commission determines that any party to the determination must make payments (covering per-line set-up costs and industry common system costs) to an access provider of amounts calculated in accordance with the formula set out in Appendix 2 to this determination.¹⁴

¹² Decision 554, paragraph 58.

¹³ Decision 554, paragraphs 69 to 96 and 97 to 105, 114 to 123, 128 to 132, 141 to 149, 158 to 179..

¹⁴ Section 40(1)(d) of the Act.

FUNCTIONS AND STANDARDS

34. The Commission is required under section 40(1)(a) of the Act to include a description of the functions that must be performed by a system for delivering the Number Portability Services and the standards to which those functions must be performed.
35. In addition, the Commission is also required to include the “terms and conditions on which the determination is proposed to be made” under section 40(1)(f).
36. The LMNP Terms and Network Terms attached to this determination contain the functions and standards for delivering the Number Portability Services through the IPMS. These Terms are consistent with the scope of the Number Portability Services set out in Part 2 of Schedule 1 of the Act, with the determination framework under Part 2 of the Act, and the requirements of the section 18 purpose statement.
37. The Commission has relied on the interpretation of the Number Portability Services as set out in Decision 554 in determining that the LMNP Terms and the Network Terms will apply for the term of this determination. This interpretation is incorporated by reference in this determination.
38. The LMNP Terms in Appendix 3 and the Network Terms in Appendix 4 form part of the determination in accordance with section 40(1) of the Act. Together, these Terms qualify as:
 - the functions that must be performed by the system (the IPMS) for the delivery of the Number Portability Services and the standard to which those functions must be performed¹⁵; and
 - the formula for how the cost of delivering the service must be apportioned between the parties to the determination and every person who becomes an access provider after the determination is made.¹⁶
39. The Commission requires that all parties to the determination provide the Number Portability Services by means of a system that is consistent with the functions and standards set out in this determination (including all terms and conditions set out in the LMNP and Network Terms).

¹⁵ Section 40(1)(a) of the Act.

¹⁶ Section 40(1)(b) of the Act.

DATE OF INCEPTION AND EXPIRY

40. Under the Act, the Commission may determine the commencement and must determine the expiry date of this determination, which provides certainty about the term for which regulation should apply. In considering these matters, the Commission has taken into account all relevant considerations under section 18 of the Act.

Date of Inception

41. The Commission considers that the date of inception should be the 20 December 2010 which is the day after the expiry of Decision 554.
42. This commencement date will ensure that there is continuity of the regulation of the Number Portability Services so that all parties to the determination remain bound by the LMNP Terms and the Network Terms on and from the expiry of Decision 554.

Date of Expiry

43. The Commission is required under section 40(1)(h) of the Act to determine the expiry date of the determination.
44. In the Commission's letter¹⁷ to the parties giving notice that it had initiated a process for reviewing Decision 554, the Commission asked parties to comment on the period for which the determination should be extended for.
45. Telecom supported extending the regulation of the Number Portability Services for a further period of five years, unless the relevant service descriptions are removed from Schedule 1 of the Act earlier. Telecom stated that the initial period of five years enabled the parties to the Determination to develop, implement and stabilise the systems and processes required to facilitate efficient porting processes.¹⁸
46. 2degrees supported extending the determination for a period of five years.¹⁹
47. TelstraClear²⁰ and Vodafone²¹ both submitted that number portability service should be extended for a period of two years. A two year period was suggested as an appropriate timeframe to allow the telecommunications industry to make significant progress on the various issues that are currently under discussion (such as Ultra Fast Broadband, Structural Separation, numbering rules review), after which Vodafone suggested a review of how the number portability determination could be conducted.
48. The Commission is required to undertake reviews of all regulated services at intervals of five years after the date on which a designated service or specified service came into force.²² The Commission considers that the expiry of the number portability determination should coincide with one of the five yearly reviews.

¹⁷ Commerce Commission, Number Portability – Extension of Term, 23 September 2010

¹⁸ Telecom, *Re: Number Portability Determination – Extension of Term*, 7 October 2010

¹⁹ 2degrees, Regulation of Number Portability – Extension of Term, 7 October 2010

²⁰ TelstraClear, Number Portability Determination – Extension of Term, 7 October 2010

²¹ Vodafone, Number Portability Determination – Extension of Term, 7 October 2010

²² Clause 1(3) of the Schedule 3 of the Act.

49. The next review is due to be completed by December 2011. The Commission is required to undertake reviews of regulation at five yearly intervals and considers that the number portability determination should expire on a five yearly interval, that is 20 December 2016 (qualifying as one of the future five yearly intervals of the regulated services).
50. Accordingly the Commission's view is that the number portability determination should be for a period of six years and expire in December 2016.
51. The Commission does not consider that a shorter term (two years) is appropriate because it is unclear as to when all the various issues that are currently being discussed as part of the UFB project would be resolved. The Commission considers that if there was a significant shift in the market place, it has the necessary tools to undertake a review of the determination.
52. Further, the Number Portability Services are promoting competition by improving the ease with which customers may change providers whilst keeping their telephone numbers but within the parameters of the LMNP and Network Terms. A longer term is required to secure the competition benefits arising from this determination so as to best give effect to section 18.
53. The Commission has decided that a six year term is consistent with the framework of the Act which contemplates five yearly reviews of Schedule 1 services, and reflects the importance of the Number Portability Services in relevant telecommunications markets in New Zealand.
54. The terms for the expiry dates are set out below.

Expiry dates

55. The determination, so far as it relates to the Local Number Portability, will expire on the earlier of—
 - (a) 19 December 2016; or
 - (b) the date on which the local telephone number portability service ceases to have designated multinetwork service status because it has been omitted from Schedule 1 under section 66 of the Act.
56. The determination, so far as it relates to the Cellular Number Portability, will expire on the earlier of—
 - (a) 19 December 2016; or
 - (b) the date on which the cellular telephone number portability service ceases to have designated multinetwork service status because it has been omitted from Schedule 1 under section 66 of the Act.

DATED this 15 day of December 2010



Dr. Ross Patterson
Telecommunications Commissioner

APPENDIX 1 - LEGISLATIVE FRAMEWORK

57. This section of this report sets out the legislative framework for this designated multinetwork determination in relation to the Number Portability Services which are described in subpart 2 of Part 2 of Schedule 1 of the Act.
58. The Commission has relied on the interpretation of the Number Portability Services as set out in Decision 554. The interpretation and scope of these Services is incorporated by reference in this determination.²³
59. Section 18 of the Act sets out the purpose of Part 2, under which this determination is made, and Schedules 1 to 3, which provides as follows:²⁴
- (1) The purpose of this Part and Schedules [1](#) to [3](#) is to promote competition in telecommunications markets for the long-term benefit of end-users of telecommunications services within New Zealand by regulating, and providing for the regulation of, the supply of certain telecommunications services between service providers.
 - (2) In determining whether or not, or the extent to which, any act or omission will result, or will be likely to result, in competition in telecommunications markets for the long-term benefit of end-users of telecommunications services within New Zealand, the efficiencies that will result, or will be likely to result, from that act or omission must be considered.
 - (3) Except as otherwise expressly provided, nothing in this Act limits the application of this section.
 - (4) Subsection [\(3\)](#) is for the avoidance of doubt.
60. Section 19 of the Act requires the Commission to consider the purpose set out in section 18 and to make the determination that the Commission considers best gives, or is likely to best give, effect to the purpose set out in section 18. Section 19 states:
- If the Commission or the Minister (as the case may be) is required under this Part or any of Schedules [1](#), [3](#), and 3A to make a recommendation, determination, or a decision, the Commission or the Minister must—
- (a) consider the purpose set out in section [18](#); and
 - (b) if applicable, consider the additional matters set out in Schedule [1](#) regarding the application of section [18](#); and
 - (c) make the recommendation, determination, or decision that the Commission or Minister considers best gives, or is likely to best give, effect to the purpose set out in section [18](#).
61. Section 36 of the Act requires that the Commission must make reasonable efforts to undertake a number of tasks (including preparing a draft determination) not later than 60 working days after it gave written notice under section 35(b) of the Act. For completeness, section 36 states as follows:
- (1) The Commission must make reasonable efforts to do the following things not later than 60 working days after it gave written notice under section [35\(b\)](#)—

²³ Decision 554, pages 32 to 41.

²⁴ ‘The end-user is the ultimate user or consumer of telecommunications services. It is not restricted to subscribers, but extends to telecommunications’ users generally’, Commerce Commission Determination on the TelstraClear Application for Determination for Designated Services, Decision 477, 5 November 2002, p.10.

- (a) prepare a draft determination; and
 - (b) give a copy of the draft determination to all the parties to the determination; and
 - (c) give public notice of the draft determination; and
 - (d) include in the public notice—
 - (i) the closing date for submissions, which must not be earlier than 20, and not later than 40, working days after the date of publication of the draft determination; and
 - (ii) if a public hearing is to be held under section 38, the date of the public hearing.
- (2) If, despite making reasonable efforts, the Commission is unable to do all the things set out in subsection (1) within the time limit specified in that subsection, the Commission must give to the parties concerned written reasons for not meeting that time limit.

62. Section 37 sets out the matters to be included in a draft determination. Section 37(1) requires that, subject to sub-section 2, the draft determination must include –

- (a) a description of the functions that must be performed by a system for delivering the service and the standard to which those functions must be performed; and
- (b) the formula for how the cost of delivering the service must be apportioned between the parties to the determination and every person who becomes an access provider after the determination is made; and
- (c) the reasons for the determination; and
- (d) the terms and conditions on which the determination is proposed to be made; and
- (e) the actions (if any) that a party to the determination must do or refrain from doing; and
- (f) the proposed expiry date of the determination.

63. The Commission issued a draft determination for the Number Portability Services on 11 November 2010.

64. Section 38 sets out the Commission’s statutory obligation with respect to consultation, conferences and public hearings. Section 38 provides:

The Commission may consult with interested parties, hold conferences, or, if it is satisfied that it is in the public interest to do so, hold a public hearing, in relation to a draft designated multinet network service determination.

65. Submissions on the draft Number Portability Determination were due on 9 December 2010. The Commission does not consider that a conference or public hearing is necessary for the Number Portability determination as all parties to the determination have indicated that the determination is working well and no major or contentious issues were raised in submissions.

66. After the completion of consultation under section 38, the Commission must as soon as practicable move to release a final determination under section 39. Section 39 states that:

As soon as practicable after completing any consultation, conferences, or any public hearing under section [38](#), or if there is no consultation, conferences, or public hearing, after the closing date for submissions under section [36\(1\)\(d\)\(i\)](#), the Commission must,—

- (a) prepare a determination; and
- (b) give a copy of the determination to all the parties to the determination; and
- (c) give public notice of the determination.

67. Section 40 sets out the matters that must be included in the final determination. Section 40(1)(c) and (d) are requirements that are particular to final determinations only and are not required to be included in the draft determination. Section 40 provides as follows:

- (1) Subject to subsection [\(2\)](#), a designated multinetwork service determination must include—
 - (a) the functions that must be performed by a system for delivering the service and the standard to which those functions must be performed; and
 - (b) the formula for how the cost of delivering the service must be apportioned between the parties to the determination and every person who becomes an access provider after the determination is made; and
 - (c) the requirement that all the parties to the determination provide the service by means of a system that is consistent with the functions and the standards set out in the determination; and
 - (d) the requirement that any party to the determination make payments to an access provider of amounts calculated in accordance with the formula set out in the determination; and
 - (e) the reasons for the determination; and
 - (f) the terms and conditions (if any) on which the determination is made; and
 - (g) the actions (if any) that a party to the determination must do or refrain from doing; and
 - (h) the expiry date of the determination.
- (2) Subsection [\(1\)\(a\)](#) applies only to the extent that the matters referred to in that paragraph have not already been provided for in an approved code.

APPENDIX 2 – FORMULA FOR THE COST OF DELIVERING THE SERVICES

Formula for Allocating Industry Common System Costs

The Framework

- B1. Capex and Opex incurred in any particular year of the determination will be financed by those who are parties to the determination at the beginning of that year based on their market share at the beginning of that year ('Financing Parties').
- B2. The Financing Parties in any particular year will receive at the end of that year, a capital cost payment ('Capital Cost Payment') and an operational cost payment ('Operational Cost Payment') from those who are parties to the determination at the end of that year, including new entrants, based on their market share at the end of that year ('Liable Parties')
- B3. The calculation of the Capital Cost Payment and Operational Cost Payment is described below.
- B4. A Capital Cost Payment calculation will be undertaken for the assets financed as Capex in a particular year and this Capital Cost Payment will be allocated annually amongst the parties until those assets are fully depreciated. The total Capex contribution which a Liable Party is required to make in any particular year will be the sum of their allocations for that year.
- B5. If a new entrant is assessed to be an eligible access provider in respect of a particular year and, therefore, becomes a party to the determination, that new entrant will be liable for a Capital Cost Payment and an Operational Cost Payment for that year based on its market share on the last day of that year.
- B6. Liable Parties will be required to contribute in accordance with the following payment formula.

The Capital Cost Payment Formula

- B7. The Capital Cost Payment ensures that Capex, which generates benefits beyond the year in which it is incurred, is amortized over the period of the determination and recovered annually from all parties to the determination (including new entrant access providers) based on the benefits they derive from the Capex.

- B8. The Capital Cost Payment for the Capex incurred in a particular year will be calculated in accordance with the following formula:

$$\text{Capital Cost Payment} = \frac{\text{Capex}}{\left[\frac{1 - \left(\frac{1}{\left(1 + \frac{i}{t} \right)^{(n \times t)}} \right)}{\frac{i}{t}} \right]}$$

where: Capex: capital expenditure in that year;
 i: funding rate;
 n: number of years until the asset has been fully depreciated;
 t: number of payments per year.

- B9. The beginning of a year will coincide with the anniversary of the date of this determination. Any assets financed as Capex will be depreciated using a straight line method at a rate which will result in the asset being fully depreciated after six years from the date of this determination.
- B10. The funding rate reflects the opportunity cost associated with the financing of Capex. Given that the Financing Parties are likely to face minimal risk of default on payment, the funding rate will be the New Zealand Government bond rate of a maturity equal to the number of years until the asset has been fully depreciated.
- B11. The bond rate used for Capex incurred in a particular year will be the bond rate published on the first day of that year (i.e. for Capex incurred in a year, the bond rate used will be the applicable bond rate as at the applicable anniversary date of the determination).
- B12. The TCF on behalf of Airnet, Telecom, TelstraClear, Vodafone and Woosh, submitted that while this methodology fits well with any purchase made in years 1 or 2 of the determination on a smooth glide path over 5 or 6 years, an asset purchased in years 5 or 6 will depreciate to zero on a very sharp line in an exceptionally short space of time.²⁵
- B13. The Parties submit that the Commission consider a glide path where all assets depreciate to zero over a rolling time period without making the sixth anniversary of the Determination the final point by which assets must be written off. This will ensure that assets purchased in year 6 do not become instantly depreciated on 20 December 2016, but will depreciate steadily over, say, a 3 year period.²⁶

²⁵ TCF, Submission on Draft Number Portability determination, para 4, 6 December 2010..

²⁶ Ibid, para 5

- B14. The Commission has asked the TCF to fully consider how such a rolling time period could be applied to cover a timeframe that goes past the expiry date of the determination. The Commission will consider any recommendations and if feasible may clarify the determination to give effect to the suggestion put forward by the parties.
- B15. For the purposes of this Determination, the Commission considers that the formula previously applied is working in a manner that supports the s18 purpose, and therefore should be continued.

The Operational Cost Payment Formula

- B16. At the beginning of each year²⁷, the Financing Parties will prepare and finance an Opex budget, including maintenance, with each contributing towards this budgeted amount based on their market share at the beginning of that year. At the end of each year, the Financing Parties will receive from the Liable Parties, an Operational Cost Payment based on the actual Opex incurred in that year and based on their market share at the end of that year.

²⁷ Which coincides with the anniversary date of the determination.

APPENDIX 3

Terms for Local and Mobile Number Portability in New Zealand (LMNP Terms)

APPENDIX 4

Network Terms for Local and Mobile Number Portability (Network Terms)