



COMMERCE COMMISSION

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**Clarification (No. 3) of the Determination on the Multi-party Application for
Determination on the Local and Cellular Telephone Number Portability
Designated Multinetwork Services**

Decision No. 605

Clarification under section 58 of the Telecommunications Act 2001 ('the Act') in the matter of clarification of Decision 554:

**TELECOM NEW ZEALAND LIMITED
VODAFONE NEW ZEALAND LIMITED
TELSTRACLEAR LIMITED
WORLDXCHANGE LIMITED
COMPASS COMMUNICATIONS LIMITED
CALLPLUS LIMITED
IHUG LIMITED
WOOSH WIRELESS LIMITED
AIRNET NEW ZEALAND LIMITED
ORCON INTERNET LIMITED**

The Commission: Douglas Webb
Anita Mazzoleni
Donal Curtin

Summary of Application: The Commission initiated a clarification of Decision 554 under section 58 of the Act.

Date of Clarification: 22 June 2007

NO PARTS OF THIS REPORT ARE CONFIDENTIAL

Introduction

1. On 31 August 2005, the Commission issued Decision 554 ('the Determination') setting out the industry requirements for the provision of the local and cellular telephone number portability services ('the Number Portability Services').
2. On 17 March 2006, the Determination was clarified by Commission Decision 579.
3. On 30 March 2007, the Determination was clarified by Commission Decision 600.
4. On 20 March 2007, the Commission received a letter from the Telecommunications Carriers' Forum ('TCF') suggesting that the Commission issue a clarification to the Determination regarding the appropriate timeframe for new parties to the Determination to implement the Number Portability Services.
5. Under section 58(1) of the Telecommunications Act 2001, the Commission may amend a determination for the purpose of making a clarification if:
 - at any time the Commission, on its own initiative or on the application of any person, considers that a determination requires clarification; and
 - no appeal is pending in respect of the determination.¹
6. In light of the TCF letter of 20 March 2007, the Commission, on its own initiative, considers that the Determination requires clarification.
7. Prior to the launch date of the Number Portability Services, all of the "existing parties" to the Determination were given considerable time to implement and test their systems for the purposes of porting local or mobile numbers. For the purpose of this clarification, the Commission refers to existing parties as those parties that qualified as eligible access providers before 1 February 2007. The Commission has chosen the cut off date of 1 February 2007 because it cannot be reasonably expected that either Airnet New Zealand Limited or Orcon Internet Limited could port local numbers prior to 1 February 2007.
8. Accordingly, the Commission considers that new parties to the Determination, that is, those parties that were eligible as access providers for the Number Portability Services after 1 February 2007, must have physically interconnected with at least one other Determination party, have tested that interconnection to the satisfaction of both interconnecting parties, and must be afforded an opportunity to implement and test their systems before being required to port local or mobile numbers in accordance with the Determination.
9. On 21 May 2007, the existing parties to the Determination were asked to comment on the Commission's proposed clarification. On 28 May 2007, the TCF provided a combined submission from the existing parties which:
 - (a) agreed with the cut off date of 1 February 2007 for distinguishing between existing and new parties;
 - (b) agreed that the "implementation period" should be no later than 3 months after the "qualifying date"; and

¹ There is no appeal pending in respect of Decision 554.

(c) recommended that the “qualifying date” be defined so that a party cannot be deemed to have commenced the “implementation period” prior to being physically interconnected with at least one other party and testing that interconnection to the satisfaction of both interconnecting parties.

10. When a person applies to be assessed as an access provider of the Number Portability Services, the Commission is required to determine whether the applicant operates a PSTN to which numbers have been allocated, and a telephone service that relates to that number portability service. The Commission considers that one of the criteria for its assessment as to whether a person operates a telephone service, is the status of that person’s interconnection arrangements with the other access providers of the Number Portability Services. Accordingly, the Commission has decided to adopt the TCF’s suggested changes.
11. In accordance with this decision, new parties to the Determination, such as, Airnet New Zealand Limited and Orcon Internet Limited, are not required to comply with the Determination on the date that the Commission confirmed their eligibility as an access provider under the Act. New parties will, however, be required to port local or mobile numbers within three months of the date that they are declared eligible as an access provider of local or mobile telephone number portability, or the date of this decision, whichever is the later.
12. Under section 19(c) of the Act, the Commission is required to make the decision that the Commission considers best gives, or is likely to best give, effect to the purpose set out in section 18.
13. In this case, the Commission considers that this decision is likely to best give effect to the requirements of the section 18 purpose statement by giving new parties, and therefore new entrants to the market, a reasonable time to comply with the requirements of the Determination. It is the Commission’s view that allowing new parties an implementation period, as was given to the existing parties, reduces the practical difficulties associated with a party launching a new telephone service and connecting to the IPMS at the same time. Adding an implementation period will also encourage competition and thus is likely to best give effect to the section 18 purpose statement.

The Clarification

14. This clarification modifies the Determination as well as the LMNP and Network Terms that are part of the Determination as per Appendix 1, so that new parties are given a three month implementation period to comply with the terms of the Determination. This period allows for the establishing and testing of the IPMS link, bilateral testing with interconnect partners, and end to end testing with the industry.

DATE OF COMMENCEMENT

15. This clarification takes effect as at the date of the decision.

DATED this 22 day of June 2007



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Douglas Webb
Telecommunications Commissioner

APPENDIX 1

LMNP Terms

Section 4.4 of the LMNP Terms is deleted and replaced with the following text:

4.4 New Entrants

4.4.1 A new party to the Determination is a party that qualifies as an access provider of Local or Mobile Number Portability on or after 1 February 2007. Any party that qualified as an access provider on or after 31 August 2005 but prior to 1 February 2007 is a party to the Determination that was required to satisfy clause 1.4 and 1.5 of the Determination.

4.4.2 Each new party to the Determination must use its best endeavours to Port Local Numbers as soon as possible after either:

- i. the date that the Commission confirms that it qualifies as a new party to the Determination, having been satisfied that the new party and at least one existing party have successfully interconnected; or
- ii. the 22 June 2007,

whichever is the later (the “Qualifying Date”). Each new party to the Determination must ensure that Customers are able to Port Local Numbers no later than three months after the Qualifying Date, (the “Implementation Period”).

4.4.3 Where a new party to the Determination is unable to Port Local Numbers on or before the expiry of the Implementation Period, it must apply to the Commission for an extension of time.

4.4.4 Each new party to the Determination must use its best endeavours to Port Mobile Numbers as soon as possible after either:

- i. the date that the Commission confirms that it qualifies as a new party to the Determination, having been satisfied that the new party and at least one existing party have successfully interconnected; or
- ii. the 22 June 2007,

whichever is the later (the “Qualifying Date”). Each new party to the Determination must ensure that Customers are able to Port Mobile Numbers no later than three months after the Qualifying Date, (the “Implementation Period”).

4.4.5 Where a new party to the Determination is unable to Port Mobile Numbers on or before the expiry of the Implementation Period, it must apply to the Commission for an extension of time.

- 4.4.6 All parties to the determination will act co-operatively and in good faith to facilitate new parties to the Determination gaining access to Local Number Portability and Mobile Number Portability.
- 4.4.7 For the avoidance of doubt, any new party to the Determination is not required to satisfy clause 1.4 and 1.5 of the LMNP Terms.

Network Terms

The following matters are added at the end of clause 20.3 of the Network Terms:

The new Network operator must use its best endeavours to satisfy subclause (a) to (e) as soon as possible after either:

- i. the date that the Commission confirms that it qualifies as a new party to the Determination; or
- ii. the 22 June 2007,

whichever is the later (the “Qualifying Date”). Each new Network operator must ensure that these requirements are satisfied no later than three months after the Qualifying Date, (the “Implementation Period”).

Where a new Network operator is unable to satisfy subclause (a) to (e) on or before the expiry of the Implementation Period, it must apply to the Commission for an extension of time.

For the avoidance of doubt, any new Network operator is not required to satisfy clause 1.4 of the Network Terms on 1 February 2007. A new Network operator must satisfy clause 1.4 on or before the expiry of the Implementation Period.