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Dear David

Approval of the Telecommunications Carriers' Forum New Code for the Transfer of Telecommunications Services

1. The Commission has considered the Telecommunications Carriers' Forum Code for Transfer of Telecommunications Services (customer transfer code) dated 3 August 2012. We have decided to approve this code as it satisfies the criteria for approval under Schedule 2 of the Telecommunications Act 2001 (the 'Act').

Procedures, requirements and other matters

2. Clause 2(1) requires that the customer transfer code may only provide for procedures, requirements, and other matters, not inconsistent with the Act, that relate to an aspect or aspects of the supply of that service or those services. We consider that this requirement is satisfied in relation to the customer transfer code.

The applicable access principles

3. Clause 2(2)(a) of Schedule 2 requires that the customer transfer code is consistent with the applicable access principles and any regulations made in respect of the applicable access principles. The applicable access principles are defined in clause 5 of subpart 2 of Part 1 of Schedule 1 of the Act.¹ Clause 5 provides:

(a) *principle 1*: the access provider must provide the service to the access seeker in a timely manner:

¹ Limits on the application of the standard access principles are set out in clause 6 of subpart 2 of Part 1 of Schedule 1 of the Act.

- (b) *principle 2*: the service must be supplied to a standard that is consistent with international best practice:
 - (c) *principle 3*: the access provider must provide the service on terms and conditions (excluding price) that are consistent with those terms and conditions on which the access provider provides the service to itself:
 - (d) *principle 4*: the access provider must, if requested, provide an access seeker with information about a designated access service or specified service at the same level of detail, and within the same timeframe, that the access provider would provide that information had it been requested by one of its own business units.
4. We consider that the new customer transfer code is consistent with all four applicable access principles. In particular, the new code provides a transparent comprehensive set of rules governing customer transfers between telecommunications service providers, including:
- 4.1. timeliness of transfers
 - 4.2. neutral and non-discriminatory practices to provide consistent treatment for customers;
 - 4.3. authorising and consent procedures; and
 - 4.4. seamless billing changeover.
5. As with the 2006 customer transfer code, the new code is broadly consistent with international best practice, particularly Australia. The Australian customer transfer industry code promotes similar objectives, and has been regularly updated to ensure the code reflects the service delivery developments in the industry.

Application of the new code

6. Importantly, the new code applies to customer transfers between service providers for the following specified services:
- 6.1. retail services offered by means of Telecom's fixed telecommunications network;
 - 6.2. residential local access and calling services offered by means of Telecom's fixed telecommunications network;
 - 6.3. retail services offered by means of Telecom's fixed telecommunications network as part of a bundle of retail services; and
 - 6.4. retail services offered via Chorus's UBA, UBA backhaul and UCLL networks.
7. The new code does not apply to customer transfer relating to cellular networks, number portability and internal telecommunications services.

Consistency with section 18

8. The 2006 customer transfer code represented the first time that the industry had outlined in writing its procedures in relation to customer transfers between telecommunications providers. The new customer transfer code adapts and improves the 2006 customer transfer code, and takes into account developments in the telecommunications sector where there are a range of network providers and niche wholesalers, and an increasingly diverse and competitive retail market.
9. The 2006 customer transfer code was appropriate for its time but the telecommunications sector has developed significantly since then. The new customer transfer code provides the necessary framework for transferring services between the types of multi-tiered service-delivery models operated in the marketplace today. For these reasons the Commission considers the new customer transfer code gives better effect to the purpose set out in section 18 of the Act. Therefore, clause 2(2)(b) of Schedule 2 of the Act is satisfied.

Compliance with the Commerce Act 1986

10. Based on information available at this time, the Commission is satisfied that the customer transfer code complies with the Commerce Act 1986. Therefore, clause 2(2)(c) of Schedule 2 of the Act is satisfied.

Implementation of pricing principles

11. The Commission considers that the new customer transfer code does not directly provide for the implementation of initial and final pricing principles and any regulations relating to those principles. Initial and final pricing principles are not mentioned in the code and, therefore, clause 2(2)(d) of Schedule 2 of the Act is satisfied.

Conclusion

12. The Commission considers that the new customer transfer code meets all the requirements set out in clause 2 of Schedule 2 of the Act.
13. Furthermore, as the new customer transfer code provides a more effective operational framework capable of fostering competition and delivering better outcomes for customers, revoking the 2006 customer transfer code is likely to best give effect to the purpose set out in section 18 of the Act.

14. The Commission, therefore:

- 14.1. *revokes* the Code for the Transfer of Telecommunications Services dated 12 October 2006, pursuant to clause 12(3) of Schedule 2 of the Act; and
- 14.2. *approves* the new Code for the Transfer of Telecommunications Services (based on the TCF's final draft version dated 3 August 2012), pursuant to clause 10 of Schedule 2 of the Act.

Yours sincerely



Dr Stephen Gale
Telecommunications Commissioner