

Telecommunications Carriers' Forum

Co-location of Radiocommunications Services Regulated under the Telecommunications Act 2001

**Approved by the Commerce Commission
7 December 2006**

© 2006 The Telecommunications Carriers' Forum Inc. All rights reserved. Copyright in the material contained in this document belongs to the Telecommunications Carriers' Forum Inc. No part of the material may be reproduced, distributed or published for any purpose and by any means, including electronic, photocopying, recording or otherwise, without the Telecommunications Carriers' Forum Inc written consent.

TABLE OF CONTENTS

Purpose	3
Overview	3
Interpretation	3
Scope of Code	3
Compliance	4
Inconsistencies.....	4
Exclusions from Scope of Code	4
Co-location of Radiocommunications Facilities for Non-regulated Telecommunications Services.....	5
Information Package	5
Confidentiality.....	6
Co-location Agreement.....	9
Queuing Policy	9
Overview of Process	10
Identification of Relevant Sites	10
Request to Co-locate.....	10
Access Provider's Desk Study of Request to Co-locate in Principle	10
Detailed Feasibility Study for Co-location.....	11
Communication and Agreement of Decision of Co-location	12
Consequences of Not Commencing Co-location.....	13
Dispute Resolution	13
Expiry, Revocation and Amendment of the Code.....	13

Purpose

- 1 To encourage Co-location of Radiocommunications facilities for regulated Telecommunications Services in New Zealand through principles and processes that are consistent with the purposes and provisions of the Telecommunications Act, including the promotion of competition for the long term benefit of end users of Telecommunications Services within New Zealand, and to:
 - 1.1 promote and enable efficient use of existing infrastructure and network sites;
 - 1.2 assist the efficient use of new infrastructure and network sites; and
 - 1.3 address environmental and community concerns relating to Telecommunications infrastructure development.

Overview

- 2 In seeking to meet these objectives Co-location needs to be in accordance with legislation, be technically feasible, and subject to reasonable commercial terms and conditions.
- 3 The Code is intended to provide the framework for Co-location. The Code does not preclude applications for access to multiple sites. The Code does not anticipate operators gaining blanket access to another operator's infrastructure through a single access request. Multi-site applications can be made where there is a group of sites that are sufficiently similar to enable an Access Provider to determine feasibility on a general basis. Without limitation, multi-site applications may be made in relation to the number of sites the subject of clause 31 below.
- 4 This Code is drafted on the basis that it outlines:
 - 4.1 the process to be followed in developing a Co-location Agreement to apply to all applications made by the Access Seeker to the Access Provider for Regulated Co-location Services in relation to sites the subject of that Co-location Agreement; and
 - 4.2 the process to be followed to enable an Access Seeker to determine which sites of an Access Provider the Access Seeker wishes to be the subject of a Co-location Agreement.

Interpretation

- 5 In this Code, unless the context otherwise requires capitalised terms have the meanings given in Annex 1, and 'person' means a legal person and includes a company and any other legal entity. Unless stated otherwise, 'Clause' refers to a clause in this Code.

Scope of Code

- 6 The Code is binding on Access Providers and Access Seekers for the following Telecommunications Services (on both existing and planned sites) for so long as and to the extent that these are specified or designated services under the Telecommunications Act:
 - 6.1 Co-location of Equipment on cellular mobile transmission sites; and

- 6.2 Co-location of Equipment for fixed Telecommunications Services at sites used by Broadcast Communications Limited (BCL) (together “**Regulated Co-location Services**”).

Compliance

- 7 An Access Provider must, if requested to do so by an Access Seeker, give the Access Seeker access to its Relevant Facilities in the manner provided by this Code, any relevant Co-location Agreement and in a manner consistent with the principles set out in clause 5 of Schedule 1 of the Act.
- 8 An Access Provider is not required to comply with this clause if the limits on application of the standard access principles apply, as set out in clause 6 of Schedule 1 of the Act, and in part 3 of Schedule 1 of the Act in relation to each of the Regulated Co-location Services under the sub-heading “Limits on Access Principles”, provided however that an Access Provider must at all times act in a bona fide manner when applying such limits, and must promptly notify an Access Seeker in writing of the reasons why such limits apply in a particular situation.

Inconsistencies

- 9 In the event of any inconsistency between this Code, a relevant Co-location Agreement, any relevant legislation and any Commerce Commission determinations, this inconsistency will be resolved in the following (descending) order of precedence:
- 9.1 any legislation;
 - 9.2 any Commerce Commission Determination;
 - 9.3 any applicable contractual document entered into before the approval of this Code;
 - 9.4 the Code;
 - 9.5 any Co-location Agreements entered into after the approval of this Code; and
 - 9.6 the Master Co-location Agreement.
- 10 This Code contains the minimum requirements regarding the matters referred to in clause 4. Co-location Agreements must not diminish or otherwise affect any requirements under this Code or impact on the ability of other parties to interact with parties the subject of this Code (subject to clause 12); or impact on the ability of other participants to interwork with parties to those arrangements in accordance with the minimum requirements.
- 11 This Code does not alter, vary or restrict any rights or obligations contained in any contract between Access Seekers and Access Providers, or any contract between any other Person and an Access Seeker or Access Provider which was binding on that party when that party first becomes bound by this Code. In all other respects, however, the Access Seeker and Access Provider must comply with this Code and clauses 3, 5, 6, 7, 10, 14, 15, 17, 18 and 19 of the Master Co-location Agreement.

Exclusions from Scope of Code

- 12 For the avoidance of doubt:

- 12.1 This Code is for Co-location of the Regulated Co-location Services under the Telecommunications Act. This Code does not apply to non-regulated services.
- 12.2 This Code applies only to Access Providers and Access Seekers as defined by this Code and the Telecommunications Act. This Code does not apply to other persons, such as property owners who lease or licence property to Access Providers but who do not themselves provide Regulated Co-location Services. Such other persons can not be required by this Code to offer services or rights relevant to Co-location to any person. When an Access Provider is:
- 12.2.1 entering into agreements; or
- 12.2.2 varying, renewing, renegotiating any agreement,
- with any property owner or other person who leases or licences property to the Access Provider (which property is or may be the subject of Regulated Co-location Services), the Access Provider must use its best endeavours to ensure that such agreements do not preclude in any way the application of this Code.
- 12.3 Wherever the Code refers to property owners or other persons who lease or license property to an Access Provider, and those persons are “related companies” of the Access Provider (as defined by the Companies Act 1993), then for the purposes of those provisions of this Code, that Access Provider shall be deemed to include those related companies.
- 12.4 Pricing and commercial arrangements are not specified in the Code and should be addressed under a Co-location Agreement, as referred to in Clauses 26 and 27 of the Code.

Co-location of Radiocommunications Facilities for Non-regulated Telecommunications Services

- 13 Access Seekers and Access Providers for co-location of non-regulated services, and persons who are not subject to this Code, by agreement may choose to:
- 13.1 adopt the Code, to the extent that they consider it is relevant to their type of service; or
- 13.2 use the Code as a guide when developing their Co-location Agreements, by taking into account the clauses that are relevant to their type of service.

Information Package

- 14 Subject to clauses 19 to 26, Access Providers will make all information, reasonably required by Access Seekers available on request, including but not limited to pricing policy, to enable potential Access Seekers to decide whether the potential Access Seeker wants to make a single or multi-site application to the Access Provider for Co-location.

- 15 Without limiting the above, the Access Provider must establish and maintain an information package ("**Information Package**") in relation to the provision of Co-location access to its particular Relevant Facilities or its classes of Relevant Facilities.
- 16 The Information Package must be provided to any Access Seeker who requests it in writing from the Access Provider within 5 Business Days of such a request. Any charge to the Access Seeker for the Information Pack must not be more than the incremental cost to the Access Provider of providing such information,
- 17 If the Information Package is amended by the Access Provider it must, within 3 Business Days of those amendments being made, provide a copy of the amendments, or an amended copy of the Information Package, to:
 - 17.1 Access Seekers who are being provided with Co-location access to Relevant Facilities; and
 - 17.2 any Access Seekers who have requested an Information Package within the period 60 Business Days prior to the making of those amendments, unless an Access Seeker has indicated that it does not wish to proceed with a Co-location access application.
- 18 The Information Package must contain at least the following information:
 - 18.1 the name and address of the Access Provider and contact details of its contact person;
 - 18.2 Site identification number/name, basic technical information (i.e. mast/building, approximate height, number of antenna currently on the site, equipment shelter type (i.e. shelter/room/cabinet), Site and land plan, grid reference (if available) and legal status of the tenure of each of its Relevant Facilities;
 - 18.3 an indication of the time and major milestones likely to be reasonably required to enable Co-location access to Relevant Facilities to be supplied to the Access Seeker;
 - 18.4 reasonable financial security requirements which the Access Provider may seek from the Access Seeker; and
 - 18.5 details of any confidentiality agreement which the Access Provider requires from the Access Seeker, the terms and conditions of which should be consistent with the Code.

Confidentiality

- 19 Promptly upon commencement of any discussions regarding a potential Co-location Agreement for Regulated Co-location Services, the Access Provider and Access Seeker may, if they have not already done so, execute a mutual confidentiality agreement, the terms of which may be agreed between the parties. Unless and until those parties otherwise agree in writing, the following shall apply:
 - 19.1 All Confidential Information shall be, and shall remain, the property of the Disclosing Party to which it relates. This includes information which is derived from or generated about a Disclosing Party's network or facilities as a result of, or in connection with, the provision of access to facilities.
 - 19.2 Confidential Information provided by the Disclosing Party to the other party with which it is engaged in relation to Co-location access (**Receiving Party**) is provided only for the benefit of the Receiving Party, which acknowledges that

no warranty is given by the Disclosing Party that the Confidential Information is or will be correct.

- 19.3 Subject to clause 21 and any statutory duties, the Receiving Party must:
- 19.3.1 preserve the confidentiality of the Disclosing Party's Confidential Information:
 - 19.3.2 keep confidential all the Disclosing Party's Confidential Information which:
 - (a) is disclosed, communicated or delivered to it in connection with an application or agreement relating to access to the Relevant Facilities; or
 - (b) comes to its knowledge or into its possession in connection with such an application or agreement.
 - 19.3.3 establish and observe procedures adequate to protect the Confidential Information of the Disclosing Party;
 - 19.3.4 ensure that each of its directors, officers, employees, agents, representatives and professional advisors to whom that Confidential Information is disclosed is subject to and maintain the confidentiality obligations of this clause; and
 - 19.3.5 take all necessary action to prevent an unauthorised person obtaining access to the Confidential Information by direct or indirect exposure thereto or otherwise.
- 20 The Disclosing Party and the Receiving Party must cooperate to:
- 20.1 protect the confidentiality of the Disclosing Party's Confidential Information; and
 - 20.2 enforce rights in relation to the Disclosing Party's Confidential Information.
- 21 Subject to clause 23, Confidential Information about a Disclosing Party's facilities may only be used by the Receiving Party:
- 21.1 for the technical purpose of undertaking work necessary to allow for Co-location access by the Receiving Party to the Relevant Facility; and
 - 21.2 as far as is reasonably practical, by technical and related personnel directly involved in that Co-location access task or in accordance with clause 21.
- 22 Subject to clause 21 and any statutory duties, the Receiving Party must not:
- 22.1 use or copy such Confidential Information except for the purposes of this Code; or
 - 22.2 disclose or communicate, cause to be disclosed or communicated, or otherwise make available such Confidential Information to any third person.
- 23 The Receiving Party may only disclose the Confidential Information of the Disclosing Party in the following circumstances:
- 23.1 to those of its directors, officers, employees, agents, representatives and professional advisors to whom the Confidential Information is reasonably required to be disclosed for the purposes of an actual or proposed application

- to use a Relevant Facility for Co-location access, or the negotiation of a Co-location Agreement;
 - 23.2 in connection with legal proceedings, arbitration, expert determination and other dispute resolution mechanisms relating thereto;
 - 23.3 as required by law, provided that the Receiving Party has first notified the Disclosing Party that it is required to disclose the Confidential Information and the Receiving Party has had a reasonable opportunity to object to such disclosure on reasonable grounds and/or consult with the Disclosing Party as to the timing or content of such disclosure and to protect the confidentiality of its Confidential Information;
 - 23.4 as required by the listing rules of any stock exchange where a Receiving Party's securities are listed or quoted;
 - 23.5 with the consent of the Disclosing Party to whom the Confidential Information relates; or
 - 23.6 if reasonably required to protect the safety of personnel or equipment; or
 - 23.7 as required by this Code.
- 24 Unless disclosure is made to a third party which is a government of statutory authority in compliance with a requirement imposed by statute, pursuant to subclause 23.5, the Disclosing Party may require the Receiving Party, prior to the disclosure of the Confidential Information to a third person (**disclosee**) to:
- 24.1 impose an obligation upon the disclosee:
 - 24.1.1 to use the Confidential Information disclosed solely for the purposes for which the disclosure is made and to observe appropriate confidentiality requirements in relation to such information; and
 - 24.1.2 not to disclose the Confidential Information without the prior written consent of the Disclosing Party; and
 - 24.2 obtain an acknowledgment from the disclosee that:
 - 24.2.1 the Confidential Information is, and at all times remains, proprietary to the Disclosing Party; and
 - 24.2.2 misuse or unauthorised disclosure of the Confidential Information will cause serious harm to the Disclosing Party;
- and the Receiving Party must comply with that requirement.
- 25 The Receiving Party shall ensure that each of the Receiving Party's representatives in receipt of the Disclosing Party's Confidential Information shall return to the Disclosing Party or destroy all of the Disclosing Party's Confidential Information which is included in any writing or any other tangible form in his or her possession, including any and all excerpts and copies thereof and any Confidential Information stored on any storage device or live server used by him or her, and shall provide written confirmation to the Disclosing Party that this obligation has been fulfilled:
- 25.1 in relation to each site, within 20 Business Days of the expiry of application of a relevant Co-location Agreement to that site; or
 - 25.2 within a timeframe agreed by the Disclosing Party,

whichever is the latter.

Co-location Agreement

- 26 If, in relation to a Regulated Co-location Service, an Access Seeker has made a written request for Co-location access to a Relevant Facility of an Access Provider, or has indicated an intention to make such a request, and no Co-location Agreement applies (or is intended to apply) to the Relevant Facility to which the Access Seeker is seeking Co-location access, the Access Provider and the Access Seeker must negotiate in good faith and make reasonable attempts to agree a Co-location Agreement (or an amendment to an existing Co-location Agreement to include the Relevant Facilities) complying with the requirements of this Code within 20 Business Days (or such longer period as the parties may agree) from the date the Access Seeker first makes such written request.
- 27 The Co-location Agreement agreed by the Access Seeker and the Access Provider (and as amended from time to time) applies to all applications made by an Access Seeker to the Access Provider for access to a facility covered by the Co-location Agreement. Subject to this clause 27, the Master Co-location Agreement may be used by Access Seekers & Access Providers as the basis for their bilateral Co-location Agreements as anticipated by this Code, subject to the following:
- 27.1 clauses of the Master Co-location Agreement referred to in clause 11 of the Code are mandatory provisions and must be included in any Co-location Agreement;
- 27.2 subject to clause 27.1 of the Code, a bi-lateral Co-location Agreement must otherwise deal with the subject matter contained in the Master Co-location Agreement ;
- 27.3 the bilateral Co-location Agreement must address the liability of the parties in a balanced way, taking into account all risks to those parties (except pure commercial risks) arising from Co-location that may harm the respective parties' networks and/or operations; and
- 27.4 the bilateral Co-location Agreement must have a termination date.

Queuing Policy

- 28 The Access Provider must have and apply a queuing policy for multiple Co-location applications for the same site that:
- 28.1 conforms with the standard access principles in clause 34.1 of the Code;
- 28.2 conforms with the non-discriminatory access principle set out in Clause 5(c) of Part 1 of Schedule 1 of the Telecommunications Act;
- 28.3 is available on request to Access Seekers;
- 28.4 provides for Access Seekers to be advised of their position in the queue;
- 28.5 allows Access Seekers to determine the relative priority of applications they may submit simultaneously;
- 28.6 addresses the conditions under which a request for Co-location access lapses;
- 28.7 identifies the consequences of not meeting timeframes in clauses 30 to 46;
- 28.8 determines the basis on which priority is decided; and,
- 28.9 states how it will apply to the Access Provider's own proposals to use its Relevant Facilities.

Overview of Process

29 An overview of the process outlined in clauses 30 to 46 is illustrated in Annex 2.

Identification of Relevant Sites

30 Where an Access Seeker requires Co-location access from an Access Provider's site in a specific Search Ring, the Access Seeker may request the Access Provider to provide reasonable information as to the location and the type of the Access Provider's Relevant Facilities, and any relevant details readily available at the time of request, regarding that specific Search Ring, which information is in addition to the information the subject of an Information Package. The Access Provider shall provide that information within 5 Business Days of a request. This timeframe applies up to a maximum of 30 concurrent site requests from any one Access Seeker, provided however that an Access Provider must use its reasonable commercial endeavours to adhere to that timeframe for up to a maximum of 100 concurrent site requests from any one Access Seeker in circumstances where that Access Seeker can demonstrate that any roaming agreement to which it is a party has ended or will likely end within the following 12 month period.

Request to Co-locate

31 Presuming a Co-location Agreement relating to the Relevant Facility is in place between an Access Seeker and an Access Provider, requests to Co-locate typically take two forms:

- 31.1 the Access Seeker submits a request to the Access Provider to co-locate; or
- 31.2 the Access Provider actively seeks an Access Seeker to co-locate.

32 To enable Access Seekers to request to Co-locate on a Relevant Facility, the Access Provider must have an application form in the form set out in Annexure 4 (that is available on request, within 3 Business Days to Access Seekers) together with details of any other information required for the Access Provider to undertake the desk study.

Access Provider's Desk Study of Request to Co-locate in Principle

33 Immediately upon receipt of an application form from an Access Seeker, the Access Provider shall conduct a desk study to determine a preliminary response to the Access Seeker's request for Co-location Access. The desk study is a general desk-based review of the application.

34 For the purpose of the desk study, the parties must exchange information reasonably necessary to enable the Access Provider to evaluate the Co-location request in accordance with the access principles in the Telecommunications Act, together with any other reasonable and relevant matters raised by either party that are not inconsistent with, and subject to the limits and any conditions set out in, the Telecommunications Act.

- 34.1 The standard access principles in the Telecommunications Act as at the date of this Code are:
 - 34.1.1 the Access Provider must provide the service to the Access Seeker in a timely manner;

- 34.1.2 the service must be supplied to a standard that is consistent with international best practice; and
 - 34.1.3 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.
- 34.2 A Co-location request may be rejected if it fails to meet objective criteria with regard to the limits on standard access principles in the Telecommunications Act which as at the date of this Code are:
- 34.2.1 reasonable technical and operational practicability having regard to the Access Provider's network;
 - 34.2.2 network security and safety;
 - 34.2.3 existing legal duties on the Access Provider to provide a defined level of service to users of the service;
 - 34.2.4 the inability, or likely inability, of the Access Seeker to comply with any reasonable conditions on which the service is supplied;
 - 34.2.5 any request for a lesser standard of service from an Access Seeker;
 - 34.2.6 the Access Provider's current and reasonable forecast requirements for capacity on the Relevant Facilities;
 - 34.2.7 the management of existing or potential radio spectrum interference arising from use of Relevant Facilities;
 - 34.2.8 all relevant requirements under the Resource Management Act (1991);
 - 34.2.9 all relevant health and safety requirements under any enactment;
 - 34.2.10 all existing contractual obligations to third parties, including lessors of land on which Relevant Facilities are located; and
 - 34.2.11 the interests of third parties who use the Relevant Facilities.
- 34.3 Nothing in the Code precludes any request from an Access Seeker for a higher standard of service than the Access Provider provides to itself. Any acceptance of such a request is subject to agreement between the Access Provider and the Access Seeker of the commercial terms of providing such a higher standard of service.
- 35 The Access Provider may charge the Access Seeker reasonable expenses for time spent in conducting the desk study, in accordance with a generally applicable published scale available in advance.
- 36 The Access Provider shall Communicate to the Access Seeker, its preliminary finding of acceptance (which shall not be unreasonably withheld) or rejection of any request, no more than 20 Business Days after commencement of the study in accordance with the agreed queuing policy (or as per timeframes agreed between the parties).
- 37 The Access Seeker's decision to proceed or not to proceed to the next stage, i.e. to the detailed feasibility study, shall be communicated to the Access Provider no more than 20 Business Days after the Access Provider advises the Access Seeker of desk study findings (or as per timeframes agreed by the parties).

Detailed Feasibility Study for Co-location

- 38 After the Access Seeker has communicated its intention to proceed past the desk study stage (as set out above), the Access Provider shall immediately undertake a

detailed feasibility study of the application including reference to the issues identified in clause 34.2.

- 39 The parties must endeavour to agree on the reasonable costs (including management time) for the detailed feasibility study and must use reasonable endeavours to agree this within 5 Business Days of the Access Seeker's Communication referred to in clause 37.
- 40 Upon agreement under clause 38, the Access Provider will advise the Access Seeker of the information it reasonably requires to process the detailed feasibility study, no more than 5 Business Days after the date of that agreement (or as per timeframes agreed by the parties).
- 41 The Access Seeker shall provide the Access Provider with the information the Access Provider reasonably requires to execute the detailed feasibility study no more than 10 Business Days after the Communication received from the Access Seeker referred to in clause 40, or as per timeframes agreed by the parties.

Communication and Agreement of Decision of Co-location

- 42 The Access Provider's decision relating to the outcome of the detailed feasibility study shall be Communicated to the Access Seeker no more than 20 Business Days after the receipt of the information under clause 41 (or as per timeframes agreed between the parties). Such a decision would be either:
 - 42.1 acceptance (which shall not be unreasonably withheld);
 - 42.2 acceptance (which shall not be unreasonably withheld) subject to reasonable conditions relating to the standard access principles and limits on the standard access principles in the Telecommunications Act; or
 - 42.3 rejection.
- 43 The Access Provider shall provide the Access Seeker with a written report on the results of the detailed feasibility study together with the decision relating to the request to Co-locate, including the reason(s) for any rejection, with reference to clauses 34.2, and/or 34.3.
- 44 Should the Access Provider and Access Seeker disagree on reasons for rejection of a request, then the parties shall make all reasonable endeavours to resolve the issues by further reasonable consultation and discussion in order that a positive outcome may be achieved within 10 Business Days of receipt by the Access Seeker of the Communication of the Access Provider's decision. Any dispute in relation to this decision will be resolved in accordance with the procedures outlined in clause 48 and Annexure 3.
- 45 Upon receipt by the Access Seeker of the Access Provider's acceptance pursuant to clause 42.1 or 42.2 above, or upon the outcome of the process referred to in clause 44 above which results in the Access Provider providing acceptance, the Access Seeker shall communicate to the Access Provider within 10 Business Days whether it wishes the relevant site to be the subject of the relevant bilateral Co-location Agreement.
- 46 Where the terms and conditions in the proposed Co-location Agreement are, following completion of the processes referred to in clauses 32 to 45 above, inappropriate for a specific site(s), the Access Provider and Access Seeker shall make reasonable attempts in good faith to promptly develop and agree special

conditions to their existing Co-location Agreement to relate to that specific site, provided however that such special conditions must not materially derogate from an Access Seeker's rights under this Code.

Consequences of Not Commencing Co-location

- 47 Where an Access Seeker is granted the rights to utilise space on a Relevant Facility under clause 45 of the Code, and it fails to use that space within 6 months, then that Access Seeker's right of access to that Relevant Facility may be terminated in accordance with this Code provided that:
- 47.1 the space to be occupied by the Access Seeker is at that time the subject of another bona fide application by another party, including the Access Provider;
 - 47.2 the Access Seeker has not made any payment (other than a Co-location fee); and
 - 47.3 the Access Seeker has not taken reasonable steps to utilise the site within a reasonable timeframe after that 6 months.

Dispute Resolution

- 48 In the event that a dispute arises between the Access Provider and Access Seeker in relation to this Code, the aggrieved party may notify the other in writing and, within 10 Business Days of such notice the parties must appoint a senior and authorised manager who must negotiate with the other in good faith with the view to resolving the dispute. In the event that this process does not produce an outcome satisfactory to both parties within 10 Business Day's (or such other date agreed by the parties) after the date on which the dispute notice referred to in this clause is issued, any party may refer the dispute to arbitration by an arbitrator agreed by the parties or failing agreement, an arbitrator appointed by the President of the NZ Law Society. Reference shall be deemed a submission to Arbitration in accordance with the Arbitration Act 1996 or its replacement.
- 49 In the event of arbitration being sought, the Access Provider and Access Seeker will bear their own costs, including the costs of their own expert(s). The costs of the arbitrator and any external expert(s) that they appoint will be borne equally by the parties unless the arbitrator determines otherwise, on the basis that one party's conduct in relation to the dispute has been unreasonable in the circumstances.
- 50 If the parties do not agree to arbitration under clause 48, either party may seek a determination from the Telecommunications Commissioner under the Telecommunications Act.
- 51 For the avoidance of doubt, the procedures referred to in clauses 48 to 50 are additional to, and not exclusive of, any other rights a party may have under the Telecommunications Act, at law or in equity and nothing in clauses 48 to 40 will prevent any party from exercising its right to seek redress from the Enforcement Agency as anticipated by Annexure 3.

Expiry, Revocation and Amendment of the Code

- 52 The Expiry, Revocation or Amendment of this Code is subject to Clauses 11-15 of Schedule 2 of the Telecommunications Act 2001. For the avoidance of doubt, and in accordance with section 9 of the Telecommunications Carriers' Forum's Operating

Procedures Manual, any Forum Member may put a Project Proposal to the Forum Board (at any time) for the amendment or revocation of the Code.

ANNEXURES

Annexure 1: Definitions

Access Provider	(a) Co-location on cellular sites: Every person who operates a cellular mobile telephone network; (b) Co-location at BCL sites: BCL or any of its subsidiaries.
-----------------	--

Access Seeker	(a) Co-location on cellular sites: Any person who operates, or is likely to operate, a cellular mobile telephone network and seeks access to the service; (b) Co-location at BCL sites: Any person who operates or is likely to operate a radio based fixed Telecommunications network that offers data transmission capability in excess of voice band capacity to several end-users of fixed Telecommunications Services, and seeks access to the service.
---------------	---

BCL	Broadcast Communications Limited
-----	----------------------------------

Broadcasting	Any transmission of programmes, whether or not encrypted, by radio waves or other means of Telecommunication for reception by the public by means of broadcasting receiving apparatus but does not include any such transmission of programmes: (a) made on the demand of a particular person for reception only by that person; or (b) made solely for performance or display in a public place.
--------------	---

Business Day	means a day on which registered banks are open for normal banking business, excluding Saturdays, Sundays and nation-wide public holidays. Regional public holidays are considered to be Business Days.
--------------	--

Code	Means this Code for Co-location of Radiocommunications Services Regulator under the <i>Telecommunications Act 2001</i> .
------	--

Co-Location	means: (a) in the case of Co-location on cellular transmission sites, 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 that relate to cellular mobile sites); and (b) in the case of Co-location of equipment for fixed telecommunications services at sites used by BCL, a service that enables a telecommunications network operator to Co-locate transmission and reception equipment (including any necessary supporting equipment) used to provide fixed telecommunication links directly to several end users of fixed telecommunications services on or with Relevant Facilities relating to sites used by BCL.
-------------	---

Co-location Agreement	<p>Includes:</p> <ul style="list-style-type: none"> (a) A master co-location agreement agreed between an Access Provider and Access Seeker setting out the generic terms and conditions relevant to Co-location on Relevant Facilities; and/or (b) A site-specific co-location agreement agreed between an Access Provider and Access Seeker setting out terms and conditions relevant to site-specific matters for Co-location on Relevant Facilities; and/or (c) A schedule to a master co-location agreement and/or a site-specific co-location agreement agreed between an Access Provider and Access Seeker; and/or (d) Any other form of agreement agreed between an Access Provider and Access Seeker for Co-location on Relevant Facilities.
Communication	Communications in writing, including by email.
Confidential Information	<p>Means all proprietary information whether of a business, financial, technical or non-technical nature and whether existing in hard copy form, on computer disk or otherwise, which is disclosed by either the Access Seeker to the Access Provider, or by the Access Provider to the Access Seeker, or on either party's behalf relating to the business or affairs of the party disclosing such information (the Disclosing Party) for the purposes of negotiating a Co-location Agreement under this Code or determining the sites to be the subject of such Co-location Agreement, but does not include any such information which is</p> <ul style="list-style-type: none"> (a) at the date of receipt by either party: <ul style="list-style-type: none"> (i) in the public domain or which subsequently enters the public domain without any breach of an obligation of confidentiality; or (ii) already known to that party, unless it has come into that party's knowledge only by reason of the discussions referred to in clause 19; (b) at any time after the date of receipt by either party received in good faith by that party from a third party without obligation of confidentiality; or (c) agreed by the parties in writing to be information to which the confidentiality clauses contained in this Code do not apply.
Disclosing Party	As that term is defined in the definition of Confidential Information
Enforcement Agency	means a person(s) nominated by the Telecommunications Carriers' Forum and approved by the Commerce Commission, or if the Telecommunications Carriers' Forum fails to nominate a person, a person appointed by the Commerce Commission whose role is to monitor and enforce compliance of the obligations set out in this

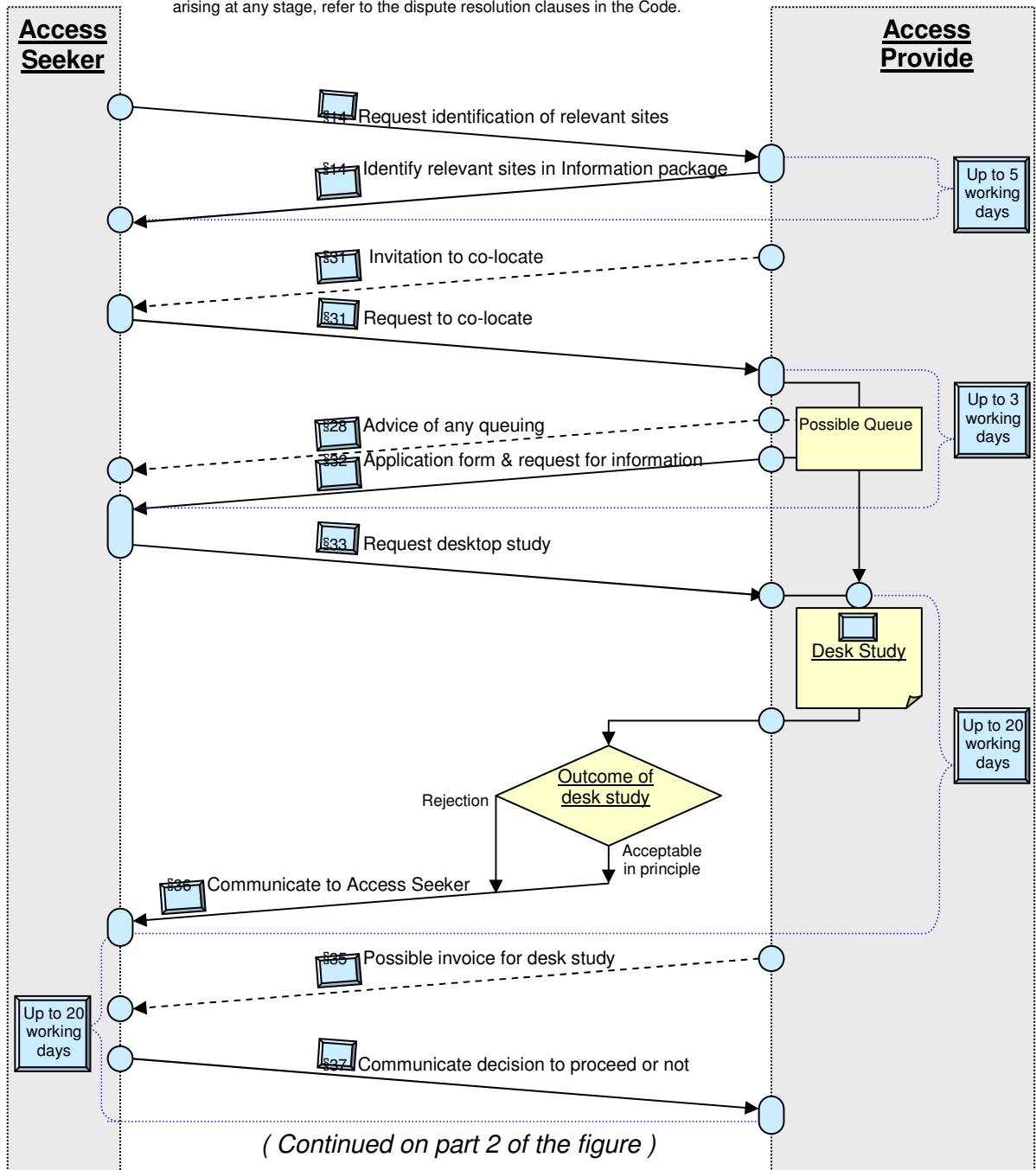
		Code.
Emergency		<p>A situation that:</p> <p>(a) Is the result of any happening, whether natural or otherwise, including, without limitation, any explosion, earthquake, eruption, tsunami, land movement, flood, storm, tornado, cyclone, serious fire, leakage or spillage of any dangerous gas or substance, technological failure, infestation, plague, epidemic, failure of or disruption to an emergency service or a lifeline utility, or actual or imminent attack or warlike act; and</p> <p>(b) Causes or may cause loss of life or injury or illness or distress or in any way endangers the safety of the public or property in New Zealand or any part of New Zealand.</p>
Equipment		<p>Includes:</p> <p>(a) Antennas or microwave dishes; associated transmission equipment, power plant (including standby power) and air conditioning plant; associated feeders, waveguides and waveguide pressuring equipment; and cabling and cable gantries;</p> <p>(b) Relevant tools and test equipment;</p> <p>(c) Enclosures, risers or other structures housing any of the above; and</p> <p>(d) Such other facilities as may be specified from time to time and agreed to by the parties pursuant to the Telecommunications Act.</p>
Master Co-location Agreement		Means the proforma bi-lateral agreement between an Access Seeker and an Access Provider in the form attached as Annexure 4 to this Code.
Radiocommunications		Any transmission or reception of signs, signals, writing, images, sounds, or intelligence of any nature by radio waves (being electromagnetic waves of frequencies less than 3000 gigahertz, propagated in space without artificial guide); but excluding any conveyance that constitutes Broadcasting for the purpose of the Code.
Receiving Party		As that term is defined in subclause 19.2
Regulated Co-location Services.		As that term is defined in clause 6.

Relevant Facilities	<p>As defined in the Telecommunications Act 2001 for the relevant specified service which, at the date of this Code, are as follows:</p> <p>(1) for Co-location on cellular mobile sites:</p> <p>(a) any towers, poles, masts or other similar structures –</p> <p>(i) that are used for the transmission or reception of Telecommunications via a cellular mobile telephone network; and</p> <p>(ii) that are owned, managed, or leased by the Access Provider;</p> <p>(b) all sites, buildings, or utility services that are associated with the kinds of structures referred to in paragraph (a).</p> <p>(2) for Co-location of Equipment for fixed Telecommunications Services at sites used by Broadcast Communications Limited:</p> <p>(a) any towers, poles, masts or other similar structures –</p> <p>(i) that are used for the transmission or reception of Radiocommunications (as defined in section 2(1) of the Radiocommunications Act 1989); and</p> <p>(ii) that are owned, managed, or leased by the Access Provider;</p> <p>(b) all sites, buildings, or utility services that are associated with the kinds of structures referred to in paragraph (a).</p>
Search Ring	A defined geographical area identified by an Access Seeker in which a single proposed site can be located to provide coverage to a single defined coverage area.
Telecommunications	The conveyance by electromagnetic means from one device to another of any encrypted or non-encrypted sign, signal, impulse, writing, image, sound, instruction, information, or intelligence of any nature, whether for the information of any person using the device or not; but excluding any conveyance that constitutes Broadcasting.
Telecommunications Act	Means the Telecommunications Act, 2001 as amended from time to time.
Telecommunications Carriers' Forum or TCF	means the Telecommunications Carriers' Forum Incorporated Society of New Zealand.
Telecommunications Service	Any goods, services, Equipment, and facilities that enable or facilitate Telecommunication.

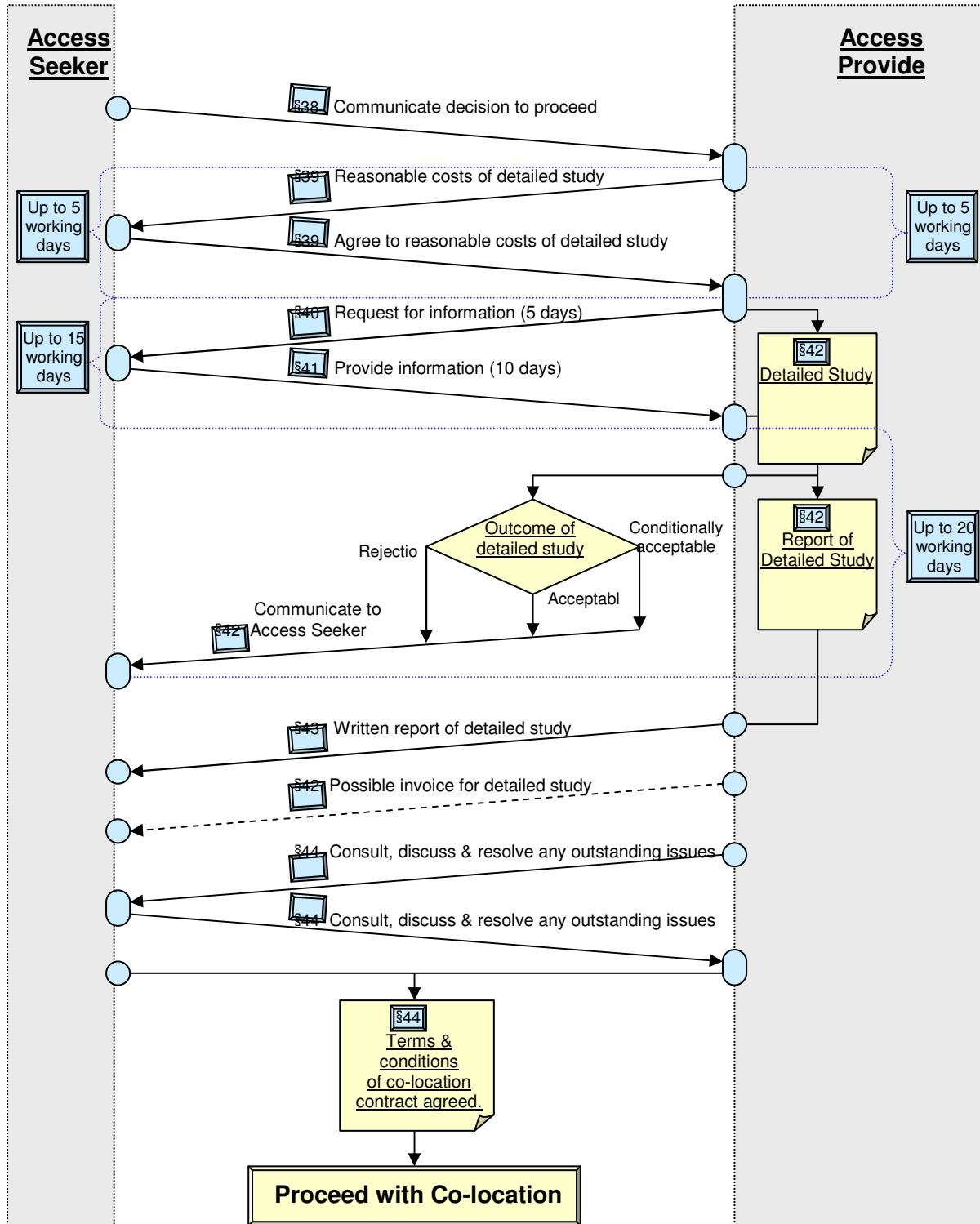
Annexure 2: Flowchart

Overview of Process for Co-location Figure - part 1 of 2

- Key & notes:-**
- §14 Reference for the clause number in the code. Refer to the clauses 14 to 29 for details.
 - Up to x working days The Code allows for other periods as agreed between the parties.
 - This flow diagram represents the normal process. In the event of a dispute arising at any stage, refer to the dispute resolution clauses in the Code.



Overview of Process for Co-location *Figure - part 2 of 2*



Annexure 3:

Monitoring and Enforcement of the Codes Obligations

1. Parties to this Code must keep information they deem necessary to show their compliance with this Code, should it be required.
2. If an Access Seeker or Access Provider does not meet the obligations contained in the Code, the Enforcement Agency may issue that party with a written:
 - a) Caution Notice of Breach;
 - b) Warning Notice of Breach; or
 - c) Public Censure Notice.
3. The Enforcement Agency must consider the seriousness of the non-compliance of the party, and the parties past conduct with respect to compliance with this Code when making a determination whether to issue a notice under clause 2 of Annexure 3. The Enforcement Agency must first have issued a Caution Notice of Breach and then a Warning Notice of Breach to the party in relation to the particular breach in question before making a determination to issue a Public Censure Notice relating to the party. The Enforcement Agency will provide a copy of any Caution Notice of Breach, Warning Notice of Breach or Public Censure Notice issued to all parties to Code and, at the same time, to the Commerce Commission. Parties to the Code who receive a copy of a Caution Notice of Breach or Warning Notice of Breach shall keep such notice confidential.

Caution Notice of Breach

4. The written Caution Notice of Breach to the party will include a request that one or more of the following actions be undertaken by the party:
 - (a) rectification of the breach;
 - (b) specific corrective actions; and
 - (c) an internal review of the party's state of compliance with the Code.
5. The Caution Notice of Breach will specify a timetable within which the action is required to be completed, with duration dependent upon the nature and complexity of the action. The Enforcement Agency will also seek confirmation from the party of receipt of the Caution Notice of Breach.

Warning Notice of Breach

6. The written Warning Notice of Breach to the party is a more severe version of the Caution Notice of Breach, and may be appropriate for situations where the party has failed to undertake voluntarily the actions requested by the Caution Notice of Breach, within the timetable specified therein. The Warning Notice of Breach to the party will include an order that one or more of the following actions be undertaken by the party:

- (a) rectification of the breach;
 - (b) specific corrective actions;
 - (c) arrange for an independent audit of its compliance procedures in relation to the Code's obligations. The auditor must be approved by and report to the Enforcement Agency on compliance with the codes obligations. The party will be required to implement recommendations of the audit; and
 - (d) that the party conduct relevant education of its relevant staff to address knowledge inadequacies that may have led to the breach.
7. The Warning Notice of Breach will nominate a timetable within which the action is required to be completed, and the steps needed to be taken by the party to address the action required by the Warning Notice of Breach, with duration dependent upon the nature and complexity of the action. The Enforcement Agency will also seek confirmation from the party of receipt of the notice.

Public Censure Notice

8. In the event of a refusal or failure on the part of the party to undertake to the Enforcement Agency's satisfaction any actions required by a Warning Notice of Breach within the timetable specified therein, the party will promptly be formally advised by the Enforcement Agency that a Public Censure Notice is to be prepared for widespread publication. The party will be sent an advance copy of the intended Public Censure Notice, which will:
- (a) identify the party by name;
 - (b) give details of the breach;
 - (c) list all requests/orders previously made of the party;
 - (d) report on whether an independent audit has been ordered and, if so, state the results of the audit;
 - (e) state that at the date of publication, the requests of the Caution Notice(s) of Breach and the orders of the Warning Notice(s) of Breach have not been complied with;
 - (f) specify a final timetable by which any corrective action must be completed by the party.
9. The party will also be advised that publication of the Public Censure Notice will not occur until a specified time period has elapsed from the date the advance copy of the public censure notice is sent, (the period of time is at the discretion of the Enforcement Agency). If the Enforcement Agency is fully satisfied that the party has fully complied as ordered prior to the date the Public Censure Notice is due to be published, then the Public Censure Notice shall not be published.

10. If the Public Censure Notice is proceeded with, it must be published in the New Zealand Gazette and the TCF's newsletter and, at the Enforcement Agency's discretion, may be published in any relevant industry newsletter or magazine, in the national newspapers or in Consumer bulletins.

11. If the audit report states that the party has complied with this Code then:
 - (a) if the audit was undertaken due to a request from another Access Seeker and/or Access Provider, then the Audit Costs will be payable to the Enforcement Agency by that other Access Seeker or Access Provider and, upon receipt of payment of that sum, the Enforcement Agency will reimburse the party its costs; or
 - (b) if the audit was undertaken otherwise than due to a request of an Access Seeker or Access Provider, the party shall bear its own costs and the costs of the Enforcement Agency shall be reimbursed to it by the party that initiated the audit; or

12. If the audit report states that the party has not complied with this Code then the Audit Costs will be payable by the party.

13. For the purposes of clauses 11 and 12 of Annexure 3, "Audit Costs" means the aggregate of:
 - (a) Enforcement Agency reasonable direct costs in respect of the audit (including auditing and legal fees); and
 - (b) such costs of the party in respect of time involved in assisting the audit as are submitted by the party to the Enforcement Agency which the Enforcement Agency determines are fair and reasonable.

Annexure 4:

GENERAL COLOCATION REQUEST FORM

Name of applicant	
Purpose/Use of co-site	
Timeframe of co-siting installation	

Site Name:			Date of request:
Map Reference:			
Required cutover date of installation:			
Hours of operation	24 hours	Other	
Is this a permanent installation	Yes/No		
Is this a temporary installation	Yes/No		End Date:

*Attach detailed plan of site marking out requirements
Please use the numbers below to match corresponding antennas, feeders, racks, equipment and frequencies*

Antennas:

Make/Model	Type/size	Bearing Deg T.	Polarity: H or V	Height on support	Other
1.					
2.					
3.					
4.					
5.					
6.					

Earthing arrangement:

Fixing (i.e. Mast, Tower, Building) and method of fixing:

Attach detailed plan of attachments and manufacturers specifications of equipment

Feeders:

Equipment Size and type	No. of	Fixing method of cable to support:	Proposed entry window:	Earthing arrangements on cable/waveguide
1.				
2.				
3.				
4.				
5.				
6.				

Rack:

If you intend to install your own building on our site, please specify:

Will you be installing racks		Yes/No		Quantity:	
------------------------------	--	--------	--	-----------	--

Footprint:		Height:		Weight:	
------------	--	---------	--	---------	--

Access to rear of racks required?		Yes/No	
-----------------------------------	--	--------	--

Position of rack:		Drawing included	Yes/No

Equipment:

Include details of external combiners, etc – number, size, etc if rack space of Telecom is required

Make	Model	Power (AC/DC)	Weight	Width	Height
1.					
2.					
3.					
4.					
5.					
6.					

Cable feeding preferred (floor or overhead):

Position of cabinet/rack	Drawing included	Yes/No	
--------------------------	------------------	--------	--

Frequencies:	Transmit	Receive	Power Output RF	Emission	RF licence no.
1.					
2.					
3.					

Existing Power etc:

Please note that the information in this table will be required (for a cosite request requiring power) before it can be approved. Please use best endeavours to acquire this information before submitting your application

Existing Power demand of building	
Existing Power on Engine	
Existing Engine size	
Existing Air conditioning/ventilation size in the proposed Equipment space	

Power requirements:

Type	AC	DC	
Tick what sources of power you would require if available	Mains	Essential	UPS
Voltage			
Max Current			
Idle or Normal Operating Current			
% of time at Normal Operating current			

Environmental requirements – if known

Limits	Normal	Extreme
Temperature		
Humidity		