

**Reform of the
New Zealand Telecommunications Numbering
Governance Arrangements**

**Report of the
TCF/NAD Numbering Working Party**

December 2009

1 Purpose

The joint TCF/NAD Numbering Working Party has arrived at a proposal for new governance arrangements for telecommunications numbering in New Zealand. This report summarises the Working Party's proposal, on which feedback is now sought.

2 Consultation phase

The Working Party seeks feedback from interested persons on its proposal for reform of the numbering governance arrangements. The Working Party's proposal is encapsulated in three documents:

- The present report, which summarises the proposed arrangements and the Working Party's thinking that lies behind them;
- A draft Project Scope¹, which sets the terms of reference for a new permanent working party (the "Numbering Management Group") of the TCF (section 4 explains the role of this working party and the Project Scope document); and
- A draft Code for Number Management, which defines policy for, and facilitates, the administration of numbering (section 4 explains the place of this document).

Comment is sought on all three documents. The closing date for comment is **5 February 2010**.

It is normal TCF procedure that draft Codes issued for public consultation will be in a final form, and will have received a legal review. At this stage the Project Scope and Code documents are not final and have not received a legal review. Following consideration of the feedback the Working Party will move to finalise the necessary documents, and this will include legal review. Implementation of the new regime will require several coordinated steps, including at least:

- (1) The consent of all the existing parties to the Number Administration Deed to wind up the NAD;
- (2) Each party to the new arrangements (i.e. all those intending to hold number allocations following the implementation of the

¹ The term "Project Scope" is the standard TCF language for the document which sets out the terms of reference for an area of TCF activity. Despite the use of the word "Project", the working party ("Number Management Group") thus constituted will be a permanent rather than transitory working party of the TCF.

new regime) to sign the Deed Poll committing them to comply with the requirements of the new regime.
Given the requirements for unanimous acceptance of the ultimate arrangements in this manner, it is not proposed to have a further round of consultation following the present one.

3 **Background**

Number Administration Deed

The Number Administration Deed (NAD) is an industry-based mechanism which was established in December 1998 to provide centralised and independent administration of New Zealand's telecommunication numbering resources.

Number portability was originally a key function of the NAD, however the TCF and NAD agreed in 2003 that this function should be transferred to the TCF, as it had a better governance and project management structure to oversee the design of the technical and operations requirements and the subsequent implementation. The transfer of number portability to the TCF left the NAD with the core number administration tasks.

TCF/NAD working party (I)

In 2004 the NAD considered whether the remaining functions of the NAD should come under the governance of the TCF. The NAD prepared a number of papers considering the pro's and cons of this initiative and identifying issues which would need to be resolved. The matter was not progressed beyond this point until 2008, when the TCF instigated a project to form a joint working party with the NAD, to review who should be responsible for managing the numbering plan, and how it should be managed.

The Working Party published its draft report for consultation in July 2008. That report set out the Working Party's preliminary view that the NAD should be amalgamated with the TCF, and that the Amalgamation should have the following features:

- “a) A permanent Numbering Working Party (NWP) should be established with an Independent Chair (possibly the TCF CEO). The NWP's scope should be designed to assume most of the responsibilities of the current NAD Management Committee and Numbering Sub-Committee - effectively collapsing these two bodies into one;
- “b) The TCF Board should have high-level governance functions only:
 - Appointment of NWP Independent Chair;
 - Appointment of Number Administrator;
 - Financial oversight; and

- No ability to over-ride substantive NWP decisions (eg Numbering Code, numbering allocations);
- “c) A Numbering Code should be developed that includes all relevant material from the current NAD Deed. Number Allocation Rules would become an appendix to the Numbering Code. NWP members would be required to be signatories to that Code;
- “d) NWP membership should permit non-TCF members to join. The NWP would operate on the 1P1V principle. Funding and membership fees would be compartmentalised to reflect 1P1V for this sphere of activity;
- “e) The NA’s function in terms managing the numbering plan, allocations and rules will be largely unchanged. The NA would be appointed by the TCF Board. The NA would be accountable to the TCF CEO with activities and work programme largely determined by the NWP;
- “f) The administrative functions of the NA, such as managing the finances, budgeting and management reporting and maintaining the website would be undertaken as part of the Forum Administrators role;
- “g) TCF working practices should be adopted with any necessary modifications; and
- “h) Enforcement, monitoring, compliance and dispute resolution is either amalgamated with other like TCF activity or vested in the Commerce Commission.”

Commerce Commission Study

While the Working Party was working on this report the Commerce Commission instigated a study into telecommunications numbering, to identify international best practice models for number management and the potential application of those principles in New Zealand. The Commission’s final report of the Study was published in December 2008. It identified a number of deficiencies with the present state of number management in New Zealand.

In a letter to the Commerce Commission in September 2008 responding to a draft of the Commission’s Study, the TCF suggested that that a joint project team be formed with the primary purpose of re-designing the New Zealand numbering regime to reflect world best practice. This project team would use the Commission’s numbering study report issued on 5 December 2008 and the NAD/TCF working party’s earlier report as the basis for defining the high-level issues and therefore the project’s work plan.

TCF/NAD working party (II)

The Commerce Commission accepted this approach, and the present joint working party was formed early in 2009. The working party comprised representatives of the TCF and NAD (Airnet, LinkTel,

Telecom, TelstraClear, Vodafone, WorldxChange), Commission, and Ministry of Economic Development (MED), and worked through the issues in regular meetings during the greater part of the year.

A workshop was held in late November. This workshop was open to all TCF and NAD parties (including those who had not chosen to join the working party),² the MED, the Commission (including the Telecommunications Commissioner), and TUANZ's representative (as User Representative on both TCF and NAD). The purpose of the workshop was to provide information on the working party's proposals and to obtain initial feedback. This feedback has led to further refinements of the working party's proposal.

The present report, together with the associated draft Project Scope and draft Code, is the culmination of this Working Party's activity.

4 **Proposed structure and related documents**

Initial view

Given the differences in membership and voting structure between the NAD and the TCF, the initial approach taken by the Working Party was to graft the NAD onto the TCF and to preserve as much as possible of the existing NAD structure.

Fundamentally this involved the establishment within the TCF of a Numbering Council, which would be open only to numbering members, and which would retain most of the governance functions of the NAD Management Committee. A sub-committee providing technical expertise and making proposals for review or reform of the Number Allocation Rules would report to the Numbering Council.

By this means it was possible to preserve the one party/one vote rights that currently exist under the NAD.

This approach threw up two major issues:

- A cumbersome governance process; and
- Complexities around how this structure could be integrated with the existing TCF Board, the prime governance body in the TCF structure.

What is proposed

In order to simplify what was rapidly becoming apparent was an unnecessarily complex governance structure, the Working Party explored a fundamentally different approach. The approach now proposed by the Working Party is to see the TCF Board as fulfilling the overarching

² In addition to companies represented in the working party (noted above), the parties represented at the workshop were Kordia, Orcon, 2Degrees, and Symbio.

governance role (but with carefully circumscribed rights over numbering policy as described below), with a permanent Working Party managing numbering policy, to be called the Numbering Management Group (NMG). The NMG conflates many of the functions of the NAD Management Committee and NAD Numbering Subcommittee.

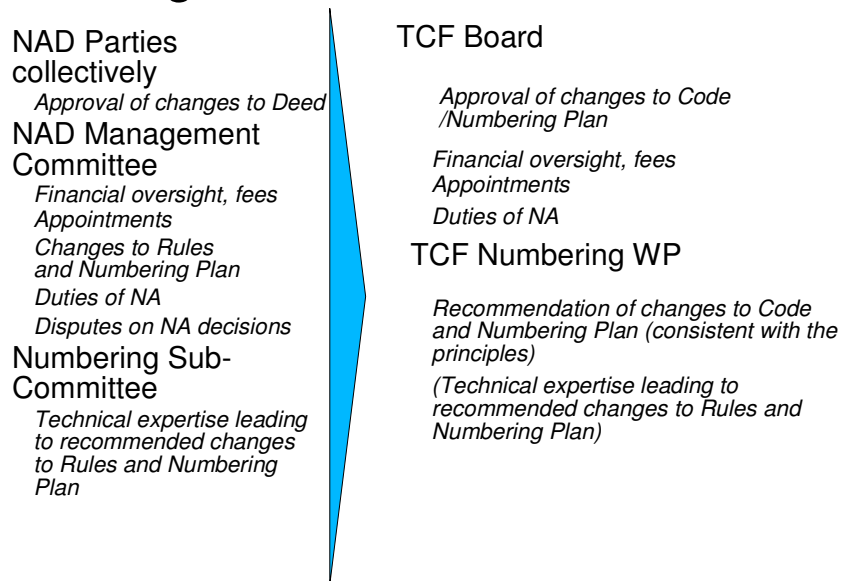
The NMG would be open to all parties who have signed the Deed Poll to become members of the NMG and to be bound by the Code. Voting at the Working Party would be on the basis of one party/one vote.

In the proposed structure, the Working Party puts up changes to the Numbering Code to the TCF Board for governance sign-off. The Board can either accept (and endorse) or reject (on valid grounds discussed further below) what is put up to it for approval.

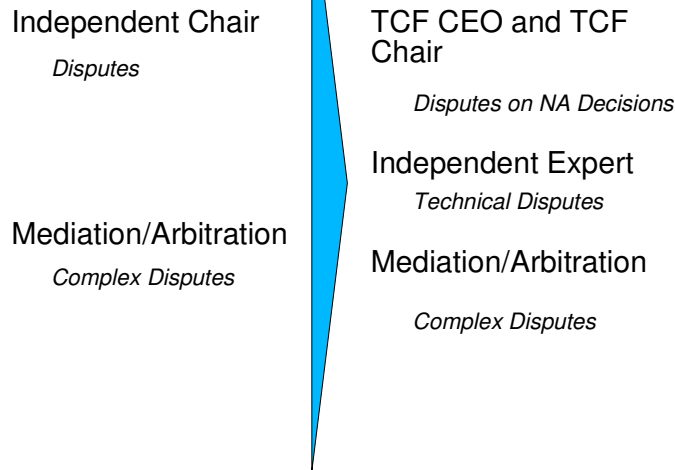
The Board, as the primary governance body would have approval rights over budgets and capital expenditure as well as power to appoint the Number Administrator. The Board would have no other direct role in number management.

The proposed organisational structure can be briefly outlined by comparison to the current structure, as illustrated overleaf:

Organisation

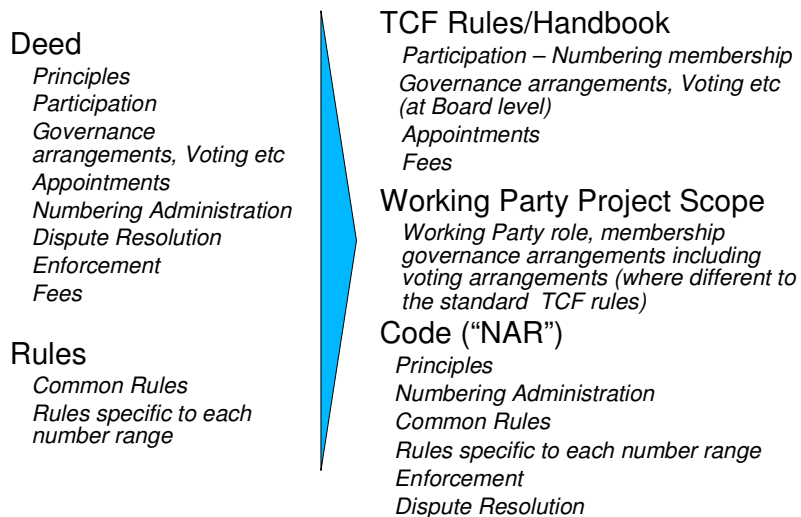


Organisation continued



Another perspective on the proposed arrangements can be obtained by reference to the various governance documents:

Documents



Note that the Principles (with two exceptions discussed below), fundamentals of Numbering Administration, Common Rules, and Rules specific to each number range from the present Deed and Rules have

been incorporated with no more than minor amendments into the new draft Code.

The MED proposes that the whole arrangement be recognised in a Memorandum of Understanding (or similar agreement) with the Crown, which would formally delegate authority to the TCF for administration of the New Zealand telecommunications numbering plan. (The Crown is recognised by the ITU as the sovereign having paramount authority for administration of the numbering plan falling under the +64 country code.)

5 Key issues

In the course of its work the Working Party has had to address several key issues. They are discussed in the following sections.

5.1 Historical issues

During the Working Party's deliberations it became apparent that two historical issues had the potential to stand in the way of proper reform of the numbering governance arrangements:

- Telecom's claim to "own" the numbering plan; and
- TelstraClear's ongoing retention of two non-geographic code blocks.

Both of these issues have now been resolved by the parties involved, in the manner outlined below. The Working Party applauds these initiatives.

Telecom's claim to ownership

Telecom has claimed to own the numbers and/or the national numbering plan, "by virtue of it being part of the assets sold by the Government in 1987". Telecom has never resiled from this claim.

A number of the issues which the working party needed to discuss - such as the development of appropriate processes for withdrawing unused number blocks - were hampered by this historical claim.

In July Telecom gave notice of its willingness to withdraw its claim to ownership of the numbers/numbering plan. The text of Telecom's brief paper on this subject is reproduced as Appendix A.

TelstraClear's non-geographic allocations

Pre-dating the formation of the NAD, TelstraSaturn and Clear each held an allocation for a full 02X code block. Due to the merger of TelstraSaturn and Clear in 2001, TelstraClear then held allocations for

both 023 and 029. This led to concern about a perceived shortage of available ranges for new entrants.

In August TelstraClear advised its willingness to relinquish the 023 code block. The text of TelstraClear's email is reproduced as Appendix B.

5.2 Membership

It is proposed that it will be a requirement that those who hold, or wish to hold, number allocations will become signatories to the Code (by Deed Poll). There is therefore a strict link between holding allocations and an ongoing and binding commitment to adhere to the rules that are expressed in the Code.

The Code specifies certain eligibility conditions. The concern here is to ensure that the rules are enforceable on the parties. This link between eligibility for membership and enforcement is the subject of ongoing discussion in the Working Party, as it is a perceived area of weakness in the present NAD construct. Various improvements to the Code are under consideration, but the Working Party has not yet arrived at a final view. Appendix C reproduces a paper, prepared by the Working Party's external legal counsel, which proposes various amendments and additions to the Code to address these matters. Note that Appendix C does not necessarily reflect the views of the Working Party as a whole or any of its members. The Working Party invites comment on these ideas to assist it to arrive at a final view.

By virtue of signing the Deed Poll parties will be entitled to be members of the TCF and of the NMG, and will be required to be financial members of the TCF.

While not every present member of the NAD is a current member of the TCF, it is the working party's view that the requirement for ongoing membership is a reasonable requirement commensurate with the responsibility that goes with holding an allocation of part of the New Zealand numbering resource.

The Number Administration Deed permits parties to hold onto allocations while not remaining members of the NAD. The working party considers that this is not an appropriate model: the privilege of holding number allocations carries with it the responsibility to contribute, financially and by participation in the governance, to the ongoing administration of the regime that makes that allocation possible. More importantly, if membership were not required, parties could potentially avoid the enforcement provisions of any arrangement.

5.3 Non-industry participation

The NMG will also be open to participation by representatives of end-user interests (such as TUANZ), the Commission and the Ministry of Economic Development.

The consumer representative will be entitled to vote in the NMG. This is not currently the case under the NAD.

Such participation ensures that consumer/public interests are heard and taken into account in the formation of numbering policy and the work programme of the NMG.

5.4 Representation and Voting

Numbering Management Group (TCF Working Party)

The Numbering Management Group (NMG) will be established as a permanent TCF working party. The NMG is open to all parties with allocations. Within the NMG each party will hold one vote. Parties may have more than one representative present at NMG meetings - for example, including technical representatives of the type who today participate in the NAD Numbering Sub-committee - and all will have speaking rights. When matters are put to a vote, only one representative of each party will be entitled to vote.

In common with TCF guidelines, it is expected that when a vote is cast at the NMG it has the full support, at all relevant levels, of the party represented.

In accordance with the TCF Rules, a 50% majority will be required for all decisions, with a 75% majority required for any recommendation to the TCF Board for any change to the Code. The Principles (section F of the Code) will be entrenched, requiring 100% of NMG members present and voting being in favour of the proposed change.

TCF Board

TCF Board voting, including the formation of the Group Member mandate, follows the TCF Rules as they are today, except that voting on numbering matters will only be conducted by parties to the Code. The TCF Rules will be amended to reflect this.

In relation to voting on changes to the Code, the TCF Board can only reject and send the Code back to the NMG if the Board can reasonably establish that the change would contravene the Principles.

5.5 Funding and fee setting

As noted above, in order to obtain and hold allocations under the working party's proposal, it will be necessary to be a financial member of the TCF. The TCF Board will be responsible for approving the budget for the NMG and the fee structure and level, on recommendation from the NMG.

The fees levied for numbering will reflect the actual costs of running the NMG and Number Administrator activities, as well as a fair proportion of the TCF Board costs having regard to the time that the Board devotes to numbering issues. The assessment of these fees should be transparent and defensible on the criteria that they are a fair fee reflective of the costs of the administration of numbering in New Zealand.

5.6 Amending the Code

In setting up its work programme with reference to the Commission's *Study*, the working party elected to address the governance arrangements first rather than addressing amendments to the rules (as dealing with, for example, nomadic services, or timeframes for number activation). Amendments to the rules will be part of the order of business for the new NMG (to the extent they have not already been addressed by the NAD) once it is formed. The decision to address the governance arrangements and to leave rule changes for the new body was a pragmatic one: until the new governance structure is in place, it is only the NAD Management Committee that can make any amendments to the rules; and the working party was concerned to ensure that the scope of its work was such as to enable the new governance structure to be put in place as promptly as possible.

Under the working party's proposal, amendments to the rules (the Code) will require the following steps:

1. the NMG will seek public submissions on the proposed amendment (and must notify the Commerce Commission to ensure that it has the opportunity to submit);
2. the amendment will be put forward to the TCF Board by a 75% majority vote of the NMG;
3. the TCF Board, using its normal voting procedures subject only to excluding from voting those TCF members who are not parties to the Code, will either endorse the amendment, or, finding the proposed amendment in contravention of the Principles, will return the proposal to the NMG for further consideration.

5.7 Transparency

Transparency of the activities and decisions of the new numbering regime will be provided in several ways:

- All members of the NMG receiving all Working Party agendas, minutes, and papers whether or not they actually attend meetings;
- As noted above, participation in the NMG by representatives of user groups, the MED, and the Commission (and likewise receiving all documentation whether or not they attend meetings);
- Consultation on amendments to the Code, as discussed above;
- Publication of the Code and the Number Register on the website.

5.8 **Dispute resolution**

It is proposed that dispute resolution will as far as possible follow the procedures generally used within the TCF. Thus for technical disputes, an independent expert will be procured to resolve the issue. For complex disputes, mediation or arbitration is provided.

Disputes specifically over a decision of the Number Administrator (e.g. to make or not make a particular allocation) will be resolved by the TCF Chair and TCF CEO.

5.9 **Enforcement**

In considering enforcement, the working party has been concerned to balance the need for the regime to have “teeth” and to ensure that any enforcement action will not directly affect end-users. The latter concern rules out summary withdrawal of numbers and corresponding action in the networks of interconnected parties.

The enforcement regime therefore revolves around:

- a tight link between allocation and ongoing membership;
- membership requiring assent to the Code, which is then enforceable in the High Court, and ensuring that members remain within the jurisdiction of the New Zealand justice system;
- not allowing any change of state towards activation of numbers when parties are in breach (e.g. new allocations cannot be made to parties in breach; parties in breach cannot move Reserved blocks to Assigned status);
- financial penalties (the details of which are still under consideration by the working party).

5.10 **Principles**

The present Deed contains Principles against which decisions are evaluated. These Principles are carried over into the Code, with minor amendments for clarification (with no change in intent). However, in the course of its deliberations, the working party has come to the view that the Principles require substantive amendment in two respects.

Numbering Principle 4 is to be amended as follows:

All end user numbers must be capable of being ported. The administration of numbering must be conducted in a manner that does not hinder the portability of end user numbers between service providers.

The rationale for this change is:

- It is not the purpose of the Rules to create portability obligations on parties where there are otherwise none.
- Number administration - e.g. changes to the numbering plan - should not get in the way of portability. The working party considered positive language like “facilitates”, but reached the view that this risks creating too great an obligation on the numbering regime, suggesting that the NMG should create porting obligations where there are otherwise none.
- The Code elsewhere includes explicit links between the allocation of numbers and the portability obligations that arise under the Commission’s Decision 554.
- Given that there are various kinds of “portability” (e.g. geographic portability, enabling local numbers to be ported from one location to another), the type that is envisaged should be specified - hence “between service providers”.

Numbering Principle 6 is also to be amended:

~~Number allocation does not affect number confer ownership or other intellectual property rights, and number ownership or other intellectual property rights will not prevent or limit the operation of the Number Management Arrangements.~~

The Commission expressed concern about this principle in its December *Study* (see reference to this in Telecom’s paper on Number Ownership reproduced as Appendix A). Given that the likely genesis for this Principle being part of the Deed in the first place was Telecom’s historical claim, the withdrawal of this claim clears the way for the Principle to be amended in the fashion proposed.

6 Conclusion

The joint TCF/NAD Working Party has put a great deal of effort into developing a proposed regime which we believe will address the perceived deficiencies raised by the Commission and at times by NAD parties. It is the view of the working party that the resulting proposal is workable, properly respects the public nature of the numbering resource, reduces the overall burden of cost and time on the industry, and does not disadvantage any party.

The working party commends the proposal to interested parties, and welcomes your submissions. The closing date for submissions is 5 February 2010.

Appendix A

TCF NAD Numbering Working Party

Numbering Ownership

Paper by Telecom
20 July 2009

As noted in the Commerce Commission's *Study on Numbering Management in New Zealand*, Telecom has claimed to own the numbers and/or the national numbering plan, "by virtue of it being part of the assets sold by the Government in 1987". Concerns over this claim led in due course to the formation of the NAD.

The NAD records, as one of its fundamental principles, that "Number allocation does not affect number ownership or other intellectual property rights and number ownership or other intellectual property rights will not prevent or limit the operation of this Deed".

Telecom has never resiled from its claim to own the numbers.

In its *Study*, the Commission identified as a key element for efficient number management that numbering should be recognised as a critical resource which influences the way numbering frameworks are developed. The Commission then went on to make the following comments:

"This fundamental principle is not recognised in the NAD. According to Numbering Principle 6 of the NAD, "number allocation does not affect ownership or other intellectual property rights...".

"The question of ownership remains an outstanding matter to be resolved and the Commission's view is that, if this matter is addressed, it will improve the regime by avoiding potential ambiguities that may arise from the Numbering Principle 6 statement."

In recent meetings of the Working Party, it has become apparent that a number of issues which need to be discussed - such as the development of appropriate processes for withdrawing unused number blocks - are hampered by this historical claim on Telecom's part.

In order to facilitate the development of an appropriate forward-looking regime, Telecom gives notice of its willingness to withdraw its claim to ownership of the numbers/numbering plan, and its intention to record this withdrawal in the [establishment documentation] for the new regime.

Telecom, in common with other parties, will be concerned to ensure that in the design of a new regime and transition towards it proper regard is given to its existing allocations, both those made under the NAD and those which pre-dated and were preserved by the NAD. However, Telecom's withdrawal of its claim enables a discussion on these matters to occur on an equal footing, without any particular privilege being claimed for, or perceived in relation to, Telecom.

Appendix B

TCF NAD Numbering Working Party

TelstraClear's proposal to relinquish un-used non-geographic number range

Email by TelstraClear
7 August 2009

Further to the email sent to the TCF NAD Working Party on 20 July 2009, TelstraClear propose to the NAD to relinquish the un-used non-geographic number range it is currently allocated.

TelstraClear notes that a concern in respect of non-geographic numbers is a perceived shortage of available ranges for new entrants. Under current NAD allocations, TelstraClear holds the non-geographic number ranges of 023 and 029. These allocations are the result of the merger between TelstraSaturn and Clear in 2001.

In a June 2008 letter to the NAD Management Committee TelstraClear signalled in principle a proposal to relinquish one of the non-geographic number ranges it is allocated. Because of recent developments in TelstraClear's Mobile strategy, it was necessary for TelstraClear to review the proposal.

TelstraClear is prepared to relinquish the 023 non-geographic number range on the understanding that the NAD will protect the 023 number range for a new entrant or for an expansion path for an existing provider. We consider that the concerns around non-geographic number scarcity will be removed.

TelstraClear remain committed to the work being undertaken by the TCF NAD Working Party to improve the numbering management regime by establishing a revised numbering governance model and new numbering management rules.

We look forward to discussing TelstraClear's proposal with the NAD in due course.

Appendix C

TCF NAD Numbering Working Party

Numbers - Misuse and Control

Paper by Simon Martin
Hudson Gavin Martin
14 December 2009

We understand that there have been issues with companies having access to NZ numbers and then not complying with requirements that enable those numbers to be used efficiently. The issues that have arisen relate to ensuring proper use by entities that are not parties to the deed and enforcing the duties assumed by parties as part of having numbers allocated to them.

Access to Numbers

We suggest that to have access to numbers the party must be a New Zealand Operated Company:

“New Zealand Operated Company” means:

- i. a body corporate incorporated in New Zealand under the Companies Act 1993; or*
- ii. an overseas incorporated company registered in New Zealand;*

which has its principal place of business in New Zealand, its centre of management in New Zealand and the majority of its directors in their capacity as directors exercising control of the company in New Zealand.”

If a party meets this criteria they would also need to sign up to the rules for Numbering - these being a combination of the NAD and the NAR. (Query whether a further requirement will be that they are also a member of the TCF).

If a party has access to numbers they will also ensure that they do not make those numbers available in such a manner that someone can circumvent the eligibility requirements.

Therefore any party that receives numbers will agree as part of receiving those numbers :

No Party who has numbers allocated to it will sell or otherwise transfer the effective control of those numbers to any person who is not a New Zealand Operated Company or who they have cause to believe will not comply with the Numbering Rules. Should a Party become aware that a person that they have sold or transferred

effective control of numbers to (“Number User”) ceases to be a New Zealand Operated Company or fails to comply with the Numbering Rules then the Party will [take back]those numbers from the Number User. Any act or omission of a Number User will be treated as an act or omission of the Party that has sold or transferred control of numbers to them.

Use of Numbers

In addition to the Principals that exist in the NAD a new Principle could be added:

“A Party will ensure that any number allocated to it is not used in a manner that represents to other Parties that a call originating outside New Zealand or terminating outside New Zealand has originated or terminated within New Zealand.”

Enforcement

To aid with enforcement the following rights will need to be committed to by any Party that received numbers.

*Should the Number Administrator have any cause to believe that a Party who has numbers allocated to it ceases to be a New Zealand Operated Company or is not complying with the Numbering Rules it will notify that Party of this (“**Default Notice**”) and the basis for that belief. If the Party the subject of the Default Notice (“**Defaulting Party**”) does not agree with the Default Notice it will within 10 business days of receiving the Default Notice notify the Number Administrator of this (“**Dispute Notice**”) and the matter will be resolved in accordance with the Dispute Resolution Process.*

Where a Default Notice is issued and the Defaulting Party does not give a Dispute Notice or it is determined through the Dispute Process that the Defaulting Party is no longer a New Zealand Operated Company or is not complying with the Numbering Rules then the Defaulting Party will within [45] working days after the later of Default Notice or the determination of the Dispute relating to the Default Notice return the numbers allocated to it to the control of the Number Administrator and relinquish any and all rights to those numbers.”

If a Defaulting Party does not return the numbers allocated to it when obligated to do so by these Numbering Rules then that Party acknowledges the absolute right of the Number Administrator to take such steps to regain control of the numbers allocated to that Party or the person at the time holding or controlling such numbers such steps including High Court proceedings seeking the appropriate orders or injunctive relief to regain control of such numbers and the Party agrees they will not take any steps to defend such proceedings.
