

## **Submission on the Telecommunication Carriers' Forum draft amended Code for the Transfer of Telecommunications Services ("The Customer Transfer Code")**

**14 September 2009**

InternetNZ (Internet New Zealand Inc.) has an interest in ensuring ease of access to broadband services and encourages the ongoing development of the Code in making life easier for consumers and industry participants and contributing to a competitive market for Internet services.

Our subsidiary, Domain Name Commission Ltd, also has experience in dispute resolution and transfer policy, so we have also drawn on that experience in formulating this submission.

### **Answers to Key Questions:**

*Question 1: Should ANP-ANP transfers be included in scope of the Code?*

InternetNZ appreciates that the Customer Transfer Code is primarily targeted at regulated services but supports inclusion of ANP-ANP transfers in the scope.

From the customer point of view they are simply "transferring" their services and do not necessarily know what is happening at deeper layers in the network. To treat such transfers as disconnection/connection is technically accurate in a narrow sense but invites consumer confusion and frustration.

Another form of transfer also comes to mind. When a customer shifts house it can be an opportune time to change providers, particularly where features differ because different networks are available at the new address. Therefore, the location being transferred to should not have to remain the same as the location transferred from.

As the telecommunications industry develops it will also be worth keeping an eye on what else a "transfer" becomes from the end-user point of view, particularly in respect to PSTN to VoIP services and between fixed and mobile networks. As the working party is made up of industry participants, some work with focus groups of consumers may be beneficial in future revisions.

Thinking further about the structure of the process, the inclusion of concepts such as "virtual provider" add to complexity and in future we may see the addition of dark fibre providers. The "downstream ISP" concept utilised in the TCF Copyright Working Party Code might be able to be reworked as an "upstream ISP followed by downstream ISP" approach to transfer resolution. We recognise that the current approach may be too far down the track to consider such change in approach in this iteration.

*Question 2: Is the dispute resolution framework appropriate?*

Regarding Section O. DISPUTE RESOLUTION. As a general comment, the text is complex and can be difficult to comprehend, suffering from a mixing of process, information and definition.

For example, the section could begin with any definitions relevant to this section, followed by a clear outline of process of negotiation, mediation and determination, and then followed with explanatory or legal notes.

In another example, it is possible that section 75. Arbitration of Complex Disputes, could be

simplified. If, as in 75.2, the arbitrator is required to be experienced and an expert then they will likely already be known to the TCF. A list of arbitrators could be maintained and agreements put in place setting the standards further outlined in Section 75. This may also allow for more flexibility around issues such as location, by leaving them for the trusted arbitrator to determine.

By contrast to Section O, the Section P. CUSTOMER COMPLAINTS is underdone. This may be due to greater focus having been on industry-industry issues rather than industry-consumer.

At the least, the section should link by hyperlink to the Customer Complaints Code, advise which customers would fall under its scope, or where to find that information, and suggest in more detail the process for when customers do not fall under the Customer Complaints Code. For example reference could be made to the Disputes Tribunal, the Commerce Commission, Ministry of Consumer Affairs and to consumer advocacy groups.

*Question 3: Should the Code mandate that supply chain information MUST be on a simple customer's bills, or is a choice between on-bill information or web-portal acceptable?*

*Question 4: Are the restrictions on LSP contact necessary and appropriate?*

We address these two questions together.

It may be considered anti-competitive to overly restrict contact with a customer by a Losing Service Provider (LSP) given that the opportunity to win-back a customer is therefore being compromised.

There is no need to require transfer information on a bill or web portal. Before transferring a customer, the coded transfer service information can be requested by the customer from the Losing Service Provider if they do not already have it, and the LSP should be under an obligation to provide that in a timely fashion.

This provides the LSP an opportunity to pitch a win-back if they so desire and mitigates against the accusation that the regime is anti-competitive. If a win-back is successful then "the market has spoken" and because no transfer process been initiated the problems of semi-completed transfers are avoided.

Once the transfer service information has been provided to the Gaining Service Provider (GSP) (and they have sent a notification to the LSP) then restrictions on LSP to end-user communication must come into play to prevent win-back tactics that would disrupt a transfer process and cause frustration all around. At this point any opportunity to win-back has passed and full contact should only be allowed to resume once a transfer is completed.

Restrictions are best addressed in the Code by precisely defining in the positive what contact is allowed rather than using ambiguous descriptions such as "marketing" to attempt to exclude particular contact types in the negative.

InternetNZ points to how a similar approach is applied in the transfer of domain names in New Zealand through our subsidiary, DNCL: [http://www.dnc.org.nz/content/transfer\\_registrar.pdf](http://www.dnc.org.nz/content/transfer_registrar.pdf)

*Question 5: What timeframe should be allowed for implementation, and what interim steps are possible?*

InternetNZ would like to see the 9 months implementation plan adhered to. This is an issue of prioritisation. An improved pro-competitive framework for the industry, and one that includes ANP-ANP transfers, could be expected to have ancillary benefits with respect to other industry

processes. A longer timetable would bring the process quite close to the beginnings of the next scheduled review.

*Question 6: Should the form and format of notifications be standardized – and if so, how?*

With increasing use of automated and online processes it makes sense to standardize the data format of notifications to simplify system design.

ENDS