



## **Telecommunications (National Roaming) Order 2008**

Rt Hon Dame Sian Elias, Administrator of the Government

### **Order in Council**

At Wellington this 11th day of August 2008

Present:

Her Excellency the Administrator of the Government in Council

Pursuant to section 66 of the Telecommunications Act 2001, Her Excellency the Administrator of the Government, acting on the advice and with the consent of the Executive Council and on the recommendation of the Minister for Communications and Information Technology made in accordance with section 19 of that Act and after accepting (in accordance with section 68 of that Act) the Commerce Commission's recommendation made in accordance with sections 19 and 68 of that Act, makes the following order.

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**Schedule** 2  
**Substituted item relating to national roaming**

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**Order**

- 1 Title**  
This order is the Telecommunications (National Roaming) Order 2008.
  - 2 Commencement**  
This order comes into force on the 28th day after the date of its notification in the *Gazette*.
  - 3 Part 3 of Schedule 1 of Telecommunications Act 2001 amended**  
Part 3 of Schedule 1 of the Telecommunications Act 2001 is amended by omitting the item relating to **national roaming** and substituting the item set out in the Schedule of this order.
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**Schedule** cl 3  
**Substituted item relating to national roaming**

**National roaming**

*Description of service:* A service (and its associated functions) that enables transmission of cellular mobile traffic by means of the access provider's cellular mobile telephone network between (but not including) the cellular mobile device of the access seeker's end-user and the access seeker's handover point (or equivalent facility) and that enables an end-user who subscribes to an access seeker's cellular mobile service to use services (except value-added services) within the area where the access provider has

a cellular mobile telephone network, but which is outside the coverage area of the access seeker's cellular mobile telephone network

*Conditions:*

All of the following:

- (a) the access seeker must have rolled out a cellular mobile telephone network that—
  - (i) comprises at least 100 cell-sites (each of which provides wide area coverage and delivers cellular mobile services to both outdoor and indoor areas and where service in areas of coverage of that cellsite will be lost if the cellsite is switched off); or
  - (ii) covers at least 10% of the New Zealand population:
- (b) the cellular mobile telephone networks of the access seeker and the access provider must be technically compatible and be able to interconnect with each other:
- (c) the Commission must have approved a plan for the access seeker. That plan must include—
  - (i) the establishment of roll-out milestones to be met by the access seeker to continue to access the national roaming service; and
  - (ii) provision for roll-out of a cellular mobile telephone network that provides cellular mobile services to at least 65% of the New Zealand population:

- (d) the Commission must be satisfied that the access seeker has the capability to comply with the agreed network roll-out plan:
- (e) the services (other than value-added services) for which transmission is sought must each be offered by the access provider to its end-users and be generally available to the access seeker's end-users from the access seeker's own cellular mobile telephone network (that is, the effect of roaming must be to increase the coverage area for the access seeker's end-users)

*Access provider:*

A cellular mobile telephone network operator who operates a cellular mobile telephone network

*Access seeker:*

A cellular mobile telephone network operator (except Telecom or Vodafone New Zealand Limited or their successors or subsidiaries) that holds sufficient radio spectrum rights to enable that operator to roll out a cellular mobile telephone network that provides cellular mobile services to at least 65% of the New Zealand population

*Access principles:*

The standard access principles set out in clause 5

*Limits on access principles:*

The limits set out in clause 6 and additional limits, which must be set by taking the following matters into account:

- (a) whether the access provider has, for each relevant cellsite within an area, sufficient available capacity to provide the service, taking into account its reasonable anticipated requirements for capacity at that cellsite:
- (b) all legal requirements and all existing contractual obligations that the access provider has with third parties:
- (c) the requirement on the access provider to provide the service to the access seeker will cease on the earlier of—
  - (i) any failure by the access seeker to comply with the agreed network roll-out plan, as determined by the Commission; or
  - (ii) any other events specified by the Commission in its determination

*Additional matters that must be considered regarding application of section 18:*

The Commission must establish roll-out milestones and roll-out thresholds that ensure that the access seeker has strong incentives to roll out its cellular mobile telephone network in an efficient and timely manner

Rebecca Kitteridge,  
Clerk of the Executive Council.

## Explanatory note

*This note is not part of the order, but is intended to indicate its general effect.*

This order, which comes into force on the 28th day after its notification in the *Gazette*, gives effect to recommendations made by the Commerce Commission to amend the terms of the national roaming service as set out in Part 3 of Schedule 1 of the Telecommunications Act 2001.

This amendment is made following the acceptance by the Minister for Communications and Information Technology of the Commerce Commission's recommendations set out in *Telecommunications Act 2001: Schedule 3 Investigation into Amending the Roaming Service* (final report, 10 March 2008).

The amendments will do the following:

- remove the restriction to “second generation cellular mobile services” and the exclusion “(which must not be a third generation cellular mobile telephone network)”, with the effect of making the service technology neutral provided that both the access seeker and the access provider have deployed networks that are technically compatible and are able to interconnect with each other:
- clarify that the roaming service enables transmission of cellular mobile traffic by means of the access provider's cellular mobile telephone network between (but not including) the cellular mobile device of the access seeker's end-user and the access seeker's handover point (or equivalent facility):
- remove conditions (a) and (b), which prevent an access seeker from applying for a determination if there is an agreement in place or there is a pending or existing determination on another service provider's network, to ensure consistency with the changes made by the Telecommunications Amendment Act (No 2) 2006:
- change the initial coverage area requirement to comprise either at least 100 cellsites or coverage of at least 10% of the population:
- remove the ability of an access seeker to apply for a determination before achieving the roll-out threshold:

- reduce the roll-out requirement from national coverage to 65% of the New Zealand population:
- introduce a new condition requiring that the services (other than value-added services) for which transmission is sought are available to the end-users of both the access provider and the access seeker, to ensure that the access seeker will face appropriate incentives to build out its own network:
- introduce a new condition requiring that the cellular mobile telephone networks of the access seeker and the access provider are technically compatible and able to interconnect with each other, to give certainty about network compatibility:
- reduce the spectrum requirement from national coverage to a network that covers 65% of the population.

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Issued under the authority of the Acts and Regulations Publication Act 1989.

Date of notification in *Gazette*: 14 August 2008.

This order is administered by the Ministry of Economic Development.

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