

# **Determination for the designated multinetwork services of ‘local telephone number portability service’ and ‘cellular telephone number portability service’**

## **Decisions and reasons paper**

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**Date:** 2 December 2021



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## Associated documents

Publication date	Reference	Title
2 December 2021	ISSN <b>1178-2560</b>	Attachment B: Terms of Local and Mobile Number Portability in New Zealand
2 December 2021		Attachment C: Network Terms for Local and Mobile Number Portability in New Zealand
2 December 2021		Determination for the designated multinet network services of 'local telephone number portability service' and 'cellular telephone number portability service'

## List of terms and abbreviations

Term	Definition
<b>2FA</b>	means Two-Factor Authentication.
<b>Access Provider</b>	means every person who operates- (a) a PSTN to which numbers have been allocated; and (b) a telephone service that relates to the LMNP Services.
<b>Access Seeker</b>	means any person who- (a) operates a PSTN to which numbers have been allocated; and (b) operates a telephone service that relates to the LMNP Services; and (c) seeks access to the LMNP Services.
<b>Act</b>	means the Telecommunications Act 2001.
<b>Commission</b>	means the Commerce Commission.
<b>[2016] NZCC 32</b>	means the Final Determination for Local and Cellular Number Portability Services, 19 December 2016.
<b>Decision 554</b>	means the Final Determination for Local and Cellular Number Portability Services, 31 August 2005.
<b>Decision 705</b>	means the Final Determination for Local and Cellular Number Portability Services, 15 December 2010.
<b>Enforcement Agency</b>	means the agency responsible for enforcement action [2021] NZCC 27.
<b>IPMS</b>	means Industry Portability Management System, which is the software, hardware and other shared facilities used to provide the LMNP Services.
<b>LMNP Services</b>	means the designated multinetwork services of 'local telephone number portability' and/or 'cellular telephone number portability' services that are listed under subpart 2 of Part 2 of Schedule 1 of the Act.
<b>LMNP Terms</b>	means the terms that outline the process that enables end-users to port their numbers and sets out the rights and obligations of parties to the terms set out in Attachment B of [2021] NZCC 27.

Term	Definition
<b>Network Terms</b>	means the terms that set out what is required of parties to the terms in the development of their own network solutions and that specify the optional and mandatory requirements necessary between networks to enable LMNP Services in Attachment C of [2021] NZCC 27.
<b>PSTN</b>	has the definition as set out in section 5 of the Act.
<b>TCF</b>	means the New Zealand Telecommunications Forum Inc.

## Executive summary

1. This decision and reasons paper sets out our decision to issue a new Determination for the local telephone number portability and cellular telephone number portability services (together the **LMNP Services**), which are the two designated multinet network services listed in Schedule 1 of the Act.
2. The LMNP Services allow end-users to keep their local and mobile phone numbers when they switch service providers.
3. The current Determination in respect of the LMNP Services, [2016] NZCC 32, will expire on 19 December 2021.
4. We consider that the continued regulation of the LMNP Services through a Determination is likely to best give effect to the promotion “of competition in telecommunications markets for the long-term benefit of end-users of telecommunications services within New Zealand”, consistent with section 18 of the Telecommunications Act 2001. Regulation of the LMNP Services promotes competition by enabling end-users to take their phone number with them when they switch service providers, which removes a barrier to competition.
5. We have decided to make a new Determination that will, in effect, continue the regulation of the LMNP Services for five years beginning on 20 December 2021 which is the day after the expiry of [2016] NZCC 32.
6. In our investigation, we found that overall the current regulatory framework for processes supporting the LMNP Services is working well and is achieving its intended objectives. Accordingly, we consider that this new Determination should be largely based on [2016] NZCC 32.
7. However, we have decided to include a Fraud and Security protection section in the General Business Rules section of the LMNP Terms and amend the Bilateral and other Agreements section to help facilitate the prevention of fraud in number porting.
8. Based on the feedback we received in submissions, we have also made a change to the Privacy and Use of Information section in the General Business Rules section of the LMNP Terms. This change will enable parties to use the information gained in the Porting Process to help fulfil their requirements under the Fraud and Security protection section of the LMNP Terms.
9. We consider that the current formula for allocating the costs of delivering the LMNP Services is working and does not need to be revised. As such we have retained the cost allocation approach and formulas from [2016] NZCC 32.<sup>1</sup>

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<sup>1</sup> The cost allocation formulas are set out in Attachment A of the Determination.

10. The Commission's costs relating to the Determination are to be shared between the parties to the Determination based on market share, using the industry common system costs as set out in Attachment A of the Determination.<sup>2</sup>
11. We have not retained the exemptions to [2016] NZCC 32 previously provided to Spark New Zealand Limited (Spark) for Post Dialling Delay and In Ported Services and Features, as these exemptions expired on 31 December 2020 and Spark have informed us that these exemptions are no longer required.
12. We thank parties for their involvement throughout this process.

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<sup>2</sup> The parties to the determination can be found at <https://www.tcf.org.nz/industry/numbering/number-portability/participants/>.

## Introduction

### Purpose of the reasons paper

13. The purpose of this paper is to set our decisions and reasons on the Determination for the local telephone number portability service and the cellular telephone number portability service.
14. The services allow end-users to keep their local and mobile phone numbers when they switch service providers.

### Structure of the reasons paper

15. This reasons paper has the following sections:
  - 15.1 Background for the Determination explains the context for the Determination, and its history;
  - 15.2 The process for issuing the Determination, which sets out the process we must follow, and the steps we have taken to this point;
  - 15.3 The decision-making framework, which sets out our approach for deciding whether to continue regulation and whether any changes to the regulation should be made;
  - 15.4 Sections that set out our decisions to retain regulation with minimal changes and includes our decisions and reasons for:
    - 15.4.1 fraud prevention and mitigation – TCF proposal for changes from [2016] NZCC 32;
    - 15.4.2 exemptions;
    - 15.4.3 functions and standards;
    - 15.4.4 the cost allocation formula; and
    - 15.4.5 how the Commission's costs for issuing the Determination are recovered.

## Process to date

16. Below we briefly summarise the process we have followed to date:
- 16.1 On 23 July 2021 we notified in writing all persons expected to be parties to the Determination and requested each to comment on the Commission's initiation of the process for a Determination.<sup>3</sup>
  - 16.2 Submissions closed on the Notification to initiate a process on 04 August 2021. We received two submissions, with both supporting the initiation of the process for issuing a Determination.<sup>4</sup>
  - 16.3 On 13 August 2021 we notified parties to the Determination that we had decided to investigate issuing an LMNP Services Determination. Public Notification of this decision was given in the Gazette on 13 August 2021.
  - 16.4 We published the draft Determination, the draft reasons paper, the draft LMNP Terms, and the draft Network Terms on 06 October 2021.
  - 16.5 We requested submissions on these drafts by 27 October 2021, and then provided the opportunity to give cross-submissions by 05 November 2021. We received two submissions and no cross-submissions.<sup>5</sup>

## Background to number portability

17. Subpart 2 of Schedule 1 of the Act contains two designated multinetwork services:
- 17.1 local telephone number portability service (Local Number Portability or LNP); and
  - 17.2 cellular telephone number portability service (Mobile Number Portability or MNP) (together, the **LMNP Services**).
18. The services allow end-users to keep their local and mobile phone numbers when they switch service providers.
19. We issued the first LMNP Services Determination, Decision 554, in 2005 and the services were made available to end-users from 2007 after the necessary processes were established.<sup>6</sup>

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<sup>3</sup> This notification can be found at <https://comcom.govt.nz/regulated-industries/telecommunications/projects/number-portability-determination-2021-review-?target=documents&root=260245>

<sup>4</sup> Submissions can be found at <https://comcom.govt.nz/regulated-industries/telecommunications/projects/number-portability-determination-2021-review-?target=documents&root=260246>.

<sup>5</sup> Submissions can be found at <https://comcom.govt.nz/regulated-industries/telecommunications/projects/number-portability-determination-2021-review-?target=documents&root=262632>

<sup>6</sup> Commerce Commission, Decision 554, 31 August 2005.

20. We issued a second Determination, Decision 705, on 15 December 2010.<sup>7</sup> That Determination expired on 19 December 2016.
21. We issued a third Determination, [2016] NZCC 32, on 20 December 2016. This is the current Determination and will expire on 19 December 2021.<sup>8</sup> [2016] NZCC 32 consists of the following key parts:
  - 21.1 the Determination for the designated multinet network services of 'local telephone number portability service' and 'cellular telephone number portability service';
  - 21.2 LMNP Terms; and
  - 21.3 Network Terms.
22. These parts together contain the matters that are required to be included in a designated multinet network service Determination, as set out in section 40 of the Act.

## **Process to make the Determination**

### **Initiating the process for issuing a Determination**

23. Section 31AA of the Act allows us to initiate the process to issue a Determination for a designated multinet network service. Subpart 3 of Part 2 of the Act specifies the process that we must follow.
24. We may only decide to initiate the process for issuing a Determination if we are satisfied that there are reasonable grounds for doing so.<sup>9</sup>
25. We considered that there were reasonable grounds for initiating the process to issue a further Determination for the LMNP Services. Those grounds were:
  - 25.1 [2016] NZCC 32 has effectively enabled end-users to switch service providers, with the costs being absorbed by the service provider that gains the customer, thereby promoting competition for the long-term benefit of end-users. This removes a barrier for end-users who wish to switch service providers and enjoy the benefits of competition. This also removes a barrier to entry for firms wishing to enter the market or expand their service offering. These benefits are consistent with the section 18 purpose of the Act of promoting competition for the long-term benefit of end-users.
  - 25.2 Issuing a new Determination before [2016] NZCC 32 expires on 19 December 2021 will ensure continuity of the benefits of number portability and remove

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<sup>7</sup> Commerce Commission, Decision 705, 15 December 2016.

<sup>8</sup> Section 62 provides that a determination expires on the earlier of either the expiry date in the determination or the date on which the service to which the determination applies is omitted from Schedule 1.

<sup>9</sup> Section 31AA(2).

uncertainty and the risk of opportunistic behaviour during an unregulated period.<sup>10</sup>

- 25.3 Without a Determination there may be incentives for incumbent service providers to either not provide the service or to charge Access Seekers prices significantly above cost and hence create barriers to entry and competition.
26. We therefore initiated the process for Determination under section 31AA on 23 July 2021. As required by section 34(c) of the Act we notified in writing all persons expected to be parties to the Determination and requested each to comment on the Commission's initiation of the process for a Determination.<sup>11</sup>
27. We then provided eight working days to give submissions. We received two submissions on the Notification to initiate a process. These were from New Zealand Telecommunications Forum Inc. (TCF) and Spark. Both submissions indicated support for initiating the process for issuing a Determination.<sup>12</sup>
28. Following this, we decided to investigate issuing an LMNP Services Determination.<sup>13</sup> The parties to the Determination were notified of this decision and public notice was given in the Gazette on 13 August 2021.

#### **Steps taken as part of our investigation**

29. Following our decision to investigate, we undertook a range of activities in order to assess whether we should continue regulation of the LMNP Services, and if so, whether and what changes we should make to [2016] NZCC 32, consistent with our decision-making framework set out below. The activities we undertook were:
- 29.1 Reviewing [2016] NZCC 32 and assessing whether it continues to best meet the section 18 purpose.
- 29.2 Seeking feedback from the industry and reviewing its proposed changes to the terms of [2016] NZCC 32.
- 29.3 Seeking feedback from the Enforcement Agency that is responsible for enforcing the service performance requirements of [2016] NZCC 32.

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<sup>10</sup> Section 62 provides that a determination expires on the earlier of either the expiry date in the determination or the date on which the service to which the determination applies is omitted from Schedule 1.

<sup>11</sup> Blue Reach Services Limited, Compass Communications Limited, Devoli Limited (formerly Vibe Communications Limited), Hitech Solutions Limited, Link Telecom (NZ) Ltd, NOW New Zealand Limited, Solarix Networks Limited, Spark (including Skinny Mobile), Symbio Wholesale NZ Limited, Telnet Telecommunication Ltd, 2degrees New Zealand, Vocus New Zealand Ltd (including 2Talk, CallPlus, Orcon and M2), Vodafone New Zealand Ltd, Voxbone SA, Voyager Internet Limited.

<sup>12</sup> Submissions can be made via our [Number portability determination 2021 review webpage](#).

<sup>13</sup> As required by section 35 of the Act.

- 29.4 Reviewing consumer feedback on the LMNP Services based on complaints made to the Commission and to the Telecommunications Dispute Resolution Scheme.
- 29.5 Reviewing the consumer feedback on number portability that we received as part of the Commission's engagement on improving Retail Service Quality.
- 30. Section 36 of the Act requires us to make reasonable efforts to undertake a number of tasks, including preparing the draft Determination, not later than 60 working days after we gave written notice under section 35(b) of the Act.
- 31. The draft Determination was published on 06 October 2021.

### **Submissions**

- 32. In the draft Determination we invited submissions, which closed on 27 October 2021. We then invited cross-submissions, which closed on 5 November 2021. This fulfilled our requirements under section 36(1)(d)(i) of the Act.
- 33. We received two submissions in total. These were from the TCF and an anonymous submitter. Both submissions indicated support for continued regulation of the LMNP Services. We did not receive any cross-submissions.

### **Finalising the Determination**

- 34. Section 39 requires the Commission to, as soon as practicable after the closing date for submissions, prepare a Determination. Section 39 also requires us to give a copy of the Determination to all the parties to the Determination and give public notice of the Determination.
- 35. Section 40 sets out the matters that must be included in the final Determination.
- 36. Section 40(1) states that the Determination must include:
  - 36.1 The functions that must be performed by a system for delivering the service and the standard to which those functions must be performed;
  - 36.2 The formula for how the cost of delivering the service must be apportioned between the parties to the determination and every person who becomes an access provider after the determination is made;
  - 36.3 The requirement that all the determination provide the service by means of a system that is consistent with the functions and the standards set out in the determination;
  - 36.4 The requirement that any party to the determination make payments to an access provider of amounts calculated in accordance with the formula set out in the determination;
  - 36.5 The reasons for the determination;

- 36.6 The terms and conditions (if any) on which the determination is made;
  - 36.7 The actions (if any) that a party to the determination must do or refrain from doing; and
  - 36.8 The expiry date of the determination.
37. Section 55 requires the Commission's costs of the Determination to be met by the parties to the Determination in the proportions directed by the Commission in writing. We have set out the proportions in which we propose the costs of the Determination must be met at paragraphs 91- 92 below.

### **Decision-making framework**

38. This section sets out our approach to deciding:
- 38.1 Whether to continue regulation of the LMNP Services by issuing a new Determination; and
  - 38.2 If we decide to continue regulation of the LMNP Services, whether we should make changes to [2016] NZCC 32 and what those changes should be.

### **Should we continue regulation of the LMNP Services?**

39. Section 18 sets out the purpose of Part 2 and Schedules 1-3 of the Act, which is "to promote competition in telecommunications markets for the long-term benefit of end-users of telecommunications services within New Zealand." Section 18 provides as follows:
- (1) The purpose of this Part and Schedules 1 to 3 is to promote competition in telecommunications markets for the long-term benefit of end-users of telecommunications services within New Zealand by regulating, and providing for the regulation of, the supply of certain telecommunications services between service providers.
  - (2) In determining whether or not, or the extent to which, any act or omission will result, or will be likely to result, in competition in telecommunications markets for the long-term benefit of end-users of telecommunications services within New Zealand, the efficiencies that will result, or will be likely to result, from that act or omission must be considered.
  - (3) Except as otherwise expressly provided, nothing in this Act limits the application of this section.
  - (4) Subsection (3) is for the avoidance of doubt.
40. Section 19 of the Act requires us to consider the purpose set out in section 18 and to make the Determination that the Commission considers best gives, or is likely to best give, effect to the purpose set out in section 18.
41. Accordingly, when deciding whether or not to continue regulation of the LMNP Services through a Determination, we must be satisfied that continuing regulation is likely to best give effect to the promotion of "competition in telecommunications

markets for the long-term benefit of end-users of telecommunications services within New Zealand.”

**Should we make changes from [2016] NZCC 32?**

42. If we decide to continue regulation of LMNP by issuing a new Determination, we must then decide whether or not we should make changes to the current Determination, [2016] NZCC 32, and what form those changes might take.
43. We propose to make minor changes to address aspects raised with [2016] NZCC 32 that we identified in our investigation. The steps we took as part of our investigation are set out at paragraph 29 above.
44. When considering any changes from [2016] NZCC 32, we consider that any changes should:
  - 44.1 be likely to best give effect to the promotion of “competition in telecommunications markets for the long-term benefit of end-users of telecommunications services within New Zealand”, consistent with section 18;
  - 44.2 ensure industry and end-users continue to receive the benefits of number portability; and
  - 44.3 minimise unnecessary disruption and cost to the industry.

## Decision to maintain regulation with limited changes

45. We have considered whether or not we should make a new Determination that would in effect continue regulation of the LMNP Services. We have concluded that we should continue to regulate the LMNP Services because doing so would best give effect to section 18 of the Act.
46. We consider that the continued regulation of the LMNP Services is likely to best give effect to the promotion of competition as set out in section 18. As noted above, we consider that the LMNP Services promote competition by enabling end-users to switch service providers, with the costs being absorbed by the service provider that gains the customer, thereby promoting competition for the long-term benefit of end-users. Regulating the LMNP Services removes one of the most significant potential barriers for end-users who wish to switch service providers and enjoy the benefits of competition. It also removes a potential barrier to entry for firms wishing to enter the market or expand their service offering. By continuing regulation, we will ensure that end-users continue to receive the benefits of the LMNP Services.

## Stakeholder views on continued regulation of LMNP Services

47. Our decision to continue regulation of the LMNP Services is consistent with the views expressed by stakeholders through the comments received on our initiation of the process for a Determination under section 34(c), through our engagement with stakeholders as part of our investigation, and through the submissions we received on the draft Determination.
48. We found that number portability is seen by stakeholders as beneficial to consumers, is seen as having effective systems, and gives rise to a low level of consumer complaints. We also found that overall, the current regulation is seen as being effective at removing a barrier to customer switching and promoting competition.
49. The TCF, on behalf of its members, supported our rationale for there being reasonable grounds to investigate and noted the benefits of ensuring ongoing provision of the LMNP Services.<sup>14</sup>
50. Spark considered that the Determination has provided an appropriate framework for number portability and has been operating effectively across the industry.<sup>15</sup>
51. Both submissions we received on the draft Determination were supportive of continued regulation of the LMNP Services. An anonymous submitter stated that:

I wish to submit that it is essential for the protection of consumers that the current protocols for Local (landline) and mobile phone number portability be retained for as long as the Commission has a mandate to enforce this.<sup>16</sup>

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<sup>14</sup> New Zealand Telecommunications Forum Inc “Response to Notice to initiate” (4 August 2021) para 2.1.

<sup>15</sup> Spark “Initiating the determination process for designated multinet service determination for number portability” (4 August 2021) para 2.

<sup>16</sup> Anonymous “Local and mobile number portability submission” (27 October 2021) page 1.

## Decisions for the Determination

52. While stakeholders have expressed support for continuing the regulation of the LMNP Services, they have also suggested changes to [2016] NZCC 32. The changes suggested by stakeholders are addressed below.

### Fraud prevention and mitigation – TCF proposal

#### *Background*

53. Number porting fraud is a relatively new development in New Zealand but has already proven to be harmful. It occurs when a fraudster requests that another person's phone number is ported to a sim-card controlled by the fraudster. With control of the victim's phone number, fraudsters may be able to access bank accounts and other important information. This can lead to financial and identity fraud.
54. TCF approached us in 2020 with a proposal to include an amendment to [2016] NZCC 32 that it considered would allow them to act against fraud in number porting. In response to TCF's proposal, we noted that the matter could potentially be addressed as part of the Determination process we are now carrying out or through bilateral agreements between parties.<sup>17</sup> TCF has since been working on mechanisms like the Two-Factor Authentication (2FA) process for mobile porting.
55. After completing our Schedule 3 review of number portability services earlier this year, we encouraged TCF to proactively think about possible changes to the current Determination, noting that it is due to expire on 19 December 2021.

#### *TCF proposal*

56. In response to the Notification to initiate published on 23 July 2021, TCF stated that the Commission should include some commentary in the Determination review regarding fraud mitigation and it would be advantageous for the Determination to include a requirement on parties to participate and comply with any fraud prevention measures that industry agrees on.<sup>18</sup> Spark also mentioned that it would be adopting the 2FA process and requested the process be made mandatory for all providers.<sup>19</sup>
57. We sought clarification from TCF on how and in what form it would like fraud prevention commentary and measures to be included in the new Determination. It replied requesting a Schedule to the LMNP Terms and a new Security & Fraud Operations Manual. The TCF said that the Schedule would "set up the formal

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<sup>17</sup> Letter from the Commission to the TCF regarding LMNP porting process (28 July 2020) which can be found on the [Local and mobile number portability](#) page on our website. We also noted that an amendment to the existing determination ([2016] NZCC 32) could be sought.

<sup>18</sup> New Zealand Telecommunications Forum Inc "Response to Notice to initiate" (4 August 2021) para 3.1, 3.2.

<sup>19</sup> Spark "Initiating the determination process for designated multinet network service determination for number portability" (4 August 2021) paras 11-14.

standing of the Operations Manual and define how the Operations Manual is initially created, and the process for reviews.” The Operations Manual would be drafted by the TCF working party, and the contents signed off by the Board, with a possible role for the Commission in approving the Manual.<sup>20</sup>

*Draft decision*

58. In the decision proposed in the draft Determination, we acknowledged that preventing fraud is an important focus for providers porting numbers and that fraud can have a significant impact on consumers.
59. We noted that fraud can also impact consumers’ confidence in the LMNP Services as a whole, which can negatively affect competition by increasing the barriers to switching, thus making it harder for consumers to take advantage of competition and reducing the incentives for industry to compete for new customers.
60. We considered it important to ensure that steps are taken by industry to limit fraud occurring in future. We also thought it was important that the number porting process is robust to ensure consumers have the confidence to switch providers and industry continue to compete for new customers. Therefore, we considered the prevention of fraud to be an appropriate element for inclusion in the Determination.
61. We proposed to add a Fraud and Security protection section to the LMNP Terms (Attachment B). This was included in the General Business Rules section of the LMNP Terms, at paragraph 20, and was as follows:

*Fraud and Security protection*

20. *In implementing and operating the LMNP Terms, all parties to the LMNP Terms must ensure that they have appropriate policies and processes to mitigate security risks and prevent fraud during Porting, and that such policies and processes are consistent with the Operational and Support Manual for LMNP.*
62. We also included a provision for the industry’s Operations and Support Manual (OSM) to include appropriate fraud prevention and security procedures in paragraph 27 in the LMNP Terms.

27. All Carriers that are bound by the LMNP Terms must comply with the provisions of the Operational and Support Manual for LMNP, dealing with the operational issues not included in the LMNP Terms, which is to be agreed by the Carriers. In addition to the matters set out in paragraph 22 of the Network Terms, the Operational and Support Manual for LMNP must include:

27.1 appropriate fraud prevention and security procedures;

27.2 provided that if the Operational and Support Manual for LMNP contains anything inconsistent with these LMNP Terms or the Network Terms, then, to the extent of the inconsistency, the LMNP Terms or Network Terms, as the case may be, shall prevail.

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<sup>20</sup> Email from TCF to the Economic Regulation Branch (Commerce Commission) (25 August 2021)

63. We considered that this approach would:
- 63.1 provide clear direction to industry to ensure appropriate procedures are in place, and a clear mechanism, via the OSM to agree and implement common practice for number portability;
  - 63.2 provide the ability for the industry to more easily adjust their approach to fraud prevention as fraud practices evolve, without the need to amend the Determination itself; and
  - 63.3 acknowledge the importance of preventing fraud in number porting without requiring parties to comply with any particular process in acting against fraud in number porting.
64. We stated our expectation that the TCF would ensure the OSM is reviewed regularly and updated to keep pace with evolving fraud prevention practices.
65. We also added 'Fraud and Security Protection Requirements' to the Definitions table of the LMNP Terms. This definition directs readers to the Fraud and Security protection section at paragraph 20.
66. The definitions of Service Levels in both the Network Terms and the LMNP Terms were updated to incorporate the new Fraud and Security Protection Requirements. As the Enforcement Agency is responsible for assessing whether parties meet the required Service Levels, we considered that this change would enable the Enforcement Agency to assess compliance with the Fraud and Security Protection Requirements.
67. We did not consider that more substantial changes to the Determination were necessary to address fraud prevention and mitigation at that point in time. Our view was that it would be more efficient to address fraud prevention in the existing Operational and Support Manual, rather than providing for the creation of an additional Security & Fraud Operations Manual, as suggested by the TCF.
68. We then invited views on our proposed approach for the Determination and whether it would enable industry to agree and implement appropriate processes and measures to prevent fraud.

*Final decision*

69. We have decided to retain our draft decision, and also accept an addition suggested by the TCF in its submission on the draft Determination.
70. The TCF provided the only submission on the draft Determination that commented on our suggested approach to fraud prevention and mitigation. Their submission was supportive of the inclusion of the measures outlined in paragraphs 65 and 66 of the

Draft decisions and reasons paper.<sup>21</sup> These paragraphs contained the proposal to add a Fraud and Security protection section at paragraph 20 of the LMNP Terms and the inclusion of a provision for the industry's OSM to include appropriate security procedures at paragraph 27 of the LMNP Terms.

71. However, the TCF also suggested that “[i]n addition to the changes proposed, we ask the undertakings are explicit in allowing information provided in Porting Processes to be used for the purpose of mitigating security risks and preventing fraud.”<sup>22</sup> It stated that providers should be able to contact customers who have experienced multiple failed port attempts and work with that customer to mitigate harm in future.

72. To give effect to this suggestion, the TCF proposed making the following addition to paragraph 17 of the LMNP Terms (shown in bold):

Information provided in Porting Processes can only be used for Porting, the routing of calls or in association with the delivery of telecommunications services, for Customer and network fault management, **for fraud and security protection as set out in paragraph 20**, and complaint handling. Information provided in Porting Process must not be used for any other purposes (including winback and marketing purposes).<sup>23</sup>

73. After reviewing the possible implications of this addition, we have decided to include this change to paragraph 17 of the LMNP Terms.

74. Paragraph 20 of the LMNP Terms requires parties to ensure they have appropriate policies and processes to mitigate security risks and prevent fraud during porting. Central to being able to implement appropriate policies and processes to mitigate security risks and prevent fraud during porting is being able to identify trends in fraudulent activity. Allowing parties to use this information may help mitigate harm to customers who are repeatedly exposed to fraudulent port requests as the party and the customer can work together to find ways to better secure the customer's personal information. This aligns with, and contributes to, the overall purpose of fraud prevention and mitigation measures being included in the Determination.

75. Therefore, we agree that parties should be allowed to use the information provided in Porting Processes for Fraud and Security protection as set out in paragraph 20 of the LMNP Terms. We have updated paragraph 17 of the LMNP Terms to reflect the TCF's suggested change, as outlined in paragraph 70.

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<sup>21</sup> TCF “Number Portability: Submission on the Commerce Commission’s Draft Determination for the designated multi network services of ‘local telephone number portability service’ and ‘cellular telephone number portability service’.” (27 October 2021) para 3.2.

<sup>22</sup> TCF “Number Portability: Submission on the Commerce Commission’s Draft Determination for the designated multi network services of ‘local telephone number portability service’ and ‘cellular telephone number portability service’.” (27 October 2021) para 3.4.

<sup>23</sup> TCF “Number Portability: Submission on the Commerce Commission’s Draft Determination for the designated multi network services of ‘local telephone number portability service’ and ‘cellular telephone number portability service’.” (27 October 2021) para 3.6.

## Exemptions

### *Background*

76. In July 2016 the Commission approved an extension for exemptions from clauses 14.2.1 and 14.2.3 of [2016] NZCC 32's Network Terms for Spark for the period 1 January 2016 to 31 December 2020. These exemptions were for Post Dialling Delay and In Ported Services and Features.<sup>24</sup>

### *Draft decision*

77. In August 2021 Spark informed us that the exemptions for Post Dialling Delay and In Ported Services and Features are no longer required, therefore, we stated we will not be including any exemptions in the new Determination.<sup>25</sup>

### *Final decision*

78. We have decided that no exemptions will be included in the Determination, as proposed in the draft decision. We received nothing in submissions to suggest we should shift from this position.

## Functions and standards

79. We are required under section 40(1)(a) of the Act to include in the Determination a description of the functions that must be performed by a system for delivering the LMNP Services and the standards to which those functions must be performed.
80. In addition, we must include the "terms and conditions on which the Determination is proposed to be made" under section 40(1)(f).
81. Section 40(1)(c) also requires a final Determination to include "the requirement that all the parties to the Determination provide the service by means of a system that is consistent with the functions and the standards set out in the Determination."
82. The LMNP Terms (Attachment B) and Network Terms (Attachment C) attached to the Determination contain the functions for delivering the LMNP Services through the IPMS, and the standard to which those functions must be performed. In our view, the LMNP Terms and Network Terms are consistent with the scope of the LMNP Services set out in Part 2 of Schedule 1 of the Act, with the requirements for a Determination under Part 2 of the Act, and the requirements of the section 18 purpose statement.
83. Accordingly, we have included in the Determination a requirement that all parties provide the LMNP Services by means of a system that is consistent with the functions

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<sup>24</sup> Gazette notice [2016-au4049](#) and [https://comcom.govt.nz/data/assets/pdf\\_file/0034/89980/Spark-granting-for-extension-of-exemptions-under-clauses-14.2.1-and-14.2.3-of-the-network-terms-of-the-local-number-portability-service-July-2016.pdf](https://comcom.govt.nz/data/assets/pdf_file/0034/89980/Spark-granting-for-extension-of-exemptions-under-clauses-14.2.1-and-14.2.3-of-the-network-terms-of-the-local-number-portability-service-July-2016.pdf)

<sup>25</sup> Spark "Initiating the determination process for designated multinet service determination for number portability (4 August 2021) para 15.

and standards set out in the Determination, including all terms and conditions set out in the LMNP Terms and Network Terms.<sup>26</sup>

### Cost allocation formula

84. We are required under section 40(1)(b) to determine “the formula for how the cost of delivering the service must be apportioned between the parties to the Determination and every person who becomes an Access Provider after the Determination is made.”
85. Further, in accordance with section 40(1)(d), a final Determination must include the requirement that “any party to the Determination make payments to an Access Provider of amounts calculated in accordance with the formula set out in the Determination.”
86. In Decision 554, the relevant part of which was adopted by Decision 705 and [2016] NZCC 32, we considered the impact of allocating costs incurred in the provision of number portability to the various market participants based on:
- 86.1 the incentives of operators to compete with each other for customers; and
  - 86.2 the switching costs faced by customers, i.e. the cost to a customer of porting a number.<sup>27</sup>
87. We remain of the view that the guiding principles relevant to determining the cost allocation formula (as outlined in Decision 554) remain appropriate. The reasoning set out in Decision 554 relating to the cost allocation formula is incorporated by reference in this Determination.<sup>28</sup>
88. In summary, in deciding how to allocate the costs associated with the LMNP Services, we were guided by the promotion of competition for the long-term benefits of end-users, under section 18, by lowering the switching costs incurred by customers when changing service providers. We adopted four guiding principles to allocate costs, namely: cost minimisation, cost causation, alignment of costs with benefits and practicality. On this basis, we concluded that:
- 88.1 Industry common system costs: Allocated amongst all providers of the LMNP Services on the basis of market share based on active numbers.
  - 88.2 Per-operator set-up costs: Each operator will bear its own costs.
  - 88.3 Per-line set-up costs: Recoverable by the donor network operator from a recipient network operator.

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<sup>26</sup> Section 40(1)(c) of the Act.

<sup>27</sup> Commerce Commission, Decision 554, 31 August 2005, para. 58.

<sup>28</sup> Commerce Commission, Decision 554, 31 August 2005, para. 69 to 105, 114 to 123, 128 to 132, 141 to 149, 158 to 179.

88.4 Additional call conveyance costs: Each operator will bear its own costs.

89. Accordingly, we have included a requirement in the Determination that any party to the Determination must make payments (covering per-line set-up costs and industry common system costs) to an Access Provider of amounts calculated in accordance with the formula set out in Attachment A to the Determination.<sup>29</sup>

### **Commission's costs**

90. Under section 55 of the Act, our costs of preparing a Determination must be met by the parties to the Determination in the proportion we direct.
91. We consider that the costs of the Determination should continue to be recovered in the same proportion as the cost allocation for industry common system costs, as set out above. This reflects that our costs are part of the industry's common costs of having regulated LMNP Services.
92. Accordingly, our costs will continue to be allocated amongst all providers of the LMNP Services on the basis of market share, based on active numbers, using the industry common system costs allocation. The active numbers will be taken from the figures used in the last industry common system costs allocation made under [2016] NZCC 32. This is the allocation made on 31 October 2021.

### **Commencement date and date of expiry**

93. We consider that we must determine the commencement date and are required by the Act to determine the expiry date of the Determination. This provides certainty about the term for which regulation should apply.

#### **Commencement date**

94. The commencement date will be 20 December 2021, which is the day after the expiry of [2016] NZCC 32.
95. This commencement date will ensure that there is continuity of the regulation of the LMNP Services so that all parties to the Determination remain bound by the LMNP Terms and the Network Terms as amended by the Determination on and from the expiry of [2016] NZCC 32.

#### **Date of expiry**

96. We are required under section 40(1)(h) of the Act to determine the expiry date of the Determination.
97. We are also required to consider whether there are reasonable grounds to commence an investigation into whether a service listed in Schedule 1 should be

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<sup>29</sup> Section 40(1)(d) of the Act.

omitted from the Schedule at intervals of not more than five years after the date on which a designated service or specified service came into force.<sup>30</sup>

98. In our 2021 review of designated services, we decided that there were not reasonable grounds to commence an investigation into the omission of the LMNP Services from Schedule 1. Hence the LMNP Services remain in Schedule 1.<sup>31</sup>
99. We consider that the expiry of the number portability Determination should coincide with one of the five yearly reviews. This approach is consistent with the framework of the Act which contemplates five yearly reviews of Schedule 1 services.
100. We also consider that a five-year term is required to secure the competition benefits arising from the Determination so as to best give effect to section 18. We also consider that if there was a significant shift in the market, that we would be able to undertake an earlier review of the inclusion of the Number Portability Services in Schedule 1. This is because clause 1(1) permits the Commission to investigate whether Schedule 1 should be altered, if the Commission considers that there are reasonable grounds for doing so. The next five-year review of all regulated services is due to be completed by December 2021. Accordingly, our view is that the number portability Determination should be for a period of five years and expire in December 2026.
101. The terms for the expiry dates are set out below.
102. The Determination, so far as it relates to Local Number Portability, will expire on the earlier of—
- 102.1 19 December 2026; or
- 102.2 the date on which the local telephone number portability service ceases to have designated multinetwork service status because it has been omitted from Schedule 1 under section 66 of the Act.
103. The Determination, so far as it relates to the Cellular Number Portability, will expire on the earlier of—
- 103.1 19 December 2026; or
- 103.2 the date on which the cellular telephone number portability service ceases to have designated multinetwork service status because it has been omitted from Schedule 1 under section 66 of the Act.

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<sup>30</sup> Clause 1(3) of the Schedule 3 of the Act. “Designated service” is defined in section 5 of the Act as meaning (among other things) a “designated multinetwork service”.

<sup>31</sup> Commerce Commission “Review of Services in Schedule 1 of the Telecommunications Act 2001 Decision 2021 NZCC 5” (12 May 2021) para. 85.