



Draft report on whether Spark's Resale Voice Services should be omitted from Schedule 1 of the Act

Submission | Commerce Commission

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Introduction

1. Thank you for the opportunity to comment on the Commission's draft report on whether Spark's resale voice services should be omitted from Schedule 1 of the Telecommunications Act 2001 (**draft report**).
2. Spark supports the Commission's proposal to recommend to the Minister of Communications that three local access calling related services be removed from the Act. We also support the draft report conclusions that lead the Commission to propose making the recommendation.
3. The Commission has not set regulated terms for Spark's resale services for over ten years, yet these services remain listed in the Act, making this aspect of the legislation and regulatory framework increasingly at odds with the evolving market dynamics.
4. The draft report acknowledges the clear evidence that Spark's PSTN resale voice services face effective competition from wholesale input services provided by Chorus, LFCs and wireless operators. RSPs are increasingly using a number of alternative and competitive access services for delivering services to end users, including fibre, copper and wireless based services. Digital voice services have reached large scale market acceptance and are now direct substitutes for traditional PSTN voice. These voice services are no longer based on the legacy PSTN, nor is access to a PSTN service required for an RSP to provide an efficient competitive voice service to consumers.
5. Continued backstop regulation in the face of competition from alternative technologies can only add cost and distort incentives on market conduct and future investment. Under these circumstances, continued regulation through a backstop regime is unlikely to promote outcomes which are consistent with the section 18 objectives.
6. The draft report sets out the Commission's proposed approach to deciding whether regulation best gives effect to section 18, evidence of competitive constraints on Spark and assesses the costs and benefits of maintaining backstop regulation. In this submission we provide brief comments on:
 - a. Wider section 18 considerations – for example - the potential for regulation to distort or displace more efficient competition and undermine regulatory framework expectations;
 - b. The degree to which it is feasible to migrate to alternative platforms. We believe that customers will increasingly migrate from the PSTN to alternative voice services; and
 - c. The proposed 12 month deferral of removing the services from the Act.

Deciding whether to omit resale local access and calling from the Act

7. We agree with the Commission overall approach – services should only be regulated where regulation best gives effect to the section 18 outcomes. We agree - where there is effective competition there can be no reason to regulate a firm.
8. The draft decision, accordingly, focuses on evidence of competitive activity that indicates continued regulation is no longer needed to promote competition for the long terms benefits of end users. We operate in an increasingly competitive market:

- a. Voice services are provided in a number of ways, including voice over IP based applications agnostic to the (wireless or fixed) access;
 - b. Chorus offers a range of wholesale broadband, baseband, UCLF and UCLL services that RSPs can use to provide retail voice services – entirely by-passing the Spark PSTN service; and
 - c. End users are offered, and increasingly taking up, alternative voice services.
9. The Commission is therefore correct to recognise that continued regulation of such legacy services may no longer be consistent with the wider set of section 18 considerations.
 10. However, we believe there are wider considerations that further support this conclusion. As set out in our earlier submission, when conducting any competition-based assessment, the Commission has generally equated a lessening of competition with an increase in market power. Market power is the ability to raise price above the price that would exist in a competitive market (the ‘competitive price’), or reduce non-price factors such as quality or service below competitive levels¹. Where market power exists, mandating access to a wholesale service is a material intervention that may be appropriate where it matches the scale or scope of the economic problem it seeks to address. However, where the provider of the regulated services no longer holds market power or where there has been a significant reduction in the level of power it holds in the market, such as where access seekers (and end users) have and readily utilise other viable options, mandatory access regulation should be wound back in order to avoid other distortions which inappropriate regulation can cause.
 11. In addition to determining whether competition remains limited, the Commission could also consider the potential for regulation to distort or displace more efficient competition and resale service within the regulatory framework. For example, a number of RSPs have already invested in the networks, applications and other technology needed to consume a range of wholesale inputs and provide large scale voice and broadband services to end users. As they invest to compete for more of the value chain, they deliver stronger, more sustainable and fundamentally more innovative competition. From a policy perspective, this is generally considered the preferred form of competition as it promotes long term investment and innovation.
 12. The Commission should not seek to maintain a limited and rigid form of competition at a particular level of the industry. Unnecessarily maintaining a regulatory backstop can deter or distort both Spark’s investment decisions on the scale and scope of replacement platforms, and RSPs investment options. In both cases, the continuation of regulation is likely to deter market participants from acting efficiently and investing in market-relevant voice based telecommunications services.
 13. For example, substantial RSPs in New Zealand are now well established in building and providing competitive voice services – they have the backing and resources of major international operators. They already offer voice services directly to end-users using their own networks or wholesale access services other than Spark’s. RSPs can readily expand existing capacity to avoid using Spark resale services should they want too.
 14. The Commission should ensure the regulatory framework doesn’t adversely influence RSPs decisions to invest in capability, discouraging RSP from investing voice capability by virtue of its regulatory settings.
 15. Further, predictable application of the regulatory framework is expected to reduce uncertainty and promote investment. The New Zealand regulatory framework is premised

¹ *Woolworths & Ors v Commerce Commission* (2008) 8 NZBLC 102,128 (HC)

on regulation being removed when no longer necessary, and the market expectations are that unnecessary regulation will be removed. Accordingly, the Commission should look to remove unnecessary regulatory overhead to investment and efficient end-user outcomes, i.e. permitting the framework to pan out as expected.

Alternative platforms and services

16. The draft report also notes that customers are migrating off the PSTN and on to alternative platforms and services. We agree. Voice services can be readily provided over Chorus wholesale accesses or competing platforms and customers are already to migrate to alternative services. In our earlier submission, we noted that IDC forecasts industry year on year fixed voice decline of 11% through to 2018.
17. We expect the migration to alternative platforms to accelerate as UFB is rolled out and RSPs increasingly offer fixed wireless services. Chorus reports higher than anticipated uptake of fibre services in its 2016 results (which are based on an IP based voice application) and we have indicated that we intend to serve 50,000 fixed customers using our wireless network (also based on a managed IP voice platform). Further, the PSTN is legacy technology that is increasingly costly to maintain and we expect to migrate customers to alternative platforms over time.
18. For example, []SPKCI
19. We do not believe there are material impediments to migrating customers to alternative technologies.
20. []
21.]SPKCI

Proposed transition period

22. The Commission tentatively proposes that, to provide RSPs with time to consider other wholesale options, there be a 12 month transition period for omitting resale services from the date on which the Order in Council is made.
23. We believe that a 12 month deferral of a decision already made is unlikely to add much in the way of certainty, bargaining power, or stability to the industry. This is because the resale local access and calling service has already not been subject to a regulatory determination for close to ten years. Spark has no commercial incentive to terminate the wholesale agreements it has in place today for resale services. Conversely, it is highly unlikely that regulation could be justified and implemented within the transition period. In other words, with the Order in Council to remove regulation in place, there would be no real prospect of regulation within the 1 year window so no real benefit to imposing such a lengthy notice period.
24. Accordingly, we don't expect the 12 month transition period will have any additional benefit, and the Government should remove regulation at the time of the order in council.

25. There will, in any event, be a reasonable period of time between the draft report and the final Order in Council being made. Further, we expect that RSPs are already considering the implications of omitting voice resale from the Act and likely to make decisions based on this information. The draft report reflects the realities of the market, and analysis demonstrates that regulation is unwarranted. Accordingly, the Commission should recommend that the Minister omit the service from the Act as soon as possible.

END
