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TRUSTPOWER CROSS-SUBMISSION: DRAFT REPORT ON WHETHER SPARK'S RESALE VOICE SERVICES SHOULD BE OMITTED FROM SCHEDULE 1

1 Introduction and overview

- 1.1.1 Trustpower Limited (Trustpower) welcomes the opportunity to provide a cross-submission to the Commerce Commission on its *Draft report on whether Spark's Resale Voice Services should be omitted from Schedule 1 of the Telecommunications Act 2001* (the Draft report).
- 1.1.2 After reviewing the submissions from other parties, it seems that, by and large, parties have accepted the Commission's Draft report, but feel that a longer transition period might be required. We make three key comments in reply, emphasising that:
- The focus of the Commission's assessment should be on whether there is competition at the wholesale level;
 - The regulatory framework should not favour network owners, nor should it incentivise Retail Service Providers (RSPs) to deploy their own networks in order to compete; and
 - If Spark's resale voice services are deregulated, the proposed transition period of 12 months is insufficient to allow for migration to alternative wholesale voice services.

2 Focus should be on wholesale competition

- 2.1.1 Vodafone and Chorus focus the conversation around competitive alternatives to Spark's resale voice services. For example, Vodafone stated:¹

We agree with the conclusion that there are sufficient competitive alternatives, which provides a range of options for access seekers and the right incentives for Spark to continue to offer a competitive commercial wholesale offer. Over time, we expect the market to only become more competitive, as the roll-out of next-generation fibre and wireless networks continues to displace the primary role of legacy copper services in delivering connectivity to New Zealanders.

¹ Vodafone, "Submission on Draft report on deregulation of Spark's resale voice services", p1.

- 2.1.2 And Chorus stated that “[t]he Commission’s view is that where there is one competitive alternative to Spark’s resale service, this is sufficient competition to justify deregulation. We support the fact that one alternative provider is sufficient.”²
- 2.1.3 We believe that the Commission’s assessment should focus on competition at the wholesale level.
- 2.1.4 Further, to Chorus’ comment, we believe that the sufficient number of alternative wholesale providers to justify deregulation depends on the circumstances of the case. In this case, Chorus’ wholesale baseband services are not readily available as a competitive alternative to Spark’s resale voice services, and other services cited, such as cable and fixed wireless services, are not readily available at the wholesale level.

3 The regulatory framework should not favour network owners

- 3.1.1 Spark stated that “[u]nnecessarily maintaining a regulatory backstop can deter or distort both Spark’s investment decisions on the scale and scope of replacement platforms”.³ However, Spark has not explained how the regulatory backstop has deterred or distorted its investment in replacement platforms. Further, as Vocus notes, this is not about “seeking to prolong existence of legacy PSTN or encourage inefficient investment by Spark in legacy technology. If Spark were seeking to withdraw service then there would be different issues and considerations.”⁴
- 3.1.2 Spark stated that:⁵
- [S]ubstantial 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.
- 3.1.3 This is not true of all RSPs. As we noted in our submission, we cannot readily avoid using Spark’s resale services. We currently have no choice but to continue to use them until we are able to migrate our customers onto Chorus’ baseband services. The argument that Spark puts forward favours RSPs that have their own networks. We are concerned that such an approach adversely impacts RSPs that do not have their own networks, as they will realise significant cost to implement the technology required to consume PSTN alternatives.
- 3.1.4 Further, we disagree with Spark’s implication that the current framework is discouraging RSPs from investing in voice capability.⁶ Investing and testing systems to enable the provision of baseband alternatives to PSTN services is costly and takes considerable time to ensure the continuity of service for the customer.
- 3.1.5 The Commission should ensure that the regulatory framework does not favour RSPs who have their own networks. Such an approach would undermine competition in the telecommunications sector, and effectively limit retail competition to those parties that have their own network.

² Chorus, “Submission in response to the Commerce Commission’s Draft report on deregulating Spark’s resale voice services”, p2.

³ Spark, “Submission on Draft report on whether Spark’s Resale Voice Services should be omitted from Schedule 1 of the Act”, [12].

⁴ Vocus, “Submission on Draft report on whether Spark’s Resale Voice Services should be omitted from Schedule 1 of the Telecommunications Act 2001”, [8].

⁵ Spark, “Submission on Draft report on whether Spark’s Resale Voice Services should be omitted from Schedule 1 of the Act”, [13].

⁶ Spark, “Submission on Draft report on whether Spark’s Resale Voice Services should be omitted from Schedule 1 of the Act”, [14].

4 A 12 month transition period is insufficient to allow for migration to alternative wholesale voice services

4.1.1 If Spark's resale voice services are deregulated, Trustpower believes that 12 months is an insufficient transition period for migrating customers to PSTN alternatives. As stated in our submission:⁷

Spark summarised our sentiment to wholesale voice services in its submission on the Schedule 1 review in relation to backhaul. Spark stated:⁸

While there is nascent competition from LFCs and wireless technologies in broadband markets, the strength of these alternatives are not yet sufficient to constrain Chorus' power in broadband infrastructure markets and it would be premature to undertake an investigation at this stage. RSPs rely heavily on Chorus inputs and to remove them from the Act would have a significant adverse impact on the market and end users.

4.1.2 We believe that viable alternative wholesale services such as fixed wireless are not yet mature enough for us to ensure that our customers' experience would be maintained with minimal disruption during a 12 month transition period.

4.1.3 Chorus has stated that "[t]here are already around 9,000 customers with a voice line provided over our baseband IP service".⁹ Trustpower is concerned that, at the current rate of Chorus connecting end-users to its baseband services, only a minor proportion of PSTN services would be substituted for baseband IP by December 2017.

4.1.4 Trustpower argues there is not a viable PSTN alternative in 4.1.2 above, and requests the Commission clearly specify the key elements of the perceived urgency and motivation for PSTN deregulation.

4.1.5 Vocus stated that:¹⁰

Vocus suggest that the Commission consider a condition to the effect that the transition period ending could be made conditional on achieving a trigger for actual coverage in combination with some form of commitment to extend the coverage further, in a timely manner, up to the 97% coverage, as required by an RSP.

4.1.6 Trustpower supports Vocus' suggestion around a coverage trigger and commitment. We recommend the Commission considers:

- a) a 2 to 3 year transition period; and
- b) a minimum level of uptake of wholesale PSTN alternatives that is available to all RSPs, with an open access regulatory framework, to trigger deregulation commitment.

4.1.7 For any questions relating to the material in this submission, please contact me on 07 572 9888.

Regards,

⁷ Trustpower, "Submission on Draft report on whether Spark's Resale Voice Services should be omitted from Schedule 1 of the Telecommunications Act 2001", p2

⁸ Spark New Zealand, Submission on Review of Designated and Specified Services under Schedule 1, 23 May 2016, [7].

⁹ Chorus, "Submission in response to the Commerce Commission's Draft report on deregulating Spark's resale voice services", p3.

¹⁰ Vocus, "Submission on Draft report on whether Spark's Resale Voice Services should be omitted from Schedule 1 of the Telecommunications Act 2001", [15].

A handwritten signature in black ink, appearing to read "Peter Gregory". The signature is fluid and cursive, written in a professional style.

PETER GREGORY
BUSINESS MANAGER - TELECOMMUNICATIONS

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