

2019 Draft report on whether Spark's Resale Services should be omitted from Schedule 1 of the Telecommunications Act 2001

Draft report outlining amendments to our recommendations from our 22 December 2016 Final report to the Minister for Communications.

The Commission: Dr Stephen Gale

 Elisabeth Welson

 John Crawford

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Associated documents

Publication date	Reference	Title
22 December 2016	ISBN 978-1-869455-55-2	Final report on whether Spark's Resale Services should be omitted from Schedule 1 of the Telecommunications Act 2001
23 September 2016	ISBN 978-1-869455-37-8	Draft report on whether Spark's Resale Voice Services should be omitted from Schedule 1 of the Telecommunications Act 2001
5 July 2016	ISSN 1178-2560	Final decision on the review of Schedule 1 services
29 April 2016	ISSN 1178-2560	Review of Designated and Specified Services under Schedule 1 of the Telecommunications Act 2001

Commerce Commission

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Glossary

Baseband services Commercial services supplied by Chorus Limited (Chorus) that allow the delivery of voice services to end-users.

The different variants of Baseband services, such as Baseband Copper, Baseband IP and Baseband IP Extended, and their relationship with Chorus' Unbundled Copper Low Frequency (UCLF) are detailed in Attachment A of the 2016 Draft report on whether Spark New Zealand Limited's Resale Voice Services should be omitted from Schedule 1 of the Telecommunications Act 2001.¹

Designated service A service described in Part 2 of Schedule 1 of the Telecommunications Act 2001.

FWA Fixed Wireless Access.

IP Internet Protocol.

ISDN Integrated Services Digital Network.

PSTN Public Switched Telephone Network, as defined in s 5 of the Telecommunications Act 2001.

Resale Services Schedule 1 of the Act currently contains the following Resale Services:

local access and calling services offered by means of a fixed telecommunications network (local access and calling service) (eg, telephone service);

retail services offered by means of a fixed telecommunications network (Retail Services) (eg, smartphone services, voicemail etc); and

retail services offered by means of a fixed telecommunications network as part of a bundle (Part of Bundles) (eg, retail services bundled with broadband services).

¹ Commerce Commission "Draft report on whether Spark's Resale Voice Services should be omitted from Schedule 1 of the Telecommunications Act 2001" (23 September 2016), Attachment A.

RBI	Rural Broadband Initiative, an initiative where the government partners with private sector telecommunications operators to upgrade or extend telecommunications networks outside UFB areas.
RSP	Retail Service Provider.
Specified service	A service described in Part 3 of Schedule 1 of the Telecommunications Act 2001.
STD	Standard Terms Determinations are one of the Commerce Commission's mechanisms for regulating designated services and specified services under the Telecommunications Act 2001.
TSO	Telecommunications Service Obligation, a regulatory framework established under the Telecommunications Act 2001 enabling specific telecommunications services to be available and affordable. Spark (supported by Chorus) is the TSO provider for the local residential telephone service, which includes charge-free local calling.
UCLF	Unbundled Copper Low Frequency service is a wholesale service provided by Chorus that enables access to and interconnection with, the low frequency band (300 and 3400Hz) of the copper line and can be accessed by retail telecommunications providers to provide voice services. The UCLF service is available from an exchange including on cabinetised lines.
UFB	Ultrafast Broadband is the name given to the Government's initiative to roll-out a fibre access network in New Zealand. The network connects the end-users' premises to the RSP's network, enabling high-speed broadband services and voice over internet protocol (VoIP).
VoIP	Voice over Internet Protocol is a way to send voice calls over a data connection such as a broadband connection.

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Chapter 1 Introduction

Purpose of this paper

- 1.1 Following the end of the then Minister for Communication's² two-year deferral period,³ this draft report:
 - 1.1.1 considers whether any amendments are required to our recommendations from our 2016 Final report on whether Spark New Zealand Limited's (Spark) three resale voice services (Resale Services) should be omitted from Schedule 1 of the Telecommunications Act 2001 (the Act);⁴ and
 - 1.1.2 explains our proposed amendments.⁵
- 1.2 The report is set out into the following sections:
 - 1.2.1 why we are conducting this investigation, our proposed amendments, and how to provide your views (here in Chapter 1);
 - 1.2.2 our framework for considering whether to amend our 2016 final recommendations (Chapter 2);
 - 1.2.3 our analysis supporting the proposed amendments we wish to make to our 2016 final recommendations (Chapter 3);
 - 1.2.4 an overview of the current regulation of Resale Services (Attachment A); and
 - 1.2.5 our process to date (Attachment B).

What are Resale Services?

- 1.3 The regulation of Resale Services provides retail service providers (RSPs) with the ability to rebrand and on-sell voice services to end-users, a stand-alone voice

² We note the Minister for Communications is now known as the Minister of Broadcasting, Communications and Digital Media.

³ Hon Simon Bridges, Minister for Communications ["My decision on your recommendations about Spark's Resale Voice Services"](#) (27 March 2017).

⁴ Commerce Commission "Final report on whether Spark's Resale Services should be omitted from Schedule 1 of the Telecommunications Act 2001" (22 December 2016).

⁵ This draft report is made under clause 7(1)(b)(i) of Part 1 of Schedule 3 of the Telecommunications Act 2001 (the Act).

service, additional 'retail' features like voice mail or separate connection for Eftpos, or a bundle of these.

- 1.4 Resale Services opened up access to New Zealand's incumbent voice platform (previously operated by Telecom, and now Spark). This access allowed RSPs to enter and supply end-users with voice services without having to invest in their own network infrastructure.
- 1.5 RSPs currently buy Spark's wholesale voice services by commercial agreement, but the inclusion of the services in Schedule 1 of the Act provides a regulatory backstop. That means we could compel Spark to supply these services at a margin less than its own retail price if commercial arrangements fail in a way that threatened competition.⁶
- 1.6 Schedule 1 of the Act currently contains the following Resale Services:
 - 1.6.1 local access and calling services offered by means of a fixed telecommunications network (local access and calling service) (eg, telephone service);
 - 1.6.2 retail services offered by means of a fixed telecommunications network (Retail Services) (eg, call transfer, call waiting etc or fax); and
 - 1.6.3 retail services offered by means of a fixed telecommunications network as part of a bundle (Part of a Bundle) (eg, part of a bundle of the above).

Why we are conducting this investigation?

- 1.7 In 2016, we completed an investigation into whether Spark's three resale voice services should be deregulated. At the time, we recommended that the then Minister for Communications:⁷

"does not omit Resale Services from Schedule 1 of the Act at this time; and defers the decision for two years from the date of this report."

- 1.8 In March 2017, the Minister accepted our recommendation to defer their decision for two years from the date of our report and referred our recommendation back

⁶ For example, we could make a STD specifying the terms on which the Resale Services must be supplied to all access seekers and all access providers under Subpart 2A of the Telecommunications Act 2001.

⁷ Commerce Commission "Final report on whether Spark's Resale Services should be omitted from Schedule 1 of the Telecommunications Act 2001" (22 December 2016), para X2.

to us for a report at the end of this two-year period.⁸ In April 2017, we confirmed that we will prepare a draft report in early 2019, in accordance with the process set out in clause 7 of Schedule 3 of the Act.⁹ The two years have since passed, and we are now re-examining whether it is necessary to make any amendments to our 2016 Final report recommendations.¹⁰

Proposed amendments

- 1.9 Our draft view is that we will recommend to the Minister of Broadcasting, Communications and Digital Media (the Minister) that the three Resale Services are omitted from Schedule 1 forthwith. We will also recommend that any consideration by the Minister of whether to omit the three Resale Services from Schedule 1 of the Act ought to consider the Resale Services together on the basis that these services are 'sufficiently related to each other'.¹¹
- 1.10 We consider that these Resale Services, currently acting as backstop regulation, are not required to help promote competition as competition is established, increasingly effective, and no longer dependent on access to these services. Alternative services (such as voice over fibre) are readily available to most end-users, and those few remaining end-users that have no option other than to receive voice services from Spark are protected by the Telecommunications Service Obligations (TSO) requirements.¹²
- 1.11 We consider removing unnecessary regulation is good for investor confidence and best gives effect to section 18 of the Act. In short, having the Resale Services in Schedule 1 is not itself delivering competitive retail pricing or innovation in voice services.
- 1.12 Chorus, the local fibre companies and fixed wireless operators all have the infrastructure to offer alternative wholesale voice services to RSPs. There will be a

⁸ Hon Simon Bridges, Minister for Communications ["My decision on your recommendations about Spark's Resale Voice Services"](#) (27 March 2017).

⁹ Dr Stephen Gale, Telecommunications Commissioner ["Re: Spark's resale Voice Services - Next steps"](#) (27 April 2017). A high-level overview of our review process to date is provided in Attachment B.

¹⁰ Our review is under clause 1(3) of Part 1 of Schedule 3 of the Act. This is a Schedule 1 review in accordance with section 66(b) of the Act.

¹¹ Under clause 4(4) of Schedule 3 of the Act, we may, if we think fit, identify any recommendations included in the final report that we consider to be sufficiently related to each other that they ought to be considered together by the Minister.

¹² See https://comcom.govt.nz/data/assets/pdf_file/0024/90492/Spark-TSO-LRTS-Deed-November-2011.PDF

very small number of end-users for whom the Spark voice service will be the only option. For these end-users the price will continue to be capped by Spark's Telecommunications Service Obligation. Overall, we consider that even if the benefits of deregulating the Resale Services are small, deregulation will best give effect to section 18 of the Act.

Submitting your views

- 1.13 We are interested in your views on our draft recommendation to omit Spark's Resale Services from Schedule 1 of the Act. Please send your submission to us by **5pm Friday, 17 May 2019**, and address your submission to:¹³

Cheryl Paget

C/- regulation.branch@comcom.govt.nz

How to provide your submissions

- 1.14 Please include 'Spark's Resale Services' in the subject line of your email. We prefer submissions in both a format suitable for word processing (such as a Microsoft Word document) as well as a "locked" format (such as a PDF) for publication on our website.

Confidential submissions

- 1.15 While we discourage requests for non-disclosure of submissions so that all information can be tested in an open and transparent manner, we recognise that there may be cases where parties that make submissions wish to provide information in confidence.¹⁴
- 1.16 When including confidential information in your submission, we offer the following guidance:

¹³ In accordance with Telecommunications Act 2001, clause 7(2)(b) of Schedule 3, the Commission must include in the public notice the closing date for submissions, which must not be later than 20 working days after the date of giving public notice.

¹⁴ Parties can also request that we make orders under section 100 of the Commerce Act 1986 in respect of information that should not be made public. Any request for a section 100 order must be made when the relevant information is supplied to us and must identify the reasons why the relevant information should not be made public. We will provide further information on section 100 orders if requested by parties. A key benefit of such orders is to enable confidential information to be shared with specified parties on a restricted basis for the purpose of making submissions. Any section 100 order will apply for a limited time only as specified in the order. Once an order expires, we will follow our usual process in response to any request for information under the Official Information Act 1982.

- 1.16.1 if it is necessary to include confidential material in a submission, the information should be clearly marked, with reasons why that information is confidential;
 - 1.16.2 where commercial sensitivity is asserted, submitters must explain why publication of the information would be likely to unreasonably prejudice their commercial position or that of another person who is the subject of the information;
 - 1.16.3 please provide a clearly labelled “confidential version” and “public version”; and
 - 1.16.4 the responsibility for ensuring that confidential information is not included in a public version of a submission rests entirely with the party making the submission.
- 1.17 We request that you provide multiple versions of your submission if it contains confidential information or if you wish for the published electronic copies to be 'locked'. This is because we intend to publish all submissions on our website. Where relevant, please provide both an 'unlocked' electronic copy of your submission, and a clearly labelled 'public version'.

Next steps

- 1.18 As soon as is reasonably practicable after receiving submissions, we will begin preparing our final report and recommendation to the Minister.¹⁵
- 1.19 We intend to publish our final report in **July 2019**.

¹⁵ This will be in accordance with clause 7(2)(c) of Schedule 3 of the Act.

Chapter 2 Framework for considering whether to amend our 2016 final recommendations

Purpose of this chapter

- 2.1 This chapter provides our framework for this draft report, including:
- 2.1.1 our required legal process (what we need to consider);
 - 2.1.2 our proposed decision must best give effect to s 18 of the Act; and
 - 2.1.3 our process for assessing whether regulation of Resale Services is required to best give effect to s 18 of the Act.

Our required legal process

2.2 This draft report is issued under clause 7 of Schedule 3 of the Act.¹⁶ Clause 7 of Schedule 3 of the Act sets out the process for us to make further recommendations to the Minister, where the Minister has deferred their decision on recommendations we have made in a final report.

2.3 Clause 7 of Schedule 3 of the Act says:

- (1) If the Minister accepts the Commission's recommendation that the Minister's decision be deferred for any period that the Commission thinks fit,—
 - (a) the Minister must refer the recommendation back to the Commission for a report after the end of the period on whether the recommendation should be amended; and
 - (b) the Commission must, after the end of that period,—
 - (i) prepare a draft report stating that the period has expired and setting out any amendments it wishes to make to the recommendation;¹⁷ or
 - (ii) prepare a final report that includes a recommendation that the Minister should accept an undertaking under Schedule 3A and deliver that report to the Minister.
- (2) If subclause (1)(b)(i) applies, the Commission must also—
 - (a) give public notice of the draft report;¹⁸ and

¹⁶ Telecommunications Act 2001, clause 7 of Schedule 3.

¹⁷ As recommended by us - see Commerce Commission "Final report on whether Spark's Resale Services should be omitted from Schedule 1 of the Telecommunications Act 2001" (22 December 2016), para X2.2 and accepted by the Minister for Communications - see Hon Simon Bridges, Minister for Communications "My decision on your recommendations about Spark's Resale Voice Services" (27 March 2017).

¹⁸ As 'public notice' is defined under s 6 of the Act.

- (b) include in the public notice the closing date for submissions, which must not be later than 20 working days after the date of giving public notice; and
 - (c) prepare, as soon as is reasonably practicable after the closing date for submissions, a final report to the Minister that contains the matters set out in the draft report and summarises, and makes recommendations on, the submissions received on the draft report.
- 2.4 Following our recommendations in our final report, the Minister may accept our recommendation and recommend that the Governor-General, by Order in Council, omits Resale Services from Schedule 1 of the Act.¹⁹
- 2.5 At this time, we recommend that any consideration by the Minister of whether to omit the three Resale Services from Schedule 1 of the Act ought to consider the Resale Services together on the basis that these services are 'sufficiently related to each other'.²⁰
- 2.6 The scope of this draft report is confined to only include amendments we wish to make to our recommendations from our 2016 Final Report. Meaning we will only consider whether our recommendation to 'not omit Resale Services from Schedule 1 of the Act at this time' should be amended.

Our proposed decision must best give effect to s 18

- 2.7 We are required to make recommendations that promote competition in telecommunication markets for the long-term benefit of end-users. That is, in considering whether our recommendations from our 2016 final decision should be amended, we must make a decision that best gives effect to s 18 of the Act.²¹
- 2.8 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 by regulating, and providing for the regulation of, the supply of certain telecommunications services between service providers.

¹⁹ Telecommunications Act 2001, s 66(b) and s 68.

²⁰ Under clause 4(4) of Schedule 3 of the Act, we may, if we think fit, identify any recommendations included in the final report that we consider to be sufficiently related to each other that they ought to be considered together by the Minister.

²¹ Telecommunications Act 2001, s 19.

2.9 We are required to consider the following when determining what promotes competition in telecommunications markets for the long-term benefit of end-users:²²

(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.

(2A) To avoid doubt, in determining whether or not, or the extent to which, competition in telecommunications markets for the long-term benefit of end-users of telecommunications services within New Zealand is promoted, consideration must be given to the incentives to innovate that exist for, and the risks faced by, investors in new telecommunications services that involve significant capital investment and that offer capabilities not available from established services.

Applying s 18 of the Act to our recommendations

- 2.10 We consider that we must apply s 18 of the Act to our consideration of proposed amendments to our recommendations from our 2016 Final report. Telecommunications services should only be regulated where regulation will give best effect to the promotion of competition for the long-term benefit of end-users of those services.
- 2.11 The Resale Services cannot be supplied in isolation from the access line. “Part of Bundles” is also likely to be linked to the local access and calling service. Therefore, we apply s 18 of the Act to the three Resale Services in conjunction.
- 2.12 We consider that the Resale Services should be omitted if competition is sufficiently effective and the benefits of regulation are outweighed by the direct and indirect costs of regulation. If competition is not yet sufficiently effective and the benefits of retaining the services are likely to outweigh the costs of retaining the services, we consider the service should be retained in Schedule 1 of the Act.

²² In accordance with s 18(2) and s 18(2A) of the Act. As the High Court has observed in *Chorus Ltd v Commerce Commission* [2014] NZHC 690, s 18(1) is the “dominant” provision in s 18 of the Act, and subsections (2) and (2A) “are specified to assist our analysis under section 18(1)”. In this sense, subsections (2) and (2A) are not isolated considerations on their own. Rather, they form part of the consideration of whether competition is promoted for the long-term benefit of end-users. For a more detailed discussion see Commerce Commission, *Determination for Chorus' unbundled copper local loop service* [2015] NZCC 37 at paragraphs [148]– [155].

Our process for assessing whether regulation is required to best give effect to s 18 of the Act

- 2.13 In assessing whether regulation under Schedule 1 of the Act is required to best give effect to s 18 of the Act, we looked at the following:
- 2.13.1 We examined the level of reliance RSPs had on Spark's Resale Services through the change in volumes of the various services since 2016. That is, whether alternatives to Resale Services were readily available, enabling us to assess effective constraints.
 - 2.13.2 We focused on the ability of RSPs to self-supply the wholesale input and/or to source supply of the wholesale input independently of Spark's Resale Services. In doing so, we considered the availability of wholesale alternatives across New Zealand.
 - 2.13.3 We assessed the likely benefits of omitting the Resale Services. We did this by looking at the potential costs that could be avoided if these services were omitted from Schedule 1 of the Act.

Chapter 3 We propose amending our 2016 final recommendations

Purpose of this chapter

- 3.1 This chapter sets out:
- 3.1.1 our draft recommendation to propose omitting Spark's Resale Services from Schedule 1 of the Act following our latest analysis;
 - 3.1.2 a brief overview of our 2016 Final report reasoning as to the sufficiency of alternative services; and
 - 3.1.3 an overview of our analysis on the three main reasons why we recommended not omitting Resale Services from Schedule 1 of the Act, and why our views have now changed.

Our draft recommendation

- 3.2 We propose amending our 2016 Final report recommendation from [to] 'not omit Resale Services from Schedule 1 of the Act at this time'²³ to say, 'omit Resale Services from Schedule 1 of the Act with immediate effect.'
- 3.3 We also recommend that any consideration by the Minister of whether to omit the three Resale Services from Schedule 1 of the Act ought to consider the Resale Services together on the basis that these services are 'sufficiently related to each other'.²⁴
- 3.4 Since 2016, the number of resold lines has significantly decreased.²⁵ In 2016 the total number of resold Spark phone lines was 341,000. Our latest monitoring report records a total of 179,000 lines, a decrease of 48%.²⁶ This decrease indicates that

²³ Commerce Commission "Final report on whether Spark's Resale Services should be omitted from Schedule 1 of the Telecommunications Act 2001" (22 December 2016), para X2.1.

²⁴ Under clause 4(4) of Schedule 3 of the Act, we may, if we think fit, identify any recommendations included in the final report that we consider to be sufficiently related to each other that they ought to be considered together by the Minister.

²⁵ A resold line is a telephone line, so it is a copper line bundled with a connection to a telephone exchange, providing plain ordinary telephone service functionality (including a telephone number and the ability to make and receive telephone calls). All three Resale Services are provided over resold lines.

²⁶ Commerce Commission "Annual Telecommunications Monitoring Report - 2018 Key facts" (18 December 2018) p4.

RSPs have alternatives to Resale Services that they can migrate customers onto in a timely manner.

- 3.5 We consider alternative voice services to Spark's Resale Services include:
- 3.5.1 Baseband IP provided over Chorus' copper network;
 - 3.5.2 fixed wireless access (through Spark and the rural broadband initiative (RBI)); and
 - 3.5.3 VoIP services provided over a broadband connection.
- 3.6 Our 2016 report also provided a signal that we were anticipating that Resale Services could be omitted from Schedule 1 of the Act, when sufficient alternative services became available. As sufficient alternative services have become available, we consider that omitting Resale Services from the Act can take place with immediate effect, without the need for a further transition period.
- 3.7 We consider it would only be appropriate to keep Resale Services in Schedule 1 of the Act if we believed that we may need to regulate in the future, such as by compelling Spark to supply these services at a margin less than its own retail price.²⁷
- 3.8 There is increasing availability of alternative telecommunications technologies that can provide voice services, eg, Baseband IP using the copper network as well as via the fibre network. This situation has resulted in a decrease in the use of the Public Switched Telephone Network (PSTN), to provide Resale Services, and means that we consider a requirement for future regulation is unlikely.
- 3.9 We consider that the direct costs of regulation are small but there may be other indirect costs associated with continuing to apply regulation when it is no longer necessary.

An overview of our analysis

- 3.10 In accordance with our required legal process, our draft report is confined to only include amendments we wish to make to our recommendations in our 2016 final report. The three main reasons why we recommended not omitting Resale Services from Schedule 1 of the Act were the:²⁸

²⁷ For example, we could make a STD specifying the terms on which the Resale Services must be supplied to all access seekers and all access providers under Subpart 2A of the Telecommunications Act 2001.

²⁸ Commerce Commission "Final report on whether Spark's Resale Services should be omitted from Schedule 1 of the Telecommunications Act 2001" (22 December 2016) X7.

- 3.10.1 ability of RSPs to migrate to alternative services;
- 3.10.2 accessibility of those alternative services; and
- 3.10.3 low cost and low benefit to omitting these services.

Ability of RSPs to migrate to alternative services

- 3.11 In our 2016 Final report we were concerned that RSPs' ability to switch to alternatives was constrained. We considered:²⁹
 - 3.11.1 this could allow Spark to exercise market power in the absence of backstop regulation; and
 - 3.11.2 the use of such market power might also disrupt competition to provide UFB services if RSPs' attention is diverted to provisioning analogue voice services.
- 3.12 We considered this constraint might diminish as RSPs enhanced their capability to utilise wholesale alternatives, and as Chorus increasingly automated the provisioning process for the Baseband IP services (Baseband IP and Baseband IP extended).³⁰
- 3.13 Trustpower Limited (Trustpower) and Vocus Group NZ Limited (Vocus) noted in 2016 that although alternatives were becoming available (eg, Baseband IP), they were not sufficiently developed to be a competitive constraint to Spark's Resale Services.³¹ Trustpower also indicated that a transition period of 2 to 3 years prior to the omission of Resale Services from Schedule 1 of the Act may be appropriate.³²
- 3.14 We have now updated our analysis to look at the change in the number of resold lines to assess whether RSPs have moved away from this service. Figure 3.1 shows the number of resold lines has decreased significantly since 2016 with total resold residential lines down by 60% from July 2016 to July 2018 and total resold business lines down by 34% over the same period.

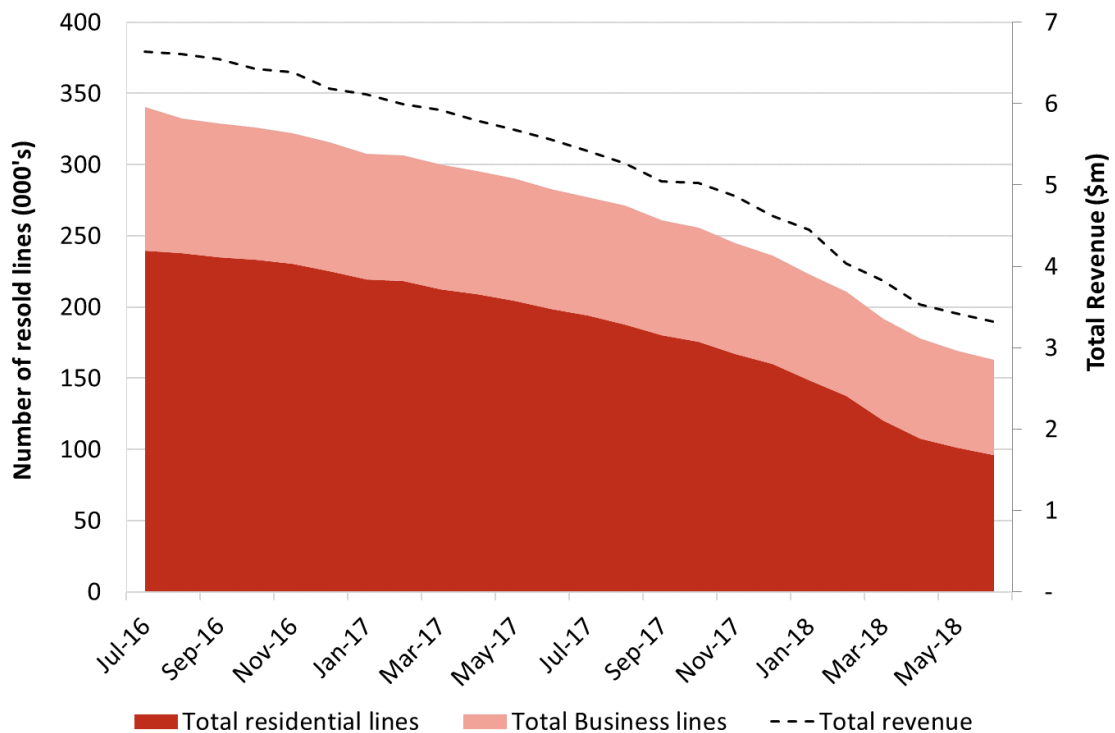
²⁹ Commerce Commission "Final report on whether Spark's Resale Services should be omitted from Schedule 1 of the Telecommunications Act 2001" (22 December 2016) para 56.

³⁰ Commerce Commission "Final report on whether Spark's Resale Services should be omitted from Schedule 1 of the Telecommunications Act 2001" (22 December 2016) para 57.

³¹ Commerce Commission "Draft report on whether Spark's Resale Voice Services should be omitted from Schedule 1 of the Telecommunications Act 2001" (23 September 2016) paras 73-81.

³² Commerce Commission "Draft report on whether Spark's Resale Voice Services should be omitted from Schedule 1 of the Telecommunications Act 2001" (23 September 2016) para 78.

Figure 3.1 Total number of resold lines and associated revenue by month (Jul 2016-2018)³³



3.15 In our view, the significant decrease in Resale Services provided by Spark since 2016 indicates that alternative services have become available and are being increasingly used by RSPs. Spark's revenue from Resale services has also been decreasing at a similar rate to the drop in the number of resold lines. This suggests that Spark is constrained in its ability to raise prices to compensate for the lower volume of lines.

Alternative services available

3.16 At the time of our 2016 Final report, we considered that there were not fully effective competitive alternatives to Spark's Resale Services available. Therefore, the decision to defer would enable RSPs to enhance their capability to utilise wholesale alternatives.³⁴

³³ Information provided to us voluntarily by Spark following an information request. Note that the resold lines in this graph only relate to 'Local access and calling services offered by means of a fixed telecommunications network' and not other resale services.

³⁴ Commerce Commission "Final report on whether Spark's Resale Services should be omitted from Schedule 1 of the Telecommunications Act 2001" (22 December 2016) para x 7.

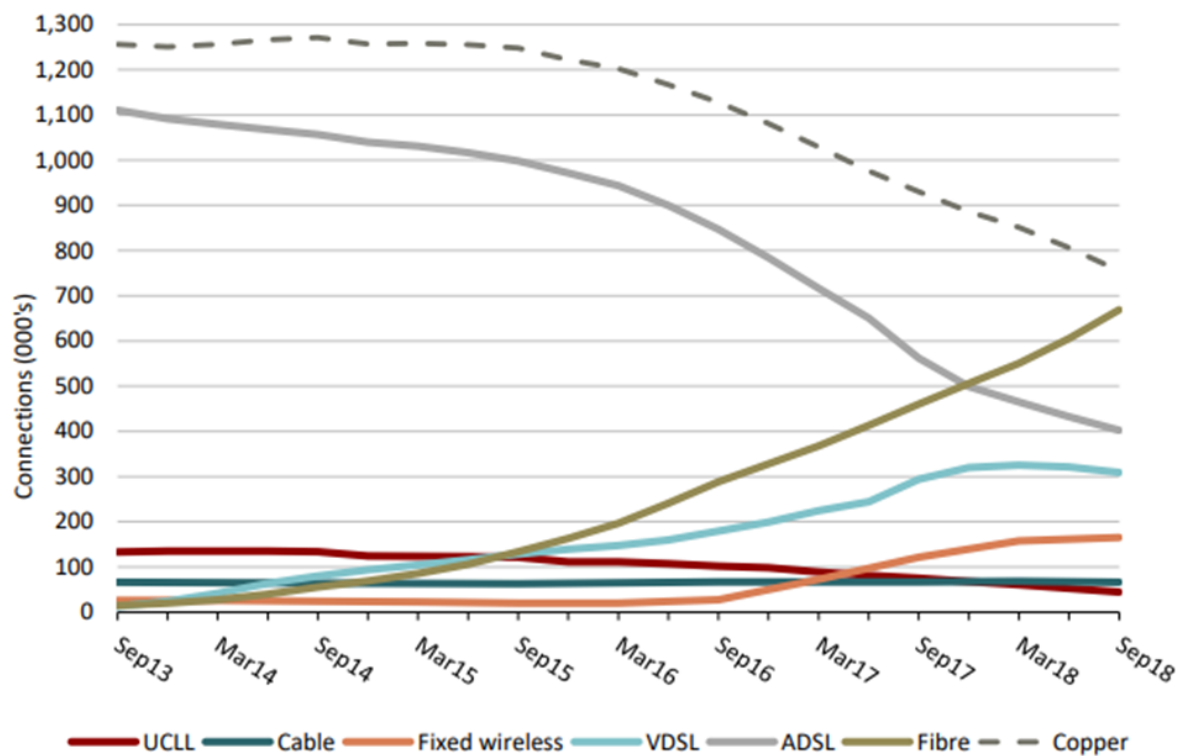
- 3.17 In our 2016 Final Report we were concerned as to the costs and time to Chorus of physically migrating end-users' lines over to the Baseband IP services and the ability of RSPs to migrate from the PSTN used to provide Resale services to a Baseband IP service.³⁵
- 3.18 We also considered that the constraint on RSPs switching services would diminish over time, and Spark's incentives to provide a commercial service would increase, reducing the need for any regulatory backstop.³⁶
- 3.19 We consider that the concern about available alternatives has reduced since 2016 as:
- 3.19.1 Chorus has since taken additional steps to support customer migration to Baseband IP;
 - 3.19.2 connection data shows migration away from Resale Services is taking place;
 - 3.19.3 we have seen a significant migration of users from copper-based to fibre-based services; and
 - 3.19.4 fewer than 4,000 homes are expected to be without access to government backed broadband (fibre and FWA) in four years.³⁷
- 3.20 Our 2018 monitoring report mentioned the migration away from copper-based services. Figure 3.2 shows this with fixed-line broadband connections by technology.

³⁵ Commerce Commission "Final report on whether Spark's Resale Services should be omitted from Schedule 1 of the Telecommunications Act 2001" (22 December 2016) para 88.

³⁶ Commerce Commission "Final report on whether Spark's Resale Services should be omitted from Schedule 1 of the Telecommunications Act 2001" (22 December 2016) X9.

³⁷ The 4,000 reflects the Government's announcement at the end of 2018 that Government-funded broadband will reach 99.8% of population. See <<https://www.crowninfrastructure.govt.nz/wp-content/uploads/2018/12/RBI2-MBSF-expansion-fact-sheet-18-Dec-2018-FINAL.pdf>>

Figure 3.2 Fixed-line broadband connections by technology



Source: Chorus, MBIE, annual telecommunications questionnaire

3.21 We consider that the availability of these alternative services suggests that regulations on Resale Services are unlikely to have any impact on the current or future promotion of competition in telecommunications markets for the long-term benefits of end-users.

Assessing the cost and benefits of regulation

3.22 Regulation incurs costs and can distort supply-side incentives. Telecommunications services should only be regulated where regulation best gives effect to the promotion of competition for the long-term benefit of end-users of those services.

3.23 In our 2016 Final report, we noted that the benefits from removing the Resale Services from Schedule 1 of the Act include any avoided regulatory costs. Our view was that these avoided costs are low both for Spark and for us.³⁸ We continue to consider that direct costs of regulation are small. However, we consider that there are other indirect costs associated with continuing to apply regulation when it is no longer deemed necessary.

³⁸ Commerce Commission " Draft report on whether Spark's Resale Voice Services should be omitted from Schedule 1 of the Telecommunications Act 2001" (23 September 2016) para 120.

- 3.24 We consider deregulation would reduce or remove the indirect costs associated with these Resale Services and best gives effect to s 18 of the Act.
- 3.25 For example, one potential impact of deregulation would be a signal to investors that we appropriately recommend deregulation of regulated services, when regulation is no longer required to meet our statutory objectives. This could potentially reduce investment costs across several currently regulated services.
- 3.26 Retaining backstop regulation for a service that can now be provided by a number of alternative technologies and services does not promote innovation or the efficiency of telecommunications providers.³⁹⁴⁰

³⁹ As required under s 18(2) of the Act, the efficiencies that will result or will be likely to result, from an act or omission must be considered.

⁴⁰ As required under s 18(2A) of the Act, "...in determining whether or not, or the extent to which, competition in telecommunications markets for the long-term benefit of end-users of telecommunications services within New Zealand is promoted, consideration must be given to the incentives to innovate that exist for, and the risks faced by, investors in new telecommunications services that involve significant capital investment and that offer capabilities not available from established services."

Attachment A Overview of the regulation of Resale Service

- A1 Resale Services provide RSPs with the ability to rebrand and on-sell a complete voice service to end-users. These services were included in Schedule 1 of the original Act in December 2001.⁴¹
- A2 The three Resale Services listed in Schedule 1 of the Act are:
- A2.1 local access and calling services offered by means of a fixed telecommunications network (local access and calling service);
 - A2.2 retail services offered by means of a fixed telecommunications network (Retail Services); and
 - A2.3 retail services offered by means of a fixed telecommunications network as part of a bundle (Part of Bundles).

Local access and calling service

- A3 This service covers the line rental and local calls. It is described in Schedule 1 of the Act as follows:

A local access and calling service offered by Spark to end-users by means of a fixed telecommunications network in the following markets:

- (a) all markets in which Spark faces limited, or is likely to face lessened, competition for the service;
- (b) all, some, or no markets in which Spark does not face limited, or is not likely to face lessened, competition for the service as determined by the Commission.

Retail Services

- A4 This service includes value added services like call waiting and call minder. It is described in Schedule 1 of the Act as follows:

A retail service that satisfies both of the following:

- (a) either of the following:

⁴¹ Telecommunications Act 2001 (No. 103) (19 December 2001) Schedule 1 subpart 1 of Part 2. Available at http://www.nzlii.org/nz/legis/hist_act/ta20012001n103241/ These services were originally known by different names - 'Retail Services offered by means of Telecom's fixed telecommunications network' (now known as 'Retail Services offered by means of a fixed telecommunications network'); Residential local access and calling service offered by means of Telecom's fixed telecommunications network' (now known as 'Local access and calling service offered by means of fixed telecommunications network'); and 'Bundle of retail services offered by means of Telecom's fixed telecommunications network' (now known as 'Retail services offered by means of a fixed telecommunications network as part of bundle of retail services').

- (i) a non-price-capped retail service (and its associated functions) supplying an access and calling service in a different form to a local access and calling service (and including, for the avoidance of doubt, a service supplying ISDN digital access, or Centrex-based access or facsimile); or
- (ii) a value-added non-price-capped retail service that is supplied in conjunction with a service described in subparagraph (i) above or a local access and calling service; and

(b) a retail service offered by Spark to end-users by means of a fixed telecommunications network in the following markets:

- (i) all markets in which Spark faces limited, or is likely to face lessened, competition for that service:
- (ii) all, some, or no markets in which Spark does not face limited, or is not likely to face lessened, competition for that service as determined by the Commission.

Part of Bundles

A5 This service is described in Schedule 1 of the Act as follows:

A retail service that—

(a) is, or has previously been, offered separately by Spark to end-users by means of a fixed telecommunications network; and

(b) is offered by Spark to end-users as part of a bundle of retail services—

- (i) in markets in which Spark faces limited, or is likely to face lessened, competition for that service; and
- (ii) if the effect of the bundled price is likely to significantly reduce the ability of an efficient rival to contest the market.

Attachment B Our process to date

Purpose of this attachment

B1 This attachment provides Table B1 which outlines our process to date.⁴²

Table B1 Our process to date

Decision or publication date	Overview of decision or process
April, 2016	Draft decision on our review of Designated and Specified Services under Schedule 3 of the Act as to whether there were reasonable grounds for commencing an investigation into whether any Resale Services should be omitted from Schedule 1 of the Act.
July, 2016	Final decision on our review of Designated and Specified Services under Schedule 3 of the Act concluded that there were reasonable grounds to commence an investigation into whether Spark's Resale Services should be omitted from Schedule 1 of the Act.
September, 2016	Draft report recommended that the Minister for Communications omit Spark's Resale Services from Schedule 1 one year after the date of the relevant Order in Council (a transition period). ⁴³
December, 2016	Final report recommended that the Minister for Communications does not omit Resale Services from Schedule 1 of the Act at this time and recommended that the decision as to whether Spark's Resale Services should be omitted from Schedule 1 should be deferred for two years. This was because we didn't consider there were full effective competitive alternatives and that the ability of RSPs to switch to alternatives is constrained. ⁴⁴
March, 2017	Minister for Communications accepted our recommendation to defer their decision for two years from the date of our report. ⁴⁵
April, 2017	Telecommunications Commissioner confirmed that we will prepare a draft report in early 2019, in accordance with the process set out in clause 7 of clause 3 of the Act. ⁴⁶

⁴² A full overview of the activity on these services prior to this current investigation is provided in [Commerce Commission "Review of Designated and Specified Services under Schedule 1 of the Telecommunications Act 2001 - Draft decision on whether to commence an investigation under clause 1\(3\) of Schedule 3 of the Telecommunications Act 2001" \(29 April 2016\) p 68 and 70.](#)

⁴³ [Commerce Commission "Draft report on whether Spark's Resale Voice Services should be omitted from Schedule 1 of the Telecommunications Act 2001" \(23 September 2016\).](#)

⁴⁴ [Commerce Commission "Final report on whether Spark's Resale Services should be omitted from Schedule 1 of the Telecommunications Act 2001" \(22 December 2016\).](#)

⁴⁵ [Office of Hon Simon Bridges "My decision on your recommendations about Spark's Resale Voice Services" \(27 March 2017\).](#)

⁴⁶ https://comcom.govt.nz/_data/assets/pdf_file/0022/61825/Letter-to-Hon-Simon-Bridges-re.-Sparks-Resale-Voice-Services-27-April-2017.PDF