



## Response to Commission 111 contact code – Draft code – 11 March 2020

22/05/2020

### Introduction

New Zealand Technology Group represents a co-operative group of companies who provide telecommunications and internet services to a range of consumers throughout New Zealand.

Our diverse product portfolio includes analogue, mobile and digital telephone services, and internet services delivered over traditional analogue copper lines, as well as modern connectivity via fibre, mobile and fixed wireless connections.

We have reviewed the Commissions draft code changes regarding the 111 contact code since the initial discussions began. We have a number of concerns with the current draft code published on the 11<sup>th</sup> of March 2020 that we wish to highlight and to have the Commission consider on behalf of our group.

We support that view that it is very important for consumers to educate themselves on the risks created by transitioning their voice services away from traditional copper services to more modern solutions such as VoIP, and that RSP's are uniquely placed to inform consumers of these risks and to offer a choice of solutions.

However, we disagree that the responsibility to ameliorate these risks and to bear the costs of doing so, should be borne by RSP's alone.

### Commentary on the proposed code changes

#### D. Definitions

- The definition of a consumer should not extend to persons who ordinarily resides at the premises where the retail landline service is supplied. It is not practical to expect an RSP to extend the provisions of the code to persons it has no commercial relationship with, or to grant critical information and decision capabilities to persons who are not the customer of the service the RSP provides simply on the basis of their residence location. RSP's will not be practically able to identify such persons or establish communications with them, nor should they be empowered to make decisions about the operations of the customers services without the express consent of the customer.
- We disagree with the view that the minimum period should be defined as 12 hours of continuous power services. Currently the technology to provide continuous power for this length of time in a number of different scenarios may be scarce, prohibitively expensive and/or simply not practical. We discuss our views on this in more detail in a later section.
- We believe that the list of person of standing in the community is too expansive to be reasonable or practical. We agree the licensed medical professionals are suitable for inclusion for certifying consumers as vulnerable on medical grounds, and that emergency services personnel and justice systems representatives would be suitable to provide certifications on non-medical grounds. However the current list includes a number of persons of standing who may be easily misled or misinformed as to the purpose and gravity of a consumers request to be identified as vulnerable. We also understand the NZ Police force already has a solution in place for contacting emergency services for persons it considers at risk.

## **E. Requirement on providers to inform customers about options available for vulnerable consumers**

- In principle we agree that informing customers of the options to mitigate their risks for maintain emergency contact are necessary and valuable, and that RSP's are in a unique position to communicate this information to their customers.
- We believe it is very important to keep in mind with this code reform that the customer has purposefully chosen to purchase an internet service without a retail landline service (excluding areas completed under the CWC) and has the choice of the provider of that service. Due to that choice, it should be incumbent upon the customer to consider the impacts and risks of those choices, and to bear the responsibility for accepting them. It is not reasonable to expect RSP's to bear responsibilities for the outcomes of a consumers choice once it has provided them with appropriate resources to allow them to educate themselves.

## **F. Process for a consumer to demonstrate they are a vulnerable consumer**

- The definition of a vulnerable customer is currently too vague to be practical. By the existing definition, all persons in New Zealand are at risk of requiring the 111 emergency service during a power outage. There is no definition of what "particular" risk means within the code, and a partial definition is only included on the sample application form in Appendix A. We submit that the commission needs to consider and provide an updated, detailed definition of exactly what "particular risk" means in contrast with the normal, everyday level of risk all person's experience at all times. We appreciate that the causes of such risk may be diverse with various different sources, so a set of general guidance needs to be created and shared. With the current guidelines, a person of standing within the community is free to certify any consumer as vulnerable for frivolous reasons without any check or balance being in place. We do not agree that every person identified on the persons of standing in the community is sufficiently educated already to make such a determination within the interpretations of the Code, the Act and a generally understood meaning of the phrase.
- We believe that requiring customers to self-identify as vulnerable is the correct choice. However, clause 9.2 does not provide any means of testing whether a consumer is actually vulnerable or not, nor does it provide the RSP with any decision making capability or means of disqualifying consumers who do actually have the means of contacting emergency services, but choose not to disclose that information to the impacted RSP.
- RSPs must have the ability to review a consumer's vulnerability claim and provide contrary evidence where such evidence has been collected, and have the discretion to disqualify consumers from vulnerable status or impose financial penalties for costs incurred, where it can show they have made a false statement regarding their lack of alternative contact means. We do not anticipate such situations to be common, but we believe that there must be a form of relief for an RSP who is besieged with claims from consumers and who has no power under the proposed reform to manage them appropriately.
- It is unfair to expect an RSP to bear all the risk, responsibility, and cost of providing solutions to vulnerable consumers without it having some discretionary powers over customer certification. For example; if a potentially vulnerable consumer fails to disclose that they already have access to a mobile device that provides sufficient contact means, an RSP must be contractually able to recover costs incurred in providing a separate means to that consumer as well as withdrawing the means they provided.
- We note that the "Scenario two" presented on the sample application form is in our opinion, a poor example. The risks highlighted as inherent in their occupation as a farmer mean that if an emergency occurs, it is unlikely to occur within reach of their landline services and as such, identification as a vulnerable customer is unlikely to benefit them. They would need to have considered their risks and be carrying a device capable of contacting emergency services on their person, regardless of any provided means or vulnerable status.

## **F2. Process for a consumer to demonstrate they are a vulnerable consumer**

- Clause 11 implies that RSP's do have discretionary power to accept a customer's application for vulnerable status. This however is contradicted 12.2.2. In our view, the code requires RSP's to

accept all properly completed applications, regardless of any other factors it may wish to consider. We recommend the Commission reconsider this position, and grant RSP's some leeway in reviewing applications according to the criteria it has outlined for identifying vulnerable customers and recommend granting RSP's some discretion in accepting applications. Disputes about applications can be handled according to the procedures in section L.

- Customer privacy is of paramount concern to us. We believe that it should not be acceptable for any person to complete an application to become a vulnerable customer without the knowledge and consent of the account holder of the specific customer. It should not be encouraged, or even supported, for the application process to be completed by any person on behalf of the customer who purchases the retail landline service without their consent, or without equivalent legal powers to execute an agreement on behalf of that customer, such as holding power of attorney or equivalent.
- What is deemed to be adequate mobile phone coverage is not defined. We interpret this to mean adequate coverage at the discretion of the affected RSP.
- Regarding clause 12.5, this provision needs to be strengthened. If a vulnerable customer no longer lives at the premises where the provided means was installed, an RSP should be able to immediately commence de-certification and recovery of the provided means. An RSP should only provide means to its customers at the location where that customer resides or operates and consumes the retail landline service. It should not be expected to allow a consumer to recertify a location that no longer meets those terms. This is important because if the customer moves to a new location and is still vulnerable, they need to be applying for vulnerable status at the new location.

#### **G. Requirement on providers to provide vulnerable consumers with an appropriate means for contacting 111**

- We fundamentally disagree with the Commissions view that this service should not be provided on a user-pays basis.
- As noted in the previous section, we dispute that 12 hours of continuous power during an outage is a reasonable and achievable level of service to maintain.
- We submit that the definition of "appropriate means" should be split dependant on the consumers access to mobile coverage at their stated location. We expect in most cases for consumers with sufficient mobile coverage at their location, that a mobile phone with the ability to call emergency services and 12 or more hours of regular battery life, or any equivalent device, will be an appropriate means for RSP's to offer their customers.
- For consumers without mobile coverage, a minimum of 1 hour of continuous power is a more reasonable and achievable goal within the current limitations of power continuity technology that exists today. We believe that sufficiently reliable power technology to provide 12 hours of service is not available in the market at a reasonable cost. Additionally, not all network devices and configurations are equivalent between different consumers. It is plausible that some vulnerable consumers may have unusual and excessive power requirements to support the provision of retail landline service, completely beyond the ability of an RSP to influence or control, as consumers have the choice of networking hardware. This is similar to the increased power requirements for rural fixed wireless and satellite connections.
- RSP customers who have been informed of the provisions of the code and who have traditional copper retail landline services available to them, but who chose not to purchase that service, should be excluded from being considered vulnerable consumers for the purposes of providing alternative contact means. Those consumers have made a conscious choice not to purchase a service with suitable coverage and an RSP should not be expected to provide them with means on the basis of that choice.
- Similarly the code must permit RSP's to direct vulnerable customers who have replaced their corded telephone handsets with cordless ones, to purchase a corded handset at their own expense from the RSP or another provider. RSP's should not be expected to provide telephone handsets as part of their provided means.

- RSP's should be permitted to offer consumers who have poor mobile coverage, and who wish to have more than 1 hour of continuous power, an increased service to meet their own requirements within the available solutions in the market the RSP chooses to offer, with the additional cost borne by that consumer.
- It is possible that in future, developments in uninterruptable power sources and telecommunications technologies may support increasing the minimum period for consumers without mobile coverage, and the code should be amended when those solutions become common in the market, but that is not the case at this time.
- The code needs to address who is to determine which solution is suitable for a particular customer. RSP's are incentivised to require the customer to accept the least expensive possible solution, but we foresee circumstances where a consumer may dispute that solution is appropriate to them and this may be for reasons that are considered frivolous by the RSP. For example, a customer may testify that they are unable to use a mobile phone and want an alternative solution, where there is no medical, physical or technical reason why that customer could not use a mobile phone – they simply choose not to. We believe RSP's should be able to determine which of their offered solutions is suitable for a consumer, within guidelines set out by the code. The disputes resolution process is available if an agreement cannot be reached.
- As a fixed wireless services provider, we have a reasonable number of customers who live rurally, do not have access to copper or fibre based internet services, and have poor or non-existent mobile coverage. Vulnerable customers in these locations would require a non-mobile solution, which will be significantly more expensive, technically complex, and problematic to monitor and maintain over the long term. Additionally, the requirement to maintain power for these customers is significantly higher than a normal xDSL or Fibre connection, due to the requirement to power a wireless receiver in addition to the other network and telephone equipment. We expect this also applies to consumers receiving a satellite based service. Therefore the code change has a disproportionate negative effect on RSP's whose customer base who require the more costly provided means.
- We believe that the Commission directing RSP's to bear all the costs for providing consumers with an appropriate means of contact is unreasonable and unfair to all consumers. As most RSP's are for-profit businesses, the reality is that the cost of providing alternative contact means will be passed on to consumers, but equally to all consumers resulting in RSP's raising their prices across the board in order to recoup their increased cost of operations. This means in principle, the Commission's instruction that a vulnerable consumer must not bear any costs relating to the supply of an appropriate means is not realistic. The most likely outcome is that all consumers will bear increased costs, including vulnerable consumers, by raising the standard retail rental prices of services, rather than a fair user-pays basis. The only way to achieve the Commission's stated goal would be to apply a separate fee to non-vulnerable consumers identified as a fee or tax for providing support to vulnerable consumers, which is not applied to vulnerable consumers, meaning they would receive lower overall prices than consumers who are not using the means but are forced to fund it. Neither scenario we present is acceptable. No doubt this is a point that will be extensively raised in the public media forum. At the minimum, this condition should be rephrased to state that a vulnerable consumer must not bear any additional costs relating to the supply of an appropriate means when compared with a standard non-vulnerable consumer.
- As the RSP will now be expected to bear additional costs and is likely forced to raise prices, this has an added undesirable effect of forcing RSP's to increase their prices more than their competitors where they have a smaller customer base, or with a larger proportion of vulnerable consumers due to their market positioning or bad luck, or they provide services in rural areas that have a higher cost of compliance than their competitors such as areas with poor mobile coverage. This rule unfairly advantages larger RSP's with a bigger coverage area and more diverse product portfolio, and as a result is anti-competitive and will depress market choice for consumers.
- Retail landline services are generally a low margin, low volume service. The likely outcome for many RSP's who would not be able to remain market competitive may be to withdraw offering retail landline services to their customers, or to withdraw entirely from areas without mobile coverage, and thereby avoid bearing additional costs. This has the effect of reducing the consumers ability to

contact emergency services, rather than increasing it. Consumers would be forced to look to larger RSP's or to purchasing offshore services who are not required to comply with these regulations, and some consumers may be left with no choice in internet provider at all.

- We believe the Commission should be looking at alternative means of funding the support of vulnerable consumers beyond expecting the RSP to bear the costs. This could involve seeking funding from other government or industry funds, or to establish a separate levy applied equally to all consumers via their RSP to fund these costs.
- We hope the commission understands that for some solutions, the cost of ensuring the means is regularly and appropriately maintained may be extremely high, particularly in cases where the consumer is unable to or refuses to conduct testing of the solution at the direction of the RSP.
- We expect that for some RSP's in some locations for reasons beyond their own control, during a power outage event, it will not be possible for the RSP to maintain their own internet connectivity infrastructure for 12 continuous hours, and thereby consumers of that service would not be able to use internet based means for contacting emergency services. This possibility should be addressed in the code and excluded from compliance requirements. We note that the Commissions comments about Chorus's infrastructure having general coverage of backup power specifically raises the possibility that this may not be true in all cases, and it is unreasonable to hold RSP's to a higher standard than the underlying LFC network providers themselves.

## **G2. Limit on provision of appropriate means**

- We believe these provisions should be further clarified and strengthened. An RSP should not be expected to test for, or provide contact means to, consumers who are not its customers just because they happen to reside at the same location as its customer. An RSP would not have a contractual relationship with those persons and should not be expected to have a duty of care towards them. It is the responsibility of the customer to ensure that they consider the vulnerability of all consumers in their household and ensure they establish appropriate contact means for their household, which may include applying to their RSP for those means under this code. An RSP is entirely reliant on the customer to self-identify vulnerable consumers in their household and this fact should be clearly explained within the code

## **G3. Requirement to monitor**

- In order to maintain the continuity of contact means, an RSP must be able to contract a customer into supporting the provider with ensuring the provided means is functional and appropriate. Currently in the code it is unclear whether an RSP has the right to enforce contractual terms on a customer who refuses to participate in supporting the RSP to ensure the means is functional and appropriate. The code states an RSP may not cease services to consumers who are vulnerable on the basis that they are in section I.22. It is not reasonable to expect an RSP to bear costs of visiting customer sites to conduct means testing, where such testing can easily and safely be completed by the consumer at the RSP's direction but the consumer refuses to do so. The Code should make it clear that an RSP may instruct the consumer to complete testing of the means to meet this section of the code, provided that testing is able to be completed by the consumer and is safe for them to do so.

## **H. Circumstances where a consumer may no longer be considered vulnerable**

- Clause 20.1 of the proposed code requires additional clarification. The term "someone on their behalf" is open to interpretations that may impact on the RSP's customer. As written, it is possible for a person without a relationship to the vulnerable consumer, to request removal of vulnerable status for a consumer and force an RSP to remove their status or face a breach of this code.
- This section should also have a provision stating that the contact means may be withdrawn by the RSP should a consumer cease to be identified as vulnerable at the discretion of the RSP
- It should also include a clause to explain that a provider is permitted to regard a consumer as no longer being a vulnerable consumer immediately upon the termination of their retail landline services contract to that consumer. A consumer must not have an expectation that the provided means will continue to be available to them upon contract termination.

- RSP's expect to be able to enforce contractual financial penalties to recover their incurred costs for consumers who fail to disclose a change in their vulnerable status. This should be addressed and permitted in the Code. It is unreasonable to expect an RSP to continue to bear the costs for the provided means due to non-disclosure of a change in circumstance on behalf of the customer.

#### **I. Requirement on provider to not withdraw service**

- As previously discussed, it is likely this provision will have the unintended consequence of causing RSP's to withdraw offering retail landline services from some or all of its coverage locations.

#### **J. Requirement on providers to disclose information**

- Regarding clause 23.4, we believe it is unreasonable to require RSP's to disclose the size of their customer base to the commission under this code, and we question whether the commission has sufficient reason to collect this information.

#### **General Comments**

- How does the Commission suggest RSP's address increased levels of competition for retail landline services from providers that operate outside the coverage of New Zealand law, and are therefore exempt from complying with this code? It is a simple matter today for a consumer to arrange to purchase a landline phone service from a provide outside NZ and there are a large number of such providers in the global market. The additional costs to be incurred by local RSP's will make them uncompetitive in the market compared to the foreign services.

We look forward to the next stage of this project,

Regards,

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