

17 July 2020

Dr Stephen Gale
Telecommunications Commissioner
Commerce Commission
Wellington

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NOVA ENERGY SUBMISSION TO THE COMMERCE COMMISSION: DRAFT 111 CONTACT CODE

PUBLIC VERSION

1. Nova Energy Limited (**Nova**) welcomes the opportunity to provide a submission to the Commerce Commission (**Commission**) in relation to the Commission's Draft 111 Contact Code (**Code**) and associated draft decisions and reasons paper.
2. By way of background:
 - (a) Nova is a wholly owned subsidiary of The Todd Corporation, which has been one of New Zealand's leading energy explorers and producers for around 60 years. Todd Generation Limited, also a wholly owned subsidiary of The Todd Corporation, holds an interest in approximately 170 megawatts of installed power generation capacity. Nova is a supplier of electricity and natural gas to wholesale, retail and industrial markets.
 - (b) In 2018 Nova entered the telecommunications market and currently supplies fixed-line broadband and voice services. This includes voice calls originating on a fixed telephone network using VoIP to residential customers.
 - (c) In 2019 Nova purchased the business of Total Consumer Services Limited and its corporate group (trading as MegaTEL) including its fixed-line broadband and mobile customer books. The MegaTEL business supplies mobile services as an MVNO (pursuant to an agreement with Spark as the MNO) and now operates as a standalone division of Nova.
3. Nova is supportive of many of the Commission's draft decisions and Code provisions. In particular, we support:
 - (a) the exclusion of naked broadband services, mobile services and apps that provide voice services over broadband from the scope of "retail landline services" to which the Code applies;
 - (b) the Commission's shift from a solely technology-based approach to the definition of "vulnerable consumer";
 - (c) the Commission's draft decision that the Code will not specify classes of people that must be considered vulnerable customers.
4. However, there are certain key aspects of the Code which we consider problematic and should be revisited, as explained below.

Information disclosure detail

5. The Telecommunications Act explicitly states that the Code must require providers to inform consumers about the options available for vulnerable consumers. However, the proposed level of detail which “must be specified” (as stated in clause 6 of the Code) appears overly prescriptive and beyond what is necessary to meet the purpose of the Code – especially if the detail set out in clause 6 must be provided in written communications to customers or disclosed over the phone in each of the situations where information disclosure is triggered under clause 8 of the Code.
6. We consider a less prescriptive approach is important, particularly to ensure:
 - (i) customer onboarding and switching processes do not become overly onerous, cumbersome and time consuming (for both the customer and provider); and
 - (ii) the required communications do not lose their impact by being overly wordy and laden with detail.
7. Nova therefore requests that the Commission clarify if/how the level of detail may be truncated by providers when communicating with customers in each of the situations where information disclosure is required. For instance, we consider that clause 6 of the Code could be adapted to better reflect the Commission’s “high-level” information summary at table 2, clause 87 of the decisions and reasons paper.

Application form

8. We request that the Commission consider whether the proposed application form should require the person certifying to include a reason / state the basis as to why they consider the applicant to be “at particular risk”.
9. We expect this will help ensure that a vulnerable customer’s specific circumstances are accurately reported to and understood by providers, and also assist providers with their ongoing monitoring and record keeping requirements under the Code.

Assessing mobile coverage

10. Clause 12.6 of the Code provides that consumers must be deemed to have an appropriate means for contacting 111 in the event of a power failure (and therefore, cannot constitute a “vulnerable customer”) if they have unrestricted access to a mobile phone **and** their premises has adequate mobile coverage.
11. The mobile coverage element is especially problematic for non-MNO providers, who will be disadvantaged in assessing their customers circumstances, due to not having visibility of mobile network coverage areas and urban blackspots.
12. We consider the Code should prescribe a means for non-MNO providers to have access to the same information used by MNO providers when assessing mobile coverage, so that the Code can be consistently applied by all providers.

Scope of “no cost” requirement

13. We request the Commission to revisit/clarify the scope of the “no cost” requirement, particularly the requirement for providers to ensure an alternative means is “regularly and appropriately maintained”, which is technically very broad wording.

14. We suggest that the Code should explicitly state that certain responsibilities lie with the customer. For instance, where provision of a mobile phone is the alternative means provided to a vulnerable customer it would be:
- (a) impossible for the provider to ensure the customer keeps it sufficiently charged at all times in order to be operated for the minimum period; and
 - (b) unreasonable for the provider to be potentially liable for costs such as the electricity used to keep it charged and the cost of replacement if the customer has not reasonably cared for it.
15. We also request the Commission to reconsider its position that the Code should not include provisions regarding who should bear or be required to share the cost of providing the “appropriate means” to vulnerable consumers, or at least review its position regularly, given the clear risk that non-MNO providers are likely to be disproportionately impacted by these costs.
16. We would be happy to meet with the Commission to further discuss our submission and to answer any questions that you may have. Please direct any questions or other matters regarding this submission to me in the first instance.

Yours sincerely,



Cameron Pentecost – Legal Counsel – Todd Corporation

