

Submission on the Commerce Commission's Emerging Views paper on the 111 Contact Code

14 October 2019



OVERVIEW

- 1 This submission responds to the Commerce Commission's (**Commission**) 111 Contact Code Emerging Views Paper (**Paper**), dated 12 September 2019. We welcome the Commission's Paper and continued commitment to finalise this Code (along with the Copper Withdrawal Code (**CWC**)) and have both in place by June 2020.
- 2 The 111 Contact Code (**Code**) is required under the amended Telecommunications Act 2001 (**Act**) and aims to ensure vulnerable consumers have reasonable access to a means to contact 111 emergency services in the event of a power failure. While most copper landlines will continue to work in the event of a power failure affecting a consumer's premises, other technologies may need power to continue to function.
- 3 Consumers have a range of connectivity options available. There is, most notably, a transition to superior fibre to the home networks that will cover 87% of the country by 2022, and which already have over 50% uptake. Other technologies, such as fixed wireless access and HFC cable, also present the need for consumers to be well informed and to have reasonable access to contact 111 emergency services.
- 4 We agree that the purpose of the Code, and other regulatory changes, recognises the changed landscape. The Code is aimed at ensuring that a subset of "vulnerable consumers" are identified and have reasonable access to all emergency services by calling 111 in the event of a power failure at a consumer's address (e.g. from a natural disaster).
- 5 Overall, we support the Commission's indicated approach to the Code. We look forward to the workshop in November and the remainder of the submission process.
- 6 The Code needs to appropriately identify vulnerable consumers; determine what services the Code applies to, and who is responsible for, ensuring a solution for consumers of those services; set up a framework for the development and implementation of such solutions and ensure that this is done in a timely manner consistent with other industry timelines.
- 7 There is agreement with many of the Commission's emerging views across the wider industry, and a number of issues on which only Chorus and Local Fibre Companies share the Commission's views. This range of views is set out in the TCF's submission on the Paper. In particular, we agree with the Commission that:
 - 7.1 The Code's scope applies to power failures at a consumer's premises. It is not a network resilience code.
 - 7.2 The Code is not related purely to copper withdrawal but also needs to reflect the range of other access technologies (such as fixed wireless access and cable) that are similarly affected in a power outage at a consumer's premises.
 - 7.3 A technology-based approach to the definition of 'vulnerable consumer' appropriately recognises that all consumers, not just those with pre-determined conditions, is consistent with the Code's intent to ensure vulnerable consumers can contact all 111 emergency services in the event of a power failure.

- 7.4 The proposed exceptions to the technology-based definition will appropriately exclude certain consumers (such as the high number of consumers who also have mobile phones or choose to have a “naked” service) will then immediately narrow and appropriately exclude certain consumers who will already have reasonable access to call emergency services. Appropriate certainty can also be met by the Commission’s proposed approach. For these reasons, and for incentive reasons in the next paragraph, we have a different view from RSPs - who favour a more subjective approach to assessing the likelihood of, or personal circumstances of, a consumer needing to use 111.
- 7.5 This approach encourages industry to support a more informed consumer base. Retailer and consumer engagement should ensure that consumers are made aware at the outset about technology options available and that their service relies on power to function. They should also be informed that their ability to call emergency services may be affected by underlying technology (e.g. fibre, cable or fixed wireless access) without further service provision (e.g. a mobile phone, battery back-up or other alternatives offered by an RSP), and/or may be affected by other choices they make outside the retail telecommunications service provision (e.g. cordless phones which are commonly used and will not work in the event of a power failure regardless of the underlying connectivity technology).
- 7.6 RSPs are best placed to have that conversation with consumers and determine who does not have a mobile phone and offer alternatives, including where a basic mobile may not be appropriate.
- 8 We address each of the key elements of the Code in turn below.

Vulnerable Consumers

- 9 We support a technology-based approach to the definition of “vulnerable consumer”. We consider this appropriately recognises that all consumers, not just those with pre-determined conditions of some type, should have the means to contact a 111 emergency service during a power outage. The need to contact 111 is (almost by definition) unexpected and unforeseeable, and so cannot be predicted by personal circumstances, particularly for police and fire services. The requirement to develop a Code recognises the importance of consumers being able to contact all emergency services (ambulance, police and fire) in the event of a power failure.
- 10 We consider that a “personal circumstances” approach would not be consistent with the potentially universal need to contact the emergency services covered by the Code. We agree with the potential problems identified by the Commission in adopting an alternative condition-based approach. While any selection of vulnerable consumers will need to be identified and recorded, we consider that this would be less extensive and less complex with the technology-based approach the Commission has signalled.
- 11 Additionally, this technology-based starting position (i.e. anyone who has a landline that will fail during an outage), will help drive a more informed consumer base, with an incentive on RSPs to make consumers of next generation technology aware at the outset that their service relies on power to function (unlike most copper voice services).

- 12 We appreciate that including all consumers as potentially “vulnerable” creates a very large (and possibly impracticable) pool, but this is considerably narrowed by the proposed exceptions to the “vulnerable consumer” definition – including the increasingly common choice not to have a landline, plus the recognition that most consumers have a mobile phone. We agree with the exceptions identified and consider it is reasonable to expect owners of mobile phones to be able to contact 111 during a power outage.
- 13 We agree that the Code’s scope applies to power failures at a consumer’s premises only, and is not intended to apply to resilience of telecommunications networks outside of the consumers’ premises.
- 14 We note the Commission considers that copper Voice over Internet Protocol (**VoIP**) services will not work during a power outage. We suggest that it would be useful for the Commission to clarify what it means by “copper VoIP” to ensure the industry has a shared and accurate understanding.
- 15 For example, all of Chorus’ copper voice services (i.e. both PSTN and baseband IP services) will continue to work during a power outage. This is because baseband IP is digitised at the cabinet or the exchange. As this technology will work during a power outage at the consumer premises, consumers using Chorus’ copper voice services would not be “vulnerable” under the technology-based approach.

Service Providers

- 16 The Act requires the Code to require “providers” of specified telecommunications services to inform consumers about their options, and to supply those consumers with the appropriate means for contacting 111 (among other matters).
- 17 We agree that “provider” is best interpreted as Retail Service Provider (**RSP**). RSPs are the providers of telecommunications services to consumers, and are best placed to determine who does not have a mobile phone (i.e. identify vulnerable consumers), to inform vulnerable consumers of their options, to provide a mobile phone as the first-line solution and offer alternatives where a mobile may not be the appropriate means.
- 18 We agree with the TCF submission that it is important that the Commission understands existing processes in the industry and that these be leveraged as much as possible for efficiency.

Appropriate Means to Contact Emergency Services

- 19 We support provision in the Code of a basic mobile phone for vulnerable consumers who are able to use one as the first-line back-up option. This is likely to be the most efficient, least-cost option suitable for the majority of vulnerable consumers.
- 20 Where a basic mobile is not an appropriate solution (limited to coverage or medical reasons), we agree that the Code should give RSPs (as the providers with the responsibility for providing a back-up solution) freedom to identify and offer appropriate alternatives for consumers.
- 21 We agree with the Commission that a potential solution is likely to be a battery back-up, although RSPs should be able to investigate and present alternative solutions. Any

battery back-up would need to be suitable for the relevant powered equipment, which requires identifying the services and equipment at customers' premises. This is not an exercise wholesalers are able to do, as we don't have the relationship with the end-consumer or the requisite visibility of the services they've purchased. Due to the suite of options in the market, there are likely to be different configurations at customers' premises, which may mean different types of battery depending on whether the telephone is connected to the consumer's modem, or directly to the ONT or if the phone is cordless. We do not have a view on a particular battery solution at this stage. RSPs would be best-placed to determine what would be suitable for their consumers and Chorus can provide them with details of the ONT power requirements to factor in with RGW and phone requirements.

- 22 The Commission should enable and incentivise efficient market solutions in RSP offering of alternatives. It should incentivise that the lowest overall cost options for end users are front of mind while meeting the requirements of the code. In our view, achieving these incentives, and aligned to the Code's intent aimed at the retail level, this means the costs will be borne by RSPs in developing, offering and selling services to consumers.
- 23 If Chorus or other LFCs were required to bear the costs of some solutions, not only will this significantly complicate matters given wholesalers do not hold the relationship and information at individual retail customer level, this could disincentivise RSPs to inform consumers well and offer the most efficient options.

Timing and Interrelationship with the Copper Withdrawal Code

- 24 We support the Commission holding to the timetable to have the 111 Code in place by June 2020 (in alignment with its timing for the CWC). We do not consider that further delays should be presented even though the Commission notes the legislative deadline of 2022 (which aligns with the delay in the establishment of the fibre utility regime).
- 25 As noted earlier, Fibre uptake has surpassed expectations at over 50% alongside uptake of other new technologies. It is therefore important that the CWC and the 111 Codes are in place as soon as possible next year. Delays in incentivising good information for consumers, identification of vulnerable consumers in line with the 111 Code and development of alternatives, is not in the best interests of anyone.
- 26 We agree with the Commission that the widespread adoption and access technology choices available creates potential vulnerability, regardless of whether copper services have been migrated from, or ultimately withdrawn in a location or not. Fibre is not the only access technology that requires electricity to function – HFC cable, fixed wireless, and xDSL modem based VOIP services are also affected.