

13 July 2020

111 CONTACT CODE

SUBMISSION TO THE COMMERCE COMMISSION IN RESPONSE TO THE DRAFT CODE

1. Introduction

- 1.1 Lightwire is a locally-owned regional wireless ISP providing broadband coverage to approximately 7,000 rural and remote users across the Waikato and Bay of Plenty regions. Lightwire operates its own network of 200+ high site radio transmission towers to provide fixed wireless broadband network coverage into remote and hard to reach locations, many of which have no alternative access to broadband or cellphone coverage.
- 1.2 Lightwire is a member of WISPA.NZ, an industry group launched in 2017 to represent the interests of commercial Wireless Internet Service Providers (WISPs) in New Zealand.
- 1.3 Lightwire has spent the past 15 years dedicated to connecting remote communities including disadvantaged and unconnected people. Lightwire is a frequent sponsor and supporter of all manner of community initiatives. We understand the desire of the government to protect people who are particularly vulnerable in the event of a power failure.
- 1.4 As with most regional wireless ISPs, the vast majority of Lightwire's customer base is rural residential. In comparison to the larger national network operators, Lightwire does not have a significant urban residential customer base with which to offset the incremental costs the Draft Code would impose. This presents a significant challenge to the business model of delivering Voice over IP (VoIP) services to rural and remote users.
- 1.5 Lightwire invests heavily in ensuring our network is able to reliably deliver services to end users. Lightwire is not in the electricity supply business. The Draft Code would impose additional responsibilities on Lightwire to protect against the inherent unreliability of a service provided by a third-party, that is, the electricity supply to the household. It is our view that the responsibility of ensuring continued supply of electricity to vulnerable households should be placed on the electricity supplier, not the voice line provider who has no control over the reliability of electricity supply to the household.
- 1.6 Lightwire considers the Draft Code to be fundamentally unworkable, and disproportionate to the problem it sets out to solve.
- 1.7 This submission focusses on several features of the Draft Code which in our view require amendment:
 - (a) the definition of Vulnerable Customer;
 - (b) the minimum period of twelve contiguous hours; and
 - (c) the extension of the Draft Code obligation beyond the end-user's home.
 - (d) the absence of safeguards against end users abusing the Code

1.8 In addition, in our view it is essential that the Commission undertakes a cost/benefit analysis before proceeding further with its work on the Draft Code.

2. **Proportionality of regulation**

2.1 A fundamental principle of regulation is that intervention be proportionate, and the costs and benefits of regulatory intervention are weighed; regulation should only be imposed to the extent necessary to address the issue at hand, and only if the benefits of regulation clearly outweigh the costs.

2.2 In the case of the Draft Code the Commission has provided no evidence of any attempt to quantify the costs of its proposal, on the basis that the Draft Code is not intended to address matters of cost recovery. However, whether the costs of intervention are proportionate is unrelated to who ultimately bears the cost; a cost/benefit analysis is a step in the regulatory decision-making process that in our view the Commission cannot ignore.

2.3 The Draft Code does not in our view meet the proportionality principle:

(a) it extends the scope of the group who are the beneficiaries of the Draft Code by adopting a very broad definition of vulnerable customer.

(b) it imposes an obligation on the provider of voice services under the Draft Code (UPS battery with minimum of twelve continuous hours of operation, compared with the one hour period mandated in the UK) which would be prohibitively expensive to meet (if it can be met at all).

(c) It exposes service providers who specialise in rural areas to costs that may well threaten their ability to continue trading.

(d) the Code was intended to replicate the degree of reliability of 111 access during power cuts that existed with copper, so

2.4 It is essential that the Commission, before proceeding further with its work on the Draft Code, investigate the availability and cost of UPS devices in New Zealand, quantifies the cost of any obligation it proposes to impose relative to customer payments, and demonstrates that imposition of the Code can be achieved without serious damage to some service providers, especially those specialising in serving a rural customer base.

3. **The definition of Vulnerable Customer is too broad and imprecise**

3.1 A Vulnerable Customer is a customer "*at particular risk*" of requiring to use the 111 emergency service. The Draft Code gives an example in the definition ("*a known medical condition*"), but in Appendix A this is extended to "*health, disability or safety reasons*".

3.2 Examples are given, including:

(a) a pensioner who has had two recent falls;

(b) a woman with type 2 diabetes in early stages of dementia;

(c) a household with a verbally and physically abusive father; and

- (d) a worker on a remote farm who drives a quadbike and sometimes uses heavy machinery.
- 3.3 While medical/disability reasons will require certification by a medical expert, under the safety category it is left to the person of standing, who is not required to have any specialist risk assessment skills, to assess whether, in their **own** opinion, they consider the consumer is at particular risk.
- 3.4 The Draft Code does not provide any mechanism to review the opinion of the “person of standing”; if such a person signs the declaration, the Draft Code provides that the customer “*must be deemed to be at risk*”. We submit that the opinion of the person of standing should be subject to some form of external review.
- 3.5 The combination of an imprecise definition of vulnerable person (“*at particular risk*”), and the binding effect of a risk assessment by unqualified persons, is likely to result in an exponential increase in the number of customers for whom service providers must provide an Uninterruptable Power Supply, particularly in rural areas where mobile phone service is, in the Commission’s words, “*patchy*”. For example, every person over 70 could claim to be at particular risk in relation to COVID-19. Likewise, every farmer and farm worker could claim so under the example in Appendix A, scenario 2.
- 3.6 As the cost of meeting the obligations in the Draft Code falls solely on the provider of the voice service, there is a real risk of compliance costs driving specialist service providers in rural areas out of the market.
- 4. The minimum period of twelve continuous hours is too long**
- 4.1 The Commission’s Draft Decision specifies a minimum period of 12 continuous hours.
- 4.2 While the reasons paper analyses the duration of unplanned electricity outages in New Zealand to arrive at this figure, there is no discussion of whether batteries which would meet this standard are available in New Zealand, or the cost of such batteries if they are not available.
- 4.3 To comply with this requirement at least one 240 volt Uninterruptible Power Supply (UPS) device would be needed (and for many users, two or three UPS devices would be required, as when the WISP service terminates on a farm building, is radioed to the house, and then onto a router in another room). The cost of a UPS device in New Zealand (which is in any event unable to meet the 12 hour standard) is at least \$300.
- 4.4 No UPS devices available on the New Zealand market meet the Commission’s twelve continuous hours standard, and the few UPS devices available overseas which claim to meet the Commission’s twelve continuous hours standard are prohibitively expensive. UPS devices are designed to maintain power for short periods during an orderly shutdown of critical equipment, or while an alternative supply is connected, not for the purpose envisaged in the Code.
- 4.5 We submit that the one hour period adopted in the UK should also be adopted in New Zealand.
- 5. The assessment of “particular risk” should not extend beyond the end-user’s house or building**
- 5.1 The problem the Draft Code is seeking to solve for is that traditional analogue voice technology does not require a power supply at the consumer’s premises to work, but

services provided over fibre or other digital technologies do. In a power failure these new technologies will not work unless there is an alternative power source such as a battery backup or generator.

- 5.2 This is a particular problem if consumers require the 111 emergency service during a power failure but do not have the means to contact 111. The purpose of the Draft Code is to ensure that in this situation vulnerable customers have "reasonable access" to an appropriate means to contact the 111 emergency service.
- 5.3 The Code was intended to replicate as far as possible the availability of the 111 emergency service in the case of a power failure when an analogue voice service was provided over a copper access line to an end-user's house or building. However, the Draft Code extends the obligation beyond the end-user's house or building by defining premises as "*a house or building, **together with its land and outbuildings***". The Commission accordingly identifies Tane as a person at particular risk because he drives a quadbike to get around his farm.
- 5.4 The fact that a person may work away from their house should not be a relevant "particular risk" in the assessment of a vulnerable consumer, because in the event of an accident away from the home when an analogue copper line was connected to the farmhouse, that person would not have been able to use the emergency service. The Code should specifically exclude from the "*at particular risk*" assessment activities beyond the end-user's house.
6. **The absence of safeguards against end users abusing the Code**
 - 6.1 Provision of a cell phone, or of one or several UPS devices, is a significant private benefit which under the Code end users will gain at the cost of service providers. It will cost the service provider more than \$1000 per end user in many instances, and twice that in some.
 - 6.2 Yet the Code does not provide any sanctions against an end user who abuses this benefit. For example a "vulnerable" end user might cease to be vulnerable, or move addresses, or sell the equipment on TradeMe, or connect a UPS to a different device, or give the device to a child to play with. Some applications may be clearly vexatious.
 - 6.3 Service providers are entitled to recompense in such cases and arguably, to compensation in the case of fraudulent applications.