

11 October 2023

[REDACTED]  
Worldnet Services Limited

By email only: [REDACTED]

Dear [REDACTED]

## **Warning - Alleged breach of section 156A(1)(p) of the Telecommunications Act 2001**

### **Purpose of this letter**

1. The Commerce Commission (**Commission**) has been investigating Worldnet Services Limited (**Worldnet**) under the Telecommunications Act 2001 (**Act**). We have now completed our investigation and are writing to inform you of the outcome.
2. In summary, the Commission considers Worldnet is likely to have breached section 156A(1)(p) of the Act, by failing to comply with the Commission 111 Contact Code (**the Code**) without a reasonable excuse between November 2022 and February/March 2023.
3. In this instance the Commission has decided to issue Worldnet with a warning in respect of its failure to comply with the Act. A warning is not a finding of non-compliance; only the Courts can decide whether a breach of the law has occurred.<sup>1</sup>
4. We expect Worldnet to ensure that it implements and follows procedures to maintain compliance with the Code.

### **Compliance with the Code and the role of the Act**

5. The purpose of the Code is to ensure that vulnerable consumers, or persons on their behalf, have reasonable access to an appropriate means to contact the 111 emergency services in the event of a power failure.
6. The Code sets out a range of obligations designed to ensure that consumers are made aware of, and are regularly informed about the Code, including the protections available to vulnerable consumers.

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<sup>1</sup> Commission's *Enforcement Response Guidelines* at [41] available [here](#).

7. Compliance with the Code is important because it ensures that consumers are aware that modern voice services do not work in a power outage, and provides a pathway by which vulnerable users can be assured of continued voice access to 111 emergency services in the event of a power failure.
8. Non-compliance with the Code, if it is found to have occurred without a reasonable excuse, breaches section 156A(1)(p) of the Act. The Commission can take enforcement action for such breaches, under section 156B of the Act.

### **Worldnet's non-compliance with the Code**

9. Worldnet is a provider of retail landline services to consumers.<sup>2</sup>
10. Under the Code, Worldnet must provide certain information to its retail landline customers, capably manage applications under the Code, and disclose information to the Commission each year. Failure to do so without a reasonable excuse gives rise to a likely breach of section 156A(1)(p) of the Act.
11. Between February 2021 and May 2023, Worldnet failed to comply with the Code in the following ways:
  - 11.1 between 1 February 2021 and November 2021, Worldnet failed to display any of the information required under clause 5 and specified in clause 6 of the Code, to meet its clause 7 obligations to provide Code information to consumers at the point of sale, on websites and via direct communication.
  - 11.2 Worldnet did not make available or operate a process for consumers to apply to be recognised as vulnerable under the Code, as required by clause 11, between 1 February 2021 and November 2021.
  - 11.3 Worldnet did not provide consumers with reminder communications about the Code, as required by clause 7.3, between November 2022 and 10 February 2023.
  - 11.4 Worldnet did not provide disclosure of its Code-related activities to the Commission by 30 November 2022, as required by clause 38 of the Code. For the 2021/22 disclosure year, Worldnet's disclosures were provided late, on 1 March 2023 as part of our investigation.

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<sup>2</sup> Under section D of the Code: (i) a 'provider' means a supplier or suppliers of a retail landline service; (ii) a 'retail landline service' means a landline service provided to a consumer at a premises, and excludes (a) mobile services, (b) naked broadband services, and (c) applications that provide voice services over broadband services (such as Skype); (iii) 'consumer' has the same meaning as given in section 232 of the Act, and, in the case of a retail landline service, includes: (a) the customer; and (b) a person who ordinarily resides at the premises where the retail landline service is supplied; and (iv) 'customer' means a consumer who has a contract with a provider for the supply of a retail landline service.

### **Worldnet's explanation of its non-compliance with the Code**

12. Worldnet stated, via written correspondence, and at interview that:
  - 12.1 it allocated compliance with the Code to a staff member that left the organisation in May 2022;
  - 12.2 the duties for Code compliance held by the departed staff member had not been passed on within Worldnet;
  - 12.3 after the staff member's departure, Worldnet management were unaware of their non-compliance with the Code until they were contacted by the Commission in January 2023 as part of our investigation; and
  - 12.4 in Worldnet's view, the Commission should have done more to ensure Worldnet was made aware of its Code disclosure obligations in November 2022.

### **Our view of reasonable excuse**

13. We note that Worldnet was not sent information about the Code when the Code was first published in November 2020. Our first communication to Worldnet about its Code obligations was in September 2021, in the form of an email advising that we would be creating a template for the first set of disclosures in November that year.
14. The Commission's email sent to Worldnet in September 2021 was not an explicit call to action. However, the email did outline the Code obligations that existed in relation to voice services. The email also provided a link to the Code.
15. As a result of the Commission's email, the necessary steps were taken by Worldnet to comply with the Code. Worldnet's website displays information about the Code under clause 7.1, and an email was sent to customers about the Code in November 2021 under clause 6 of the Code, with the information prescribed in clauses 6.1 – 6.8. We also received information disclosures from Worldnet under clause 38 of the Code in November 2021.
16. We consider that between February 2021 and September 2021, Worldnet may hold a reasonable excuse for its non-compliance with the Code. The Commission did not communicate the Code's requirements to Worldnet until September 2021, and Worldnet promptly brought itself into compliance with the Code after the Commission's communication.
17. However, in our view, Worldnet's subsequent non-compliance between November 2022 and February/March 2023 occurred as the result of circumstances that were within its control, and of its making.
18. We expect providers of retail landline services to be capable of navigating their compliance obligations and managing their operations to ensure compliance occurs.

19. Worldnet demonstrated that it could meet its obligations under the Code in November 2021. However, there was no process to ensure the steps Worldnet had taken towards Code compliance were maintained, when the staff member who implemented Code compliance left Worldnet's employment.
20. In 2022, the Commission sent the usual reminder emails regarding Code disclosures due 30 November each year. Worldnet did not receive these reminder emails in 2022 as it permitted its departed staff member to retain the email address used in the workplace, and otherwise used by the Commission to communicate with Worldnet about the Code.
21. In our view, Worldnet does not hold a reasonable excuse for its failure to remind its customers about the Code and provide the Commission disclosures under the Code in November 2022, giving rise to a likely breach of section 156A(1)(p) of the Act.

#### **Available enforcement responses for a breach of section 156A(1)(p)**

22. Under section 156B(1) of the Act, the Commission may take one of the following actions where a person has failed, without reasonable excuse, to comply with section 156A(1)(p):
  - 22.1 serve a civil infringement notice under section 156D requiring the payment of a pecuniary penalty of up to \$2,000;
  - 22.2 enter into enforceable undertakings; or
  - 22.3 apply to the High Court for an order requiring payment of a pecuniary penalty to the Crown.

#### **Our decision to issue a warning**

23. Section 156C of the Act sets out matters the Commission must consider when deciding what enforcement action to take under section 156B of the Act.
24. The Commission uses its enforcement criteria to assist it in deciding whether to take enforcement action in response to a statutory contravention, and to assist it in deciding what enforcement action to take.<sup>3</sup>
25. The enforcement criteria applicable are:
  - 25.1 the extent of detriment and gain;
  - 25.2 the circumstances, seriousness and culpability relating to non-compliance; and
  - 25.3 public interest.

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<sup>3</sup> Further detail regarding our enforcement criteria can be found in our Enforcement Response Guidelines.

26. Our assessment is that detriment is limited. Worldnet has a relatively small number of retail landline customers who did not receive reminder information about the Code. These consumers did receive earlier information about the Code, and Worldnet remedied this aspect of its non-compliance in early February 2023. Worldnet's failure to provide Code disclosures by 30 November 2022 did not cause significant impairment to the Commission's duty to monitor compliance with the Code under section 9A(1)(c) of the Act.
27. We consider Worldnet is wholly responsible for its non-compliance. More effective systems for maintaining processes throughout changes in personnel could be expected, and would have avoided the non-compliance which occurred.
28. We consider that there is significant public interest attached to the purpose of the Code. It is ultimately designed to protect the vulnerable, at times when they are at increased risk.
29. Based on our assessment of Worldnet's non-compliance against the enforcement criteria, we have decided to issue Worldnet with a warning at this time rather than take one of the stronger enforcement actions provided under the Act.

**Our expectations regarding Worldnet's future compliance**

30. We take non-compliance with the Code seriously. We expect Worldnet to ensure that it implements and follows procedures designed to ensure the departure of staff does not impact its compliance with the Code.
31. While we will not be taking any further action against Worldnet at this time, we will take this warning into account if this issue arises again, or if Worldnet engages in similar conduct in the future. We may also draw this warning to the attention of a court in any subsequent proceedings brought by the Commission against Worldnet.

**Further information**

32. This warning letter is public information and will be published on our website. We may also issue a media release or make public comment about the outcome.
33. Please contact Zeb Walker, Principal Investigator on direct dial [REDACTED] or by email at [REDACTED] if you have any questions about this letter.

Yours sincerely,



Tristan Gilbertson  
Telecommunications Commissioner