



**Spark**<sup>nz</sup>

# Improving RSQ – Draft Product Disclosure Coverage Map Guidelines

Spark New Zealand

Public Version

Commerce Commission

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## Principles

1. We welcome the opportunity to comment on the Commerce Commission’s Draft Product Disclosure Coverage Map Guidelines (Guidelines). The Guidelines seek views on two broad proposed requirements:
  - **Enhanced coverage transparency and comparability:** That mobile providers should align on a common set of coverage strength descriptors to better enable consumers to compare coverage in an area, and that providers should prominently display a link to their coverage maps in marketing material; and
  - **Compensation for “material coverage issues”:** That providers should compensate customers for “material coverage issues” from the date the “material coverage issue” commenced, including:
    - providing a right to exit any contract they have with the provider;
    - refunding any monthly payments made for as far back as the date the material coverage issue commenced;
    - allowing the customer to keep any upfront discounts or ongoing discounts offered when they signed up for the service; and
    - giving a customer who has purchased a mobile device on interest-free payment terms the option of exiting their contract without having to pay the outstanding balance of the interest-free payments.
2. These are new and globally-untested ideas that require careful consideration, and the draft Guidelines have been very useful in helping us work through the practical implications of the proposals. We are supportive of enhanced coverage transparency and comparability, but would value further discussion on the questions of what a “material coverage issue” is intended to represent, and when different forms of compensation for material coverage issues might be appropriate. We would also value further insight into the underlying issues that the Commission is seeking to address with the proposed compensation Guidelines.
3. This is an important topic which would benefit from more discussion. We welcome further consultation to understand and refine the proposals.

## Coverage Maps

4. We agree there can be industry alignment on coverage prediction maps. We suggest alignment activity is limited to 4G and 5G mobile outdoors coverage maps, as 3G is a legacy technology and is soon to be withdrawn. We also note that consideration should be given to whether satellite coverage should be included on coverage maps.
5. As the Commission notes, coverage prediction maps aren’t speed guarantees and may not accurately reflect the impacts of the natural and built environment on signal strength, and this should be made clear on the maps and in related materials.

## Material Coverage Issues

6. In our experience, 'material coverage issues' (**MCI**s) are not a significant driver of customer complaints.
7. Mobile coverage is not static or universal, and there will always be areas with better or worse coverage – even within different parts of a customer's home. Our observation is that typically, where coverage in a specific location is important to a customer, the customer will already know which provider(s) has the best coverage in that location. Further, service features like WiFi calling mean customers can make mobile calls even if there is no mobile coverage in an area or in their home.
8. Customers do complain about coverage black spots, and it is common for them to ask for further information on when and how those black spots will be addressed. But it is not common, in our experience, for customers to claim they have been promised coverage or coverage strength in a location that was not, in fact, available at that location.
9. Further, we are very careful in describing the limitations of any coverage maps or descriptions of coverage we describe, because we understand that a large number of natural and built environment features can affect that coverage. Some of these may be within a provider's control but many (for example, the location, height, and change in height of a tree or trees) are not. As a result, we are not surprised at the small number of complaints we see about a material change in coverage and we expect the lack of volume of these complaints is reflected across the industry.
10. Of course, customers who do experience material coverage issues can reach out to us and we will investigate their issue and work with them to understand their concern. Where appropriate, our policy is to allow customers to leave their service early. This would include a situation where we have set incorrect coverage expectations.
11. Our view is that existing consumer legislation contains tools to effectively deal with MCIs and resolve customer issues, but we are open to RSQ Guidelines being used to 'fill in the gaps' if there is identified harm which cannot be addressed through Consumer Guarantees and Fair Trading legislation. If such Guidelines are to be set, they will need to be carefully designed to ensure they do not cause unintended results, such as encouraging providers to be overly conservative in their prediction maps, and/or refuse to serve customers who live in areas on the bounds of acceptable coverage strengths. A smaller reported footprint may also have flow-on implications for New Zealand's global position on mobile coverage as reported to the OECD.
12. It may be that we have misunderstood the Commission's intended scope for the term 'MCI', so further discussion on this point would be welcomed.

## Product Disclosure As A First Step

13. For issues such as this – where the size of the concern, and the number of consumers affected by it, is unclear, our view is that transparency obligations are a sensible starting point for any regulatory intervention. They shine a light on existing policies, and incentivise providers to compete across all elements of their service. If the Commission

has concerns that customers are not aware of their rights to exit where coverage materially changes at an important location for them, we suggest that this should be addressed through the product disclosure guidelines as a first step, which could be coupled with a consumer awareness campaign.

14. We encourage the Commission to take a staged approach to RSQ intervention, to allow the market to respond to areas which are of priority to address. If product disclosure does not provide adequate transparency of policies, or shows that policies are not sufficient and are unlikely to change, then the Commission can consider other interventions such as aligning providers' approaches for customers who face coverage issue.

### Right To Exit and Associated Customer Rights

15. Given the proposed definition of a material coverage issue, and the rights available to customers in these circumstances (see below), we are concerned at the Commission's proposed right for consumers to exit a monthly contract term early where they can show evidence of a material coverage issue .
16. Customers of mobile services derive benefit from the entirety of a provider's network coverage, which enables them to access communication and data services on the move and at multiple locations. As noted above, providers also offer services such as Wifi calling which enable communication services even in areas where there is no mobile network coverage but there is an accessible WiFi signal. We provide high-level predictive coverage modelling, and make clear statements about the limitations of this modelling.
17. In this context, except in extreme cases such as where a provider has promised a particular coverage outcome to a customer, or have itself caused a material degradation in coverage through relocation of a mobile site, we do not believe providers should be held liable for events which are outside of their control. For example, this could be in instances such as changes in coverage caused by new buildings or shelter belt growth between our cell site and the customer.
18. We also have concerns at the proposal to backdate compensation for monthly payments to the date the MCI began, rather than when it was reported by the customer. As a principle, we believe that providers should have the opportunity to identify and fix problems which occur on their network, and should not be held liable for issues they did not know about. Even where a provider knows about a coverage change at a given location, it would still be unfair to expect the provider to know which customers value coverage in that particular location to such an extent that they see insufficient value in remaining a customer of that provider.
19. Similarly, allowing customers to keep discounts and offers, such as up-front payments and ongoing bundle discounts on standalone products, even where they hand those products back or discontinue their payments, would introduce troubling uncertainty for providers and, ultimately, should be expected to lead to reduced innovation and fewer such discounts and offers. This consequence may be acceptable in the face of clear evidence of a countervailing harm caused by MCIs, but we are not yet convinced of this.

20. Combined, these two requirements create significant costs to providers and effectively become a penalty for a provider predicting any level of acceptable coverage – providers would only produce prediction modelling under this framework because they were required to, and they would have clear incentives to under-report that coverage.

## Interest Free Payments

21. Interest Free Payment (IFP) plans are a customer choice, and provide flexibility for a customer in how they pay for their device. The Guidelines propose to introduce two options for customers who wish to leave a provider's service due to a MCI but do not want (or cannot afford) to pay the outstanding amount of their IFP in a lump sum:
- Their provider should buy back their device. This will be costly to providers. Device trade-ins only make sense because the customer is buying a new device and accessories, and committing to further service. In the case where the customer is leaving their provider, there is no ongoing revenue to offset costs.
  - Their provider should allow the IFP to continue, even if the customer has no other plans with them. This requires providers to offer a finance product (mobile device credit financing for non-customers) which, in Spark's case, currently doesn't exist. The provider will carry the bad debt risk and admin costs with no ongoing revenue to offset these costs, and must manage a completely new customer relationship centred only around credit financing.
22. Neither of these options is attractive. However, the issues are complex and we would value further consultation on the principles and solutions proposed.

## Other Points

### *Requirement To Link To Coverage Prediction Maps In Marketing*

23. The Guidelines state that any marketing that 'relates to services that rely on mobile coverage' should prominently disclose a link to the RSP's coverage map. While this makes sense in a digital context, it does not make sense in offline formats or where space is limited. We suggest that this criteria could be logically met by using general wording such as 'see website for coverage', rather than putting a written link on offline marketing, especially where space is limited.

### *15 working days is not enough time to investigate and resolve coverage complaints*

24. The Guidelines propose allowing providers 15 working days to resolve issues before the customer's exit rights apply. This is a short amount of time given the variables which may apply and the lack of visibility that providers have of the customer's equipment and experience.
25. By comparison, providers have 30 working days to investigate broadband complaints. For clarity, broadband is an easier service to investigate as it is at a fixed location and providers have better diagnostic capabilities.

26. We would welcome further discussion on how the Guidelines are proposed to apply if the issue is not resolved within 15 working days but is due to factors outside the provider's control; for example, if the service limitation is due to a cell tower relocation, or a temporary issue which will soon be resolved.

#### *Changes in performance*

27. It is unclear if a 'material coverage issue' means the customer has no coverage, or just less coverage than they had previously. Coverage and capacity naturally vary over time as customers pass through the network. This can be due to expected variation, such as the daily pattern as people travel into an area to work during the day. Alternatively, it can be unexpected variation, such as an unforeseen road closure on a motorway, resulting in vehicles detouring through areas not dimensioned for large amounts of mobile traffic. The definition of what constitutes a material coverage issue needs to take account of these effects and natural variations, as there is no single guaranteed performance level.

#### *Proving Material Coverage Issues*

28. As noted above, it is relatively easy to prove broadband faults, as the customer is in a fixed location and performance is usually static. For mobile the situation is more complex, with multiple variables including locations and device variations.
29. We are unsure how providers can establish at a high level of certainty that an MCI exists for a given customer short of drive testing – which would be prohibitively expensive if required in each case. If a provider is required to simply accept the customer's word, this manifestly increases the risk of non-genuine coverage issue claims as a way to exit from a contract early.

#### *Time To Implement*

30. We have not performed a feasibility study for the cost and timeframes involved in operationalising the proposals, but we note the changes are complex and will require significant development resource. We welcome further consultation on the proposals and timeframes.