

10 December 2020

Geoff Thorn
Chief Executive Officer
New Zealand Telecommunications Forum
PO Box 302469, North Harbour
Auckland

Dear Geoff

Re: Commerce Commission 111 Contact Code

1. We write in response to the letter sent from the New Zealand Telecommunications Forum (**TCF**) to the Commerce Commission on 27 November 2020 about the Commission's 111 Contact Code (**Code**). The Code was published on 17 November 2020 and comes into effect on 1 February 2021 (except section G, which comes into force on 1 August 2021).
2. The TCF letter requested an extension to the 1 February 2021 commencement date until mid-2021. It also outlined further questions and clarifications from TCF retail service providers (RSPs) about the Code's implementation.
3. We respond to this request and provide clarification on individual questions below.

Commencement date of 1 February 2021

4. The TCF has requested that RSPs have until mid-2021 to comply with the provisions of the Code that come into force on 1 February 2021, or that the Commission provides for another option to alleviate compliance concerns. The relevant provisions require RSPs to inform consumers about the options available to vulnerable consumers and to make available a process for persons to apply to become vulnerable consumers.
5. During the consultation for the Code, we indicated that it would come into force on the date it was published. After receiving submissions from parties, including the TCF, we decided on a staged commencement with Section G (which relates to the provision of appropriate means to contact 111) coming into force on 1 August 2021 and the remainder of the Code on 1 February 2021.
6. The TCF has provided information in its letter which it suggests that RSPs will face significant challenges in complying with the relevant provisions on 1 February 2021.

The letter outlines the work RSPs must undertake to comply with the Code and the difficulties in completing this work given the Christmas break.

7. We note that we have been engaging with RSPs on the Code since 12 September 2019 when we published our Emerging Views Paper. That engagement has included consultation on a draft Code and draft reasons paper, and workshops with RSPs.
8. While the finalised requirements in the Code were published on 17 November 2020, RSPs have been aware for some time now of the key requirements of the Code. In particular, RSPs will have been aware that they would be required to provide information to consumers about the Code and to put in place a process for persons to apply to be vulnerable consumers.
9. Nonetheless, having considered the information in the TCF's letter, we have decided to use our discretion to not take enforcement action in relation to breaches of the Code that occur between 1 February 2021 to 30 April 2021, conditional on RSPs:
 - 9.1 making best efforts to be in compliance with the Code when it comes into force on 1 February 2021; and
 - 9.2 being in compliance with the Code from 1 May 2021.
10. If an RSP does not meet these conditions, we may take action in relation to breaches of the Code by the RSP that occur between 1 February 2021 and 30 April 2021.
11. Finally, we wish to emphasise the importance of RSPs moving quickly to implement the requirements of the Code, as the Code will provide critical protections to vulnerable New Zealanders. Concerningly, the TCF's letter suggests that RSPs have not yet had the opportunity to explore what is required to meet the criteria in the Code relating to the provision of appropriate means to contact 111, despite this criteria remaining essentially unchanged from the draft Code published on 11 March 2020.
12. The requirement to provide appropriate means comes into force on 1 August 2021, and RSPs must comply with the requirement from that date onwards. This is sufficient time for RSPs to have sourced appropriate devices.

Clarification of TCF questions

13. The letter outlined three areas that were identified by TCF RSP members as needing further clarification from the Commission. We have addressed each area below.

Application turnaround in ten working days

14. The TCF has sought clarification that during the ten working days that an RSP must approve or decline an application, the 'clock can be stopped' in the circumstance the RSP is waiting for information from the applicant or an applicant's third party.

15. It is important to note that the ten working days begins once a *complete* application has been received by the RSP. Clause 14 of the Code lists the information that must be included in a consumer's application for it to be treated as complete by the RSP. If there is information missing from the application, such as a medical certificate as evidence that the consumer is at particular risk, then the application is incomplete and the ten working day clock does not start.
16. We also acknowledge that RSPs may face delays outside of their control while contacting a nominated person. Clause 19 of the Code outlines the grounds under which a RSP may decline an application, including the consumer's application has provided the details of a nominated person but the RSP has not been able to contact the nominated person despite all reasonable efforts to do so.

Phone call applications

17. The TCF has sought clarification from the Commission on whether it intended phone calls to be a valid form of application.
18. The purpose of clause 17 of the Code is to ensure that RSPs offer a range of ways for consumers to apply, including those who may have accessibility challenges or use voice-only services. This is particularly important in the context of the Code which provides protections for vulnerable consumers. For this reason, we did not specify that the application must be written.
19. Our view is that the information listed in clause 14 that forms the consumer's application is generally able to be collected over the phone. A customer representative's electronic notes of the phone conversation should suffice as appropriate evidence of the application, if the record is accurate and covers all the information listed in clause 14 of the Code. For example, the application could be completed by a customer representative over the phone via an online form with the consumer's consent.
20. We do note that there may be some situations (for example, where the consumer elects to provide sufficient evidence to support that the consumer is at particular risk) which may not be possible to complete over the phone. In these circumstances, the RSP can require the consumer to provide the relevant written documentation.

Storage of confidential documents

21. TCF has sought clarification that RSPs may sight confidential documents in support of the application, such as medical certificates, and return them to the customer, but do not need to store them.
22. We confirm that the intention is that the RSP may sight any confidential documents and return these to the consumer without storing them, provided that the record of the application reflects this appropriately.

23. Our expectation is that RSPs will maintain appropriate records of where this has happened, particularly where an application has been declined on the grounds that the evidence provided alongside the application is deemed to be insufficient to show that the consumer is at particular risk,¹ and the RSP has made reasonable efforts to assist the consumer to remedy the insufficiency of the evidence.²

Review of the Code

24. As RSPs proceed to implement the requirements of the Code, there may be further areas where implementation issues arise, and clarification will be required. We will continue to engage with RSPs on these areas as and when they come to our attention.
25. We will also consider when the appropriate time would be to review and amend the Code to include clarifications and any necessary amendments to ensure the Code meets its purpose and is providing guidance and clarity to RSPs on their obligations.
26. Our current thinking is to consider a review of the Code following the first annual information disclosure by RSPs to the Commission (due 30 November 2021).

Wider communication on the Code

27. We thank the TCF for the offer to assist in identifying all affected RSPs through various TCF groups and distribution lists. We will review the information you have provided and will let you know if we have any questions.
28. We agree that a wider awareness campaign of the Code would assist both consumers and RSPs to understand the Code's requirements for eligibility and types of solutions likely to be provided. The TCF has proposed a meeting between the relevant communication teams from the TCF, Telecommunications Dispute Resolution (TDR), the Commission and consumer stakeholders to discuss developing a shared programme for communications and sharing material. We agree that this would be a valuable discussion, particularly around timing of communications. We will be in touch early in the new year to arrange this meeting.
29. Please contact Sam Norman (Sam.Norman@comcom.govt.nz) if you have any questions in relation to this letter.

Yours sincerely


Vanessa Turner

Head of Telecommunications
Commerce Commission

¹ Clause 19.4 of the Commission 111 Contact Code.

² Clause 20 of the Commission 111 Contact Code.