

# One NZ submission on the Commerce Commission's draft mobile coverage maps

15 March 2024

## Introduction

1. We welcome the opportunity to comment on the Commerce Commission's (**the Commission**) draft mobile coverage maps guidelines (**draft guidelines**). We appreciate the extension provided for submissions.
2. In support of this submission, we have commissioned (jointly with Spark and 2degrees) an independent report prepared by Coleago. The report explains how mobile coverage maps are generated and outlines the challenges of defining, measuring and communicating mobile coverage to consumers in practice. We expect to be able to provide this report to the Commission later this month.
3. This submission builds on the context that will be provided in the Coleago report and sets out One NZ's position on the Commission's proposals around standardisation of mobile coverage maps, marketing communications and consumers' right to exit in the event of a material coverage issue. We understand from discussions with the Commission that it intends to hold further rounds of consultation with industry and other relevant stakeholders before the guidelines are finalised in the latter part of this year. We support this approach. Given the complexity associated with the proposals, it is important that they are adequately worked through by the Commission and industry to ensure any final measures are practical and deliver genuine benefits to consumers.

## Summary of key points

4. Summary of One NZ's key points:
  - a. We are open to working with the other Mobile Network Operators (**MNOs**) to determine what level of standardization of mobile coverage maps would be achievable.

However, more time than the Commission's proposed three months would be required to deliver this in practice.

- b. The proposed requirement to include a link to the mobile coverage map in marketing communications should only apply to marketing materials that make specific claims regarding mobile coverage and it should be sufficient to include this link in the short terms and/or in the customer sign-up journey.
- c. The Commission should not proceed with the 'right to exit' proposal due to the significant practical challenges with implementing this that derive from the nature of mobile coverage being predicted, not guaranteed, and the lack of evidence of a problem that merits regulatory intervention of this scale. Our view is that existent consumer protection measures remain sufficient in this case.

## Standardisation of mobile coverage maps

5. One NZ provides a mobile coverage map on its website which reports predicted outdoor coverage by technology and has an address checker functionality.<sup>1</sup> These predictions are generated using computer programs that simulate the way mobile signals travel from mobile masts and are blocked by any obstructions such as hills, trees and buildings. Predictions from computer models are generally accurate but cannot guarantee coverage is present in a certain area (as they provide a probabilistic or statistical view of coverage). Links to One NZ (and other MNOs') coverage maps are also provided by third party entities such as SignalChecker.<sup>1001</sup>
6. We make it clear that One NZ's coverage map is indicative only, and is intended to provide general guidance on where the One NZ network and outdoor coverage is available. As noted, while mobile coverage may be available in a specific area, the end-user's ability to connect to that coverage and the quality of service they will receive in that coverage area will vary

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<sup>1</sup> [Mobile Coverage at your place, over 5G, 4G, 3G and even 2G. One NZ.](#)

and depend on a number of factors, many of which are uncertain and outside of One NZ's control, such as the local environment, type of device used, and temporary congestion on cell sites. This is why One NZ provides no commitment or guarantee about the quality of connectivity the end-user will receive in any particular area where our map indicates coverage is available.

7. As a general principle, we support the outcome the Commission is seeking to achieve to enable consumers to compare coverage across different MNOs' services. We considered the Commission's proposal for MNOs to standardise mobile coverage maps when this idea was first consulted on in late 2022. One NZ's position remains that it would be complicated, difficult and disproportionate to require MNOs to develop and apply an agreed consistent *calculation methodology* for reporting mobile coverage.
8. As we have explained previously, each mobile operator uses its own methodology to predict coverage. These methodologies use various combinations of data that are either created by the operator itself or acquired from third parties together with proprietary software/tools that 'renders' that information to provide a prediction of coverage at different locations. While these processes will use some common data sources, each operator may apply and render data in a variety of different ways – and not all operators use the same software/tools to do so.
9. We appreciate that these challenges around aligning methodologies and tools have been taken into account by the Commission and the revised proposal is limited to requiring providers to standardise only the terms used to describe coverage levels. The Commission has acknowledged that any standardised terminology will not be 100% comparable because of the different methodologies and tools that MNOs use to predict coverage, but will go some way in enabling an easier comparison of mobile coverage across providers, i.e. operators will apply a standard 'label' to quality of service in a coverage area regardless of how they individually determine where that label applies.
10. We are open to working with the other MNOs to determine what level of standardisation of terms and presentation of coverage maps would be achievable. We are unable to comment on the timeframes for delivering increased standardisation at this stage without first carrying out a feasibility study after the Commission's guidelines are finalised. The Commission has proposed that operators should comply with the final guidelines within three months after they are published. While three months may be sufficient for the discussions between MNOs to commence and an initial project feasibility assessment to be done, more time will be required for MNOs to deliver the changes to enable increased standardisation of mobile coverage maps. We expect that significant development work and resources will be required to implement these changes in practice, given the complexity associated with the proposal.

## Marketing communications

11. The Commission has proposed that ‘Any marketing communication that mentions mobile coverage or relates to services that rely on mobile coverage should prominently disclose a link to the RSP’s coverage map.’
12. The Commission’s definition of ‘marketing communication’ is extremely broad,<sup>2</sup> meaning that the requirement to ‘prominently disclose a link to the RSP’s coverage map’ would apply irrespective of the marketing channel. Practically, this would limit One NZ’s ability to advertise mobile products across some channels. A lot of advertising is very small (e.g. social media posts) – being required to include a link to the coverage map into advertising copy will likely make mobile marketing via such channels unviable.
13. We propose that the requirement to include a link to the coverage map should apply to marketing communication that makes specific claims regarding mobile coverage. For example, One NZ’s products like One Upgrade have no link to mobile coverage, but would be caught under the Commission’s proposed draft requirement for a link to a coverage map to be included for ‘any services that rely on mobile coverage’. A link to the mobile coverage map is not an essential piece of information that should be required to feature in marketing material that does not specifically reference mobile coverage – it should be sufficient to provide a link as part of the sign-up journey in these cases.
14. In any case, we propose that it should be sufficient to include a link to the coverage map in the RSP’s short terms and under ‘important things to know’ as part of the sign-up journey. This would be a proportionate approach given that coverage areas do not affect a large proportion of our customers and having this additional information in the copy of the

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<sup>2</sup> ‘Marketing communication: means any communication relating to the description, promotion, advertising, or sale to consumers of retail energy bundles, including, without limitation, online, email, print, television, radio, in-store and door-to-door descriptions, promotions, advertising, and marketing performed by contracted third-parties’, [https://comcom.govt.nz/\\_data/assets/pdf\\_file/0034/337669/Improving-RSQ-Draft-Product-Disclosure-Mobile-Coverage-Maps-Guidelines-14-December-2023.pdf](https://comcom.govt.nz/_data/assets/pdf_file/0034/337669/Improving-RSQ-Draft-Product-Disclosure-Mobile-Coverage-Maps-Guidelines-14-December-2023.pdf)

advertising material will detract from messages that we are required to display under relevant legislation, such as cost and time in contract. The Commission's proposal is very broad and would require significant amendment to MNOs' existing mobile marketing practices. We have seen no evidence that shows demand from consumers for links to mobile coverage maps to feature in all mobile marketing materials.

## Right to exit without penalty in the event of a material coverage issue

15. The Commission has proposed that retail service providers (RSPs) should allow customers to exit their service, or move to a different service, without penalty if they experience a material coverage issue and the RSP cannot remedy this issue within 15 working days of the customer raising the issue. The Commission's guidelines define a material coverage issue as 'a situation where a consumer's experience of coverage materially fails to meet the representations the RSP has made in its marketing communications, including in a mobile coverage map, such that the consumer is unlikely to have purchased the service had they been aware of the issue.' The Commission goes on to propose that industry should work together to 'develop an agreed threshold for a material coverage issue.'<sup>3</sup> We understand that the Commission's key objective behind this proposal is to avoid consumers being 'trapped' in contracts if they experience a 'material coverage issue'. We were surprised to see this proposal included in the draft guidelines given it was not consulted on in the Commission's emerging views paper.<sup>4</sup>
16. Under the Commission's definition, a material coverage issue derives from 'material failure'. However, there is no discussion of the nature of the failures that might affect mobile coverage, whether these are within or beyond the control of a mobile operator, or whether failure that results directly from the action of an end user is included or excluded. Proper consideration

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<sup>3</sup> [https://comcom.govt.nz/\\_data/assets/pdf\\_file/0034/337669/Improving-RSQ-Draft-Product-Disclosure-Mobile-Coverage-Maps-Guidelines-14-December-2023.pdf](https://comcom.govt.nz/_data/assets/pdf_file/0034/337669/Improving-RSQ-Draft-Product-Disclosure-Mobile-Coverage-Maps-Guidelines-14-December-2023.pdf)

<sup>4</sup> [https://comcom.govt.nz/\\_data/assets/pdf\\_file/0035/294659/Improving-retail-service-quality-Product-Disclosure-Emerging-Views-paper-12-October-2022.pdf](https://comcom.govt.nz/_data/assets/pdf_file/0035/294659/Improving-retail-service-quality-Product-Disclosure-Emerging-Views-paper-12-October-2022.pdf)

of these factors illustrates the complexity of itemising causes of material coverage ‘failure’, and shows that it is simply not possible to allocate accountability for all potential causes of failure, or the ability to remedy these factors, to MNOs.

17. Defining the threshold for a material mobile coverage issue presents significant challenges due to the difficulties associated with defining and describing coverage. Defining a ‘material coverage issue’ requires a well-defined reference against which quality of service received in a particular coverage area is compared. But it is not possible to provide a definite reference because mobile coverage is predicted and influenced by a number of factors that operators do not and cannot control. As noted earlier in this submission, One NZ makes no commitments on the quality of service that an end-user will get at a specific location. Our coverage maps are based on models that predict whether outdoor coverage is likely to be available in specific parts of New Zealand, but give no guarantees and do not provide a commitment as to the quality of service that the end user will receive via the coverage (again, because there are a range of factors that can impact the quality of service that the mobile operator does not have visibility of and does not control). In its emerging views paper on this issue, the Commission itself acknowledged that ‘coverage maps rely on models that cannot account for all factors that affect real-world performance.’<sup>5</sup>
18. We market and sell mobile services on a national basis. These services are not sold to customers for use at specific geographic locations, nor do we seek to restrict or limit their range of geographic use. In some instances, a customer may tell us that their purchase of mobile services is based on a specific need, e.g. being able to make and receive mobile calls at or around a particular address. In these cases, we would refer the customer to our mobile coverage map for an indication of predicted coverage at the given location. However, no assumption is made that this is the only address where they will use the service. Indeed, there’s

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<sup>5</sup> [https://comcom.govt.nz/\\_data/assets/pdf\\_file/0035/294659/Improving-retail-service-quality-Product-Disclosure-Emerging-Views-paper-12-October-2022.pdf](https://comcom.govt.nz/_data/assets/pdf_file/0035/294659/Improving-retail-service-quality-Product-Disclosure-Emerging-Views-paper-12-October-2022.pdf)

a natural expectation that customers will use mobile services at an extremely diverse locations across the country.

19. If any customer's expectations of the quality of service they receive with One NZ are not met, they can cancel their service and return any devices purchased within 30 days under our network guarantee policy<sup>6</sup>. This is a clear and effective existing protection for any customer who finds that mobile coverage does not enable the quality of service that they require at a specific location, e.g. their home address. In addition, for network issues that may arise at any other point in the customer's contract, we work through these issues on a case-by-case basis and if the customer is not satisfied with the outcome, they can escalate the issue to the Telecommunications Dispute Resolution (TDR) service. These existing provisions remove need for the further measures suggested in the Commission's proposals.
20. Furthermore, we have concerns that a 'right to exit' founded solely in consumers' subjective experience of 'coverage levels' will enable a small number of individuals to exploit the process in order to get discounted devices without having to fulfil their contractual obligations. Feedback from our technical teams was that it would be very challenging to validate customers' claims about a material coverage issue because the service is not intended to be provided to a fixed point and there are many factors that can impact quality of service that we cannot influence, diagnose or control. Again, this is why we cannot and do not guarantee a consumer's actual experience of coverage, or their quality of mobile services, at a fixed location (which, we think, is what the term 'coverage levels' means in practice). The range of factors that have potential to affect mobile services, some of which will be transitory in nature, means they are fundamentally different from fixed services (where causes of faults or loss of service can be diagnosed and controlled). Attempting to replicate a consumers' rights to exit broadband services in the context of mobile services just can't be done in any practical or workable way, as evidenced by the fact that this hasn't been implemented in other overseas mobile markets.

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<sup>6</sup> <https://one.nz/guarantee/>



21. As proposed by the Commission, a material coverage issue – and corresponding right to exit – would exist where a consumer’s experience of coverage materially fails to meet any representation made by an operator. We’re concerned that the obligation on operators to provide ‘standardised relative signal strength thresholds’, even if accompanied by information as to inherent limitations of maps that show **predicted** coverage (not actual coverage), could create an expectation among consumers that they will **in all circumstances** receive predicted coverage at a location (and, if not, that a misrepresentation giving rise to an exit right has occurred). This creates risk that a significant number of requests to exit may be received by operators.
22. The Commission’s proposal includes that in the event of a material coverage issue, customers should be allowed to exit services that are linked to interest free payment (IFP) contracts and be given the option to either i) repay the outstanding amount of the device (One NZ already enables customers to do this), ii) continue interest free repayments for the device, or iii) return the device to the RSP, while also keeping any discounts applied when the customer first signed up. The latter two aspects of the proposal present several significant challenges, including:
  - a. Currently, once the customer’s active service is closed, they are no longer a customer and any IFP plans associated with that account are automatically closed and the customer is required to cover the remaining cost of the device. Process and system changes would be required to enable customers to continue paying for their IFP devices while no longer being a One NZ customer. If operators looked to add an administration fee for processing these payments for consumers who are no longer customers, they would be subject to additional lending requirements under Credit Contracts and Consumer Finance Act 2003. This is an added complexity that the Commission does not appear to have engaged with.
  - b. One NZ regularly offers customers discounts on selected devices when a customer signs up for a minimum eligible plan for a set period. In one of the latest offers, a customer could get a phone for \$0 if they stayed on an eligible pay monthly mobile



plan for 36 months<sup>7</sup>. Under the Commission’s proposal, if a case arose where a high-rise building was built near the customer’s premises in month 6 of their contract and this impacted the quality of their mobile service, the customer would be able to exit their contract and keep the device which would essentially be free. [] It would be unfortunate if the Commission’s intervention resulted in loss of product innovation and reduced choice for consumers.

23. Lastly, we have seen no evidence of consumers being routinely ‘trapped’ in contracts despite not having access to mobile coverage. In the last six months, the TDR received a total of nine complaints that were specifically related to a mobile coverage issue where the complainant alleged there had been a change in the mobile service quality they experienced. Out of these complaints, only one complainant expressed dissatisfaction about the fact that they would lose the discount on their broadband service if they moved to another mobile provider. None of these complaints were upheld. Meanwhile, under []% of the total customer complaints/enquiries received by One NZ were related to a mobile coverage issue, and a significant proportion of these were enquiries about when mobile connectivity upgrades would be carried out in a specific area. Indeed, the Commission has acknowledged that the ‘right to exit’ proposal is based on ‘anecdotal evidence’ from consumer advocacy organisations, rather than in-depth consumer research. We don’t support intervention on this basis, and a more robust and data-based analysis of end user demand is needed to ensure a properly reasoned and proportionate policy intervention.
24. Given the significant practical challenges with implementing this proposal in practice and the lack of evidence of a problem which would merit regulatory intervention of this scale, we recommend that the Commission does not proceed with the proposal to introduce consumers’ right to exit without penalty in the event of a material mobile coverage issue.
25. Please contact the following regarding any aspect of this submission.

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<sup>7</sup> <https://one.nz/legal/terms-conditions/zero-dollars-a-month/>

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