

26 July 2021

Clare Dobson
New Zealand Telecommunications Forum (TCF) Incorporated
Northshore
Auckland 0754

By email only: [REDACTED]

Dear Clare

Re: 111 contact code battery back-up devices

1. We write in response to the meeting with, and the letter from, the New Zealand Telecommunications Forum (**TCF**) to the Commerce Commission, on 16 June and 2 July 2021 respectively, about the provision of battery back-up devices to vulnerable consumers under the 111 Contact Code (**Code**).
2. The TCF told us that the provision of battery back-up devices would likely be delayed beyond 1 August 2021, which is the date on which the obligation to provide an appropriate means to contact 111 comes into force. The TCF requested that we use our discretion to not take enforcement action against retail service providers (RSPs) for breaches of the Code in response to delays that are outside RSPs' control. It also requested that we provide an industry-wide exemption over considering compliance on a case-by-case basis.
3. We respond to the TCF's request below and outline the background and factors against which our decision is made.

Our response to the TCF's request

4. We thank the TCF for raising this matter and engaging with us promptly and transparently. We acknowledge the recent efforts the TCF and RSPs have made in seeking to procure appropriate battery back-up devices.
5. Our overriding concern is the safety of vulnerable consumers by ensuring that they have reasonable access to an appropriate means to contact the 111 emergency service in the event of a power failure.
6. The TCF estimated that around 100-200 vulnerable consumers would be affected by the delay of a battery back-up solution. Vulnerable consumers for whom a mobile phone would be a suitable solution would not be affected, as well as those who could be temporarily kept on copper, or otherwise provided a means to contact 111.

Our position

7. We confirm our position that it is each RSP's responsibility to ensure that it complies with the Code, including the obligation to provide vulnerable consumers with an appropriate means to contact 111 from 1 August 2021 onwards.
8. We will consider any delay in complying with the obligation to provide an appropriate means on a case-by-case basis, applying our Enforcement Criteria.¹ In particular, we will take into account the extent to which an RSP has sought to mitigate any potential harm to vulnerable consumers arising from any delay. Key steps to mitigate harm include:
 - 8.1. providing vulnerable consumers with an interim solution until the RSP provides a fully-compliant device. While the TCF has indicated that the solution it has identified may be available in November 2021, there is a risk that the delay will be longer. Interim solutions will mitigate the potential harm to vulnerable consumers in the intervening period; and
 - 8.2. clear and regular communication by RSPs to their affected vulnerable consumers. RSPs should ensure their vulnerable consumers understand the situation, explain the steps that they are taking to address the issue, keep vulnerable consumers up-to-date on when they can expect a fully-compliant device, and provide as much information as possible about how they can protect themselves during the intervening period.
9. We will also take into account an RSP's engagement with us. RSPs should be transparent with us about any potential non-compliance with the Code, and provide information on the extent of any delay in coming into full compliance, and the interim solutions that will be provided.

Background to the TCFs request

10. RSPs have been aware that they would likely need to provide battery back-up devices under the Code since at least 11 March 2020, when we published our draft Code. The draft Code required a battery back-up to operate for at least 12 hours.² When the final Code was published on 17 November 2020, this period was reduced to eight hours.³

¹ <https://comcom.govt.nz/about-us/our-policies-and-guidelines/investigations-and-enforcement/enforcement-criteria>.

² The draft Commission 111 contact code decisions and reasons paper (11 March 2020), available at https://comcom.govt.nz/_data/assets/pdf_file/0020/212717/Commission-111-contact-code-Draft-decisions-and-reasons-paper-11-March-2020.pdf.

³ The Commission 111 contact code (17 November 2020), available at https://comcom.govt.nz/_data/assets/pdf_file/0020/228314/Commission-111-Contact-Code-17-November-2020.pdf.

11. In November 2020, the TCF wrote to us identifying some issues associated with implementing the Code. In relation to the obligation to provide an appropriate means, the letter noted that “RSPs have not yet had the opportunity to explore what is required to meet the criteria set out in the Code against what is currently available in the marketplace”.⁴
12. In a response letter, we expressed our concern that RSPs had not yet explored solutions to meet the criteria in the Code. We emphasised the importance of RSPs moving quickly to implement the requirements of the Code, as the Code provides critical protections to vulnerable New Zealanders. We reiterated that the requirement to provide appropriate means comes into force on 1 August 2021, and that RSPs must comply with the requirement from that date onwards.
13. On 30 April 2021, the TCF sent a letter to the Commission outlining the difficulty the TCF had with sourcing a battery back-up device that could meet the requirements of the Code by 1 August 2021.⁵ This followed a request-for-quotes process run by the TCF that elicited one complete proposal for a battery back-up device. The TCF did not consider the proposal to be viable. The TCF noted that it would continue to seek an appropriate solution and would update the Commission.
14. On 1 June 2021, the TCF sent a letter explaining that it had not identified a solution that would be available for 1 August 2021 and would meet the requirements of the Code.⁶ However, it noted that it had identified a possible solution that may be available after 1 August 2021.
15. On 16 June 2021, we met with the TCF to discuss the issue and requested further information relating to the procurement process and the devices assessed by the TCF. The TCF provided the requested information in a letter dated 2 July 2021.⁷ The letter explained that the possible solution identified in the TCF’s 1 June 2021 letter would likely be suitable, but could not be deployed until after 1 August 2021. The TCF noted that RSPs are unable to commit to a date for deployment of the devices, but that the manufacturer of the device expects the devices to arrive in New Zealand in mid-November 2021.
16. We subsequently met with some industry participants to further understand the issue with sourcing a battery back-up solution.

⁴ TCF, Letter to the Commerce Commission, Commerce Commission 111 Contact Code (27 November 2020), available at https://comcom.govt.nz/_data/assets/pdf_file/0010/230023/New-Zealand-Telecommunications-Forum-TCF-Letter-to-Commerce-Commission-on-Commission-111-Contact-Code-27-November-2020.pdf.

⁵ TCF, Letter to the Commerce Commission, 111 Contact Code battery back-up device from the TCF (30 April 2021).

⁶ TCF, Follow up letter to the Commerce Commission, 111 Contact Code battery back-up device from the TCF (1 June 2021).

⁷ TCF, Follow up letter to the Commerce Commission, 111 Contact Code battery back-up device from the TCF (2 July 2021).

Next steps

17. We ask RSPs to email regulation.branch@comcom.govt.nz, with 'Commission 111 Contact Code compliance' in the subject line, about any potential non-compliance with the Code, and provide information on the extent of any delay, the interim solutions that will be provided, and how this will be communicated to affected vulnerable consumers.
18. Please contact Michael Callan (michael.callan@comcom.govt.nz) if you have any questions in relation to this letter.
19. This letter will be published on the Commission's website later this week.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Tristan Gilbertson', with a period at the end.

Tristan Gilbertson

Telecommunications Commissioner