

17 May 2022

By email to: Industry Stakeholder Group  
Consumer Stakeholder Group  
New Zealand Telecommunications Forum Inc

Tēnā koutou

## **Marketing alternative telecommunications services update**

### *Summary*

1. The purpose of this letter is to update you on our marketing-related work under the Retail Service Quality (**RSQ**) programme.

### *Background*

2. In November 2021, to address urgent issues in relation to broadband marketing, we issued guidelines to the industry (**Marketing Guidelines**) under s 234 of the Telecommunications Act 2001.<sup>1</sup> The Marketing Guidelines set out outcomes and conduct principles for dealing with consumers coming off copper and for advertising broadband services more generally.
3. We asked industry to immediately comply with the Marketing Guidelines and the New Zealand Telecommunications Forum Inc. (**TCF**) to convert the Marketing Guidelines into an industry RSQ code within 60 working days.<sup>23</sup>
4. We understand that most providers responded very positively to this request, which ensured a clean set of advertising for the Christmas period, and as far as we are aware, providers continue to align with the principles of the Marketing Guidelines.

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<sup>1</sup> *Marketing alternative telecommunications services during the transition away from copper: Guidelines to the telecommunications industry under section 234 of the Telecommunications Act 2001*, 8 November 2021.

<sup>2</sup> A copy of the open letter is available at [https://comcom.govt.nz/\\_data/assets/pdf\\_file/0026/260792/Marketing-of-alternative-services-to-consumers-during-copper-and-PSTN-withdrawal-Open-letter-4-August-2021.pdf](https://comcom.govt.nz/_data/assets/pdf_file/0026/260792/Marketing-of-alternative-services-to-consumers-during-copper-and-PSTN-withdrawal-Open-letter-4-August-2021.pdf).

<sup>3</sup> Telecommunications Act 2001, s 236.

### *TCF Marketing Codes*

5. On 23 March 2022, we received an update from the TCF advising us that, in order to best give effect to the Marketing Guidelines, it has opted to create two industry RSQ codes as follows:
  - 5.1 **The TCF Copper and PSTN Transition Code:** This aims to ensure customers transitioning off copper-based services are able to make informed decisions about what alternative telecommunications service is best for them and to improve the marketing of services to consumers in this situation.
  - 5.2 **The TCF Broadband Marketing Code:** This applies to providers marketing broadband services to consumers and prescribes what they must do to ensure consumers are given clear, accurate and up-to-date information about the technical and performance characteristics of different broadband services.
6. We understand that the TCF Copper and PSTN Transition Code will come into force on 9 May 2022 and the TCF Broadband Marketing Code will come into force on 30 July 2022.
7. We also understand that wholesale providers, who are not bound by the industry RSQ codes, have issued voluntary commitments to follow the principles of the industry RSQ codes to the extent relevant in their marketing.
8. We acknowledge the considerable effort that has gone into developing these industry RSQ codes and thank all parties for their constructive participation in the code development process. Although development took longer than the 60 working days we expected, we were happy to allow more time, given the constructive engagement from the industry and the extent of voluntary compliance with the requirements of the Marketing Guidelines.
9. Once they come into effect, the industry RSQ codes should “lock-in” existing voluntary compliance with the requirements of the Marketing Guidelines and improve RSQ for broadband consumers. In particular:
  - 9.1 Consumers should have sufficient notice of any change to their copper service, so that they are not hurried into making a decision about a replacement service and should know about the full range of alternative services available to them.
  - 9.2 Consumers should be more confident that advertising reflects how services are likely to perform – particularly in terms of speed – so they can make fully informed decisions about the services that are right for them.
  - 9.3 Consumers who sign up to a service that materially fails to deliver what they expected based on provider advertising should be able to switch plans or providers without being charged early termination fees.

*Our next steps*

10. We expect to see widespread adoption of the industry RSQ codes after they come into force so as to “lock-in” the improvements that have already been made for consumers.
11. We will be monitoring this area, as part of our ongoing RSQ industry monitoring, to ensure that the expected outcomes are being met by the RSQ codes.
12. We are particularly interested in understanding how providers are giving effect to the obligation to allow customers to exit without penalty when a broadband service materially fails to deliver advertised speeds. This “exit right” is a fundamental aspect of the new requirements and reinforces the obligation to use likely actual peak time speeds in advertising.
13. We expect providers to keep us informed on how they are implementing the RSQ codes including implementation of the exit right and how they are making their customers aware of their rights under the codes.
14. If we consider that the industry RSQ codes are failing to achieve the intended outcomes, we remain willing to move to issue Commission RSQ codes, with statutory penalties and enforcement provisions.

Ngā mihi nui



**Tristan Gilbertson**  
Telecommunications Commissioner