

6 May 2022

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Commerce Commission
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LFC Letter of Commitment

This letter and its **Appendix** confirm that Chorus, Enable Network, Northpower Fibre, and Tuatahi First Fibre (**LFCs**) are committed to the outcomes and principles applicable to wholesaler marketing.¹

We are committed to assisting the industry in ensuring that all consumers are treated fairly and are equipped to make fully-informed decisions about their broadband choices. It is essential that consumers are provided with clear and accurate information that does not mislead them about the type, quality or performance of services.

We, as LFCs, have an important role to play alongside retailers that sell and promote our fibre services provided by fibre fixed-line access service (**FFLAS**) networks – especially as we are required to actively promote fibre uptake as part of our UFB agreements with the Crown.

Chorus, as it begins to withdraw parts of its legacy copper network, is also required to directly communicate with impacted consumers (i.e. via maildrop).

Therefore, it is in our interest – as well as the interest of consumers – that the industry is appropriately consistent in the way it describes the performance characteristics of alternative services. We see the Commission's *Measuring Broadband NZ Report* as a key reference for the industry and are pleased that there is industry alignment to reference the report, where possible.

We support the Commission's introduction of the marketing alternative telecommunications services guidelines to help address the negative impacts created by misleading marketing to consumers during their copper and PSTN transition. While we do not believe it is necessary or appropriate for LFCs to be a signatory to a Retail Service Quality (**RSQ**) Code promulgated under Part 7 of the Telecommunications Act 2001, we want to confirm our commitment to the outcomes and principles of the MAS Guidelines through this separate process.

We are committed to implementing the principles set out in the **Appendix**. This commitment is subject to any relevant changes to the legal and / or regulatory landscape.

¹ As set out in the Commerce Commission's Guidelines on marketing alternative telecommunications services during the transition away from copper, dated 8 November 2021.

These principles are substantially similar to the industry RSQ Code, the TCF Code for the Marketing of Broadband Services, but better reflect our role as wholesalers. For instance, and in contrast to retailers, we don't have the same personalised direct engagement with consumers, any control over the point of sale, the ability to change a retailer's customer service or the information they give consumers.

We trust our commitment gives the Commission and consumers confidence that we will continue to act in good faith and by adopting these principles we will support the wider-industry objective to better protect consumers.

We would be happy to discuss any matters outlined in this letter and the attached.

Sincerely

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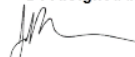
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APPENDIX: OUTCOMES AND PRINCIPLES FOR MARKETING ALTERNATIVE BROADBAND SERVICES

Glossary

Consumer	Means, in relation to a broadband service, an actual or potential end-user of a mass-market residential broadband service.
Existing Marketing	Marketing communicated after the date of this commitment.
Marketing	Means any communication to Consumers relating to the description, promotion, advertising or sale of products or services including online, print, television, radio, in-store, mail and email as well as material provided during door-to-door selling, but excludes information we are required to provide under the Copper Withdrawal Code. ²
MBNZ	Means the Measuring Broadband New Zealand programme, a Commerce Commission programme to measure the quality of Consumers' broadband connections (and any equivalent, successor Commerce Commission programme).
National Peak Time Average means	Means the average download speed and average upload speed during the peak hours of 7pm – 11pm, Monday – Friday experienced by Consumers using a similar service at different locations across the country, such speeds averaged to give a national number.

Consumers are given clear, accurate and up-to-date information about the technical and performance characteristics of alternative broadband services

1. LFCs must set appropriate expectations about what their broadband services are likely to deliver for Consumers. These expectations should recognise that Consumers may use information contained in LFC Marketing to inform their decision on whether to purchase a particular broadband service, but also that a Consumer's ultimate experience of a particular service will vary according to the Consumer's retail service provider.
2. LFCs must ensure Consumers are given appropriate information, where relevant, about the principal factors known to affect the service performance of their broadband services. In deciding what is relevant and appropriate, LFCs should take into account the channel and type of collateral – for example it may include directing Consumers to a website where this information is easily accessible or provided to Consumers in some other way as appropriate.
3. LFCs may refer to their wholesale speed inputs if they make it clear to Consumers that they are not referring to the speeds they can expect from their RSPs but the speed that LFCs provide as an input to RSPs' plans.

² Copper Withdrawal Code, Commerce Commission, dated 10 December 2020.

4. LFCs must avoid using “up to” speed claims or maximum theoretical speeds in Marketing (such as speeds that can only be achieved in lab conditions and could not be expected to be replicated in real-life conditions).
5. LFCs must refer to National Peak Time Average Speed download and upload speeds when making speed representations about plans or products in Marketing so that Consumers understand what they can expect before making their purchasing decision.
6. National Peak Time Average Speed indications must be objectively justified, demonstrably reasonable, and independently verifiable, by reference to MBNZ.
 - a) MBNZ data must be used for speed indications on products or plans where available.
 - b) MBNZ data must be presented, consistent with MBNZ reports, as national averages at peak times for the relevant services.
 - c) MBNZ reported averages provide the best available indication of what speeds are likely to be achieved, but Consumers must be made aware (where possible and appropriate) that actual speeds can still vary for individual Consumers.³
 - d) When LFCs include speed indications in their Marketing based on MBNZ data, they must ensure they are derived from the most recently published MBNZ report, and clearly identify that MBNZ report as the source (e.g., “MBNZ Spring 21”).
7. Where MBNZ data is not available for particular services, LFCs must report the headline plan speed in accordance with the relevant wholesale speed input outlined in the relevant Service Descriptions. LFCs must make it clear that this is the wholesale speed input their network is designed to deliver and not necessarily the speed Consumers will experience, which may vary depending on their retailer.
8. LFCs must use reasonable efforts to update speed and / or other performance indications in Existing Marketing or use the latest indications (where there is a material change) in their new Marketing within the following timeframes after a new MBNZ report is published, or otherwise as soon as it is reasonably practicable to do so:
 - a) Website information: (e.g., relevant LFC webpages and social media channels):
 - New Marketing: The latest MBNZ numbers must be used for new Marketing, within 30 Working Days after a new MBNZ report is published.
 - Existing Marketing: Existing speed indications must be updated within 30 Working Days after a new MBNZ report is published, provided that speed indications only need to be updated once every three months regardless of how many MBNZ reports have been

³ For example, the Fibre 100 service could be represented as: “Average busy time speeds of 100 Mbps (download) and 20 Mbps (upload) – results may vary for individual consumers”.

published in that timeframe, and non-material changes may be updated less frequently.

- b) Other Marketing (e.g., printed posters, brochures, billboards, bus shelters, radio/TV advertisements):
- New Marketing: The latest MBNZ numbers must be used for any new Marketing that goes live more than 30 Working Days after a new MBNZ report is published.
 - Existing Marketing: For Marketing that is live in-market or in-flight, the relevant speed indications do not need to be recalled and/or updated if the MBNZ report they are derived from is clearly identified and the MBNZ report was published no more than 9 months earlier and/or the change is non-material.
9. When Marketing specific plans or products, LFCs must avoid using undefined speed-related descriptors or images without providing appropriate and clear information to help moderate the Consumers' understanding of these descriptors or images.
10. Any marketing on the basis of "personas", including where drawn from the "Broadband Marketing Personas" information published on the TCF website, must be objectively justified and demonstrably reasonable.
11. Where Personas are used, they must not mislead Consumers about the absolute performance, or relative performance, of services, technologies or wholesale inputs.
12. Marketing comparisons made by LFCs must be objectively justified, demonstrably reasonable, and independently verifiable.
13. LFCs must avoid making claims or comparisons about one service that are liable to mislead Consumers directly or indirectly in relation to the performance or characteristics of another service.
14. Where speed comparisons are used across technologies, LFCs will make it clear which plans are being used as the basis of the comparison.
15. Where appropriate, Consumers must be provided with information regarding the factors that may affect service performance that are outside the control of the LFC (such as positioning of in-home Wi-Fi modems, and Consumer equipment specifications and maintenance).
16. Conditions, qualifications and disclaimers in Marketing must not alter the nature of the service the Consumer is otherwise led to expect from the headline or body of the advertisement.
17. LFCs must avoid actions that risk creating a sense of pressure or obligation on Consumers, or confusion for Consumers, in relation to Marketing of alternative

broadband services.

Consumers know where to go for the prompt resolution of any issues associated with the marketing or performance of alternative broadband services

18. Where possible and appropriate, LFCs must provide Consumers with clear information on how to raise and resolve issues in relation to the Marketing or performance of their broadband services. For example, LFCs may direct Consumers to their or the TCF website with information on how to report issues or make a complaint.
19. LFCs must inform Consumers, where possible and appropriate, of the existence of this commitment and the industry RSQ code, the TCF Code for the Marketing of Broadband Services. For example, LFCs may direct Consumers to their website.