



Submission on the Commerce Commission's Open Letter  
Marketing of alternative services to consumers during copper/PSTN withdrawal

**PUBLIC VERSION**

27 August 2021

1. Vocus welcomes the opportunity to submit in relation to the Commission's open letter on marketing of alternative services to consumers during copper/PSTN withdrawal dated 4 August 2021 (**Open Letter**).
2. We have had the benefit of reviewing the TCF's submission on the Open Letter and confirm our support of that submission. More generally, we support:
  - 2.1 focus being drawn to this particular area of marketing activity; and
  - 2.2 any regulatory guidance that is aimed at both providing clarity for RSPs and ensuring that consumers are not confused or misled.
3. We consider that the Commission issuing guidelines under section 234 of the Telecommunications Act 2001 (**Act**) in the expectation that RSPs would voluntarily comply with them (i.e. the option outlined in paragraph 18.1 of the Open Letter) should achieve the desired outcomes, and in the most efficient and timely way:
  - 3.1 while the guidelines will not be "law" *per se*, they will represent the enforcer's views, which should positively influence RSPs' marketing behaviour;
  - 3.2 relatedly, while the guidelines themselves may not be directly enforceable, the underlying activity that the guidelines will seek to address can generally be enforced by other means (e.g. under the Fair Trading Act 1986 or other existing codes);
  - 3.3 guidelines should encourage self-regulation by giving consumers and other RSPs something tangible to "point to" to keep RSPs honest in their marketing practices – we do not consider that non-compliance by just one RSP would necessarily weaken incentives for compliance by all other RSPs (including for the reasons noted at para 3.2); and
  - 3.4 by issuing an *explicit* expectation that RSPs comply with the guidelines from day one, the Commission and consumers should start seeing behavioural changes straight away (to the extent this is not already happening in response to the Open Letter), without the delays<sup>1</sup> and potential uncertainty that might result from developing and implementing any code.
4. If, however, the Commission considers that guidelines are not enough and a code is necessary, our view is that the industry (via the TCF) should be best placed to draft that code, subject to the Commission's powers to review and recommend changes to that code under section 235 of the Act.
5. Finally, while we are generally supportive of all the draft conduct principles, we consider that:
  - 5.1 principles 3(c) – 3(e), relating to advertised broadband speeds, are significantly broader in scope than simply marketing of alternative services to consumers during copper/PSTN withdrawal, and are therefore likely better addressed at a more macro

---

<sup>1</sup> Especially at a time when there is already a significant amount of regulatory work going on in the telecommunications industry.

level (e.g. as part of the Commission's broader RSQ work or the current review of the TCF's Broadband Product Disclosure Code); and

5.2 principle 3(f), relating to waiving early termination fees, should be a business decision made individually by each RSP<sup>2</sup> (and not discussed between RSPs as part of developing any code).

We therefore propose that those draft principles are either excluded from the guidelines (or any code) or clarified so that they only apply specifically in relation to marketing alternative services during copper/PSTN withdrawal and not more generally.

6. If you would like any further information or have any queries about this submission, please contact:

Gus Stewart  
Senior Corporate Counsel  
Vocus Group (NZ)

[gus.stewart@vocusgroup.co.nz](mailto:gus.stewart@vocusgroup.co.nz)

---

<sup>2</sup> Vocus' Slingshot brand already has its "No Dramas Contract" (see [slingshot.co.nz/no-dramas](http://slingshot.co.nz/no-dramas)), which allows customers to terminate without ETCs if the product and experience isn't as promised.