

Marketing alternative telecommunications services during the transition away from copper

Response to submissions on our open letter

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Associated documents

Publication date	Title
4 August 2021	Marketing of alternative services to consumers during copper and PSTN withdrawal – open letter
7 October 2021	Decision to publish guidelines on the marketing of alternative services to consumers during copper and PSTN withdrawal
8 November 2021	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	Letter to New Zealand Telecommunications Forum - Marketing alternative telecommunications services during the transition away from copper guidelines

Glossary

Table of defined terms	
ADSL	Asymmetric Digital Subscriber Line
BAU	Business as usual
CDR	Consumer Data Right
Commission	Commerce Commission
CWC	Copper Withdrawal Code
DECT	Digital enhanced cordless telecommunications
DSL	Digital subscriber line
FTA	Fair Trading Act 1986
FWA	Fixed Wireless Access
Guidelines	Marketing alternative telecommunications services during the transition away from copper – Guidelines to the industry under s 234 of the Telecommunications Act 2001
IP	Internet Protocol
ISPANZ	Internet Service Providers Association of New Zealand
Joint LFC submitters	Enable Networks Limited, Northpower Fibre Limited, Tuatahi First Fibre (formerly Ultrafast Fibre Limited)
LAP	Local aggregation paths
LFCs	Local Fibre Companies (including Chorus New Zealand Limited, Enable Networks Limited, Northpower Fibre Limited, and Tuatahi First Fibre)
LMNP Determination	Local and Mobile Number Portability Determination
MBNZ	Measuring Broadband New Zealand
PSTN	Public Switched Telephone Network
RSP	Retail Service Provider
RSQ	Retail Service Quality
RWNZ	Rural Women New Zealand
TCF	New Zealand Telecommunications Forum Incorporated
TDRS	Telecommunications Disputes Resolution Scheme
TSO	Telecommunications Service Obligation
TUANZ	Telecommunications Users Association of New Zealand
UFB	Ultra-Fast Broadband
VoIP	Voice over Internet Protocol
WSP	Wholesale Service Provider

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Introduction

Interpretation

1. All abbreviations and terms used in this document are either defined, or have the same meaning as, the Marketing alternative telecommunications services during the transition away from copper – Guidelines to the telecommunications industry under section 234 of the Telecommunications Act 2001 (referred to in this document as the ‘guidelines’).¹
2. All statutory references are to the Telecommunications Act 2001 unless otherwise specified.

Purpose

3. This document outlines our response to submissions on our open letter “Marketing of alternative services to consumers during copper/PSTN withdrawal” (**open letter**) published on 4 August 2021.²

Structure

4. This document includes the following sections:
 - 4.1 General themes from submissions; and
 - 4.2 A table of responses to submissions.

Our process

5. We published our open letter on 4 August 2021 and invited submissions from interested stakeholders. We also sought views from consumers via a feedback form on the Commerce Commission (**Commission**) website, promoted on social media.
6. We received 21 submissions. These were from Chorus; Consumer NZ; a joint submission from Enable Networks Limited, Northpower Fibre Limited, and Tuatahi First Fibre Limited (**joint LFC submitters**); Federated Farmers of New Zealand; Internet Service Providers Association of New Zealand (**ISPANZ**); Te Tari Kaumātua, the Office for Seniors; Rob Dowler; Rural Connect NZ; Rural Women New Zealand; Spark NZ; New Zealand Telecommunications Forum Inc (**TCF**); Trustpower Limited; Technology Users Association of New Zealand (**TUANZ**); 2degrees; Utilities Disputes; Vector Fibre; Vocus; Vodafone New Zealand Ltd; and five submissions from anonymous consumers.³

¹ The 8 November 2021 guidelines can be found on the Commission’s website at: https://comcom.govt.nz/_data/assets/pdf_file/0032/269663/Marketing-alternative-telecommunications-services-during-the-transition-away-from-copper-guidelines-8-November-2021.pdf

² The 4 August 2021 open letter can be found on the Commission’s website 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

³ The submissions we received are available on the Commission’s website at: <https://comcom.govt.nz/regulated-industries/telecommunications/projects/marketing-of-alternative-services-to-consumers-during-copperpstn-withdrawal?target=documents&root=260772>

7. In our open letter, we requested feedback on the proposed outcomes and principles. This feedback can be found in the 'Table of responses to submissions' section of this document. We also requested feedback on our proposal to issue the outcomes and principles as guidelines to the telecommunications industry under section 234 of the Telecommunications Act 2001 (**Act**). Finally, we invited the industry and TCF to comment on whether it will be in a position to formulate an industry Retail Service Quality (**RSQ**) code within 60 days of the guidelines being issued.
8. We also received feedback from over 600 consumers through online feedback forms.⁴ Consumers were asked both qualitative and quantitative questions that pertained specifically to the outcomes and the corresponding conduct principles. The feedback form did not ask consumers for their opinions on their preferred method of implementing the outcomes and principles (ie, voluntary commitment, industry RSQ code, or Commission RSQ code) or whether industry is in a position to formulate a code within 60 days of the guidelines being issued.
9. On 8 November 2021, we published guidelines to the telecommunications industry under section 234 of the Telecommunications Act 2001. On the same day, we also published a letter to the TCF instructing it to prepare the industry RSQ code.

Next steps

10. The industry should apply the principles in the guidelines to formulate an appropriate RSQ code that gives effect to the purpose of section 233.
11. We anticipate the TCF will produce a code based on the guidelines within 60 working days from 8 November 2021.
12. We wish to remind industry of the need to ensure marketing conduct delivers the outcomes and reflects the principles of the guidelines as soon as possible, and particularly before the Christmas period.
13. We will consider the next steps in the process in light of the industry response to the guidelines before Christmas, and progress on the code development process.

⁴ A summary of the consumer feedback can be found on the Commission's website at: https://comcom.govt.nz/_data/assets/pdf_file/0024/267522/Marketing-of-alternative-services-during-copper-and-PSTN-withdrawal-open-letter-Consumer-feedback-summary-7-October-2021.pdf

General themes from submissions

14. This section provides a summary of the key themes identified in the submissions on the open letter. We briefly outline the background of the themes, the submitters' views on the themes, and our response to each theme.
15. The key themes arising from submissions were:
 - 15.1 the implementation of the outcomes and principles;
 - 15.2 the timeframe for creating a code;
 - 15.3 the application of the outcomes and principles;
 - 15.4 who the code should apply to; and
 - 15.5 overlap with other obligations.

Implementation of the outcomes and principles

Background

16. In the open letter, we requested stakeholder views on how to ensure the outcomes and principles are best delivered for consumers in a timely way.
17. Our preliminary view was that it would "be preferable to issue the principles and outcomes by way of guidelines under section 234 and for the industry to take the opportunity to self-regulate and formulate an RSQ code that meets the statutory purpose, through the TCF."⁵

Submissions

18. In submissions, several stakeholders agreed that the TCF was well suited to develop the code. For example:
 - 18.1 The TCF stated "[t]he TCF welcomes the opportunity to develop the code. TCF members have differing views regarding whether this should be TCF or Commission RSQ code and will provide those views in their individual submissions. However, the TCF would be committed to delivering a code as swiftly as possible."⁶
 - 18.2 2degrees "agree with the Commission that if a Code is to be drafted, this should be drafted by industry, co-ordinated by the TCF."⁷

⁵ The 4 August 2021 open letter can be found on the Commission's website 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

⁶ TCF "TCF Submission to Commerce Commission Open Letter on Marketing to Consumers" (27 August 2021) paragraph 18.

⁷ 2degrees "Marketing alternative services to consumers during copper/PSTN withdrawal" (27 August 2021) page 2.

- 18.3 TUANZ, Utilities Disputes, and Vector Fibre also supported our preliminary view.
19. Spark, Trustpower, and Vocus favoured a voluntary commitment to the outcomes and principles. However, both Spark and Vocus stated it would prefer an industry RSQ code if a more formal approach were deemed necessary.
20. For example, Spark submitted “[i]t might be that a voluntary code would be adequate in the short term as providers now have a good steer from the Commerce Commission on what is required and will move to update their marketing information... If a more formal approach is needed to ensure all RSPs comply, then we support the Commission issuing the principles and outcomes to the industry as guidelines under section 234, with the TCF given the chance to develop an industry RSQ Code.”⁸
21. Vodafone, Consumer NZ, and Rob Dowler favoured a Commission RSQ code under section 236 of the Act. For example, Vodafone “note that the current exclusion of wholesalers from the scope of the open letter is a foundational problem that means it is likely to be impossible to develop an industry RSQ code. If the Commission maintains this approach then the only realistic course is for it to move to preparation of an RSQ code under s236 of the Telecommunications Act 2001.”⁹
22. Te Tari Kaumātua, the Office for Seniors proposed industry and the Commission work together to draft the code, and for it to be implemented as a Commission code under section 236 of the Act.
23. Chorus and the joint LFC submitters favoured an industry-written code, amended and adopted by the Commission.
- 23.1 Chorus submitted that “the industry is best placed to produce a first draft of the RSQ code and provide it to the Commission to adopt (amending where appropriate) and oversee its implementation and enforcement. The industry is best placed to create a first draft because of its knowledge and understanding of the relevant systems and processes.”¹⁰
- 23.2 The joint LFC submitters submitted that “Option 2 [Industry-written code] can be achieved, with the support of the Commission and provided that the Commission adopts this Code as a Commission RSQ Code. However, if not possible, or if the TCF takes too long... or TCF indicates a timeframe that the

⁸ Spark “Commerce Commission Letter: Marketing Of Alternative Services To Consumers During Copper/PSTN Withdrawal” (27 August 2021) paragraphs 10-11.

⁹ Vodafone “Vodafone Aotearoa response to the Commerce Commission’s open letter on marketing of alternative services” (27 August 2021) paragraph 49.

¹⁰ Chorus “Submission on Marketing Alternative Services to Consumers – Open Letter” (27 August 2021) paragraph 14.

Commission considers too long... then we support Option 3 [Commission-written code].”¹¹

24. The joint LFC submitters also suggested the Commission should issue “guidelines to explain what the Code means and how it will be enforced by the Commission.”¹²

Our response

25. As stated in our 7 October 2021 letter, we believe it is necessary to take a more formal approach than allowing providers to make voluntary commitments to the guidelines.¹³ Non-compliance by just one Retail Service Provider (**RSP**) would weaken incentives for compliance by all other RSPs. We consider that this conduct is harming consumers and it is of significant concern to us. Therefore, we want to ensure all RSPs are acting consistently with the guidelines, and consumers have the appropriate protections of an RSQ code.
26. The submissions indicate that industry is generally supportive of our preliminary view to issue the outcomes and principles to the industry as guidelines under section 234, in the expectation that it creates a code through the TCF. Therefore, we continue to hold the view that giving industry the opportunity to self-regulate is the most suitable approach at this point in time.
27. With this being said, we acknowledge we may be required to play a more active role in creating a code in future. If the industry process for creating the RSQ code fails to achieve its intended purpose, or appears to be unlikely to do so, we will move to issue a mandatory Commission code, with statutory penalties and enforcement provisions.

Timeframe for creating code

Background

28. In the open letter, we requested feedback from industry and the TCF as to whether it will be in a position to formulate an industry RSQ code within 60 days of the guidelines being issued.

Submissions

29. In its submission, the TCF made no explicit commitment to writing the code in 60 days, stating that it will work with the Commission, TCF members, and user representatives to confirm a reasonable timeframe to draft a code. The TCF noted “If the TCF is to develop the Code, we will work with the Commission, our members and

¹¹ Joint LFC submitters “Submission on marketing of alternative service to consumers during copper/PSTN withdrawal open letter” (26 August 2021) paragraph 4.4.

¹² Joint LFC submitters “Submission on marketing of alternative service to consumers during copper/PSTN withdrawal open letter” (26 August 2021) page 7.

¹³ The 7 October 2021 letter can be found on the Commission’s website at:
https://comcom.govt.nz/_data/assets/pdf_file/0023/267521/b2ea32dd7e745ce289e216a089c48e38d0256fdd.pdf

user representatives to confirm a reasonable timeframe to draft a code in-line with our code development process.”¹⁴

30. Spark NZ noted that producing a code in 60 days may be challenging and thinks 60 business days (12 weeks) may be more achievable, but it will depend on:
 - 30.1 “The ability for the TCF to simply ‘lift and drop’ the guidelines into the body of a Code without further editing or refinement;
 - 30.2 “The ability for the TCF to skip the public consultation phase of the Code development process (because the Commerce Commission has already consulted on the principles/guidelines); and
 - 30.3 “The availability of resource at the time the guidelines are finalised, allowing for corporate shutdowns and holidays over Christmas and New Year, issues related to the global pandemic etc.”¹⁵

Our response

31. As indicated in our 7 October 2021 letter to industry, the Commission has decided to provide the TCF with 60 business days (approximately 12 weeks) to produce a code.¹⁶ We confirmed this in our instruction letter to the TCF on 8 November 2021.¹⁷
32. We have drafted the guidelines in a form that enables them to be readily converted into a code. Therefore, together with the extension provided, our view is that this should provide the industry with enough time to complete the code while balancing the need for prompt action to ensure consumers are protected.
33. On 15 October 2021, the TCF sent the Commission a proposed timeframe for creating the RSQ Code.¹⁸ It suggested a timeframe that would have the Code published in March 2022. We acknowledge the TCF’s suggestions but remain of the view that the RSQ Code should be produced within 60 working days of the guidelines being published. Urgent action is necessary to mitigate harm to consumers, and this is reflected in the timeframe provided.

¹⁴ TCF “TCF Submission to Commerce Commission Open Letter on Marketing to Consumers” (27 August 2021) paragraph 19.

¹⁵ Spark “Commerce Commission Letter: Marketing Of Alternative Services To Consumers During Copper/PSTN Withdrawal” (27 August 2021) paragraph 17.

¹⁶ The 7 October 2021 letter can be found on the Commission’s website at: https://comcom.govt.nz/_data/assets/pdf_file/0023/267521/b2ea32dd7e745ce289e216a089c48e38d0256fd.pdf

¹⁷ The 8 November 2021 letter to the TCF can be found on the Commission’s website at : https://comcom.govt.nz/_data/assets/pdf_file/0033/269664/Letter-to-New-Zealand-Telecommunications-Forum-Inc-Marketing-alternative-telecommunications-services-during-the-transition-away-from-copper-guidelines-8-November-2021.pdf

¹⁸ Email from the TCF to the Commission on 15 October 2021.

Application of outcomes and principles

Background

34. The open letter indicated that the outcomes and principles should be applied in the context of the marketing of alternative services in the situation of copper/PSTN withdrawal. Several stakeholders questioned whether the outcomes and principles ought to apply to the marketing of telecommunications services more generally.

Submissions

35. The joint LFC submitters view was that the outcomes and principles should apply to retail marketing more generally. In particular “[t]he LFCs support... [t]he principles and outcomes described in the Commission’s Open Letter; however, we submit that the principles should apply to all retailer marketing in general and form part of the Commission’s RSQ outcomes. This is because of the number of examples of retailers using copper or PSTN withdrawal as grounds to circulate marketing material and contact consumers directly to sell alternative services to those customers irrespective of the fact that their copper or PSTN service is not scheduled to be switched-off by Chorus or Spark respectively.”¹⁹
36. TUANZ, Federated Farmers of New Zealand, and Vector Fibre agreed with the joint LFC submitters on this point.
37. In its submission, Vodafone noted that, in practice, the principles described in the open letter are directed to all advertising of alternative services. “It is difficult for Retail Service Providers (RSPs) to tailor marketing of alternative services with reference to specific circumstances to individual consumers. In practice, a general advertising campaign that is directed at selling Fixed Wireless Access (FWA) services, for example, to consumers will not differentiate according to whether it is seen by consumers who are subject to PSTN/copper withdrawal as opposed to any other category of consumer. This means, practically, that the conduct principles described in the Commission’s letter are directed to all advertising of alternative services.”²⁰
38. 2degrees disagreed that the outcomes and principles should be applied to all marketing. It was particularly concerned some of the proposed outcomes and principles in the open letter reached beyond the context of the marketing of alternative services to consumers during copper/PSTN withdrawal. It urged the Commission to take caution while introducing the outcomes and principles quickly. “We do not think it is appropriate to change or create precedent for the wider market through a ‘fast-track’ process related to copper transition. The Commission should ensure any future ‘outcomes’ and ‘principles’ are clearly focussed on marketing to consumers with copper connections.”²¹

¹⁹ Joint LFC submitters “Submission on marketing of alternative service to consumers during copper/PSTN withdrawal open letter” (26 August 2021) paragraph 4.1(b).

²⁰ Vodafone “Vodafone Aotearoa response to the Commerce Commission’s open letter on marketing of alternative services” (27 August 2021) paragraph 3.

²¹ 2degrees “Marketing alternative services to consumers during copper/PSTN withdrawal” (27 August 2021) page 2.

Our response

39. The purpose of the guidelines is to address the pressing issues faced by consumers in the marketing of alternatives services during the transition away from copper-based services. As consumers continue to be negatively impacted by these marketing practices, we consider urgency is required in this situation.
40. We accept the point made in submissions that it is not just marketing directed at consumers coming off copper (eg, targeted letter drops) that is relevant in this situation. General marketing (eg, newspapers or television advertisements) that can influence the views and decisions of consumers coming off copper is also relevant. Further, to the extent that such general marketing is problematic for consumers coming off copper, it will also be problematic for consumers more generally. There is merit to it being dealt with together.
41. Accordingly, paragraph 21 of the guidelines states that the outcomes and principles are intended to apply to **all** relevant marketing in relation to alternative telecommunications services. The marketing practices we want to prevent may not occur solely in the context of the transition away from copper-based services. The guidelines reflect our expectation that RSPs will act consistently with the outcomes and principles in all marketing representations.
42. In the 8 November 2021 letter to the TCF, we stated that providers are expected to bring their marketing conduct into line with the outcomes and principles in the guidelines as quickly as possible, ahead of the industry RSQ code.²² The requirements set out in the guidelines are clear and have been well signalled since our open letter was published in August. We view converting the guidelines into a code as a formality and expect marketing conduct to be consistent with the guidelines as soon as possible before the Christmas period.

Who the code should apply to

Background

43. Several stakeholders argued that the drafting of the outcomes and principles in the open letter may only apply to RSPs and not Local Fibre Companies (**LFCs**). They argued that because both RSPs and LFCs market to consumers currently purchasing copper-based services, the outcomes and principles ought to apply to both.

Submissions

44. Vodafone held a particularly strong stance on this, stating the outcomes and principles should apply to LFCs as well as RSPs. “For the code to achieve the intended outcomes, it needs to apply equally to the entire industry which will then have an aligned interest in helping the Commission to finalise principles that are practical and supported by all. It is not tenable for the Commission to expect that industry will

²² The 8 November 2021 letter to the TCF can be found on the Commission’s website at : https://comcom.govt.nz/_data/assets/pdf_file/0033/269664/Letter-to-New-Zealand-Telecommunications-Forum-Inc-Marketing-alternative-telecommunications-services-during-the-transition-away-from-copper-guidelines-8-November-2021.pdf

succeed in formulating a code that embeds a discriminatory approach between RSPs and wholesalers.”²³

45. Vodafone stated that the exclusion of LFCs from the scope of compliance means “it is likely impossible to develop an industry RSQ code.”²⁴
46. Spark also stated that outcomes and principles should apply to LFCs. “For consistency, clarity, and to address the Commission’s underlying concerns, the principles should apply to anybody making recommendations or claims to consumers about PSTN or copper migrations. This should include LFCs as well as online services which are promoting technology choices.”²⁵
47. 2degrees agreed with Vodafone and Spark noting that “[m]arketing to copper-based consumers occurs from both Retail Service Providers (RSPs) and Wholesaler Service Providers (WSPs). It is important that the Commission ensures that any new rules to help consumers are applied to all marketing to copper consumers, by all members of the industry that carry out this marketing.”²⁶
48. Vector Fibre also stated the outcomes and principles should apply to RSPs and LFCs.
49. Rural Connect NZ stated, with specific reference to Outcome 3, “the scope of the speed claims clause should also include network providers.”²⁷

Our response

50. We understand that LFCs are marketing fibre directly to consumers consistent with what has been required of them under the Ultra-Fast Broadband (**UFB**) agreements with the Crown to generate awareness of fibre services.²⁸
51. Strictly speaking, Part 7 of the Act, under which the guidelines have been issued, is a retail specific framework. It was created because of ongoing problems at the retail level of the market and contains powers directed at addressing these retail level issues. LFCs are regulated separately under Part 6 of the Act, including as to issues of service quality.
52. Nevertheless, as a matter of principle, we agree that all marketing of alternative telecommunications services should take place on a level playing field and should be

²³ Vodafone “Vodafone Aotearoa response to the Commerce Commission’s open letter on marketing of alternative services” (27 August 2021) paragraph 16.

²⁴ Vodafone “Vodafone Aotearoa response to the Commerce Commission’s open letter on marketing of alternative services” (27 August 2021) paragraph 49.

²⁵ Spark “Commerce Commission Letter: Marketing Of Alternative Services To Consumers During Copper/PSTN Withdrawal” (27 August 2021) paragraph 12.

²⁶ 2degrees “Marketing alternative services to consumers during copper/PSTN withdrawal” (27 August 2021) page 2.

²⁷ Rural Connect NZ “Marketing of alternative services to consumers during copper and PSTN withdrawal” (23 August 2021) paragraph 2.

²⁸ Chorus UFB2 NIPA – Schedule 2 (Commitments) – Executive Version, 7 Expected Promotional/Product Development Spend, page 6.

consistent with the guidelines as far as possible. We see no reason why, in principle, the TCF could not create a code that applies to all players.

53. Accordingly, paragraph 24 of the guidelines states that we consider the outcomes and principles to be applicable to, and could be adopted by, any party marketing alternative telecommunications services to consumers, including wholesale providers who may not sell telecommunications services directly to consumers.
54. In our 8 November 2021 letter to the TCF, we asked the TCF to confirm how it will monitor compliance with the industry RSQ code and what enforcement action it will take if parties do not comply with the code.²⁹ We encourage the TCF to move in the direction of an industry-wide code, given the value of a uniform set of rules applying to marketing conduct. If this is not possible, for technical or other reasons, the code should apply to RSPs, as contemplated by Part 7 of the Act, and we will consider the use of other tools to address any issues relating to LFC conduct.
55. We expect that marketing by LFCs will be consistent with the guidelines and, if they are not party to the industry code, we expect their commitment to the guidelines to be confirmed in another way. However, to avoid this becoming a distraction, we note our view that marketing problems are concentrated at the retail level of the market and addressing issues with RSP conduct is our current priority.

Overlap with other obligations

Background

56. Several submitters commented on the outcomes and principles overlapping with existing codes, legislation, and determinations. There was concern raised about repeating existing obligations and creating situations of ‘double jeopardy.’

Submissions

57. Spark, Vodafone, and 2degrees stated the principles in Outcome 4 are already required by the Commission 111 Contact Code. Spark cautioned against duplication, while 2degrees recommended the principles be removed.
58. 2degrees believes that Outcome 5 is already covered and consistent with the Broadband Product Disclosure Code.
59. 2degrees also commented on how some of the outcomes and principles interact with the Fair Trading Act 1986 (FTA). It questioned whether Parliament intended for an RSQ Code to prohibit actions that are already prohibited. It also raised concern over the use of average download speed claims, stating that it may not be able to always provide consumers with the advertised average speed. 2degrees is concerned that this may put it in breach of its FTA obligations.

²⁹ The 8 November 2021 letter to the TCF can be found on the Commission’s website at: https://comcom.govt.nz/_data/assets/pdf_file/0033/269664/Letter-to-New-Zealand-Telecommunications-Forum-Inc-Marketing-alternative-telecommunications-services-during-the-transition-away-from-copper-guidelines-8-November-2021.pdf

60. Chorus made general comments cautioning against replicating principles that already exist in other codes and legislation. The TCF also made general comments on the crossover with existing codes. It suggests more clarity is needed from the Commission on the intention of including principles that exist elsewhere.
61. TUANZ would prefer this “code replaces or updates the Product Disclosure Code with requirements to present information about services clearly in simple to understand statements which are easily accessible for all users.”³⁰

Our response

62. Outcomes 4, 5, and 6 of the open letter were intended to remind RSPs of their existing requirements under the Commission 111 Contact Code, Broadband Product Disclosure Code, and the Local and Mobile Number Portability Determination (**LMNP Determination**). They were not intended to create new obligations, but to signal that it may be useful for the code created from the guidelines to cross-reference the relevant existing obligations. Commentary is included in the guidelines to reflect this and guide interpretation.
63. Outcome 4 and Outcome 5 of the open letter have been amalgamated under Outcome 4 of the guidelines. However, Outcome 6 of the open letter, which referenced LMNP Determination obligations, has not been included in this outcome. Our view is that requiring RSPs to inform consumers of their ability to keep their number while changing service providers may go beyond what is required by the LMNP Determination. Therefore, as Outcome 4 of the guidelines is intended to be a reminder of existing obligations, we do not view it as a suitable position for this particular requirement.
64. With this in mind, we have added a requirement to inform consumers of their ability to keep their number when switching service providers to Outcome 2(c) of the guidelines. This decision is based on a suggestion submitted by Spark, where it stated that this requirement may be better suited to Outcome 2 as it relates to migrating from one RSP to another.³¹ Considering this requirement does not align with Outcome 4 of the guidelines, we agree with Spark that Outcome 2 is an appropriate position for its inclusion.
65. Parliament empowered the Commission to regulate RSQ for telecommunications services by passing Part 7 of the Act. As stakeholders have observed, the Commission also has powers and functions under general consumer protection legislation – in particular, the FTA. In our view, there was no indication from Parliament that the industry-specific powers in Part 7 were intended to operate to the exclusion of the FTA for the telecommunications sector, or that, conversely, the FTA should prevail in its operation over any industry or Commission codes made under Part 7.

³⁰ TUANZ “Submission on the Commerce Commission’s open letter in regards to marketing of alternative services to consumers during copper/PSTN withdrawal (27 August 2021) paragraph 24(d).

³¹ Spark “Commerce Commission Letter: Marketing Of Alternative Services To Consumers During Copper/PSTN Withdrawal” (27 August 2021) paragraph 17.

66. This is reinforced by the fact that the remedies available for enforcement of the FTA on the one hand, and Part 7 codes on the other, are different. The Commission will typically file criminal charges where it alleges that the FTA has been breached, whereas Commission codes would be enforced with civil remedies, and industry RSQ codes often use alternative forms of dispute resolution outside the court system.
67. Our view, therefore, is that Part 7 codes and the FTA are intended to co-exist in relation to the protection of telecommunications consumers. Stakeholders have raised the possibility of RSPs being subject to “double jeopardy” if more than one regulatory regime applies to their conduct. As explained at paragraph 27 of our guidelines, we consider that this risk can be adequately addressed through the exercise of enforcement discretion by the Commission, under which the Commission decides which is the most appropriate enforcement response, drawing on its published criteria³² and guidelines³³ on this topic.
68. Provisions in an industry or Commission code for marketing of alternative services may create clear boundaries for RSP conduct (eg, standardisation by the TCF of the approach to “persona”-based usage indications contemplated in Outcome 3(d) of our guidelines). To the extent that an RSP’s conduct complied with those boundaries but still arguably contravened the FTA, then the fact of code compliance would be highly relevant in informing the Commission’s exercise of enforcement discretion, under the ‘public interest’ enforcement criterion.

³² The Commission’s enforcement criteria are available at: <https://comcom.govt.nz/about-us/our-policies-and-guidelines/investigations-and-enforcement/enforcement-criteria>

³³ The Commission’s enforcement response guidelines are available at: <https://comcom.govt.nz/about-us/our-policies-and-guidelines/investigations-and-enforcement/enforcement-response-guidelines>

Table of responses to submissions³⁴

69. This section provides a summary of the feedback we received on the individual outcomes and conduct principles, and provides our response to submissions and the final position we reached for each theme and outcome.
70. Unless stated otherwise, references to the outcome numbers and principle letters in the ‘Outcome/Principle’ column are the outcome numbers and principle letters as they were drafted in the 4 August 2021 open letter, and references to the outcome numbers and principle letters in the ‘Response’ column are the outcome numbers and principle letters as drafted in the 8 November 2021 guidelines.

Row #	Outcome /Principle	Submitter	Reference	Key points raised in submissions	Response
1	1	Utilities Disputes	Page 2	“UDL suggests the scope of the supporting conduct principles be extended to more specifically refer to different cultural communities, in particular M[ā]ori and Pa[s]ifika.”	<p>The outcomes and principles that form our guidelines are broad in scope and designed with the intention of improving outcomes for all telecommunications consumers.</p> <p>However, we consider that it is important that the design and delivery of the TCF Code, and the outcomes it delivers, are effective for, and responsive to, the needs of different cultural communities, including Maori and Pacific Peoples.</p> <p>We intend to review and monitor the consumer outcomes following the implementation of the TCF code, including whether it has delivered improved outcomes for different ethnic and cultural communities.</p>

³⁴ Submissions can be found on the Commission’s website at: <https://comcom.govt.nz/regulated-industries/telecommunications/projects/marketing-of-alternative-services-to-consumers-during-copperpstn-withdrawal?target=documents&root=260772>

2	1	Rural Women New Zealand	Paragraph 17	“RWNZ would like to see a clause included which ensures that rural consumers who do not have access to alternative technology or expensive access are assured that copper lines are still available to them.”	Under the Copper Withdrawal Code (CWC), Chorus is required to maintain existing copper services in areas where fibre is not available.
3	1(a)	Vodafone	Page 34	“We suggest it should be ‘not less than six months’ notice. Chorus and Spark should also provide RSPs with a list of all copper services being withdrawn with six months’ notice.”	Under the CWC, Chorus is required to provide RSPs with at least 6 months’ notice when withdrawing copper. Spark has indicated it intends to provide similar notice periods for wholesale PSTN withdrawal. We have retained the 4 months’ notice period for RSPs to allow them time from when they receive notice from Chorus/Spark. However, we wish to emphasise that four months’ notice is a minimum and RSPs are encouraged to provide longer notice wherever possible.
4	1(b)	Vodafone	Page 34	“This principle should also include the need for the entire closure roadmap to be shared by Chorus and Spark, so when a customer asks ‘am I affected by this closure’ we can, for example, say ‘yes, but not for 12 months.”	This principle has been retained with no changes. This suggestion goes beyond the purpose of the guidelines.
5	1(c)	Vodafone	Page 34	“Disagree. This lets Chorus stage and control their exit for their own internal benefit and not for customers’ best interest. We should be allowed to be fully transparent with our customers.”	This principle has been retained but combined with Outcome 1(d) of the open letter for simplicity. The CWC governs how Chorus can withdraw copper services. RSPs should not create the impression their decision is related to copper or PSTN withdrawal in the absence of a relevant withdrawal notice to the affected consumer.
6	1(d)	Vodafone	Page 34	“Disagree. This lets Spark stage and control their exit for their own internal benefit and not for customers’	See Row 5.

				best interest. We should be allowed to be fully transparent with our customers.”	
7	1(e)	Vodafone	Page 34	“RSPs should not be required to label commercial decisions.”	This principle has been removed as it is covered by Outcome 1(b).
8	1(f)	Vodafone	Page 34	“Disagree. If an RSP is ceasing one service ahead of a Carrier’s timeline, it should be allowed to align both exits (i.e. copper withdrawal and PSTN shutdown) in the best interest of the customer, so they only have to move once. The lack of transparency or roadmap is driving this necessity. The lack of roadmap is also driving current customer confusion and poor experience (as outlined in the above submission).”	Explanatory Comments have been added to help RSPs understand that they can still make commercial decisions, but they should not make out that services are not available to consumers when they may still be available to them through other providers.
9	1(g)	2degrees	Page 6	“We consider that this is part of our BAU. It is in RSP’s best interests to address customers’ requests in a timely and accurate manner. This is also part of the competitive process. As such, while we agree with the intention of this, we do not consider this should be a codified ‘principle’.”	No change to principle. We believe it is important to include this as a principle as we understand that consumers often do not receive timely and accurate responses to requests for clarification and further information. This is supported by the feedback we received in the consumer submissions on the outcomes and principles in the open letter.
10	1(g)	Joint LFC submitters	Page 5	“Support, but a definition of ‘timely’ must be included in the Code guidelines.”	This principle has been retained with no changes. We disagree that timely needs to be defined in the guidelines. The TCF should agree an appropriate definition of timely when drafting its code. Appropriate times for a response will likely vary depending on the circumstance.

11	1	Consumer feedback		<p>The majority of submitters agreed with that consumers should be given appropriate notice of any change to their copper-based service and not be pressured to make a decision.</p> <p>For those that disagreed, many commented that wanted the outcomes and principles to go further with much stronger wording.</p>	<p>We note the consumer feedback.</p> <p>We have made wording changes for some of the principles to make them clearer. We have also added Explanatory Comments to make it clearer to the TCF about what our expectations are for RSPs, including examples, for some of the principles when drafting the RSQ code.</p>
12	2	Rural Women New Zealand	Paragraph 18	<p>“RWNZ would like to see a clause included which specifically mentions rural consumers, as their needs and the services available to them, are different from urban-based New Zealanders.”</p>	<p>We note the comment.</p> <p>The outcomes and principles are designed to be broad in scope to cover the needs of all telecommunications consumers. The TCF may decide to add more detail, where appropriate, to reflect the needs of specific consumer groups.</p>
13	2	Utilities Disputes	Page 2	<p>“UDL suggests the scope of the supporting conduct principles be extended to more specifically refer to different cultural communities, in particular M[ā]ori and Pa[s]ifika.”</p>	<p>The outcomes and principles that form our guidelines are broad in scope and designed with the intention of improving outcomes for all telecommunications consumers.</p> <p>However, we consider that it is important that the design and delivery of the TCF Code, and the outcomes it delivers, are effective for, and responsive to, the needs of different cultural communities, including Maori and Pacific Peoples.</p> <p>We intend to review and monitor the consumer outcomes following the implementation of the TCF code, including whether it has delivered improved</p>

					outcomes for different ethnic and cultural communities.
14	2	ISPANZ	Page 2	<p>“An additional Conduct Principle is required:</p> <p>(g) Chorus and other LFCs should not promote their connectivity options direct to consumers. They should only promote their services to RSPs.”</p>	We do not view this as within the scope of the guidelines, noting that Chorus and the other LFCs have been subject to obligations under the UFB agreements.
15	2	Rural Connect NZ	Page 1	<p>“Consumers would benefit if there was a source of independent information/advice on the various telecommunication services available...</p> <p>Powerswitch provides an independent service for selecting electricity providers, however we accept that a similar service for telecommunications services would require significant funding.</p> <p>LEO satellite service is now widely available in rural New Zealand. At the time of writing, Internet New Zealand’s www.broadbandmap.nz did not show satellite as an option.”</p>	<p>Outcome 2(b) encourages the use of independent information. The Explanatory Comments in Outcome 2(b) state some of the tools that may be available to consumers. These include; Internet New Zealand’s Broadband Map and other broadband comparison websites (such as that operated by Consumer New Zealand).</p> <p>Satellite broadband is shown on Consumer New Zealand’s broadband comparison service.</p>
16	2(a)	Spark	Page 13	<p>“We agree with this approach in principle, but it should not be for an RSP to promote its competitors’ offerings or list available technologies... Instead the requirement should only be that the RSPs makes a high level statement that if none of the options offered by the RSP are suitable then the customer is able to go to another RSPs with no early termination fee applied, and that if they move they should be able to change service without losing their service, and</p>	<p>This principle has been updated to “RSPs should remind consumers that they are likely to have the choice of several competing options depending on their location.”</p> <p>The purpose of this principle is to ensure RSPs remind consumers that they have choice. It is not a requirement to refer to other competitors’ options or</p>

				they will be able to keep their existing landline telephone number.”	list possible available technologies. We have added Explanatory Comments to this principle to clarify this.
17	2(a)	Vodafone	Page 34	“RSPs should not be required to advertise competitors’ services. Therefore, ‘service providers’ should be removed from this principle.”	See Row 16.
18	2(a)	2degrees	Page 6	“We support the general intent of this principle but have concerns about how this would work in practice. As RSPs we are commercial entities that, as part of the competitive process, seek to differentiate ourselves from our competitors. It should not be expected that we advertise, or know details of, alternative providers’ services. We are supportive of providing consumers with options that 2degrees can provide, and note that throughout our online ‘sign-up journey’ we provide alternative 2degrees products that may suit the individuals needs based on their location. We recommend that ‘including different technologies, services and service providers’ is removed from the above.”	See Row 16.
19	2(a)	Joint LFC submitters	Page 5	“Support, with a requirement for retailers to provide the customer with easy to understand, accurate and easily accessible information (with any service comparisons and claims to be substantiated by an independent source such as the Commission’s Measuring Broadband New Zealand reports prepared by SamKnows).”	This is covered under the principles in Outcome 3.
20	2(b)	Spark	Page 13	“We think it would be premature to require RSPs to link to broadbandmap.nz as the site would be confusing for the typical consumer. The site does not,	Specific reference to broadbandmap.nz in the principle itself has been removed. However, Explanatory Comments have been added, stating that

				for example, accurately represent at an address level where fixed wireless services are available. Further work is needed by industry on this.”	“RSPs should refer consumers to suitable sources of address-based information or other tools that can be used to help inform consumer choice.” We then list broadbandmap.nz as one of the options available to consumers.
21	2(b)	Vodafone	Page 35	“Broadbandmap is out of date as it does not take into consideration copper withdrawal. The Commission should take responsibility for making sure it’s updated to avoid further confusion among customers.”	See Row 20. Other independent information sources are available to consumers. We note the comment about working with Internet New Zealand to make sure its broadband map is up-to-date.
22	2(b)	Consumer NZ	Page 2	“We note the requirement in Outcome 2(b) for telcos to encourage customers to use independent sources of information (such as Internet NZ’s broadband map). We consider there will need to be information available via multiple channels, including online, print and freephone, to meet the needs of all consumers.”	See Rows 20 and 21.
23	2(b)	Joint LFC submitters	Page 5	“Support, but this should also include access (links) to independent service (comparison) reports that are written in consumer-friendly plain English.”	See Rows 20 and 21.
24	2(c)	Spark	Page 14	“This is potentially better driven by the separate CDR workstream and could be added to the principles at a later phase... We would need system development to make the [broadband usage] information downloadable. Adding telephone usage information would be considerably more complex and we suspect the consumer benefits will not outweigh the cost.”	This principle has been changed to “RSPs should ensure that existing customers have information on their broadband usage and spend profile so that they can meaningfully compare different services and service providers.” The change to ‘customer’ better reflects the RSPs relationship with the consumer in this principle. Usage and spend information are important to support consumer choice, and the current

					transparency work applies to mobile networks specifically.
25	2(c)	Vodafone	Page 35	“Given that all broadband products include unlimited broadband, providing usage information would be meaningless.”	<p>While many broadband plans are unlimited, some still have data caps. Therefore, a customer should be aware of their usage so they can make an informed decision about what service is appropriate for them.</p> <p>For example, Vodafone’s rural broadband plans have data caps, as seen on its website: https://www.vodafone.co.nz/broadband/rural/</p>
26	2(c)	2degrees	Page 7	“This principle should be removed. This implies that RSPs marketing to consumers have information on consumer usage and spend available to them. This may not be the case. Importantly, RSPs compete for consumers that are not their current customer.”	This should be resolved by ‘consumer’ being changed to ‘customer’.
27	2(c)	Consumer NZ	Page 2	<p>“We recommend this be worded as follows:</p> <p><i>RSPs should ensure that consumers have <u>accurate and up-to-date</u> information on their usage and spend so that they can meaningfully compare different services and service providers.</i>”</p>	We note the comment. It has been applied to Outcome 3 of the guidelines.

28	2(d)	Joint LFC submitters	Page 5	<p>“Support, and recommend that any Code guidelines should define what “information available to the customer” means.”</p>	<p>We have added Explanatory Comments that state “[f]or example, ‘information available to them’ may mean the consumer’s usage and spend, along with the comparative price and performance of alternative telecommunications services.”</p>
29	2(e)	2degrees	Page 7	<p>“... 2degrees is concerned that the Commission is seeking to create a principle for something that is already covered under the FTA. The FTA has statutory defined processes, penalties and enforcement actions that can be taken to ensure that telecommunications providers are meeting their obligations under the FTA. We are unclear the intent of Parliament was to allow the creation of guidelines under the Telecommunications Act 2001 to prohibit behaviour already prohibited. (This also raises double jeopardy concerns i.e., an RSP is found to have breached a Code and Act for the same conduct).</p> <p>We also note that explanatory guidance would be required if there is ‘only one option’ due to location constraints or individual circumstances, so this principle does not apply.”</p>	<p>This principle has been deleted as it is captured by Outcome 2(a).</p> <p>Some RSPs may only provide one alternative service in an area, but this is not the same as only one technology service option being available to the consumer (eg, fixed wireless may be available through another provider).</p>
30	2(f)	Vodafone	Page 35	<p>“This principle ignores the fact that migration off copper as a result of Chorus copper withdrawal and Spark PSTN switch off is an operational necessity (i.e.</p>	<p>This principle has been deleted as it is captured by the remainder of Outcome 2.</p>

				customers <i>will</i> lose their telecommunications service once copper is withdrawn unless they move to an alternative service).”	We agree that the loss of the existing telecommunications service may be a real outcome under the CWC or PSTN and this principle may add confusion.
31	2(f)	2degrees	Page 7	“... 2degrees is concerned that the Commission is seeking to create a principle for something that is already covered under the FTA. The FTA has statutory defined processes, penalties and enforcement actions that can be taken to ensure that telecommunications providers are meeting their obligations under the FTA. We are unclear the intent of Parliament was to allow the creation of guidelines under the Telecommunications Act 2001 to prohibit behaviour already prohibited. (This also raises double jeopardy concerns i.e., an RSP is found to have breached a Code and Act for the same conduct).”	See Row 30. We address how the outcomes and principles interact with the FTA in the ‘Overlap with other obligations’ section of this document.
32	2	Consumer feedback		The majority of submitters agreed that consumers should be given sufficient information about what alternative services are available to them so they can make an informed decision about what service is best for their circumstance. For those that disagreed, submitters suggested the principles go further and in some cases be more specific.	We note the consumer feedback. As with Outcome 1, we have edited some of the principles to make them clearer. We have also added Explanatory Comments to clarify our expectations of the RSQ code that is to be created from the guidelines.
33	3	Rural Connect NZ	Page 2	“The scope of the speed claims clause should also include network providers. For example, the Chorus broadband speed checker does not factor in potential backhaul congestion (ie non-fibre LAP[s]). (It appears to report the DSL line rate rather than the actual	At paragraph 24 of the guidelines we say that “[w]e consider the outcomes and principles set out in the guidelines are applicable to, and could be adopted by, any party marketing alternative telecommunications services to consumers, including

				<p>performance of the internet connection). For ADSL lines the Chorus tool can over report speed by a factor of at least 20.</p> <p>RSPs may take the PSTN closure as an opportunity to move their customers from copper to fixed wireless. This may lead to increased congestion on fixed wireless networks. Information on the minimum performance standards should be available to the consumer.”</p>	<p>wholesale providers who may not sell telecommunications services directly to consumers.”</p>
34	3	Chorus	Paragraph 17	<p>“In New Zealand, we continue to see the headline maximum theoretical speed claims, but retailers are less forthcoming with a peak speed or guaranteed speed. There also appears to be a lack of standard definitions for unregulated services, such as the different kinds of mobile broadband and fixed-wireless services. The reason for these gaps in New Zealand could be because of a lack of regulatory oversight and/or intervention to date. We encourage the Commission to consider whether overseas examples are relevant for New Zealand consumers.”</p>	<p>We note the suggestion to consider overseas examples. Outcome 3 of the guidelines and its Explanatory Comments outline our expectations of RSPs when making speed claims in advertising.</p>
35	3	Rural Women New Zealand	Paragraph 19	<p>“RWNZ would like to see a clause added which ensures that rural consumers are advised of how the alternative technology will behave should there be a power cut or any differences in behaviour of the service caused by distance from the source.”</p>	<p>The Commission 111 Contact Code requires providers to inform consumers of which telecommunications technologies may not work in a power failure (including fibre and fixed wireless).</p> <p>Outcome 3(b) of the guidelines intends to create a requirement for RSPs to “ensure consumers are given upfront information about the principal factors known to affect the service performance of alternative telecommunications services.” We believe</p>

					this principle covers RWNZ's comments about the service being affected by distance from the source.
36	3	ISPANZ	Page 2	<p>"An additional Conduct Principle is required:</p> <p>(l) Chorus and other LFCs should not promote their connectivity options direct to consumers. They should only promote their services to RSPs."</p>	We address this matter in the 'Who the code should apply to' section of this document. We also note that Chorus and the other LFCs have been subject to obligations under the UFB agreements.
37	3	Spark	Paragraph 25-26	<p>"We need comfort that we will not breach our Fair Trading Act obligations if we follow the Commerce Commission's recommendation to use average speed claims instead of 'up to' speed claims on our plans.</p> <p>It would be helpful therefore the Commission to provide us with standard wording to use alongside the average speed claims to help customers understand what they represent."</p>	Explanatory Comments have been added throughout Outcome 3 to outline our expectations of RSPs when making speed claims in advertising.
38	3	Spark	Paragraph 31	<p>Spark specific needs</p> <p>"Where there is a Spark specific MBNZ reported number, we will use that instead of the industry average. This is because it more directly reflects the speeds our customers are likely to experience."</p>	We agree. The Explanatory Comments in Outcome 3(e) state that "MBNZ data for individual RSPs should be used by those RSPs where available."
39	3	Spark	Paragraph 33	<p>Technology speeds which are reported but not broken down by RSP</p> <p>"Currently only Fibre 100 and Fibre Max are reported by RSP. Where there is a technology that is not split out by RSP we will use the industry averages."</p>	Explanatory Comments have been added throughout Outcome 3 to outline our expectations of RSPs when making speed claims in advertising.

40	3	Spark	Paragraph 34	<p>Fibre speeds – overclocked</p> <p>“Some plan speeds are not reported in the MBNZ reports, such as Fibre 50 and Fibre 200. For these plans we will have to make an assumption on the speed to use, using the method set out below where the LFC has informed us that a particular fibre product is overclocked.”</p>	<p>Explanatory Comments have been added throughout Outcome 3 to outline our expectations of RSPs when making speed claims in advertising.</p>
41	3	Spark	Paragraph 37-38	<p>Fibre speeds – not overclocked and speeds faster than Fibre Max</p> <p>“Some fibre services are not overclocked – the current reported example is Fibre Max which the MBNZ report shows as 855.2Mbps across all measured RSPs, and 859.8Mbps for Spark.</p> <p>We would need guidance on what speed to show for non-overclocked services and services which run faster than Fibre Max.”</p>	<p>Explanatory Comments have been added throughout Outcome 3 to outline our expectations of RSPs when making speed claims in advertising.</p>
42	3	Spark	Paragraph 39	<p>Fibre speeds – same plan different LFC inputs</p> <p>“Not all LFCs offer the same input plans. To keep things simple for customers we combine some wholesale fibre products into the same retail plans. However, the performance a customer will receive is different depending on which LFC area they are in.”</p>	<p>We note the comment.</p> <p>Explanatory Comments have been added throughout Outcome 3 to outline our expectations of RSPs when making speed claims in advertising.</p>
43	3	Spark	Paragraph 45	<p>Wireless Speeds</p> <p>“We will need to rely on MBNZ results for these services, but we have some unease about how fixed</p>	<p>We note the comment.</p>

				wireless speed is currently reported by MBNZ. Our concerns primarily relate to the distribution of the volunteers and how they reflect typical Spark (or Skinny) broadband customers based on signal strength, sector capability and capacity, modem types etc. We will continue to discuss this in more detail directly with the Commission and SamKnows.”	Explanatory Comments have been added throughout Outcome 3 to outline our expectations of RSPs when making speed claims in advertising.
44	3	Spark	Paragraph 46	<p>Urban/Rural Splits and Other More Granular Breakdowns</p> <p>“For fixed wireless broadband, once the customer has provided us with their address we can then determine whether they are rural, urban or metro... The December 2020 MBNZ report included an urban/rural split for wireless but this has not been reported since. We encourage the Commission and SamKnows to reintroduce this reporting following consultation with fixed wireless providers on what parts of the country should be classified as “rural”.</p>	<p>We note the comment.</p> <p>Explanatory Comments have been added throughout Outcome 3 to outline our expectations of RSPs when making speed claims in advertising.</p>
45	3	Spark	Paragraph 47-48	<p>New Plans and Technologies</p> <p>“The MBNZ programme does not currently measure 5G wireless broadband speeds so we will need to use our estimate for this technology speed based on our best available information.</p> <p>The MBNZ does not test speeds faster than Fibre Max at present.”</p>	<p>We note the comment.</p> <p>Explanatory Comments have been added throughout Outcome 3 to outline our expectations of RSPs when making speed claims in advertising.</p>

46	3	Spark	Paragraph 49-51	<p>Other Factors Impacting Speed</p> <p>“Many of our customers use their own modems which can have a material influence on speed and performance...</p> <p>This needs to be factored into the MBNZ report so that RSPs are not penalised by their customers using non-recommended or older modems – otherwise the MBNZ is not reporting the speeds that a new customer could expect from a service, which is the purpose of using MBNZ speeds in our marketing.”</p>	<p>Outcome 3(b) has been updated to state “RSPs should ensure consumers are given upfront information about the principal factors known to affect the service performance of alternative telecommunications services.” This should cover the fact that there are a broad range of factors that may affect services, and that RSPs cannot necessarily cover everything.</p> <p>We will continue to look at ways to improve the MBNZ programme.</p> <p>We have also added examples in the Explanatory Comments to demonstrate some of the factors that may be important.</p>
47	3	Spark	Paragraph 52-54	<p>MBNZ Reports</p> <p>“We request that future MBNZ reports include a table of the average speeds that should be reported for each plan technology in common use, including broken down by RSP where this is reported...</p> <p>If providers have their own information about actual service performance they should be permitted to use this information provided the results are objectively justifiable and independently verifiable.”</p>	<p>We note the comment.</p> <p>Explanatory Comments have been added throughout Outcome 3 to outline our expectations of RSPs when making speed claims in advertising.</p>
48	3(a)	Vodafone	Page 35	<p>“It is unclear what this principle adds to the outcome. If we do the other stuff, then this follows.”</p>	<p>We have retained this principle and added Explanatory Comments to clarify why we view it as important.</p>

49	3(a)	2degrees	Page 8	“While we support the intention of this principle, and strongly agree that consumers must not be misled, this principle has the potential to inadvertently reduce information provided to consumers, due to concerns about inadvertently making misleading claims. This principle needs to be clear what ‘appropriate expectations’ are and from whose perspective are they being set.	Explanatory Comments have been added throughout Outcome 3 to outline our expectations of RSPs when making speed claims in advertising.
50	3(b)	Vodafone	Page 35	“It is important to note that there is a very broad range of things that can affect services that RSPs can’t individualise or necessarily cover everything.”	Outcome 3(b) has been updated to state “RSPs should ensure consumers are given upfront information about the principal factors known to affect the service performance of alternative telecommunications services.” This should cover the fact that there are a broad range of factors that may affect services, and that RSPs cannot necessarily cover everything. We have also added examples in the Explanatory Comments to demonstrate some of the factors that may be important.
51	3(b)	2degrees	Page 8	“We agree that consumers should be provided with relevant upfront information, however this needs to be within appropriate limitations – for example, operators this should not include specific geographic or technical constraints for individual customers.”	See Row 50.
52	3(b)	Joint LFC submitters	Page 5	“Support, provided that the Code requires retailers to clearly and simply explain to consumers that there is a very broad range of factors that may affect the performance of different service types – and this	See Row 50.

				should also be reflected in the Commission’s RSQ outcomes.”	
53	3(c)	Vodafone	Paragraph 35	<p>“An alternative approach would be for RSPs to be entitled to advertise the <u>range of speeds</u> reported for any access type in SamKnows testing rather than an absolute speed value, which can never be guaranteed in an individual consumer scenario for reasons given above. This is consistent with the UK’s approach which allows RSPs to advertise the download speed available to <u>the majority of consumers</u> using a service, e.g. at least 50% of customers at peak time (8pm – 10pm). The UK’s Committee of Advertising Practice considers that median peak-time download speed is the most meaningful speed measure to customers because:</p> <p style="padding-left: 40px;">a. A median speed, described as “average”, is easily understood and allows for consumers to make comparisons between different ads that they see.</p> <p>As peak time is when traffic volumes are highest and traffic management policies are most likely to apply, a peak-time measure provides a better indication of the actual speeds consumers are likely to experience.”</p>	We note the comment. Outcome 3(c) has been retained with no changes. Explanatory Comments have been added throughout Outcome 3 to outline our expectations of RSPs making speed claims in advertising.
54	3(c)	2degrees	Page 8	<p>“2degrees consider that this principle is contrary to our requirements under the FTA. RSPs can make ‘up to’ claims if that ‘up to’ claim is true. We believe these claims are helpful to consumers, and we are unclear why if it is not considered misleading under the FTA it</p>	Explanatory Comments have been added throughout Outcome 3 to outline our expectations of RSPs when making speed claims in advertising.

				should [be] prohibited to potential customers that are currently receiving copper-based services.”	We also address how the outcomes and principles interact with the FTA in the ‘Overlap with other obligations’ section of this document.
55	3(c)	Joint LFC submitters	Page 5	“Support, because for certain services there are too many variables that make theoretical maximums inconsistent for each customer. For services that consistently deliver to their advertised speeds, the use of ‘up to’ should be allowed.”	We note the comment. Explanatory Comments have been added throughout Outcome 3 to outline our expectations of RSPs when making speed claims in advertising.
56	3(c)	Vocus	Paragraph 5.1	<p>“Principles 3(c) – (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 level (e.g. as part of the Commission’s broader RSQ work or the current review of the TCF’s Broadband Product Disclosure Code...</p> <p>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.”</p>	These principles have been retained with minor changes. Paragraph 21 of the guidelines makes it clear that the “outcomes and principles are intended to apply to all relevant marketing conduct.”
57	3(d)	Vodafone	Paragraph 35	“An alternative approach would be for RSPs to be entitled to advertise the <u>range of speeds</u> reported for any access type in SamKnows testing rather than an absolute speed value, which can never be guaranteed in an individual consumer scenario for reasons given above. This is consistent with the UK’s approach which allows RSPs to advertise the download speed available to <u>the majority of consumers</u> using a service,	We note the comment. Outcome 3(d) has been retained with minor changes. Explanatory Comments have been added throughout Outcome 3 to outline our expectations of RSPs when making speed claims in advertising.

				<p>e.g. at least 50% of customers at peak time (8pm – 10pm). The UK’s Committee of Advertising Practice considers that median peak-time download speed is the most meaningful speed measure to customers because:</p> <p>b. A median speed, described as “average”, is easily understood and allows for consumers to make comparisons between different ads that they see.</p> <p>As peak time is when traffic volumes are highest and traffic management policies are most likely to apply, a peak-time measure provides a better indication of the actual speeds consumers are likely to experience.”</p>	
58	3(d)	2degrees	Page 8	<p>“We are concerned that, depending on the expected level of granularity, this is not practical to implement. While we understand the intention, ‘likely actual peak time download speeds’ will depend on the specific location of customers, and – for certain technologies – would require more comprehensive ‘real life’ testing, not suited to general marketing campaigns.”</p>	<p>Explanatory Comments have been added throughout Outcome 3 to outline our expectations of RSPs when making speed claims in advertising.</p> <p>Similar requirements have been operating in other markets for some time, including Australia and the UK.</p>
59	3(d)	Joint LFC submitters	Page 5	<p>“Support, provided that the Code requires retailers to clearly and simply explain to consumers that there is a very broad range of factors that may affect the performance of different service types – and this should also be reflected in the Commission’s RSQ outcomes.”</p>	<p>Outcome 3(b) has been updated to state “RSPs should ensure consumers are given upfront information about the principal factors known to affect the service performance of alternative telecommunications services.” This should cover the fact that there are a broad range of factors that may affect services, and that RSPs cannot necessarily cover everything.</p>

					We have also added examples in the Explanatory Comments to demonstrate some of the factors that may be important.
60	3(d)	Vocus	Paragraph 5.1	<p>“Principles 3(c) – (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 level (e.g. as part of the Commission’s broader RSQ work or the current review of the TCF’s Broadband Product Disclosure Code...</p> <p>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.”</p>	These principles have been retained with minor changes. Paragraph 21 of the guidelines makes it clear that the “outcomes and principles are intended to apply to all relevant marketing conduct.”
61	3(e)	Vodafone	Paragraph 34	<p>If RSPs are ultimately required to provide “likely actual peak speed” to consumers, it is critical that a common methodology for measuring it is adopted across the entire industry and that the measure is based on independently verified evidence. Using SamKnows could be a solution if greater rigour and consistency is assured around how it measures broadband performance and is consistent with real world experience by most consumers. Currently, testing by SamKnows is carried out using hard-wired connections and measures performance to the router/modem. This does not reflect the typical experience of most end users, who experience broadband services via WiFi connection. Unless the</p>	We agree that a common methodology is important. Explanatory Comments have been added throughout Outcome 3 to outline our expectations of RSPs when making speed claims in advertising.

				<p>testing methodology used by SamKnows evolves to reflect how broadband services are actually consumed by end users then it will:</p> <p>a. Exacerbate the gap between consumers' performance expectations and real world performance;</p> <p>Distort perceptions of different access types.”</p>	
62	3(e)	2degrees	Page 9	“We are concerned this may not be practical to implement. We note not all actual speed indications for all technologies may be available independently.”	Explanatory Comments have been added throughout Outcome 3 to outline our expectations of RSPs when making speed claims in advertising.
63	3(e)	Joint LFC submitters	Page 5-6	“Support, provided that the Code requires retailers to clearly and simply explain to consumers that there is a very broad range of factors that may affect the performance of different service types – and this should also be reflected in the Commission’s RSQ outcomes.”	<p>Outcome 3(b) has been updated to state “RSPs should ensure consumers are given upfront information about the principal factors known to affect the service performance of alternative telecommunications services.” This should cover the fact that there are a broad range of factors that may affect services, and that RSPs cannot necessarily cover everything.</p> <p>We have also added examples in the Explanatory Comments to demonstrate some of the factors that may be important.</p>
64	3(e)	Vocus	Paragraph 5.1	“Principle(c) – (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 level (e.g. as part of the Commission’s broader RSQ work or the current	These principles have been retained with minor changes. Paragraph 21 of the Guidelines makes it clear that the “outcomes and principles are intended to apply to all relevant marketing conduct.”

				<p>review of the TCF's Broadband Product Disclosure Code...</p> <p>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."</p>	
65	3(f)	Spark	Page 15	<p>"We agree with this in principle but will require time to implement fully as we will need to implement a process change.</p> <p>The principle should allow customers to exit for this reason only within the first 30 days, and only if the speed does not meet the speed they could have expected based on the information they received before signing up.</p> <p>In some cases the customer will be using a Spark modem which they will need to return."</p>	<p>In our 8 November 2021 letter to the TCF, published alongside the guidelines, we requested that the TCF confirm in writing formal implementation/compliance timeframes for the code.</p> <p>We have added Explanatory Comments to Outcome 3(g) of the guidelines to clarify our expectations around consumers being able to exit from an RSP's services.</p>
66	3(f)	2degrees	Page 9	<p>"It would need to be clear as to what the 'expected requirements' that would allow this were. These should be able to be independently measured, and there would need to be a clearly defined timeframe for how a customer could move to a different service without penalty. As the Commission will understand, connecting consumers is not costless and there are likely to be appropriate, fair limitations to such a principle."</p>	<p>We have added Explanatory Comments to address these points.</p>

67	3(f)	Vocus	Paragraph 5.2	<p>“Principle 3(f), relating to waiving early termination fees, should be a business decision made individually by each RSP (and not discussed between RSPs as part of developing any code).</p> <p>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.”</p>	<p>This principle has been retained with changes. We do not think it should be an individual business decision, as suggested by Vocus. We want to ensure the RSQ Code created from the guidelines enables consumers to move to a different service, without penalty, if the selected service materially fails to meet expected requirements. The purpose of this is to mitigate consumer harm when they do not receive the service they are led to expect from relevant marketing.</p>
68	3(f)	Utilities Disputes	Page 2	<p>“UDL would like principle (f) to be explained or clarified.</p> <p>In our experience, some RSPs also provide energy services and when additional services or products such as fibre, wifi extenders etc are added, these new services or products sometimes extend existing contract terms for the whole package making it difficult for consumers to withdraw from the telco part of the package alone if it does not meet their needs.</p> <p>UDL believes the consumer should be entitled to walk away from the telco offering without penalty, should their telco purchase not meet their expected needs. It may be helpful if RSPs are encouraged to separate the telco additional purchase from the other bundled services as far as a binding contract is concerned.</p> <p>If the RSP has explained the proposal clearly and set the right expectations, this should not be an issue.”</p>	<p>We have included Explanatory Comments in the guidelines to explain this principle. The code created from the guidelines should be written with these practical considerations in mind. RSPs should consider the practical implications of how they market their services, as well as how they can ensure they are acting consistently with the outcomes and principles.</p>

69	3(g)	Joint LFC submitters	Page 6	<p>“Support, provided that the Code requires retailers to clearly and simply explain to consumers that there is a very broad range of factors that may affect the performance of different service types – and this should also be reflected in the Commission’s RSQ outcomes.”</p>	<p>Outcome 3(b) has been updated to state “RSPs should ensure consumers are given upfront information about the principal factors known to affect the service performance of alternative telecommunications services.” This should cover the fact that there are a broad range of factors that may affect services, and that RSPs cannot necessarily cover everything.</p> <p>We have also added examples in the Explanatory Comments to demonstrate some of the factors that may be important.</p>
70	3(g)	2degrees	Page 9	<p>“As currently drafted, it is unclear:</p> <ul style="list-style-type: none"> - What ‘like for like’ means when different providers offer different services and technologies? - Who determines what is objectively justifiable and independently verifiable? - Who measures the claims?” 	<p>‘Like for like’ has been removed from this principle. The second and third questions are considerations drafters should be conscious of when creating the code.</p>
71	3(h)	2degrees	Page 9	<p>“We agree with this principle but believe that the FTA already requires this and it should not be replicated as a principle here.”</p>	<p>Retained with minor changes. We comment on how the outcomes and principles interact with the FTA in the ‘Overlap with other obligations’ section of this document.</p>
72	3(h)	Joint LFC submitters	Page 6	<p>“Support, but there should be mandated limitations on the use of disclaimers to be consistent with the rules around the use of fine print Fair Trading Act.”</p>	<p>Retained with minor changes. We comment on how the outcomes and principles interact with the FTA in</p>

					the 'Overlap with other obligations' section of this document.
73	3	Consumer feedback		<p>The majority of submitters agreed that consumers should be given clear and accurate information about the technical and performance characteristics of alternative services.</p> <p>Some considered this a common problem and included specific examples of how they thought RSPs had misrepresented the speed and performance of services.</p> <p>For those that disagreed, many commented the principles were too weak and the wording needed to be stronger and more direct.</p>	<p>We note the consumer feedback.</p> <p>As with Outcomes 1 and 2, we have made wording changes for some of the principles to make them clearer. We have also added Explanatory Comments to clarify our expectations of the RSQ Code that is to be created from the guidelines.</p>
74	4	Rural Women New Zealand	Paragraph 20	<p>"RWNZ would like to see a clause added which covers off the installation of any extra equipment or infrastructure needed to transition to available technology for rural consumers."</p>	<p>We note the comment.</p> <p>The outcomes and principles are designed to be broad in scope to cover the needs of all telecommunications consumers. The TCF may decide to add more detail, where appropriate, to reflect the needs of specific consumer groups.</p>
75	4	Rural Connect NZ	Page 2	<p>"We are aware of cases where subscribers are being encouraged to move to "VoIP over ADSL" services even when they have poor performing internet. The result has been that the consumer has unreliable telephone service and has had to ask to switch back.</p> <p>Before offering VoIP to a consumer, the RSPs should be screening the broadband connection to ensure</p>	<p>We believe this is covered by Outcome 3.</p> <p>Outcome 3 states "[c]onsumers are given clear and accurate information about the technical and performance characteristics of alternative telecommunications services. "</p> <p>Principle 3(a) states "RSPs should set appropriate expectations about what their alternative</p>

				<p>that it is capable of reliably supporting the proposed VoIP service.</p> <p>It should be noted that some RSPs choose not to use Chorus's "Baseband IP" even where the broadband connection is poor and this is a viable solution."</p>	<p>telecommunications services are likely to deliver for consumers."</p> <p>We believe these situations will be covered by these outcomes and principles.</p>
76	4(a)(i)	Spark	Page 16	<p>"Agree – this is already covered by 111 Contact Code so is best addressed (or referenced) there to avoid duplication."</p>	<p>Outcome 4 has been updated to "RSPs comply with all related obligations when consumers are transitioning from copper-based services in the marketing of alternative telecommunications services."</p> <p>Outcomes 4(a) and 4(b) of the guidelines now reference the Commission 111 Contact Code.</p> <p>We have added an Explanatory Comment that states "[t]his outcome and the related conduct principles are not intended to create new obligations on RSPs. They are intended to be a reminder of key existing obligations relevant during the transition away from copper."</p> <p>We have also indicated that "it may be useful for the RSQ Code that is produced from these guidelines to cross-reference the existing obligations on RSPs under other codes."</p>
77	4(a)(ii)	Spark	Page 16	<p>"Agree – this is already covered by 111 Contact Code so is best addressed (or referenced) there to avoid duplication."</p>	<p>See Row 76.</p>

78	4(a)(iii)	Spark	Page 16	<p>“This is only relevant to customers taking voice services. We suggest this principle is made more generic so that the RSPs need to explain how a voice service will be provided using the new service, rather than focussing on existing jack points.</p> <p>For example, we provide our wireless voice customers with DECT handsets which the customer can use anywhere in their house without the need to use their existing jack points.”</p>	See Row 76.
79	4(a)	Vodafone	Page 36	“RSPs do this already as part of the 111 Contact Code.”	See Row 76.
80	4(a)	2degrees	Page 9	<p>“We support this principle but this is already required under the 111 Contact Code.</p> <p>We recommend that this principle is removed.”</p>	See Row 76.
81	4(a)	Joint LFC submitters	Page 6	“Support. This is consistent with 111 Contact Code, but the Code should require retailers to do this in all forms of marketing to consumers – and this should also be reflected in the Commission’s RSQ outcomes.”	See Row 76.
82	4(b)	Spark	Page 16	“Agree – this is already covered by 111 Contact Code so is best addressed (or referenced) there to avoid duplication.”	See Row 76.
83	4(b)	Vodafone	Page 36	“RSPs do this already as part of the 111 Contact Code.”	See Row 76.

84	4(b)	2degrees	Page 10	<p>“We support this principle but this is already required under the 111 Contact Code.</p> <p>We recommend that this principle is removed.”</p>	See Row 76.
85	4(b)	Joint LFC submitters	Page 6	<p>“Support. This is consistent with 111 Contact Code, but the Code should require retailers to do this in all forms of marketing to consumers – and this should also be reflected in the Commission’s RSQ outcomes.”</p>	See Row 76.
86	4	Consumer feedback		<p>The majority of submitters agreed that consumers should be given information on how moving from copper telecommunications services to alternative services could impact the operation of their home equipment. Consumers had many examples of how they had experienced these issues in the past with the RSPs’ customer service teams not giving them enough information on how their existing equipment would be affected.</p> <p>For those that disagreed, submitters commented concerns about moving off copper and what that would mean in a natural disaster. Some also thought the principles could go further.</p>	<p>We note the consumer feedback.</p> <p>Outcomes 4(a) and 4(b) reference the Commission 111 Contact Code.</p> <p>4(a): “RSPs provide consumers clear information on how moving from copper telecommunications services to alternative telecommunications services could impact the operation of their home equipment, in accordance with the Commission 111 Contact Code.”</p> <p>4(b): “RSPs ensure vulnerable consumers are made aware of their rights, in accordance with the Commission 111 Contact Code.”</p> <p>We have added Explanatory Comments throughout the guidelines to explain our expectations of the RSQ code.</p>
87	5	Rural Women New Zealand	Paragraph 21	<p>“RWNZ would like to see a clause added which ensures the provider gives all information regarding the cost of the installation of any infrastructure</p>	We believe this is covered by the Broadband Product Disclosure Code.

				needed to transition to available technology for the rural consumers, particularly when this pertains to infrastructure required from the farm gate to homes or buildings. This is especially needed for those rural consumers in areas where copper lines are being withdrawn and the rural consumer has no choice but to move to an alternative source.”	Outcome 4(c) now states “RSPs provide consumers clear information about the costs or fees associated with moving from copper-based telecommunications services to alternative telecommunications services, in accordance with the Broadband Product Disclosure Code.”
88	5	Te Tari Kaumātua, the Office for Seniors	Page 2	<p>“RSPs should also consider offering alternative plans that meet consumers needs at a cost that is similar to their existing plan. The plans for the general market may not be suitable and affordable for these consumers as many of them are on limited incomes and their internet usages are different to the general public (or some might just want/need a telephone line. We have heard many stories of people being sold plans that greatly exceed their needs. Breaking these contracts represents a financial burden which is exacerbated by the opaque way that consumers advised of the review period before the same contract is rolled over.</p> <p>RSPs need to provide information in plain English and in alternative languages for those non-English speakers. Older people has been identified as a digitally disadvantaged group...</p> <p>RSPs need to provide information in non-digital forms as some people are unable to access information online. It should also include information about locally available services (e.g. Digital Inclusion Alliance Aotearoa, 20/20 Trust, and SeniorNet) to assist (older)</p>	<p>We believe that this is covered in the principles to Outcome 2 “Consumers are made aware of the alternative telecommunications services available to them as they transition off copper-based services.”</p> <p>These principles aim to help consumers make an informed decision about the right broadband service for them as they transition of their existing copper-based service.</p> <p>We have added accessibility guidance to the General Guidance section of the guidelines. The RSQ Code that is produced from the guidelines should follow this guidance.</p>

				people with developing skills and knowledge to use digital technologies.”	
89	5(a)	Spark	Page 17	<p>“There are a range of fees which can apply to a customer when they are moving from copper to another technology depending on their unique circumstances...</p> <p>It would be impractical to list every cost or fee in marketing, so we suggest only the main charges and those which are mandatory charges need to be included in the marketing information, with instructions on where to find more detail on other charges which could apply.”</p>	<p>Outcomes 5 and 5(a) of the open letter have been amalgamated and included as one principle under Outcome 4(c) of the guidelines.</p> <p>Outcome 4(c) now reads “RSPs provide consumers clear information about the costs or fees associated with moving from copper-based telecommunications services to alternative telecommunications services, in accordance with the Broadband Product Disclosure Code.”</p> <p>As with Outcome 4 of the open letter’s principles, this outcome is not intended to create new obligations on RSPs.</p>
90	5(a)	Vodafone	Page 36	“RSPs do this today as BAU.”	See Row 89.
91	5(a)	2degrees	Page 10	“We support this principle, but this is already covered and consistent with the Broadband Product Disclosure Code. This provides for fibre and copper ‘Offer Summaries’ setting out this information. While fixed wireless services are not yet covered, we note RSPs providing FWA services already provide an Offer Summary, which sets out these aspects, and the TCF is planning on adding fixed wireless services to this code.”	See Row 89.

92	5	Consumer feedback		<p>The majority of submitters agreed that consumers should be given clear information about the costs or fees associated with moving from copper-based services to alternative services.</p> <p>For those that agreed, many included examples of how they felt they had been affected by not being given clear information about the costs and fees in the past.</p> <p>For those that disagreed, submitters urged the principles were not strong enough.</p>	<p>Outcomes 5 and 5(a) of the open letter have been amalgamated and included as one principle under Outcome 4(c) of the guidelines.</p> <p>We have added Explanatory Comments throughout the guidelines to explain our expectations of the RSQ code.</p>
93	6	Rural Connect NZ	Page 3	<p>“Where the RSP wishes to discontinue supplying landline services, the consumer should be informed of any rights under the TSO. Spark call centres have avoided questions related to the TSO requirements. It may be useful if the Commission/MBIE published some guidelines on how the TSO relates to the migrations.”</p>	<p>We think the principles contained in Outcome 5 of the guidelines should give adequate direction to consumers so that they know where to go to resolve their issues.</p>
94	6(a)	Spark	Page 17	<p>“Agree. Information should be in consumer friendly language so we may not actually use the word ‘port’.</p> <p>Outcome 6 might fit better next to, or a subset of Outcome 2 Principle (a) as it relates to the customer being able to migrate their service to another retailer without losing their service.”</p>	<p>We agree with both of Spark’s comments. Outcome 6 of the open letter has been deleted. The amalgamated Outcome 4 of the guidelines does not reference RSPs’ number portability requirements. However, we have included a new principle at Outcome 2(c) of the guidelines that states “RSPs should inform consumers that they are able to keep their phone number when changing service providers.”</p> <p>Outcome 4 of the guidelines is not intended to create new obligations. We consider that requiring RSPs to</p>

					<p>inform consumers that they are able to keep their phone number when changing service providers would create new obligations for RSPs. Therefore, we do not view Outcome 4 as a suitable position for this principle. With this in mind, we have accepted Spark's suggestion to place this principle at Outcome 2(c) of the guidelines, as it relates to the customer being able to migrate their service to another retailer without losing their service.</p> <p>We have also accepted Spark's suggestion to use more consumer-friendly language. The principle now uses 'keep' rather than 'port'.</p>
95	6(a)	Vodafone	Page 37	"RSPs do this already as part of wider porting requirements."	See Row 94.
96	6(a)	Joint LFC submitters	Page 6	"Support. This can be applied by referring to current (and related) TCF code(s)."	See Row 94.
97	6(b)	Vodafone	Page 37	"RSPs do this already as part of wider porting requirements."	See Row 94.
98	6(c)	Spark	Page 17	<p>"Any page we direct customers to needs to be consumer friendly.</p> <p>We suggest the TCF develop a webpage in conjunction with ComCom which can include information required by the principles."</p>	We note the comment. The principles no longer suggest RSPs should direct consumers to number portability related websites.
99	6(c)	Vodafone	Page 37	"RSPs do this already as part of wider porting requirements."	See Row 94.

100	6(c)	Joint LFC submitters	Page 6	“Support, but request the Commission to publicise and make access to this information – and an easy to use consumer portal for submitting complaints.”	We note the comment.
101	6	Consumer feedback		The majority of submitters agreed that consumers should understand their rights to their landline number. For those that agreed, comments focussed on older people maybe not knowing they have this option. Consumers also suggested that there could be a place for the Commerce Commission to provide more awareness around keeping their number.	We note the consumer feedback. A new principle has been added to Outcome 2. The RSQ Code created from these principles should require RSPs to inform consumers of their ability to port their number when changing service providers.
102	7	ISPANZ	Page 3	“We agree with the proposed Conduct Principles, but please note our concerns about TD[R]S as discussed with Cameron, Ralph, Khoury.”	We note the comment. We believe this fits within our TDRS recommendations under the TDRS review. ³⁵
103	7	Rural Connect NZ	Page 3	“The TDRS’s scope specifically excludes a particular issue that customers may encounter when moving to alternative services. The TDRS “Customer Complaints Code” excludes broadband congestion from its scope... Congestion on rural fixed wireless networks is an issue for many consumers... Should the TDRS’s scope be increased to cover congestion? What remedies should be offered to the consumer? What are the minimum acceptable	See Row 102.

³⁵ The Report to the TCF on recommendations for improvements to the TDRS can be found on the Commission’s website at: https://comcom.govt.nz/_data/assets/pdf_file/0020/270083/Report-to-the-New-Zealand-Telecommunications-Forum-on-recommendations-for-improvements-to-the-TDRS-11-November-2021.pdf

				performance standards? How can the consumer provide congestion? All difficult questions that the industry must resolve.”	
104	7(a)	Vodafone	Page 37	“RSPs do this today as BAU and through operation of the TDR.”	<p>We accept that RSPs already do this as BAU. This principle has been deleted.</p> <p>However, a new principle has been included at Outcome 5(a) which states “RSPs should provide consumers with clear information on how to raise and resolve issues in relation to the sales, marketing or performance of alternative services.”</p> <p>It is important that consumers know what their options are if they have an issue or complaint, therefore, we want to ensure the RSQ Code created from the guidelines requires RSPs to inform consumers of how to raise and resolve their issues.</p>
105	7(a)	2degrees	Page 11	“We already strive to do this. While it is in our interest to resolve any issues with our customers as promptly as possible, it is not clear this should be a principle to be ‘codified’. We consider this principle should be removed.”	See Row 104.
106	7(b)	2degrees	Page 11	“While important, operators are already required to raise awareness of the TDRS to consumers in multiple locations and we recommend that this principle is not further replicated here.”	This principle has been retained with no changes. While operators are already required to raise awareness of the TDRS to consumers in multiple locations, we want to ensure consumers are informed of their options in this context.

107	7	Consumer feedback		<p>The majority of submitters agreed that consumers should be given information as to where to go to resolve any issues associated with the marketing or performance of alternative services as they move off copper. For those that agreed, many commented there needed to be more awareness of the Telecommunications Disputes Resolution Scheme (TDRS).</p> <p>For those that disagreed, the main theme from comments was that consumers thought the TDRS had not been effective in the past in upholding complaints.</p>	<p>We note the feedback.</p> <p>Awareness of the TDRS is something we believe fits within our TDRS recommendations under the TDRS review.</p>
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