



**TCF Submission to
Commerce Commission
Open Letter on Marketing to Consumers
27 August 2021**

A. Introduction

1. We welcome the opportunity to comment on the Commerce Commission's (the Commission) Open Letter addressed to Industry, Consumer Stakeholders and the New Zealand Telecommunications Forum (TCF), that sets out the Commission's concerns regarding the marketing of alternative telecommunications services to residential consumers who are on existing copper-based services.
2. The TCF support initiatives that ensure consumers are well informed of the different technology options available that best suits their needs, and that they understand their rights to access telecommunications services.
3. The TCF broadly supports the principles and outcomes described in the Commission's Open Letter.
4. It is clear some of the principles and outcomes highlighted in the Commissions Open letter have crossover with already developed and effective codes. For example, the 111 Contact Code and the TCF Broadband Product Disclosure Code, as well as measures facilitating number portability. Further clarity is needed from the Commission on the intention of including the principles addressed under existing Codes (i.e., is the Commission seeking additional action in those areas or whether the objective is to create a compendium code restating all obligations that RSPs are subject to).
5. The scope and details of the specific principles underpinning these outcomes, and whether these should apply to all marketing to copper consumers (which includes marketing by retailers and wholesalers) is a matter that individual operators will respond on.
6. If the Commission does not consider current measures that govern telecommunications operators' marketing, such as the Fair Trading Act, to be sufficient for addressing issues related to copper

transition, issuing a set of guidelines to the telecommunications industry under section 234 of the Telecommunications Act 2001 (the Act), followed by a code should achieve the Commission’s goal to bring Retail Service Providers (RSPs) “marketing conduct into line”¹ where necessary, and within a reasonable timeframe.

7. Individual members will submit on whether a proposed code that gives effect to the outcomes should be a TCF drafted RSQ code or a Commission RSQ code.

B. The TCF

8. This submission is provided by the TCF, which is the telecommunications sector’s industry body which plays a vital role in bringing together the telecommunications industry and key stakeholders to resolve regulatory, technical and policy issues for the benefit of the sector and consumers. TCF member companies are fixed-line network operators, mobile network operators and RSPs, and represent over 95 percent of New Zealand telecommunications customers.
9. The TCF facilitates the development of consensus-based, self-regulatory codes, that set standards and specifications for the way members follow procedures internally, and for the way industry interconnects on industry-wide issues. The TCF enables the industry to work together and to discuss issues and topics collaboratively, to reach acceptable solutions that can be developed and implemented successfully.
10. The New Zealand telecommunications sector makes a significant contribution to people’s wellbeing and the economy. New Zealand ranked 12th in the world for overall digital connectivity in the Global Connectivity Index for 2020², up from 13th a year earlier. 155,000 more homes and businesses were connected to UFB fibre network in 2020 – up 9%. 84% of New Zealanders can now access UFB, with 64% connected³. Meanwhile, competition across industry and targeted funding via the mobile blackspot fund and the rural broadband initiative has led to mobile coverage being delivered to 98.5% of where people live and work, soon to grow to 99.8%. Every year providers invest approximately \$1.6b⁴ in new infrastructure and services, and Statistics NZ estimates the telecommunications and information media services sector contributes approximately \$7b annually⁵ to the economy. Over the past decade, the cost of telecommunications has fallen by 3.5% at a time when other CPI indicators such as housing, insurance and rates etc have all risen sharply⁶.
11. The telecommunications services that are relied on by New Zealanders and the economy are provided via a number of different types of infrastructure and technologies. Significant investment has been made to upgrade the fixed-line network and mobile infrastructure to ensure that New Zealand consumers can enjoy the benefits of, and have the opportunity to, participate in a digital society.

¹ Commerce Commission’s Open Letter 4 August 2021 cl. 5

² <https://www.huawei.com/minisite/gci/en/index.html>

³ Crown Infrastructure Partners, *Quarterly Broadband updates*,
<https://www.crowninfrastructure.govt.nz/about/publications/>

⁴ Commerce Commission, *2020 Annual Telecommunications Monitoring Report*, March 2021, pg. 23.

⁵ <https://www.stats.govt.nz/tools/which-industries-contributed-to-new-zealands-gdp> 2019

⁶ <https://www.stats.govt.nz/information-releases/consumers-price-index-september-2020-quarter>

C. A Period of Transition

12. New Zealand telecommunications consumers are experiencing a period of transition where New Zealand telecommunications infrastructure providers are shifting away from the provision of copper-based network technology to new, more advanced technologies.
13. Many consumers are voluntarily taking the opportunity to move their broadband and landline services off the copper network onto these newer forms of technology, such as fibre and wireless, in doing so some are also taking the opportunity to switch providers. In the 12-month period between 1 March 2020 – 28 February 2021, 257,780 fixed line numbers were ported⁷.
14. As described in the Commission’s Open Letter, there are some consumers who remain content with their existing copper service and have no desire to move to a newer technology or switch service provider for various reasons. The TCF recognises that for some of these consumers facing the prospect of having to change their broadband and landline service due to the copper and PSTN withdrawal process can appear complicated and confusing. It is important that both the network operator and the RSP ensure that consumers are kept informed and have the right information to make the right decisions to transition to services that best suits their needs. Furthermore, it is important that consumers have access to the support they may require during this process, including the telecommunications disputes resolution service (TDRS).

D. Proposed Solutions

15. In line with the Commission’s mention of the Copper Withdrawal Code in the Open Letter, there are several other consumer protections to which the telecommunications sector adheres to:
 - i. The TCF Fibre Installation Code sets out the roles and responsibilities of the fibre network operators (Chorus and the LFCs) and the RSPs to ensure that the consumer receives a good customer experience during a fibre installation.
 - ii. The TCF Broadband Product Disclosure Code specifies the minimum standards for the disclosure of information by RSPs regarding residential fixed line broadband internet plans to customers. Currently this code is under review to expand the scope to include fixed wireless services.
 - iii. The Commission’s 111 Contact Code sets out the obligations that RSPs must meet to support vulnerable consumers on fibre or VoIP telecommunications services who may have a particular need to contact 111 emergency services during a power outage, which is applicable to outcome 4 in the Open Letter.
 - iv. The Telecommunications Act 2001 regulates local and mobile number portability.
 - v. The Fair Trading Act (FTA) sets out rules to promote fair competition and make sure consumers get accurate information before buying products and services.
16. Providing clear guidance to all industry participants who market telecommunications services to consumers on copper-based services, we consider the marketing conduct of concern of the Commission will be addressed.

⁷ TCF Number Portability Data from the IPMS

E. Implementing the Principles

17. The TCF broadly supports the industry complying with the Commission's principles to achieve the described outcomes in the Open Letter. The TCF recommends that the Commission sets out a timeline to this programme as soon as possible to ensure that the industry is able to make any required changes within a reasonable period.
18. The development of a code is a way to formalise guidelines and allow for a more transparent set of protections for consumers. The 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.
19. If the TCF is to develop the Code, we will work with the Commission, our members and user representatives to confirm a reasonable timeframe to draft a code in-line with our code development process.
20. If the Commission decides that a Commission drafted RSQ code is more suitable the TCF will work with and assist the Commission to meet its goal of formulating a Commission code within 60 days.
21. The TCF looks forward to engaging with the Commission to ensure consumers have the information they need as New Zealand upgrades its telecommunications networks and services.
22. The TCF is available to discuss any views set out in this submission and looks forward to continuing our close working relationship with the Commission on this matter and its RSQ programme.
23. For any communication relating to this submission please contact:

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Yours sincerely



Paul Brislen
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