

DRAFT Broadband Marketing Guidelines 2024

Guidelines to the telecommunications industry under section 234 of the Telecommunications Act 2001

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DRAFT GUIDELINES FOR CONSULTATION



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
1 February 2023	Improving Retail Service Quality for Consumers – 2023 update

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Introduction

In 2018, Parliament amended the Telecommunications Act 2001 to introduce *Part 7: Consumer matters*, aimed at improving retail service quality (**RSQ**).¹

These new consumer provisions directed us to monitor RSQ and make information available in a way that informs consumer choice. Part 7 also empowered us to review industry RSQ codes, issue guidelines, and create Commission RSQ codes.

RSQ includes the information RSPs provide to consumers to describe goods and services, through marketing communications and at the point of sale.

In November 2021, we issued the *Marketing alternative services during the transition away from copper guidelines* (the **MAS Guidelines**) to improve the marketing of Broadband retail telecommunications services to consumers.²

Following a review in 2023, which identified opportunities for improvement, the MAS Guidelines were revised and reissued as these Broadband Marketing Guidelines 2024 (the **Guidelines**).

These Guidelines replace the MAS Guidelines and are intended to ensure that Broadband marketing and the provision of other key information relating to Broadband retail telecommunications services is clear, transparent, and allows consumers to make appropriate comparisons and fully informed choices.

To improve retail service quality, all retail service providers (**RSPs**) engaged in the marketing of broadband services or technologies should ensure they comply with the Guidelines, and the Telecommunications Forum (**TCF**) should flow through any changes to industry codes, within six months of their publication.

In future, we may compare industry practice against these Guidelines, review relevant industry RSQ codes against these Guidelines under section 235 of the Telecommunications Act 2001 (**Act**), and/or consider whether it is necessary to make a Commission RSQ code under section 236 of the Act.

These Guidelines are administered by the Commission.

NOTE: These are draft Guidelines for consultation. Items highlighted in yellow indicate the material additions and changes from the previously published MAS Guidelines.

¹ Telecommunications (New Regulatory Framework) Amendment Act 2018; Telecommunications Act 2001, Part 7.

² Commerce Commission, *Marketing alternative telecommunication services during the transition away from copper guidelines*, 8 November 2021

PART ONE – GENERAL

A. Commencement date

1. These Guidelines will take effect on the date of publication.

B. Application

2. These Guidelines apply to any RSP that offers Broadband retail telecommunications services to consumers (including as part of a bundle).
3. RSPs comply with these Guidelines by giving effect to the Principles to achieve the Outcomes in accordance with the Purpose of the Guidelines.
4. These Guidelines do not affect an RSP's obligations under applicable law or codes, including:
 - 4.1 the Telecommunications Act 2001;
 - 4.2 the Fair Trading Act 1986;
 - 4.3 the Consumer Guarantees Act 1993;
 - 4.4 Commission RSQ codes; and
 - 4.5 industry RSQ codes (if applicable).
5. If there is a conflict between these Guidelines and legislation or a Commission RSQ code, the legislation or Commission RSQ code will take precedence over these Guidelines to the extent of the conflict.
6. These Guidelines should be read alongside the Commission's other RSQ Guidelines.

C. Purpose

7. The purpose of these Guidelines is:
 - 7.1 to improve RSQ to reflect the demands of end-users of Broadband retail telecommunications services;³
 - 7.2 to improve marketing of Broadband retail telecommunications services to consumers;
 - 7.3 to improve consumers' ability to compare Broadband products, plans, and providers by ensuring they are provided with clarity and transparency;
 - 7.4 to ensure consumers can make fully informed decisions regarding their Broadband retail telecommunications service;

³ Telecommunications Act 2001, s 233

- 7.5 to improve consumers' rights in case of a material failure of a Broadband retail telecommunications service;
- 7.6 to ensure consumers who are transitioning away from copper-based services are given appropriate notice and information; and
- 7.7 to inform the development of any industry RSQ codes that achieve the above outcomes.

D. Defined terms

8. In these Guidelines, unless the context otherwise requires:

Act	means the Telecommunications Act 2001
Alternative telecommunications service	means any service available to a consumer moving off copper-based services, using an access technology other than copper, including fibre, satellite, hybrid fibre coaxial cable and wireless Broadband services.
Alternative service	has the same meaning as "alternative telecommunications service".
Broadband	means a network service or connection providing "always on" access to the Internet.
BYO	means bring your own.
Consumer	has the same meaning as given in section 232 of the Telecommunications Act 2001.
Copper-based service	means any voice or Broadband service provided over a copper access line.
HFC	means hybrid fibre coaxial.
Marketing	means any communication relating to the description, promotion, advertising or sale of products or services to consumers including online, print, television, radio, in-store and door-to-door descriptions, promotions, advertising and selling.
MBNZ	means the Measuring Broadband New Zealand programme.
Outcomes	means the outcomes set out in these guidelines.
Principles	means the principles set out in these guidelines.
PSTN	means public switched telephone network.

Personas	means in relation to broadband speed advertising the practice of indicating the types of activities that can be undertaken by different numbers of people in the same household on different plans. These activities can include browsing, email, downloading media file, and steaming music/movies in standard and high-definition quality.
RSQ	means retail service quality.
RSP	means retail service provider.
TCF	means the New Zealand Telecommunications Forum Inc.
TDR	means the Telecommunications Dispute Resolution.

PART TWO – GENERAL BROADBAND MARKETING GUIDELINES

Outcomes and Principles

Outcome 1: Consumers are given clear, accurate and up-to-date information about the technical and performance characteristics of Broadband services.

Principles

(a) RSPs should set appropriate expectations about what their Broadband services are likely to deliver for consumers.

Explanatory Comments

- Consumers find the marketing of Broadband to be inconsistent and confusing. The failure to deliver advertised speeds is also a significant pain point for consumers.
- RSPs should therefore be responsible for marketing on the basis of a consumer's likely actual experience of a service and in a way that enables meaningful comparison and choice of services.

(b) RSPs should tell consumers what technology options are available at their address from that RSP when joining or switching Broadband services or technologies.

(c) RSPs should present the Broadband services they offer in a consistent way to enable effective comparison and choice by consumers.

Explanatory Comments

- For example, if an RSP chooses to show "fibre" and "wireless" services as separate categories on its website, with a separate link to each category, the link to "fibre" should not also contain wireless broadband offerings. The services in each category should also be arranged and presented in a consistent way (such as lowest price to highest price).
- Additionally, if an RSP chooses to have an individual webpage dedicated to one type of Broadband service (such as "wireless"), then it should also have individual webpages for other Broadband services offered (such as "Fibre", "Hyperfibre", or "Satellite") to be consistent.

(d) Where a Broadband service is only available in limited geographical areas, this limitation should be stated prominently in any marketing outside these geographical areas, particularly in national marketing.

(e) Any claims and comparisons made by RSPs should be objectively justified, demonstrably reasonable, and independently verifiable.

- (f) Conditions, qualifications and disclaimers in marketing should not alter the nature of the service the consumer is otherwise led to expect from the headline or body of the advertisement.
- (g) RSPs should avoid making claims or comparisons about one service that are liable to mislead consumers directly or indirectly in relation to the performance or characteristics of another service.

Explanatory Comments

- For example, claiming that a Broadband service delivering a likely actual peak time speed of 25 Mbps is “super fast” is not likely to be justified or reasonable when the speed expectation set for most consumers by the most commonly used Broadband service is 300 Mbps.
- For example, when making a comparison with another service, claiming that a service does not require landlord consent may mislead when such consent is not ordinarily required for other services.
- Similarly, when making a comparison with another service, claiming that there are no installation costs for a service may mislead when there is no charge for standard installations for the other service.

- (h) RSPs with differential sales incentive structures should have policies addressing the risk of misselling and processes for remedying any misselling that occurs.

Explanatory Comments

- Incentive structures that reward agents for selling one service (such as wireless broadband) over another (such as fibre) create the risk of misselling to consumers.
- For example, when agents are rewarded more for selling wireless broadband, they may be more inclined to steer a consumer towards a wireless broadband service, even though fibre would be better for the consumer’s needs. There is also the risk of consumers being signed up to wireless broadband despite asking for fibre.
- RSPs should recognise and address the conflict of interest created by differential incentive structures in their policies and training and ensure they have procedures in place to remedy any misselling that occurs.
- Remedying misselling could include moving the consumer onto the most appropriate service, compensating the consumer and recovering the commission paid to the agent where the misselling was wilful or deliberate on the part of the agent.

- (i) RSPs should inform consumers that they are able to keep their phone number when changing service providers.
- (j) Any modem supplied by an RSP as part of a marketed plan should be capable of delivering the marketed speed.
- (k) If a modem is not included in the cost of the marketed plan, and a modem with particular specifications is required to achieve the full speeds of a marketed plan, this should be prominently drawn to the attention of the consumer.

Explanatory Comments

- RSPs should make it clear when a compatible modem is not included and that consumers are responsible for using or obtaining a compatible device.
- RSPs should also ensure that consumers understand that the use of an incompatible modem is likely to degrade the performance of their Broadband service.

- (l) RSPs should ensure consumers are given upfront information about the key factors known to affect the service performance of Broadband services.

Explanatory Comments

- Various factors are known to impact the performance of different technologies and services. Examples include signal attenuation, congestion/contention, traffic/network management, protocol overheads, and customer distance from the mobile mast.
- Customers should be made aware of such factors, in a way that they can understand, when relevant to the likely actual performance of the marketed service.
- These factors should be disclosed in a prominent and obvious way to consumers in all relevant communications and before any decision to buy has been made.

- (m) Consumers should be provided with information regarding the factors that may affect service performance that are outside the control of the RSP (such as positioning of in-home modems, and consumer equipment specifications and maintenance).

Explanatory Comments

- MBNZ measures speeds from the network to the modem in the consumer's premises.

- RSPs are responsible for ensuring that consumers understand that, beyond the modem, various factors can influence a consumer’s in-home Broadband experience.
- For example, if a fixed connection is used from the modem to a consumer device, there is unlikely to be any significant degradation in speed. However, if a Wi-Fi connection is used, speeds tend to degrade, even if a fully compatible modem and end-user service are used.
- RSPs should be prepared to advise consumers on possible solutions to the most common issues associated with in-home broadband experience.
- For example, “mesh” solutions can improve in-home experience by reducing dependence on the placement of a single modem and providing more consistent performance across the entire home.

(n) RSPs should ensure that existing customers have the usage and spend information required to meaningfully compare different services and service providers, including access to their Broadband usage and spend details over a minimum period of 12 months.

Explanatory Comments

- Consumers need to know their Broadband usage and spend over a period of at least 12 months to make fully informed comparisons and choices across plans and providers allowing for seasonality.
- We also encourage RSPs to provide an annual summary of their usage and spend along with a prompt to consider alternative options. The annual summary is likely to be most useful to consumers if sent on the anniversary of the consumer joining or moving to a new plan.

(o) RSPs should avoid making “up to” speed claims or using maximum theoretical speeds in their marketing.

(p) RSPs should always use MBNZ speeds in appropriate marketing when MBNZ speeds are available so that consumers understand what they can expect before making their purchasing decision.

Explanatory Comments

- Speed indicators are useful to consumers when comparing plans and should always be provided in appropriate marketing whenever available from MBNZ.
- Providing speed indications for some services (such as fibre) but not other services (such as wireless broadband) when they are published by MBNZ is unhelpful to consumers and risks being misleading by omission. Consumers should not be left to assume or guess or search for the undisclosed speeds themselves.
- Appropriate marketing would include places where service details are routinely included, such as plan pages or retail brochures, but would not include mass marketing communications, such as billboards, radio adverts, TV adverts or banner adverts.
- RSPs may also use Personas in their marketing but should take care to ensure that this is objectively justified and demonstrably reasonable (including on the basis of what combinations of activities are possible at peak times).
- The TCF could standardise the approach to “persona” based usage indications so that consumers are given consistent and comparable information across providers and plans.

(q) Likely actual peak time download and upload speed indications should be objectively justified, demonstrably reasonable, and independently verifiable, by reference to the MBNZ programme.

Explanatory Comments

- MBNZ data should be used for speed indications where available.
- MBNZ data should be presented, consistent with MBNZ reports, as national averages at peak times for the relevant services.
- MBNZ data for individual RSPs should be used by those RSPs where available.
- In all cases, the most recent MBNZ results should be used.
- Individual customers should be advised if the RSP has cause to believe that MBNZ data speeds may not be achievable at that customer’s premise.

- MBNZ reported averages provide the best available indication of what speeds are likely to be achieved, but RSPs should note that actual speeds can still vary for individual consumers.
- For example, the Fibre 300 service could be represented as:
 - “Average busy time speeds of 300 Mbps (download) and 100 Mbps (upload) – results may vary for individual consumers”.
- Additionally, 4G wireless broadband services could be represented as:
 - “Average busy time speeds of 27 Mbps (download) and 15 Mbps (upload) – results may vary for individual consumers.”

(r) Where MBNZ data is not available for particular services, the TCF may agree an interim approach to speed indications provided that:

- i. the approach is consistent with MBNZ methodology;
- ii. RSPs use such an approach for no longer than necessary until MBNZ results become available; and
- iii. RSPs do not suggest MBNZ testing is underway unless that is actually the case.

Explanatory Comments

- The Commission has developed rules that apply to the use of embedded testing agents in proprietary modems and approved the use of this for reporting Spark’s Broadband services. This option is available to other RSPs.
- For the avoidance of doubt, RSPs should not advertise that any service (such as 5G wireless broadband) is “under testing” (or similar) unless white boxes are being deployed to enable testing to take place under the MBNZ programme. Claims to the contrary risk being misleading.

(s) RSPs should avoid using undefined speed-related descriptors or images without clear information, such as likely actual peak time speeds, to help moderate the consumers’ understanding of these descriptors or images.

Explanatory Comments

- For example, claims such as “fast”, “super fast”, “ultra fast”, “blistering”, or images with a similar connotation, should not be used without specifying the likely actual peak time download and upload speeds for the relevant service. In this situation, the expectation is that the likely actual speeds justify the use of the language on a comparative basis.

Outcome 2: Consumers should be able to exit a Broadband service that does not meet expected requirements

Principles

- (a) RSPs should allow consumers to move to a different service, or exit their service, without penalty, if the selected service materially fails to meet expected requirements and this cannot be remedied within 30 calendar days of a customer complaint.
- (b) A broadband service will be deemed to materially fail if it more often than not fails to meet the following performance levels or when an RSP otherwise agrees it has materially failed:
- Fibre: consistently less than 70% of average MBNZ speeds
 - DSL: consistently less than 50% of average MBNZ speeds
 - HFC: Consistently less than 70% of average MBNZ speeds
 - Wireless: Consistently less than 70% of average MBNZ speeds where available
 - Satellite: consistently less than 70% of average MBNZ speeds where available
- (c) RSPs should provide information regarding materiality thresholds in a way that is transparent and easy to understand for consumers.

Explanatory Comments

- RSPs are expected to stand behind the speeds they choose to use when marketing Broadband services and work with consumers to address any material gap between performance and expectations.
- Materiality is an issue of frequency and degree that should be viewed through a consumer lens and assessed in terms of the consumer's actual experience of the service relative to what they were led to expect.
- For example, a customer signs up for a two-year wireless Broadband contract with an RSP. A few months into the contract term, the service starts to degrade at peak times and regularly performs at only half of the advertised speed, resulting in a customer complaint. The RSP has 30 days in which to address any underlying issues, such as congestion at the serving cell site, failing which the consumer should be able to change or exit the service.
- However, in the same example, if the deterioration in performance is only temporary (as a result of repairs to the cell site), or if the deterioration is only marginal, then the impact on the consumer may not be material.
- All issues should be assessed on a case-by-case basis by RSPs having regard to the materiality thresholds specified above.
- Any issues in relation to the performance of the service that cannot be resolved between the RSP and the consumer should be referred to the TDR

for adjudication.

Outcome 3: Consumers should know where to go for the prompt resolution of any issues associated with the marketing or performance of Broadband services.

Principles

- (a) RSPs should prominently disclose on their websites and in their retail stores how to raise and resolve issues in relation to the marketing or performance of Broadband services.
- (b) RSPs should promote to consumers that they have access to the TDR service if they cannot reach a resolution with their RSP. Where RSPs are not TDR members, they should inform consumers of other means by which they can seek resolution of their disputes, such as the Disputes Tribunal.

Explanatory Comments

- The purpose of this principle is to empower consumers to know what to expect from their RSP and to know if a complaint about the marketing or performance of Broadband services is warranted.
- RSPs are expected to have systems in place to support the timely diagnosis and resolution of performance issues for consumers.
- The TCF could develop a standard “fact sheet” to be used by RSPs for this purpose.
- RSPs should accept customer complaints about the speed or performance of their services, or customer premises equipment provided by that RSP, and all such complaints should be dealt with promptly.
- RSPs should be prepared to advise consumers on possible solutions to the most common issues associated with in-home Broadband experience. For example, “mesh” solutions can improve in-home experience by reducing dependence on the placement of a single modem and providing more consistent performance across the entire home.

Outcome 4: RSPs comply with all related obligations when marketing Broadband services.

Principles

- (a) RSPs ensure vulnerable consumers are made aware of their rights, in accordance with the Commission 111 Contact Code.

Explanatory Comments

- RSPs should ensure that their customers have ready access to information about the 111 Contact Code and what consumers are entitled to expect from it including on their websites.

PART THREE – MARKETING BROADBAND SERVICES DURING THE TRANSITION AWAY FROM COPPER

Outcomes and Principles

Outcome 1: Consumers are given appropriate notice of any change to their copper-based services and should not have to make decisions under pressure.

Principles

- (a) RSPs should provide consumers with as much notice as possible, and not less than four months' notice, of any change to a copper-based service.

Explanatory Comments

- When we refer to a change to a copper-based service, we mean copper withdrawal, PSTN withdrawal or a decision by an RSP to cease supply of copper-based services to a consumer's premises for any reason whatsoever.
- When we refer to copper withdrawal, we mean Chorus stopping supply of copper fixed line access services in relation to a specified area or at a specified premise; and a relevant copper withdrawal notice is a notice given by Chorus under the Copper Withdrawal Code specifying the date on which it intends to stop supply of copper fixed line access services in that area or at that premise.
- When we refer to PSTN withdrawal, we mean Spark stopping supply of its copper-based PSTN services in a specified area or at a specified premise; and a relevant PSTN withdrawal notice is notice given by Spark specifying the date on which it intends to cease supply of its copper-based PSTN services in that area or at that premise.
- References to withdrawal notice and formal withdrawal are to be interpreted accordingly provided that if notice given by Spark of PSTN withdrawal is longer than 6 months, the relevant notice period and formal withdrawal commences on the date six months prior to the notified withdrawal date. Four months' notice is a minimum and RSPs are encouraged to provide longer notice wherever possible.

- (b) RSPs should explain clearly to consumers the reasons why they need to move off their copper-based service and onto an alternative Broadband service.
- (c) RSPs should not give copper or PSTN withdrawal as a reason for moving unless withdrawal is evidenced by formal notification from Chorus or Spark relating to that consumer's premises.

Explanatory Comments

- RSPs are free to stop providing copper-based services as a commercial matter but 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.
- For example, if an RSP decides to stop supplying copper-based services in a particular area or at a particular premises, then the RSP should be upfront about that decision, and not suggest that the decision is related to formal copper or PSTN withdrawal when that area or premises is not subject to any relevant withdrawal notice.

- (d) RSPs should avoid creating the impression that copper-based services (including re-sold PSTN services) are not available to consumers just because that RSP has decided to cease supplying them ahead of formal withdrawal by Chorus or Spark.

Explanatory Comments

- For example, if an RSP decides to stop supplying copper-based services ahead of Chorus' copper withdrawal, then the RSP should not create the impression that consumers need to move to an Alternative telecommunications service. Copper-based services may still be available through other providers in such a situation until copper is formally withdrawn.

- (e) RSPs should avoid actions that risk creating a sense of pressure or obligation on consumers, or confusion for consumers, in relation to Broadband services.

Explanatory Comments

- Sending modems for Broadband services to consumers during the transition away from copper risks:
 - creating a sense of pressure or obligation to use the modem, even if the modem is provided on a "use it or throw it away" basis; and
 - causing confusion for consumers who may assume it is a replacement for an existing device and not realise that it relates to a different service.

- If RSPs send unsolicited modems, RSPs should therefore make it immediately and prominently obvious, such as on the modem itself, that the modem is being provided for the purpose of an unsolicited telecommunications service and where the consumer can find the terms of that service.
- To avoid confusion, consumers should be required to take a process step that results in them engaging directly with the RSP (which may be online or by way of a customer app) before becoming liable for any costs associated with the Broadband service.
- RSPs should also be mindful of the provisions of the Fair Trading Act that apply in such a situation. For example, sections 21A– 21C of the Fair Trading Act set out the rules that apply when sending unsolicited goods and services or seeking payment for them.

(f) RSPs should not move consumers onto Alternative telecommunications services without the consumer’s express consent.

Explanatory Comments

- Consumers should decide for themselves what Broadband service is best for them. They should not find out, after the event, that they have been moved to an Alternative telecommunications service by their RSP.
- This situation is different from RSPs grandfathering existing plans and moving consumers onto replacement services that are equivalent or no less favourable using the same access technology. The transition off copper-based services involves a more fundamental decision that needs to be made independently by the consumer.

(g) RSPs should respond in a timely and accurate manner to all requests for clarification or further information from consumers.

(h) RSPs should provide consumers with clear information on how transitioning from copper-based services to Alternative telecommunications services could impact the operation of their in-home equipment, in accordance with the Commission 111 Contact Code.

(i) RSPs provide consumers with clear information about the costs or fees associated with transitioning from copper-based services to Alternative telecommunications services.

Outcome 2: Consumers are made aware of the range of Broadband services available to them as they transition off copper-based services.

Principles

- (a) RSPs should remind consumers that they are likely to have the choice of several Broadband service options depending on their location.

Explanatory Comments

- Consumers need to be aware that they have other options available to them in addition to the particular service their current provider wants to sell as they transition off copper-based services.
- RSPs do not need to refer to their competitors' services but they should highlight the fact that there are other options available in the market.
- For example, a reminder notice might state: *"Remember, you have other choices available to you, so make sure you look around to find out what's best for your needs."*

- (b) RSPs should encourage consumers to use independent information to see what Broadband services are available at their location.

Explanatory Comments

- RSPs should refer consumers to suitable sources of address-based information or other tools that can be used to help inform consumer choice.
- Tools available to help inform consumers about the technologies and service providers available include:
 - Internet New Zealand's Broadband Map; and
 - Broadband comparison websites (such as that operated by Consumer New Zealand).
- RSPs should include direct links to these tools as far as possible but should also include other contact details (such as telephone numbers) for consumers who prefer alternative methods of contact or inquiry.

- (c) RSPs should prompt all consumers to use the information available to them to decide what Broadband service is best for meeting their requirements.

Explanatory Comments

- For example, “information available to them” may mean the consumer’s usage and spend, along with the comparative price and performance of Broadband services.

Outcome 3: Consumers know where to go for the prompt resolution of any issues associated with the transition away from copper

Principles

- (a) RSPs should provide consumers with clear information on how to raise and resolve issues in the transition away from copper.
- (b) RSPs should accept customer complaints about the transition, and all such complaints should be dealt with promptly.
- (c) RSPs should promote to consumers that they have access to the TDR service if they cannot reach a resolution with their RSP during the transition away from copper. Where RSPs are not TDR members, they should inform consumers of other means by which they can seek resolution of their disputes, such as the Disputes Tribunal.

Explanatory Comments

- RSPs are expected to have systems in place to support the transition away from copper.
- For example, RSPs may create dedicated communication channels or phone numbers for consumers to call about a switch off/migration rather than requiring customers to fall back on a general 0800 customer service number.
- Consumers need to know what to expect from their RSP during the transition away from copper and to know if a complaint about the marketing or performance of Broadband services is warranted.