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# **Marketing alternative telecommunications services during the transition away from copper Guidelines Review**

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**Associated documents**

<b>Publication date</b>	<b>Title</b>
<b>4 August 2021</b>	Marketing of alternative services to consumers during copper and PSTN withdrawal – open letter
<b>8 November 2021</b>	Marketing alternative telecommunications services during the transition away from copper - Guidelines
<b>1 February 2023</b>	Improving Retail Service Quality for Consumers – 2023 Update

## Glossary

Term	Defined
<b>Act</b>	means the Telecommunications Act 2001
<b>Alternative telecommunications service</b>	means any service available to a consumer moving off copper-based services, using an access technology other than copper, including fibre, hybrid fibre coaxial cable, satellite and wireless broadband services.
<b>Consumer</b>	means a person who is the ultimate recipient of that service or of another service whose provision is dependent on that service. In this paper, consumer and end-user are used interchangeably.
<b>Customer</b>	means the person who has purchased the product or service. They might not be the end-user, or consumer, of the product or service.
<b>Guidelines</b>	means the Marketing alternative telecommunications services during the transition away from copper guidelines
<b>Marketing</b>	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.
<b>MBNZ</b>	means the Measuring Broadband New Zealand programme
<b>PSTN</b>	means Public Switched Telephone Network. This is the traditional telephone system used for voice-oriented communications.
<b>RSP</b>	means a retail service provider of telecommunications services to consumers, and who has the billing relationship with the consumer for that service.
<b>RSQ</b>	means the retail service quality provided to an end-user of the service, including in relation to the following: a) customer service and fault service levels, b) installation issues, c) contract issues, d) product disclosure, e) billing, f) the switching process and related information, and g) service performance, speed, and availability.
<b>TCF</b>	means the New Zealand Telecommunications Forum Inc, an industry group established for the purposes of fostering co-operation among telecommunications industry participants to efficiently resolve regulatory, technical and policy issues and which is the Forum for the purposes of the Telecommunications Act 2001
<b>TDR</b>	means Telecommunications Dispute Resolution, the industry dispute resolution service focused on helping telecommunications consumers in New Zealand resolve disputes with their mobile and broadband RSPs.

## Background

1. In November 2021, we issued the Guidelines to the industry under s 234 of the Telecommunications Act 2001.<sup>1</sup> The Guidelines were designed to address concerns in the market including:
  - 1.1 consumers coming off copper not being informed about the full range of options available to them when being presented with offers to move to alternative broadband services;
  - 1.2 consumers on copper-based services being pressured to move quickly to alternative broadband services on the basis of copper or PSTN withdrawal when copper services were not actually being withdrawn; and
  - 1.3 consumers not being given appropriate information or being misled about the speed and other performance characteristics of broadband services.<sup>2</sup>
2. The Guidelines set out outcomes and principles for dealing with consumers coming off copper and for advertising broadband services more generally. The Guidelines were issued under Part 7 of the Telecommunications Act 2001, dealing with retail service quality (**RSQ**) matters, and were subsequently converted into industry codes by the TCF.
3. Consistent with our commitment to reviewing the results of our RSQ work, we recently completed a review of the Guidelines, including the impact they have had in the period since they were introduced.
4. This document presents the results of our review and intended next steps for consultation and is issued alongside proposed draft amendments to the Guidelines.

## Outline of review activities

5. The Guidelines set out a series of “outcomes” we expected retail service providers (**RSPs**) to achieve as well as a set of related “principles” to help inform and guide RSP conduct in achieving the outcomes.
6. Our review focused on the principles that underpinned each outcome in the Guidelines.
7. RSP alignment with the principles was assessed using:
  - 7.1 information gathered via an assessment of the marketing material displayed on the websites of the 18 largest broadband RSPs by market share; and
  - 7.2 information received from two voluntary information requests. We received responses from Spark (covering Bigpipe, Skinny and Spark), One NZ, 2degrees (covering Orcon, Slingshot, MyRepublic and 2degrees), Mercury (covering TrustPower and Mercury), and Contact Energy.

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<sup>1</sup> [Marketing alternative telecommunications services during the transition away from copper](#)

<sup>2</sup> Open Letter [Marketing of alternative services to consumers during copper/PSTN withdrawal](#).

8. Each principle was given a Red, Amber, or Green rating. These ratings were then averaged to give each outcome an overall rating.
- 8.1 **GREEN** means all RSPs are aligned with the Guidelines.
- 8.2 **AMBER** means most RSPs are aligned with the Guidelines, with some exceptions.
- 8.3 **RED** means most RSPs are not aligned with the Guidelines, with some exceptions.

#### Key Findings

9. Our review found that most RSPs are complying with most areas of the Guidelines. We did not identify any “Red” areas indicating a systemic failure to comply. During our review, when we identified any gaps to compliance, most RSPs showed a willingness to amend their conduct to comply with the Guidelines.
10. The table below summarises the key findings of our review. Detailed findings for each outcome are presented in the next section.

Outcome	Overall rating	Breakdown of rating
<b>Outcome 1</b> – Consumers are given appropriate notice of any change to their copper-based services and should not have to make decisions under pressure.	<b>GREEN</b>	7 principles rated <b>GREEN</b> .
<b>Outcome 2</b> – Consumers are made aware of the range of alternative telecommunications services available to them as they transition off copper-based services.	<b>GREEN</b>	4 principles rated <b>GREEN</b> . 2 principles rated <b>AMBER</b> .
<b>Outcome 3</b> – Consumers are given clear, accurate and up-to-date information about the technical performance characteristics of alternative telecommunications services.	General marketing principles <b>GREEN</b>  Speed-related principles <b>AMBER</b>	4 principles rated <b>GREEN</b> . 3 principles rated <b>AMBER</b> .  3 principles rated <b>GREEN</b> . 3 principles rated <b>AMBER</b> .
<b>Outcome 4</b> – RSPs comply with all related obligations when consumers are transitioning from copper-based services and in the marketing of alternative telecommunications services.	<b>GREEN</b>	3 principles rated <b>GREEN</b> .

<p><b>Outcome 5</b> – Consumers know where to go for the prompt resolution of any issues associated with the marketing or performance of alternative telecommunications services.</p>	<p><b>AMBER</b></p>	<p>3 principles rated <b>AMBER</b>.</p>
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11. Our review of the Guidelines found room for improvement in the following areas:
- 11.1 *The title, structure, and scope of the Guidelines:* The title, structure and scope of the Guidelines have caused confusion for some RSPs. Where guidance notes were not given, or Commission expectations were considered unclear, the interpretation and application of the Guidelines have varied. Those who do not sell copper services often thought that the Guidelines did not apply to them and so did not engage with them further. There are a number of principles that we intended to apply to all situations where a consumer is looking to change broadband RSP or technology but which have been applied more narrowly by some RSPs. The Guidelines should be more clearly named, with more guidance in relevant areas, and split into general marketing and copper withdrawal related sections.
- 11.2 *The marketing of broadband speeds:* While most RSPs now advertise using Measuring Broadband New Zealand (**MBNZ**) speeds, some RSPs do not include speeds for wireless broadband services, even though MBNZ speeds are available. MBNZ speeds should always be included when advertising any service where MBNZ results are available so that consumers have a clear view of the likely actual performance of the service.
- 11.3 *Transparency of information:* It can be hard to find information on how to raise and resolve issues on RSP websites, with some only having this in their offer summaries. It is relatively easy to find the ‘contact us’ page on RSP websites, but it is not always clear whether a consumer should make a complaint through those channels. This should be made clearer.
- 11.4 *Incentive structures:* Some RSPs are incentivising their staff differently for different technologies. We are concerned that this may give rise to a risk that consumers could be sold technologies that do not fully meet their needs. RSPs should have appropriate policies in place to ensure that this does not happen and remedy the situation if it does.
- 11.5 *The definition of materially fail:* One of the principles of the Guidelines is that RSPs should allow consumers to exit or move from their service if it materially fails to meet expected requirements. However, the definition of “materially fail” varies widely across RSPs, resulting in inconsistent consumer outcomes. The definition should be standardised.

## Detailed Findings

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

12. The overall status of this outcome is **GREEN**. All principles under this outcome were rated **GREEN**.

Principle	Rating	Results of Review
(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.	<b>GREEN</b>	RSPs are giving consumers at least 4 months' notice via their direct communications with consumers and closely follow the timeframes of Chorus notifications.
(b) RSPs should explain clearly to consumers why they need to move off their copper-based service and onto an alternative telecommunications service.	<b>GREEN</b>	RSPs are reasonably clear when explaining why consumers need to move off copper – usually with reference to the fact that Chorus is withdrawing the service.
(c) RSPs should not give copper or PSTN withdrawal as a reason for moving unless they can point to a formal notification from Chorus or Spark relating to that consumer's premises.	<b>GREEN</b>	RSPs are explaining if they are removing copper services for commercial reasons and informing consumers that they may be able to access copper from another provider.
(d) RSPs should avoid creating the impression that copper-based services (including re-sold PSTN services) are not available just because that RSP has decided to cease supplying them ahead of formal withdrawal by Chorus or Spark.	<b>GREEN</b>	See above.
(e) RSPs should avoid actions that risk creating a sense of pressure or obligation on consumers, or confusion for consumers, in relation to alternative telecommunications services.	<b>GREEN</b>	RSPs have discontinued practices (such as sending unsolicited modems) that were causing consumer confusion and creating a sense of pressure or obligation.
(f) RSPs should not move consumers onto alternative telecommunications services without the consumer's express consent.	<b>GREEN</b>	RSPs have clear processes for gaining express consent from consumers.
(g) RSPs should respond in a timely and accurate manner to all requests for clarification or further information from consumers.	<b>GREEN</b>	RSPs have information available to customers about copper withdrawal. Often customers are encouraged to call the RSP for more information or are referred to their website.

13. We propose:

- 13.1 keeping this outcome and its principles the same; and
- 13.2 including this outcome and its principles in a copper transition section of the amended Guidelines.



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

14. The overall status of this outcome is **GREEN**. Four principles under this outcome were rated **GREEN** and two **AMBER**. Overall, RSPs were well aligned with our expectations in this area. However, RSPs can be unclear about whether consumers are able to port their landline number to a new service when switching.

Principle	Rating	Results of Review
(a) RSPs should remind consumers that they are likely to have the choice of several alternative telecommunications service options depending on their location.	<b>GREEN</b>	In direct communications, RSPs are reminding consumers that they are likely to have other options available to them with different providers. On RSP websites, the RSPs usually use an address checker to show the consumer what technologies that RSP has available at that address.
(b) RSPs should encourage consumers to use independent information to see what alternative telecommunications services are available at their location.	<b>GREEN</b>	In direct communications, RSPs encourage consumers to use independent information to find out what is available at their location.
(c) RSPs should inform consumers that they are able to keep their phone number when changing service providers.	<b>AMBER</b>	In direct communications, RSPs inform customers that they can keep their landline number when moving off copper. However, some RSPs are phrasing this in such a way that consumers may feel this is only the case if the customer stays with that RSP. This information is not always available on RSP websites and can be hard to find.
(d) RSPs should ensure that existing customers have information on their broadband usage and spend profile so they can meaningfully compare different services and service providers.	<b>AMBER</b>	Some RSPs refer customers to their usage and spend information in direct communications. However, not all RSPs are providing 12 or more months of usage and spend information.
(e) RSPs should prompt all consumers to use the information available to them to decide what alternative telecommunications service is best for meeting their requirements.	<b>GREEN</b>	RSPs are encouraging customers to use the information available to them to decide what alternative technology is best to meet their requirements.

15. We propose:

15.1 Including principles (c) and (d) in a general marketing section of the amended Guidelines.

15.2 Providing further guidance on:

15.2.1 the usage and spend information that we expect RSPs to make available to consumers; and

15.2.2 our expectations that RSPs have clear, impartial information about the portability of landline numbers available on their websites as well as in their

direct communications to consumers that are transitioning off copper-based services.

- 15.3 Including principles (b), and (e) in a copper transition section of the amended Guidelines.
- 15.4 Creating a general marketing version of principle (a) to make it clear that we expect consumers to be presented with all the options available at their address from that RSP, when they are switching.

**Outcome 3 – Consumers are given clear, accurate and up-to-date information about technical performance characteristics of alternative telecommunications services.**

16. For the purposes of the review this outcome was split up into:
- 16.1 General marketing principles, (a), (b), (g), (i), (j), (k) and (m); and
- 16.2 Speed-related principles, (c), (d), (e), (f), (h) and (l).

*General Marketing Principles*

17. The overall status of the general marketing principles is **GREEN**. Four principles were rated **GREEN** and three **AMBER**.

Principle	Rating	Results of Review
(a) RSPs should set appropriate expectations about what their alternative telecommunications services are likely to deliver for consumers.	<b>AMBER</b>	In direct communications, most RSPs are not giving customers information about what they can expect from alternative services. Rather, customers are asked to call for more information or are referred to the RSP website. Information on RSP websites is usually sufficient – but some RSPs are not providing MBNZ information on wireless broadband services even though this is available from MBNZ.
(b) RSPs should ensure consumers are given upfront information about the principal factors known to affect the service performance of alternative telecommunications services.	<b>GREEN</b>	Most RSP websites have a disclaimer or explanation of the principal factors known to affect service performance below their plan cards. Most RSPs also have further help pages to help customers resolve common issues such as slower than expected speeds.
(g) 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 days of a customer complaint.	<b>AMBER</b>	RSPs are not charging early termination fees when services materially fail to meet consumer expectations. However, definitions of “materiality” vary widely across providers. RSPs all have different interpretations which means consumers are unlikely to know, without consulting their provider, if their service would be regarded as materially failing to deliver
(i) Any claims and comparisons made by RSPs should be objectively justified, demonstrably reasonable and independently verifiable.	<b>AMBER</b>	Most RSPs are advertising speeds using MBNZ results – but some RSPs are not using MBNZ speeds for wireless broadband services (even though these are available).
(j) 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.	<b>GREEN</b>	Generally, RSPs avoid making claims or comparisons between services. However, when RSPs do this, it is usually to explain the performance differences between services (i.e., fibre and wireless or low earth orbit satellites and geostationary earth orbiting satellites, which is helpful information for consumers).

Principle	Rating	Results of Review
(k) 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 Wi-Fi modems, consumer equipment specifications and maintenance).	GREEN	Most RSPs provide information about factors that may affect their services including factors that are outside the control of the RSP. However, sometimes this information was tucked away as a disclaimer, or consumers would need to click onto a different webpage/help page to find it.
(m) 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.	GREEN	No marketing that was found with conditions, qualifications or disclaimers was considered to alter the nature of the service the consumer is led to expect.

### Speed-related Principles

18. The overall status of the speed-related principles is **AMBER**. Three principles were rated **GREEN** and three were rated **AMBER**.

Principle	Rating	Results of Review
(c) RSPs should avoid making “up to” speed claims or using maximum theoretical speeds in marketing.	AMBER	Most RSPs are advertising speeds using MBNZ results – but a small number of RSPs are still using “up to” speeds.
(d) RSPs should use likely actual peak time download and upload speeds when marketing so that consumers understand what they can expect before making their purchasing decision.	AMBER	Some providers are only showing download speeds on their website. Some technologies or plans that are not covered by MBNZ are being marketed with maximum theoretical speeds while others mention that calculation of speeds is ‘underway’.
(e) Likely actual peak time download and upload speeds indications should be objectively justified, demonstrably reasonable, and independently verifiable, by reference to the MBNZ programme.	AMBER	Some providers do not reference the most recent MBNZ report.  Some RSPs with 5G wireless plans noted that MBNZ calculations were underway.  Some RSPs are using wholesale speeds for Fibre 30, Fibre 50 and HyperFibre plans as these are not included in the MBNZ programme.
(f) Where MBNZ data is not available for particular services, the TCF may agree on an interim approach to speed indications provided that:  (i) The approach is consistent with MBNZ methodology; and	GREEN	RSPs are not making speed claims for technologies that are not covered by the MBNZ programme e.g., 5G Wireless. Fibre 30, 50 and HyperFibre plans are being marketed with wholesale speeds, which is in accordance with the TCF’s methodology guidance.

Principle	Rating	Results of Review
(ii) RSPs use such an approach for no longer than necessary until MBNZ results become available. <sup>3</sup>		
(h) 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.	GREEN	RSPs are either not using speed-related descriptors or are using likely actual peak time MBNZ speeds to moderate the consumer's understanding.
(l) If a modem with particular specifications is required to achieve the full speeds of a marketed plan, and that modem is not included in the cost of the marketed plan, this should be prominently drawn to the attention of the customer.	GREEN	RSP websites were generally clear with information about specific modem needs. Most RSPs include this information in their plan cards and customers who choose to BYO modem will need to meet the RSPs compatibility requirements.

19. We propose:

- 19.1 including the general marketing principles in a general marketing section of the amended Guidelines;
- 19.2 clarifying our expectation that information regarding the factors that affect service performance is prominently disclosed;
- 19.3 adding a principle relating to financial incentives for RSP sales agents. Industry told us that they want their agents to help customers find the right plan for their needs and we agree with this outcome. However, where differential incentives exist (such as a higher reward for the sale of one technology over another), there is a risk that consumers could be sold technologies that do not fully meet their needs. RSPs should have appropriate policies in place to guard against this and remedy the situation if it occurs;
- 19.4 including the speed-related principles in a subsection of the general marketing section of the amended Guidelines;
- 19.5 providing further guidance around our expectations on the marketing of speeds including:
- 19.5.1 that if MBNZ speed information is available, then it should be disclosed; and
- 19.5.2 that RSPs should not claim that speed testing is "underway" (or similar) unless that is actually the case;

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<sup>3</sup> You can find the TCF's methodology guidance here: <https://www.tcf.org.nz/industry/standards-compliance/customer-experience/broadband-marketing-code/alternative-testing-methodologies-to-measure-broadband.pdf>.

- 19.6 including principle (g) in a subsection of the general marketing section of the amended Guidelines for exit rights;
- 19.7 standardising the materiality threshold by reference to best practice across major providers for each category of service; and
- 19.8 clarifying our expectation that the “exit right” should be transparent and easily understandable to consumers.

***Outcome 4: RSPs comply with all related obligations when consumers are transitioning from copper-based services and in the marketing of alternative telecommunications services.***

20. The overall status of this outcome is **GREEN**. All three principles under this outcome were rated **GREEN**.

Principle	Rating	Results of Review
(a) RSPs 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.	<b>GREEN</b>	RSPs are providing information about the 111 Contact Code – supported by compliance engagement and resources made available by the Commission.
(b) RSPs ensure vulnerable consumers are made aware of their rights in accordance with the Commission 111 Contact Code.	<b>GREEN</b>	
(c) RSPs provide consumers with clear information about the costs or fees associated with transitioning from copper-based services to alternative telecommunications services, in accordance with the Broadband Product Disclosure Code.	<b>GREEN</b>	RSPs are either including this information in their direct communications or encouraging customers to call the RSP or use the address checker on the RSP's website to find out more. RSP websites were generally quite clear about this information. When customers are signing up to fibre, most RSPs note that install fees may apply for non-standard installs.

21. We propose:

- 21.1 including principle (a) in a copper transition section of the amended Guidelines; and
- 21.2 including principles (b) and (c) in a general marketing section of the amended Guidelines.

**Outcome 5: Consumers know where to go for the prompt resolution of any issues associated with the marketing or performance of alternative telecommunications services.**

22. The overall status of this outcome is **AMBER**. All three principles under this outcome were rated **AMBER**.

Principle	Rating	Results of Review
(d) RSPs should provide consumers with clear information on how to raise and resolve issues in relation to the marketing or performance of alternative telecommunications services.	<b>AMBER</b>	<p>Most RSPs are providing consumers with information in their direct communications about how to raise and resolve issues in relation to the marketing or performance of broadband services.</p> <p>However, it was much harder to find this information on RSP websites, with some only having it in their offer summaries. It was relatively easy to find the “contact us” page on RSP websites, but it was not always clear whether a consumer would be able to make a complaint through those channels.</p> <p>We know from our previous research on customer service that it can be confusing for consumers trying to understand which contact channels are available, and when, for each RSP.<sup>4</sup></p>
(e) RSPs should remind consumers that they have access to independent dispute resolution services, including the Telecommunications Dispute Resolution service, if they cannot reach a resolution with their RSP.	<b>AMBER</b>	In direct communications, RSPs who are TDR members generally make it clear that the TDR is available to consumers. However, on some RSP websites, the information is located in offer summaries or not present at all. Some RSPs do not mention any independent dispute resolution services at all.
(f) RSPs should inform consumers of the existence of the RSQ code produced from these Guidelines, and what consumers should expect from their RSP under it.	<b>AMBER</b>	At the time of assessment, only one RSP had information about the relevant TCF Codes on its website. Those who are members of the TCF were providing this information in their direct communications.

23. We propose:

- 23.1 including this outcome and its principles in a general marketing section of the amended Guidelines;
- 23.2 clarifying our expectations about when and how information should be provided about how to raise and resolve issues;

<sup>4</sup> You can find the research here: [https://comcom.govt.nz/\\_data/assets/pdf\\_file/0018/301734/Fiftyfive5-Telecommunications-RSQ-Initiative-Development-Research-Summary-Report-15-December-2022.pdf](https://comcom.govt.nz/_data/assets/pdf_file/0018/301734/Fiftyfive5-Telecommunications-RSQ-Initiative-Development-Research-Summary-Report-15-December-2022.pdf). Page 19 notes information about customer service channels and hours available may highlight which RSPs make it easier to resolve and which RSPs have a more customer centric service.



- 23.3 widening principle (e) to state that where RSPs are not TDR members, they should inform consumers of other means by which they can seek resolution of their disputes (i.e., the Disputes Tribunal); and
- 23.4 removing principle (f). We do not think consumers will benefit from this information.