

4 August 2021

By email to: Industry Stakeholder Group
Consumer Stakeholder Group
Telecommunications Forum

Tēnā koutou

Marketing of alternative services to consumers during copper/PSTN withdrawal

1. This letter outlines the concerns we have with the marketing of alternative telecommunications services to residential consumers on copper-based services.
2. We set out outcomes we think are necessary now to ensure that consumers receive the level of retail service quality (**RSQ**) they demand and our views on how retail service providers (**RSPs**) should deliver these outcomes as soon as possible for consumers.
3. We seek your feedback on the principles set out in this letter as well as how they should be implemented to best achieve the outcomes.
4. Our preliminary view is that these principles should be issued by the Commission as guidelines to the telecommunications industry under section 234 of the Telecommunications Act 2001 (the **Act**). The industry would then apply the principles in the guidelines to formulate an appropriate RSQ code that gives effect to the purpose of section 233.
5. We expect RSPs will bring their marketing conduct into line with these principles to achieve the outcomes as quickly as possible, so that consumers on copper-based services can make informed decisions about the alternative telecommunications services best suited to their needs.

What is the problem?

6. With New Zealand transitioning away from copper-based services, including those delivered by Spark's public switched telephone network (**PSTN**), consumers will be required to switch to alternative access technologies, such as fibre, hybrid fibre-coaxial cable, wireless broadband and mobile, in order to retain a telecommunications service.

7. RSPs are responding by offering new and expanded services, each with different capabilities, specifications and expected performance, as they seek to retain existing customers and attract new ones.
8. We have been made aware through complaints, communication with consumer groups such as Consumer NZ, and letters from several providers, that some of the information being provided to consumers facing this switching decision may be incomplete, confusing, or potentially misleading. The nature of the concerns expressed to us include that:
 - 8.1 consumers are not being informed about the full range of options available to them when being presented with offers to move to alternative services;
 - 8.2 consumers are being pressured to move quickly to alternative services on the basis of copper or PSTN withdrawal when in some cases neither of these services are currently being withdrawn; and
 - 8.3 consumers are not being given appropriate information or are being misled about the performance characteristics of alternative services.
9. Consumers do not experience an acceptable level of RSQ if their understanding of their needs is inaccurate, or if information about the options available for meeting those needs is missing or incomplete. This can result, for example, in consumers purchasing a higher priced service than needed, or a service that cannot perform to their expectations or requirements.
10. Consumers who are currently on copper-based services (and have therefore not themselves initiated a transition to an alternative technology) are more likely to be vulnerable, elderly or less technologically aware. Such consumers are also potentially unaware of the options available to them, or their rights, and are therefore less able to choose an appropriate service when services are being withdrawn. This makes the accuracy and completeness of the marketing of alternative technologies even more important.
11. Many consumers still on copper-based services will have never considered switching to a new technology, or never had the ability to do so. The alternative telecommunications service consumers choose now may be the only technology change they make for the foreseeable future. This makes it vital that they choose the right service for their needs. We have suggested efficient timeframes for the proposed options below to reflect the urgency in which we consider these issues need to be addressed.

What is the solution?

12. The Copper Withdrawal Code (**CWC**) protects consumers still on copper-based services. In particular, it aims to ensure that consumers get the information they need to understand the copper withdrawal process and the range of alternative technologies available to them.
13. The obligations under the CWC apply to Chorus at the wholesale level of the market. Under the CWC, Chorus can stop supplying copper services from September 2021. In addition to this, Spark's process to retire the PSTN began late last year, increasing the level of change for consumers.
14. In light of the issues that have been brought to our attention, we have reached the view that additional protection for consumers is required at the retail level of the market. We also consider these protections are needed urgently because the copper and PSTN withdrawal process is underway and RSPs are actively marketing alternative telecommunications services to consumers on copper-based services.
15. We have set out below the outcomes that need to be produced at the retail level of the market to promote the interests of consumers on copper-based services so that they can make informed decisions about the alternative telecommunications services most suited to their needs.
16. We have also set out draft conduct principles that could form the basis of an RSQ code to deliver these outcomes. Such a code would apply to all RSPs who market alternative telecommunications services to residential consumers on copper-based services. An RSQ code will also provide consumers with formal protections, such as rights in relation to the Telecommunications Dispute Resolution Scheme (**TDRS**).

Outcomes and conduct principles

17. The outcomes and supporting conduct principles we consider to be necessary are as follows:

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

Conduct Principles

- (a) *RSPs should provide consumers with as much notice as possible, and not less than four months' notice, of any change to their copper service.*
- (b) *RSPs should explain clearly to consumers the reasons why they need to move off their copper service and onto an alternative service.*

- (c) *RSPs should not give copper withdrawal as a reason for moving unless they can point to a formal notification from Chorus relating to that consumer's premises.*
- (d) *RSPs should not give PSTN withdrawal as a reason for moving unless they can point to a formal notification from Spark relating to that consumer's premises.*
- (e) *RSPs should be open with consumers about any commercial decisions they make to cease supplying copper services ahead of formal copper withdrawal by Chorus or PSTN withdrawal by Spark.*
- (f) *RSPs should avoid creating the impression that copper 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.*
- (g) *RSPs should respond in a timely and accurate manner to all requests for clarification or further information from consumers.*

Outcome 2: Consumers are given sufficient information to decide what alternative telecommunications service is best for them as they transition off copper-based services.

Conduct Principles

- (a) *RSPs should remind consumers that they are likely to have the choice of several competing options depending on their location – including different technologies, services and service providers.*
- (b) *RSPs should encourage consumers to use independent information, such as Internet New Zealand's www.broadbandmap.nz, to see what alternative services are available at their location.*
- (c) *RSPs should ensure that consumers have information on their usage and spend profile so that they can meaningfully compare different services and service providers.*
- (d) *RSPs should prompt consumers to use the information available to them to decide what technology, service and service provider is best for meeting their requirements.*

- (e) *When promoting a particular service to a consumer RSPs must not create the impression that this is the only option available to that consumer.*
- (f) *When promoting a particular service to a consumer RSPs must not create the impression that the consumer will lose their telecommunications service unless they move to the promoted service.*

Outcome 3: Consumers are given clear and accurate information about the technical and performance characteristics of alternative telecommunications services.

Conduct Principles

- (a) *RSPs should set appropriate expectations about what their alternative telecommunications services are likely to deliver for consumers.*
- (b) *RSPs should ensure consumers are given upfront information about the factors known to affect the service performance of alternative telecommunications services.*
- (c) *RSPs should avoid making “up to” speed claims or using maximum theoretical speeds in advertising.*
- (d) *RSPs should use likely actual peak time download speeds when advertising alternative telecommunications services so that consumers understand what they can expect before making their purchasing decision.*
- (e) *Likely actual speed indications should be objectively justifiable, and independently verifiable, such as by reference to the Measuring Broadband New Zealand programme.*
- (f) *RSPs should allow consumers to move to a different service, or walk away from their service, without penalty, if the selected service does not meet expected requirements.*
- (g) *Any comparisons that RSPs make to other telecommunications services should be made on a “like for like” basis and claims should be objectively justifiable and independently verifiable.*
- (h) *Conditions, qualifications and disclaimers in advertising should not alter the nature of the service the consumer is otherwise led to expect.*

Outcome 4: Consumers are given information on how moving from copper telecommunications services to alternative telecommunications services could impact the operation of their home equipment.

Conduct Principles

- (a) *RSPs should remind consumers that in the transition to an alternative telecommunications service:*
 - (i) *They may not be able to make emergency calls in a power cut without a suitable back-up;*
 - (ii) *They may need to work with their medical or home alarm provider to ensure continuity of services; and*
 - (ii) *They may need to make changes to their jack points to keep a home phone in the same location in their house.*
- (b) *RSPs must comply in all other respects with their obligations under the 111 Contact Code including that vulnerable consumers are made aware of their rights under the 111 Contact Code.*

Outcome 5: Consumers are given clear information about the costs or fees associated with moving from copper-based telecommunications services to alternative telecommunications services.

Conduct Principles

- (a) *RSPs should clearly communicate any costs or fees, such as termination fees, equipment fees or changes in contract price at the point of sale to allow consumers to make informed decisions.*

Outcome 6: Consumers understand their rights to their landline number.

Conduct Principles

- (a) *RSPs should remind consumers that they can “port” or take their number with them to a new service or another RSP.*
- (b) *RSPs should not create the impression that consumers will lose their number unless they stay with that RSP.*
- (c) *RSPs should direct consumers to the Commission website’s number portability page, or to the [Number Administration](#)*

[Deed's page on landline numbers](#), for more detailed information.

Outcome 7: Consumers should know where to go to resolve any issues associated with the marketing or performance of alternative services as they move off copper.

Conduct Principles

- (a) *RSPs should endeavour to resolve any issues associated with the sales, marketing or performance of their alternative services promptly with consumers.*
- (b) *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.*

Implementing the principles

- 18. We are interested in stakeholder views on how to ensure the above outcomes are best delivered for consumers in a timely way. The key options we have considered are:
 - 18.1 the Commission issuing the principles and outcomes to the industry in the expectation that RSPs would either voluntarily commit to, or otherwise comply with, the principles;
 - 18.2 the Commission issuing the principles and outcomes to the industry as guidelines under section 234 in the expectation that RSPs would incorporate them into an industry RSQ code through the New Zealand Telecommunications Forum Inc (TCF); and
 - 18.3 the Commission incorporating the principles and outcomes into a Commission RSQ code under section 236.
- 19. Each of these options involves different trade-offs for consumers and the industry, which we discuss in more detail below. Our preliminary view is that it would, on balance, 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.

20. The particular circumstances of the copper and PSTN withdrawal are such that there is a need for the outcomes to be delivered as expeditiously as possible. For that reason, our expectations for delivery of an industry RSQ code are that:
 - 20.1 each RSP will, following the issue of guidelines, promptly review its marketing practices with a view to improving outcomes for consumers in line with the guidelines without waiting for an industry code to be finalised; and
 - 20.2 an industry code is implemented within 60 days after guidelines are issued.
21. The different trade-offs that we see for consumers and the industry in the three options outlined above are:
 - 21.1 The industry has expressed a general preference for less formal action from the Commission in the first instance. Last year, we accordingly accepted voluntary commitments from the three mobile network operators to address transparency and inertia issues in the residential mobile market, rather than proceeding with more formal action. While we could adopt a similar approach here, voluntary commitments cannot be enforced under the Act and non-compliance by just one RSP would weaken incentives for compliance by all other RSPs. Consumers would also lack the formal protections from an RSQ code. As noted above, because the copper and PSTN withdrawal process is already underway, we consider that stronger protections for consumers on copper-based services are needed urgently. This suggests that a more formal response may be preferable in this case.
 - 21.2 The Commission could initiate an industry code making process by issuing the principles and outcomes as guidelines to the telecommunications industry. The industry could then formulate an RSQ code that gives effect to the purpose, through the TCF, providing formal protections for consumers (e.g., access to the TDRS).
 - 21.3 We recognise there may be some challenges with this approach in this particular context, as we have received letters from different TCF members complaining about each other's approach to promoting their services to copper consumers. Therefore, we are keen to understand the TCF and industry participants' views on whether it is achievable for the TCF to reach the necessary agreement for an industry code that satisfies the statutory purpose within the timeframe described at paragraph 19.2.
 - 21.4 Alternatively, it may be more suitable for the Commission to create an RSQ code under section 236. This might be particularly appropriate if the industry indicates it may not be able to formulate a code within the necessary timeframe. A mandatory Commission code would result in a uniform set of rules, with comprehensive coverage that could be applied to, and enforced across, the industry.

22. We also note that if industry does formulate an RSQ code but, despite good intentions, fails to meet the statutory purpose (e.g., the code fails to cover important service aspects or dimensions of quality set out in the guidelines), a Commission RSQ code may be required. Also, if an industry code is created but fails to achieve the outcomes (e.g., we do not see satisfactory behavioural change from RSPs), a mandatory Commission code, with comprehensive coverage and statutory enforcement provisions, may better meet the purpose.

Your views

23. We would like to hear from you on the principles and outcomes we have set out in this letter and our proposal to issue them as guidelines to the telecommunications industry under section 234.
24. If you believe that changes are required to the principles or outcomes, please provide these by way of specific drafting comments, together with the reasons supporting your changes.
25. We would also like to hear from the industry and the TCF whether it will be in a position to formulate an industry RSQ code within 60 days of the guidelines being issued. Our preliminary view to issue the outcomes and principles as guidelines proceeds on the basis that this is both a necessary and achievable timeframe.
26. We are seeking submissions on what is outlined in this letter by 5pm, Friday 27 August 2021.
27. Please make your submission via the Telecommunications retail service quality project page on our website at <https://comcom.govt.nz/regulated-industries/telecommunications/projects/marketing-of-alternative-services-to-consumers-during-copperpstn-withdrawal>. The project page will have more information about how you can provide your comments.
28. Please contact Ben Oakley, at Ben.Oakley@comcom.govt.nz, if you have any questions in relation to this letter.

Ngā mihi nui



Tristan Gilbertson
Telecommunications Commissioner