

# **Submission on Draft Product Disclosure – Retail Service Price and Cost and Coverage Maps Guidelines**

**15 March 2024**

**C H ● R U S**

## Submission

1. Chorus welcomes the Commerce Commission's (**Commission**) continued focus on improving retail service quality to reflect the demands of consumers of telecommunications services. While progress has been made since the Commission issued its guidelines on *Marketing alternative telecommunications services during the transition away from copper* (**MAS Guidelines**), further action is needed to ensure consumers receive accurate and transparent information during their shopping journey and at the point of sale, enabling "like for like" comparisons between services and fully informed decisions.
2. To this end, Chorus supports the Commission's objectives to:
  - a. improve transparency of retail service pricing and comparability of offers between retail service providers (**RSPs**) through the proposed *Draft Product Disclosure – Retail Service Price and Cost Guidelines* (**Price Guidelines**), and
  - b. increase consumer awareness of the coverage they can expect and their rights in the event they experience a material coverage issue through the proposed *Draft Product Disclosure – Coverage Maps Guidelines* (**Coverage Guidelines**).
3. However, the Price Guidelines do not go far enough to achieve the Commission's objectives. Price and cost information is important, but it is only one piece of key information when it comes to comparing and choosing broadband services. Substantiated and standardised performance metrics, such as likely actual peak time speeds and latency under load, are key to enabling consumers to make informed comparisons and decisions.
4. As Chorus has previously submitted, when consumers are unable to make fully informed decisions it can lead to unfair outcomes and consumer harm.<sup>1</sup> The High Court in the "FibreX" judgment held, "...*harm to the consumer was the denial of their ability to make an informed choice rather than the receipt of a materially inferior product...*".<sup>2</sup> This includes the inability to access information easily and being unable to make "like for like" comparisons. The "FibreX" case noted that a "layered approach" to information, i.e., where information isn't all in one place and a consumer has the option to find out more, doesn't mitigate potential harm.<sup>3</sup> This illustrates the importance of "prominent disclosure" of key performance information about a service in helping to inform consumers, and why that disclosure needs to be consistent across technologies and plans.
5. Currently, RSPs can choose whether they include performance metrics, such as speed, in their marketing and plan disclosures. Where speeds are used, the Commission expects RSPs to use likely actual peak time speeds which are objectively justified, demonstrably reasonable, and independently verifiable, by reference to the Measuring Broadband New Zealand programme (**MBNZ**).<sup>4</sup> We encourage the Commission to build on this and ensure that substantiated (using MBNZ) key performance metrics, such as likely actual peak time speeds and latency under load, are prominently disclosed alongside price and cost information. Consumers need to know the quality of the service they are paying for to ensure informed trade-offs can be made between the price and quality of those services.

---

<sup>1</sup> Chorus, *Draft Product Disclosure – Retail Service Bundling Guidelines*, 13 October 2023.

<sup>2</sup> *Commerce Commission v Vodafone New Zealand* [2023] NZHC, at [227].

<sup>3</sup> *Commerce Commission v Vodafone New Zealand* [2023] NZHC, at [201].

<sup>4</sup> *Commerce Commission, Marketing alternative telecommunications services during the transition away from copper*, 8 November 2021, Outcome 3, clauses (c) – (f).

RSPs should be required to shine a light on actual broadband performance and not just price.

6. Disclosure of key performance metrics will also help to address marketing of services where performance information is being deliberately withheld from consumers or inconsistently disclosed between plans to make other service offerings more attractive to consumers. Recent examples we have observed include:
  - a. **Inconsistent performance disclosure between technologies** - fixed wireless plan cards are advertised alongside fibre plan cards in circumstances where performance information is only disclosed in relation to the fibre plans. Consumers are left unable to compare the performance differences between the technologies.
  - b. **Incentivising switching to a fixed wireless plan based on price and "usual monthly data use", with no performance information to enable comparison** - targeted, personalised emails sent to consumers promoting a fixed wireless service under the slogan "*Get saving with Wireless Broadband*". The marketing does not disclose any performance metrics of the fixed wireless service offered, nor how that compares to the customer's existing service. Consumers are left unable to make any meaningful comparison between their existing service and the service being offered.
  - c. **Undefined speed-related descriptor** - hybrid fibre coaxial (HFC) is promoted on an RSP's website as "faster than fibre" compared to the RSP's "most popular fibre plan", where there is no disclosure of what that plan is, or of the performance metrics being compared.
7. To help address these concerns and improve consumer transparency Chorus **recommends** the Commission:
  - a. **Requires prominent disclosure of speed and latency under load metrics alongside price and cost disclosures.** Amend the Price Guidelines to require key performance metrics for broadband plans to be prominently disclosed alongside price and cost disclosures. This will help to ensure consumers can make fully informed purchasing decisions based on "like for like" comparisons across all technologies and plans. Performance information should be sourced from MBNZ, where available.
  - b. **Monitors implementation and reviews the effectiveness of its guidelines after 12 months.** The Commission should review and evaluate the effectiveness of its guidelines to ensure they are achieving the intended outcomes. The Commission should also continue to engage regularly with industry, including through the TCF, to ensure successful implementation of the guidelines. It is important that all RSPs comply with and implement the guidelines to ensure all consumers receive (and can expect to receive) the same service quality irrespective of the RSP they choose to deliver their service.
  - c. **Considers whether the proposed obligations relating to mobile coverage maps should apply equally to fixed wireless services.** Disclosure of accurate network coverage information for consumers considering a fixed wireless broadband service is just as important as it is to consumers considering mobile services. Given mobile and fixed wireless services use the same underlying technology, we recommend consideration be given as to whether the proposed Coverage Guidelines can be applied across all wireless services. Potential consumers of fixed wireless services should have access to, and be able to rely on, the same information about coverage as mobile consumers to enable them to make informed decisions about the service that best suits their needs. This

information will increase in importance as MNO's continue to roll-out their 5G networks and offer 5G fixed-wireless broadband and 5G mobile plans.

- d. **Uses a consistent definition of "marketing communications" across both sets of guidelines.** The Coverage and Price Guidelines each contain different definitions of the term "*marketing communication*". We recommend the definition of "*marketing communication*" contained in the Price Guidelines be used across both sets of guidelines.