

Submission on the Commerce Commission's letter requesting views on scope of the Copper Withdrawal Code

14 February 2019



OVERVIEW

- 1 This submission responds to the Commerce Commission's (**Commission**) 26 November 2018 letter requesting views on the scope of the Copper Withdrawal Code (**CWC**).
- 2 The Ultra-Fast Broadband (**UFB**) initiative is a policy initiative that recognises fibre represents the best, future-proof technology for enabling connectivity and for supporting economic and social wellbeing for New Zealanders.
- 3 Through the Telecommunications (New Regulatory Framework) Amendment Act 2018 (**Amendment Act**), Parliament recognised the central place of fibre by setting a framework to ensure that end-users can access quality fibre services at fair prices.
- 4 Parliament also recognised that it makes no sense to require Chorus to continue to operate parallel networks, and passed provisions allowing us to withdraw previously regulated copper services within a Specified Fibre Area (**SFA**) while placing a responsibility on us, working with industry via the CWC, to ensure that consumers are protected during this transition.
- 5 The move to a fibre future is a significant technology change, similar in some respects to switching off analogue television broadcasting. Like any such change we will need to work closely as an industry to ensure that end-users are afforded a reasonable opportunity to make this change before copper services are withdrawn. We welcome the CWC as a basis for ensuring that end-users are protected while facilitating the withdrawal of previously regulated copper services.
- 6 Copper to fibre migration is part of our core business. The quarter to 31 December 2018 saw UFB uptake on our network grow to 51%, with fibre demand stronger than the same period in 2017. We are constantly working to refine and improve the way we work with retail service providers (**RSPs**) and end-users to make the migration process efficient and effective. The relationships with our RSP customers are underpinned by our contractual arrangements and agreed working practices.
- 7 Our view is that these business as usual arrangements work well, and should be supplemented, not overridden, by the CWC. Accordingly, where we have given notice that we intend to withdraw copper services in a particular area we do not envisage the majority of our processes for migration changing. There may, however, be some new processes arising from a need to address particular circumstances and provide information to end-users.
- 8 We see the key role of the CWC as providing clarity on the pre-conditions for withdrawal. We therefore welcome the Commission's request for submissions on the minimum requirements of the Telecommunications Act 2001 (**Act**) so that we can move forward with clarity.
- 9 A core principle for developing requirements we can meet is that those requirements are under our control. For example, a requirement for an anchor service to be available on a fibre connection should not prohibit withdrawal where another LFC offers a service analogous to an anchor service but with minor differences. Consideration will need to be given to circumstances where end-users have fibre

available within a reasonable timeframe, but a physical fibre connection is not able to proceed at the time of order due to third party access issues (which are addressed under the land access regime in Part 4 of the Act).

- 10 The Telecommunications Carriers' Forum (**TCF**) has suggested that the industry drafts the CWC for the Commission's consideration. In order to do so we believe that an open dialogue with the Commission is critical. In particular, industry dialogue would be useful before the Commission finalises its views on the minimum CWC requirements.
- 11 There is potential for far reaching practical implications arising from certain definitions in the final CWC. This could affect our ability to withdraw copper services once they have been deregulated, undermining the policy intent and the objective of the CWC. We strongly encourage a workshop at which the Commission could test its initial views with stakeholders before finalising.

SCOPE OF THE CODE – CONSUMER PROTECTIONS FOR WITHDRAWAL OF COPPER

- 12 The Act provides that once the Commission has declared an area to be a SFA, Chorus' UBA and UCLF services are deregulated in those areas. The USLL and UCLL Backhaul services were deregulated under the Amendment Act. We may stop supplying those copper services¹ if we comply with the CWC or if the end-user chooses to have the service disconnected.
- 13 Schedule 2A of the Act sets out the minimum consumer protection requirements for when we withdraw the relevant copper services. We think the scope of the CWC should focus on those statutory requirements, as well as providing clear information for consumers - including how consumers will address any issues with the industry, enabling a smooth resolution of issues between end-users, Chorus, LFCs and RSPs.
- 14 We think that the CWC should be supplemented by an operations manual, agreed by the TCF, that sets out working processes but can evolve to improve end-users' experiences as processes develop.
- 15 We address each of the CWC statutory requirements, and our view on their application and the practical implications, in turn below.

Access to the fibre network

- 16 Clause 1(3)(a) of Schedule 2A requires the CWC to specify that Chorus cannot withdraw a copper service until the end-user in relation to the service can:

16.1 Access a fibre service; and

¹ UCLL, UCLL Backhaul ("relevant services" under s69AD), UBA and UCLF ("copper fixed line access services" under s69AC).

- 16.2 Have a connection to the fibre service installed:
- (a) within a reasonable time frame; and
 - (b) at no cost to the end-user, whether the connection is standard or non-standard.
- 17 There are therefore three legs to the test:
- 17.1 Access;
 - 17.2 Timeliness; and
 - 17.3 Cost of the connection to the end-user.
- 18 With regard to 'access', this should align with where a SFA has been declared by the Commission. We are proposing that this is defined in line with the 'premised passed test' applied by Crown Infrastructure Partners (**CIP**). We refer to our submission to the Commission *Determining Specified Fibre Areas: Process and Issues Paper* dated 15 February 2019 on this matter.

Within a reasonable timeframe

- 19 We share the TCF view that 'a reasonable timeframe' should not be specifically defined for the purposes of the CWC. This is a term commonly used in legislation, regulation and contractual provisions and is well understood. This also reflects the fact that timelines for fibre installation are already addressed through our contractual provisions and working practices.
- 20 When considering whether, or how, to define this issue it is important to distinguish between a general ability for end-users to obtain a fibre connection within a reasonable timeframe and the specific circumstances of each consumer. There will be instances where end-users have fibre installation blocked or delayed due to third party consent or access issues.
- 21 As we discuss above, Parliament has recently addressed land access and consent issues in amendments to Part 4 of the Act and the CWC should not override this regime. For those issues not covered by the new Part 4 regime, we favour the industry being incentivised to work together on market-led approaches that encourage transition to fibre and improved customer experience. There may be policy changes required to support this, for example if consent regimes are problematic for consumers and the industry can't solve it alone. We also note that there may be potential for technology solutions to address these issues.²
- 22 While these are issues that will need to be addressed it is important that these issues are not confused with the general pre-condition for withdrawal – that end-users can expect to get a fibre connection within a reasonable timeframe.

² For example <https://company.chorus.co.nz/chorus-trials-gigabit-wireless-solution-fibre-lead-ins>.

- 23 We strongly encourage the Commission to address these issues as part of an industry workshop on the key elements of the CWC.

Installation at no cost to end-user

- 24 The Act³ defines standard and non-standard connections. The 'no-cost' requirement should be focused on the current charges we, or the other LFCs, make to RSPs in respect of the fibre connection. It is limited to charges for the fibre connection but not necessarily services on that connection or customer premises equipment associated with it. For example, charges to developers, retirement village owners and body corporates are outside the scope of the 'no-charge' requirement, as those charges are not to end-users.
- 25 The Act provides that standard and non-standard connections will be aerial installations. It is important that 'no-cost' does not extend all installation methods. This is because under a regulated asset base construct (that the Act introduces), this would mean cross subsidies from end-users with aerial installations to those requesting more expensive installation techniques. If the end-user wishes to have a different (non-standard), more costly installation method it should be at our discretion to seek a contribution to that additional cost. This is consistent with the principles applied in current contractual arrangements.

Reasonable notice

- 26 Under clause 1(3)(b) of Schedule 2A, the CWC must require reasonable notice to be given of the proposed withdrawal to the end-user, access seeker, and relevant fibre service provider.
- 27 We think a reasonable notice period is something that should be agreed as part of the CWC development process in discussion with RSPs. Our view is that it should be no less than six months but we are open to further discussion with RSPs given the shared logistics involved.

Service functionality

- 28 Clause 1(3)(c) of Schedule 2A requires previous service functionality must be available over fibre, except for legacy services (which the Act states are to be defined in the CWC).
- 29 The TCF view is that:
- 29.1 This should be interpreted as broadband and voice services that the end-user is consuming at the time of the copper withdrawal process, but excluding legacy services; and
 - 29.2 Chorus' obligations are to connect the premises as it currently does for the copper network. Services connected within the premises are out of scope but

³ Section 155ZU, as specified in clause 5 of Schedule 2A.

will require supporting industry communications and consumer education about service upgrades.

- 30 Service functionality refers to what the telecommunications service supplied to the end-user premises provides at a broad level, rather than a detailed technical level. Functionality should not be defined to imply that a service must achieve the same thing as copper connections in the same way. Fibre and copper networks have different technical capabilities and properties. The policy intent, and the rationale for the UFB programme, is to replace legacy copper networks with future-proof fibre networks. Any requirement that they provide identical technical functionality would be contrary to this intent, and technically infeasible.
- 31 It is also important to distinguish between the functionality of the Chorus connection to a premise and all uses of the service by an end-user. For example, if an end-user has a burglar alarm that uses the copper network to communicate with a monitoring service, this does not relate to the service that Chorus provides. It relates to what an end-user has decided to do with the service in their premises.
- 32 We believe there is a role for industry-led education on the options available to end-users when transitioning from devices that have previously relied on copper connections, such as burglar and medical alarms. This should not, however, be confused with service functionality.

Information Chorus must provide

- 33 In accordance with clause 1(3)(d) of Schedule 2A, the CWC will require us to provide information to end-users about withdrawal and the need to make alternative arrangements, such as battery backup, to maintain the fibre service in the event of a power failure.
- 34 Given much of the information relating to copper withdrawal will sit with us (although less in areas where another LFC is the fibre provider), we would be happy to take responsibility for issuing end-user notices. Example content includes:
 - 34.1 An explanation that the area has been declared a SFA and that there is a CWC in place that governs the process;
 - 34.2 Notice that we intend to stop supplying copper services on a certain date in accordance with the reasonable notice requirements discussed above;
 - 34.3 Which RSPs offer fibre based telecommunications services that end-users can order and connect to in that area;
 - 34.4 How to request fibre; and
 - 34.5 The process for ordering and installation.
- 35 This information could be provided both by direct mail to the address, and by directing end-users to an industry website that contains more detailed information.

- 36 If the Commission and industry support this approach, we expect we would have two versions of the letter – one for SFAs where we are the fibre provider, and one for SFAs where another LFC is the fibre provider.
- 37 We will also be required to provide, if reasonably practicable, the end-user with information about the fibre services available (clause 1(3)(e) of Schedule 2A).

Availability of anchor services or commercial equivalents

- 38 Only Chorus will be required to provide anchor services under the Act. We understand that once LFCs' agreements with CIP finish they are free to choose any product portfolio.
- 39 If the Commission defines a 'commercial equivalent' too tightly there is a risk that we may not be able to withdraw copper in other LFCs' areas. Our view is that a permissive approach should be taken so that an outcome where an end-user can get a substantively similar (or better) service meets the definition of 'commercial equivalent'.

Dispute resolution

- 40 Two relevant dispute regimes are currently in place – the Telecommunications Dispute Resolutions Service and the Utilities Disputes process. In line with our general view that the CWC should seek to reference existing processes, we think these should continue to apply as appropriate, and may evolve over the CWC's duration. Clear information about these regimes should be provided to end-users.

Code Structure

- 41 As noted above, we expect the CWC will be structured to include the key requirements of the code and an operations manual. We envisage the body of the CWC containing the key requirements and defined terms and the operations manual containing any processes that are specific to withdrawal under the CWC. These processes are likely to evolve over time as we gain experience as an industry, so it's appropriate that they are easy to amend as required.