

Copper Withdrawal Code

Framework Paper for the New Zealand Telecommunications Forum (TCF) to provide information to assist the Commission in developing the Copper Withdrawal Code

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Associated documents

Publication date	Reference	Title
01 August 2019	ISBN 978-1-869457-15-0	Copper Withdrawal Code Process Update
26 November 2018	N/A	Copper withdrawal code – Letter requesting views on scope

Framework Paper for initial TCF input to the Copper Withdrawal Code

Purpose of the Copper Withdrawal Code

1. We are required to prepare a Copper Withdrawal Code (the **Code**) by 1 January 2022.¹ This Code will regulate the withdrawal of copper services (e.g. broadband and voice access services) in areas in which specified fibre services are available to end-users.
2. The principal purpose of the Code is to set certain minimum consumer protection requirements for end-users of copper services to ensure consumers are adequately protected during the transition from copper to fibre.²

Purpose of this framework

3. To assist us in the preparation of the draft Code, we are seeking, through this framework paper, an industry-led response from the NZ Telecommunications Forum Inc. (TCF).³
4. On 26 November 2018, we released our letter requesting views on the scope of the Code.⁴ On 14 February 2019, we received and published submissions and cross submissions in response to our letter.⁵
5. Submissions raised many detailed practical and operational issues that are subordinate to the Code's high-level purpose, but which are crucial for the Code to be workable.
6. On 19 February 2019, we received a letter from the CEO of the TCF which highlighted industry's willingness to provide the Commission with input to the Code's content via the TCF and a commitment to assist the Commission to enable us to prepare a Code that would protect consumer interests alongside the orderly withdrawal of copper services.
7. As the telecommunications industry body, we believe that the TCF is likely to have relevant working knowledge of the detailed practical and operational issues that the Code is likely to need to cover.

¹ Clause 1 of Schedule 2A of the Telecommunications Act 2001

² Clause 1(1) of Schedule 2A of the Telecommunications Act 2001

³ An entity specified in section 5 of the Telecommunications Act 2001

⁴ Commerce Commission, Copper Withdrawal Code – Letter requesting views on scope of the code, 26 November 2018. https://comcom.govt.nz/_data/assets/pdf_file/0027/107586/Copper-Withdrawal-Code-Letter-requesting-views-on-scope-26-November-2018.PDF

⁵ Submissions are available on our website - <https://comcom.govt.nz/regulated-industries/telecommunications/projects/copper-withdrawal-code>

8. This framework paper:
 - 8.1 sets out the envisaged sections of the Code;
 - 8.2 proposes to the TCF that its response should address specific issues within some of these sections; and
 - 8.3 provides guidance on the information we would consider beneficial in any TCF response.
9. The TCF should note that we are publishing a Process Update⁶ alongside this Framework paper. The Process Update is intended to provide transparency to stakeholders regarding our proposal for the TCF's role in the development of the Code (i.e. providing an industry-led response to this paper, to assist us when preparing a draft of the Code), as well as our plans for a subsequent consultation process with all interested parties on a draft of the Code.

Structure of this framework paper

10. We are approaching the preparation of the draft Code with three high-level questions in mind, and have applied the same structure to this paper, as follows:
 - 10.1 Firstly, what sections are necessary to prepare a complete Code that meets the statutory requirements?
 - 10.2 Secondly, which of these sections are of a practical and/or operational nature and lend themselves to early industry input?
 - 10.3 Thirdly, within each section, for what key practical and/or operational issues would industry input be of particular benefit?⁷
11. We have presented our views on these questions and initial thinking on some issues in tabular form, which we hope will be helpful for directing the TCF's work. The table is found at Appendix A.
12. The remainder of the paper addresses:
 - 12.1 the TCF's response; that is, the outputs of the TCF process that we would find useful, as well as how we would like to stay engaged during the TCF's work;
 - 12.2 our next steps, which includes indicative future dates for our consultation process;
 - 12.3 the important interdependencies for the Code, and guidance on how the TCF could consider and address these in its response, as set out in Appendix B; and

⁶ Commerce Commission, "Copper Withdrawal Code: Process Update" (01 August 2019).

⁷ We have identified what we consider to be the key issues raised in submissions to our 26 November letter. We will consider all aspects raised in these submissions as we prepare the Draft Code.

- 12.4 the relevant parts of the Act that apply to the creation and purpose of the Code, as set out in Appendix C.

The TCF's response

13. In addition to addressing the issues set out in Appendix A, the TCF's response may also include:
- 13.1 suggested approaches to cover alternative views, scenarios or definitions that the TCF identifies amongst its members;
 - 13.2 suggested wording/drafting for sections and/or terms of the Code;
 - 13.3 any proposed outcomes that the TCF considers important to enable the Code to meet its purpose; and
 - 13.4 any other terms or matters that are not addressed in Appendix A that the TCF would like the Commission to consider for inclusion in our draft Code.

TCF outputs

14. We request that explanatory notes are provided for areas where members of the TCF have differing or opposing views on proposed approaches. Unless there are explanatory notes outlining differences in views, we will assume all other proposals are unanimous.
15. These explanatory notes will enable us to better:
- 15.1 understand proposals made by the TCF;
 - 15.2 see proposals that have unanimous support;
 - 15.3 see issues where industry has been unable to reach agreement; and
 - 15.4 understand those areas where reaching a unanimous approach has been challenging.
16. Understanding the exploration of key issues will assist us with the options and trade-offs that the TCF has considered.
17. Understanding where there is unanimous TCF members' support will help guide our draft Code production and supporting documentation.

Engagement throughout the process

18. We propose working with the TCF Chair to keep abreast of progress during the period in which the TCF is developing its response. This may include receiving:
- 18.1 copies of the TCF working party minutes and/or Chair updates throughout its process;
 - 18.2 working papers or issues papers that your Copper Withdrawal Code working party has produced since it was established that the TCF consider will assist the Commission in the preparation of the draft Code; and
 - 18.3 a final report accompanying the response that has an overview of the process the TCF has followed, and the explanatory notes.

Next steps

19. Following receipt of the response from TCF, we will prepare a draft Code and consult on it with interested parties (including consumer groups, but also the TCF and its members). This consultation will help ensure the Code meets the consumer protection purpose and enable the conditions to be met for the orderly migration to fibre and for the withdrawal of Chorus' copper-based services.
20. Table 1 below provides an indicative timeframe for the preparation of the Code. We note the statutory deadline of 1 January 2022.⁸
21. We will inform affected parties if we consider it necessary to hold a stakeholder workshop, including industry and consumer groups, during the preparation of our Code.

Table 1 Indicative dates

Process	Indicative date	Overview
TCF response provided to Commission	30 August 2019	TCF provides a response to this framework paper to the Commission.
Commission consultation on draft Code	Early 2020	Commission seeks public submissions from affected parties on its draft Code.
Publication of final Code	June 2020	Commission approves and publishes Final Code and supporting information.
Effective date	To be confirmed	Date Code comes into effect.

⁸ In accordance with clause 1(2) of Schedule 2A of the Act.

Appendix A – Code sections and key issues

Section	Detail	TCF input requested	Key issues raised in submissions	Our initial thinking on the submission issue
Defined terms	The Code must include a list of defined terms, both those that are directly defined in the Act and those required to be defined through the drafting process.	Yes	<p>Specified Fibre Areas Alignment</p> <p>Chorus submitted that, when considering ‘access’ to a fibre service for the Code (under cl 1(3)(a)(i) of Schedule 2A of the Act), there should be alignment with where a Specified Fibre Area (SFA) has been declared.⁹</p>	<p>We agree with this position for alignment with SFA’s in principle, both in geographic terms and the definition of ‘access’. However, the operational details will still have to be resolved in conjunction with the test for how the Commission defines ‘access’ to a specified fibre service for the purposes of definition of an SFA (noting that s 69AB is expressed in terms of specified fibre services being “available”). This would be the case whether the SFA assessment uses, for example, the ‘premises passed’ test or involves a more granular test.</p> <p>Our view is that requirements about ‘access’ will need to consider several scenarios that may affect end-users; for example:</p> <ul style="list-style-type: none"> • an end-user who wants to connect to fibre, but does not receive required consent from their landlord; • an end-user who wants to connect to fibre, but does not receive required consent from their neighbour; and • an end-user who does not want to connect to fibre, or who is not responding to invitations to arrange installation appointments.
Commencement	Sets out the conditions and effective date of commencement of the Code	No		
Purpose and key principles	<p>The Code will have its overarching key purpose, and a set of key principles, which will include, at a minimum:</p> <ul style="list-style-type: none"> • The customer can expect robust protection during the copper withdrawal process; • The customer can expect an orderly transition from copper to fibre; and • The customer can expect a good end-user experience and outcome. 	No		

⁹ Chorus “Submission on the Commerce Commission’s letter requesting views on scope of the Copper Withdrawal Code” (14 February 2019) para 18.

Section	Detail	TCF input requested	Key issues raised in submissions	Our initial thinking on the submission issue
Minimum requirements	The Code must meet the minimum requirements set out in clause 1(3) of Schedule 2A of the Act and provided in Appendix C.	Yes	111 Contact Code The TCF noted Chorus may also have to take into consideration whether other industry participants have adequate time to ensure that their 111 Contact Code obligations can be completed before notice of the copper withdrawal is given. ¹⁰	We invite the TCF in its response to provide views on the extent to which the Code should require Chorus to allow time for other parties to meet their obligations under the 111 Contact Code for a particular premise within the area in which copper services will be withdrawn.
			Communications with Consumers Various submitters referred to the customer relationship and communication requirements. ¹¹	We are interested in the TCF's proposals for the form and function of notices to be sent to access seekers and end-users, including the number and frequency of notifications. We would also expect the contents and method for communication to access seekers and end-users to be subject to industry agreement as far as possible, including the information that will be required to be provided for Consumer Premise Equipment and in-home service providers (alarm monitoring firms etc). We invite the TCF to propose clear roles and the division of responsibilities between Chorus, LFCs and Retail Service Providers (RSPs). We are also interested in the TCF's view on what communication burden should be placed on Chorus to facilitate the installation of an optical network terminal with end-users and access seekers (e.g. number and form of communications; notice periods).
			Dealing with Scale Spark noted the risk of mass migration is greater for larger RSPs who need to move more of their customers. ¹²	We are interested in how the TCF proposes that larger-scale copper withdrawal processes and plans be dealt with. For example, determining a 'reasonable timeframe' which will largely be dependent upon the scope and scale of the migration process.
			Copper Withdrawal Plans RSPs submissions suggested that Chorus should provide them with Chorus' plans for geographic areas earmarked for copper withdrawal and their sequencing. ¹³	We expect to include an obligation in the Code requiring Chorus to make these plans available to RSPs and the Commission.

¹⁰ TCF "TCF Submission Commerce Commission's Copper Withdrawal Code" (14 February 2019) para 18(ix).

¹¹ See Spark "The Copper Withdrawal Code - commerce Commission" (14 February 2019) para 18; Vocus "Copper Withdrawal Code - Submission to Commerce Commission" (14 February 2019) para 22; Chorus "Submission on the Commerce Commission's letter requesting views on scope of the Copper Withdrawal Code" (14 February 2019) para 34.

¹² Spark "The Copper Withdrawal Code - commerce Commission" (14 February 2019) para 17.

¹³ Vocus "Copper Withdrawal Code - Submission to Commerce Commission" (14 February 2019) para 21; Spark "Copper withdrawal code issues paper - Cross-submission" (6 March 2019) para 6.

Section	Detail	TCF input requested	Key issues raised in submissions	Our initial thinking on the submission issue
			No Cost to End-User Chorus, Spark and the TCF raised concerns around the issue of 'no cost' to end-users for certain types of installation, eg where a body corporate, retirement villages and others are involved. ¹⁴	We are interested in how the TCF would propose that this issue be addressed.
Amendment process	Including: <ul style="list-style-type: none"> • process for review of the Code; and • process for amendment of the Code. 	No		
Compliance, enforcement and assurance	Including: <ul style="list-style-type: none"> • requirements for compliance; • enforcement processes; • assurance guidelines; • roles and responsibilities. With each setting out: <ul style="list-style-type: none"> • key requirements; • processes for issue management and escalation; • reporting requirements; and • appropriate quality metrics. 	Yes		Although submissions did not directly address these issues, we consider this section appropriate for inclusion in the Code and invite the TCF to provide us with their views on how best to deal with compliance, enforcement and assurance.
Dispute resolution	Details of a dispute resolution process, including: <ul style="list-style-type: none"> • details of the escalation process; • roles and responsibilities; • types of dispute; • reporting and/or notifications; and • timeframes. 	Yes	Consumer Refusals The TCF suggested that the Code should describe minimum requirements for escalations and for when end-users refuse to relinquish their copper services. In such circumstances, they suggest that the Telecommunications Dispute Resolution Scheme (TDRS) should apply. ¹⁵	We will assess the appropriateness of the TDRS as part of our process of drafting the Code. We invite the TCF to propose an approach for remedies and/or compensation for delays, missed appointments and other quality metrics associated with the migration and installation process.
Schedules	As required	Yes	Operations Manual Submissions raised the possible requirement for an 'operations manual' to supplement the Code. ¹⁶	To ensure that the Code remains a single document, any proposed wording for an 'operations manual' will be considered for inclusion as an accompanying Schedule in the Code, rather than a stand-alone manual.

¹⁴ See Chorus "Submission on the Commerce Commission's letter requesting views on scope of the Copper Withdrawal Code" (14 February 2019) para 24-25; Spark "The Copper Withdrawal Code - commerce Commission" (14 February 2019) para 20; TCF "TCF Submission Commerce Commission's Copper Withdrawal Code (14 February 2019) para 18 (iv).

¹⁵ TCF "TCF Submission Commerce Commission's Copper Withdrawal Code" (14 February 2019) para 18(x).

¹⁶ See Chorus "Submission on the Commerce Commission's letter requesting views on scope of the Copper Withdrawal Code" (14 February 2019) para 41; 2Degrees "Determining Specified Fibre Areas & Minimum Requirements of the Copper Withdrawal Code Cross-submission to the Commerce Commission" page 3; Spark "Copper withdrawal code issues paper - Cross-submission" (6 March 2019) para 3.

Appendix B - Interdependencies with other requirements

22. The development of the Code also has interdependencies with other new provisions of the Act. These interdependencies will be considered by the Commission when drafting the Code. We suggest that the TCF should also consider the potential interactions with other new provisions in the Act when developing its response. An overview of these are provided in Table 3.

Table 2 Interdependencies with other requirements

Workstream	Detail
111 Contact Code	<p>Under clause 1(3)(g) of Schedule 2A of the Act, the Code must require that the 111 Contact Code is in force before Chorus is permitted to stop supplying a copper service.</p> <p>The Commission will be preparing a draft of the 111 Contact Code and further information will be provided on our website soon.¹⁷</p>
Specified Fibre Areas	<p>Chorus may withdraw its copper fixed line access services in areas that have been declared as ‘Specified Fibre Areas’ once Chorus complies with the requirements of the Code.</p> <p>Clause 1(3)(e) of Schedule 2A of the Act uses the term ‘available’. This is used in both the minimum requirements for the Code and in the legislative requirements for Specified Fibre Areas.</p> <p>The Code will consider the outcome of this issue which will be settled during the Specified Fibre Area process.</p>
Reviews of Copper Standard Terms Determinations (STDs)	<p>Sections 30R and 59 of the Act, which allow for review and reconsideration of certain copper fixed line STDs, will not apply during the period from 1 January 2020 until the “copper review date” (defined in s 69AG(8) of the Act).</p>
Anchor Service Declaration Under Section 227	<p>If an anchor service is declared in regulations made by Order in Council under section 227, the Code must require that the anchor service (or a commercial equivalent) is available at the end-user’s premises before Chorus is permitted to stop supplying a copper service.</p>

¹⁷ <https://comcom.govt.nz/regulated-industries/telecommunications/projects/commission-111-contact-code>

Appendix C - Relevant legislation

3. Schedule 2A of the Act introduces the Code and its minimum requirements. The Code will be developed in accordance with these requirements.

Schedule 2A Copper withdrawal code

[s 69AF](#)

Schedule 2A:inserted, on 13 November 2018, by [section 14](#) of the Telecommunications (New Regulatory Framework) Amendment Act 2018 (2018 No 48).

1 Copper withdrawal code

- (1) The Commission, or the Forum if requested to do so by the Commission, must prepare a code to be known as the copper withdrawal code, setting out minimum consumer protection requirements for end-users of the following:
- (a) copper fixed line access services in areas that are, or will become, specified fibre areas;
 - (b) Chorus's unbundled copper local loop network;
 - (c) Chorus's unbundled copper local loop network backhaul (distribution cabinet to telephone exchange).
- (2) The code must be prepared before the implementation date.
- (3) The minimum requirements that the code must include are that, before Chorus is permitted to stop supplying a copper service under [section 69AC](#) or [69AD](#),—
- (a) the end-user in relation to the service must be able to—
 - (i) access a fibre service; and
 - (ii) have a connection to the fibre service installed—
 - (A) within a reasonable time frame; and
 - (B) whether the connection is standard or non-standard, at no cost to the end-user; and
 - (b) Chorus must give the end-user, the access seeker, and the relevant fibre service provider reasonable notice of the proposed withdrawal of the copper service; and
 - (c) the functionality provided by the services that are to be withdrawn must, apart from legacy services, be available to the end-user over a fibre service; and
 - (d) Chorus must provide the end-user with information about—
 - (i) the withdrawal of the copper services; and
 - (ii) the need to make alternative arrangements, such as battery backup, to maintain the fibre service in the event of a power failure; and
 - (e) Chorus must, if it is reasonably practicable to do so, provide the end-user with information about the fibre services available to the end-user; and
 - (f) if an anchor service is declared under [section 227](#), the anchor service (or a commercial equivalent) must be available at the end-user's premises; and
 - (g) a Commission 111 contact code must be in force; and
 - (h) any other prescribed matters must be complied with.
- (4) The code may contain any other provisions that the Commission or the Forum (as appropriate) considers are necessary or desirable.

- (5) In this clause, —
- anchor service** has the meaning set out in [section 164\(1\)](#)
- fibre service** means—
- (a) a fibre fixed line access service; or
 - (b) a telecommunications service provided over a fibre-to-the-premises access network
- legacy service** means the services (if any) specified in the copper withdrawal code as legacy services
- standard connection** and **non-standard connection** have the meanings set out in [section 155ZU](#).

2 Consultation process on code

- (1) The Commission or the Forum (as appropriate) must—
 - (a) notify the process that will be followed to make the code; and
 - (b) consult with interested persons; and
 - (c) give public notice of a draft code.
- (2) A person is entitled to make submissions to the Commission or the Forum (as appropriate) before the date that is 30 working days after the date on which public notice of the draft code is given (the **due date**).
- (3) The Commission or the Forum (as appropriate) must have regard to any submissions received before the due date.

3 Commission’s discretion to approve draft code

The Commission may approve a draft code if the Commission is satisfied that the draft code meets all the requirements set out in this Act.

4 Amendment of approved code initiated by Commission

- (1) The Commission may prepare an amendment to the approved code or revoke the approved code if the Commission considers that the approved code no longer meets all the requirements set out in this Act.
- (2) The same procedure that applies to making a code in [clauses 2](#) and [3](#) must be followed to make an amendment or a revocation.

5 Public notice of approved code

The Commission must give public notice of—

- (a) the approved code; and
- (b) every amendment or revocation of the approved code.