

# **Copper Withdrawal Code**

## **Draft decisions and reasons paper**

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**Associated documents**

Publication date	Reference	Title
26 November 2018	N/A	<a href="#">Copper withdrawal code – Letter requesting views on scope</a>
01 August 2019	ISBN 978-1-869457-13-6	<a href="#">Copper Withdrawal Code – Framework paper for the New Zealand Telecommunications Forum</a>
01 August 2019	ISBN 978-1-869457-15-0	<a href="#">Copper Withdrawal Code Process Update</a>
20 May 2020	ISBN 978-1-869458-19-5	<a href="#">Draft Copper Withdrawal Code</a>

## Glossary

Table of abbreviations	
BAU	Business as usual
CFLAS	Copper fixed line access services
CPE	Customer-premises equipment
CPI	Consumer Price Index
DSL	Digital subscriber line
EFTPOS	Electronic funds transfer at point of sale
FAQ	Frequently asked questions
FFLAS	Fibre fixed line access services
IM	Input methodologies
LFC	Local fibre companies
MBIE	Ministry of Business, Innovation and Employment
ONT	Optical network terminal
RFSP	Relevant fibre service provider
SFA	Specified Fibre Area
STD	Standard terms determination
TCF	Telecommunications Forum
TDRS	Telecommunications Dispute Resolution Scheme
TUANZ	Technology User Association New Zealand (previously Telecommunications User Association New Zealand)
UBA	Unbundled bitstream access
UCLF	Unbundled copper low frequency
UCLL	Unbundled copper local loop
UFB	Ultra-Fast Broadband

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## Executive Summary

- X1 Over the last decade fibre telecommunications networks have been rolled out across New Zealand. About 79% of New Zealanders – 1.5 million households and businesses – can now access fibre.<sup>1</sup> This is expected to grow to about 87% of New Zealanders by the end of 2022.
- X2 Many New Zealanders have been choosing to switch their phone and broadband service from Chorus’ older copper network to new fibre networks. In 2019, fibre connections overtook copper connections for the first time.<sup>2</sup>
- X3 Currently, Chorus is required by regulation to offer copper phone and broadband services. However, amendments to the Telecommunications Act 2001 (Act) made in November 2018 mean that copper regulation will be removed in areas where fibre is available. It is our role to determine areas where fibre is available, and these areas are called specified fibre areas (SFAs).
- X4 In these SFAs, Chorus will have the option to stop supplying regulated copper phone and broadband services. However, if Chorus wants to stop supplying a copper service, it will need to first comply with the copper withdrawal code (CWC).
- X5 The CWC is a set of minimum consumer protection requirements that must be satisfied before Chorus is permitted to withdraw a regulated copper service.
- X6 The Act requires the Commerce Commission to make the CWC. This paper (Draft Reasons Paper) gives our draft decisions and reasoning for the draft CWC that is published alongside this Draft Reasons Paper.
- X7 The draft CWC is intended to ensure that, where Chorus wants to withdraw a copper service, eligible end-users:
- X7.1 must be given notice of the proposed withdrawal of the copper service, so that they have time to prepare and consider their options;
  - X7.2 must receive information about the copper withdrawal process, to help them make informed choices about the other telecommunications services they can switch to; and
  - X7.3 can have a connection to a fibre service installed within a reasonable timeframe and at no cost (if the connection is aerial), if they want to switch

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<sup>1</sup> <https://www.crowninfrastructure.govt.nz/2019/11/24/nz-a-top-10-connected-nation-with-stage-one-of-ultra-fast-broadband-roll-out-completed/>

<sup>2</sup> Commerce Commission “Annual Telecommunications Monitoring Report – 2019”, (12 March 2020 – Version 2) page 7.

to a fibre phone or broadband service. The functionality on the fibre service should be similar to that available on the end-user's old copper service.

- X8 We explain in greater detail in this Draft Reasons Paper which end-users of copper services will be eligible for protection under the CWC. However, broadly speaking, end-users who were receiving a regulated copper service when we declare an area to be an SFA, and continue to receive that service when Chorus seeks to withdraw the service, will be eligible.

## Chapter 1 – Introduction

### Purpose of Draft Reasons Paper

1. In November 2018 the Act was amended by the Telecommunications (New Regulatory Framework) Amendment Act 2018 (Amendment Act). The amendments to the Act require the Commerce Commission (Commission) to prepare a copper withdrawal code (CWC) by 1 January 2022.
2. The CWC sets out minimum consumer protection requirements to ensure that consumers are protected in situations where Chorus chooses to withdraw copper-based telecommunications services.
3. The Act requires the Commission to consult on a draft CWC. A draft CWC has been published alongside this Draft Reasons Paper. The purpose of this Draft Reasons Paper is to give our draft decisions and reasons for the draft CWC, and to invite submissions.

### Structure of Draft Reasons Paper

4. This Draft Reasons Paper has the following sections:
  - 4.1 **Chapter 2 – Context for the CWC** explains the context for the CWC, including the transition from copper to fibre and other technologies, and the amendments to the Act to reflect this evolution in the telecommunications environment;
  - 4.2 **Chapter 3 – Legal framework** discusses the legal framework relevant to the CWC;
  - 4.3 **Chapter 4 – Overview of the copper withdrawal process** provides an overview of the key steps and obligations in the Act and draft CWC that govern the copper withdrawal process;
  - 4.4 **Chapter 5 – Draft Decisions and Reasons for the draft CWC** provides our reasoning for the content of the draft CWC, including minimum requirements.

### Process to date

5. Below we summarise the process we have followed to date:
  - 5.1 On 26 November 2018 we published a letter requesting views on the scope of the CWC. The letter asked for submissions on the minimum requirements set out in Schedule 2A of the Act, including any views on whether there are additional provisions we should include in the CWC that would be ‘necessary or desirable’ to provide protections for end-users of copper services;<sup>3</sup>

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<sup>3</sup> Commerce Commission “[Copper Withdrawal Code – Letter requesting views on scope of code](#)” (26 November 2018).

- 5.1.1 In February 2019 we received seven submissions in response to our letter, from Chorus, Spark, Vocus, New Zealand Telecommunications Forum (TCF), Internet New Zealand, RWM Dowler, and Telecommunications Users Association of New Zealand (TUANZ);<sup>4</sup>
- 5.1.2 In March 2019 we received four cross-submissions, from Chorus, Spark, 2degrees and Vocus.<sup>5</sup>
- 5.2 On 1 August 2019 we requested an industry-led response from the TCF to assist us with production of the CWC, drawing on the TCF’s existing work on copper withdrawal. We provided the TCF with a framework paper which set out guidance for the TCF to consider when preparing its response.<sup>6</sup> The TCF provided their response to our framework paper on 4 September 2019.<sup>7</sup> We refer to this document as the ‘TCF Response’.
- 5.3 We also published a process update on 1 August 2019 which set out our process to date and a revised timeline for completing the CWC.<sup>8</sup>

### **Information for interested parties on making a submission**

6. We are seeking submissions on the draft CWC and Draft Reasons Paper.
7. Please make your submission via the [CWC project page](#) by 5pm on 17 July 2020. The project page will direct you to a form with instructions on how to upload your submission.
8. Due to the impact of COVID-19, we have decided to give an extended consultation period to allow more time for interested parties to consider their submission.
9. When including commercially sensitive or confidential information in your submission, we offer the following guidance:
  - 9.1 Provide a clearly labelled confidential version and public version. We intend to publish all public versions on our website; and

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<sup>4</sup> The seven submissions received in response to our Scope letter can be accessed via our website at <https://comcom.govt.nz/regulated-industries/telecommunications/projects/copper-withdrawal-code?target=documents&root=107528>

<sup>5</sup> The four cross submissions can be accessed via our website at <https://comcom.govt.nz/regulated-industries/telecommunications/projects/copper-withdrawal-code?target=documents&root=107529>

<sup>6</sup> Commerce Commission “Framework paper for the TCF to provide information to assist the Commerce Commission in developing the Copper Withdrawal Code” (1 August 2019). Available at [https://comcom.govt.nz/\\_data/assets/pdf\\_file/0020/163712/Copper-Withdrawal-Code-Framework-paper-for-the-TCF-1-August-2019.PDF](https://comcom.govt.nz/_data/assets/pdf_file/0020/163712/Copper-Withdrawal-Code-Framework-paper-for-the-TCF-1-August-2019.PDF)

<sup>7</sup> TCF “TCF Submission – Commerce Commission Copper Withdrawal Code Framework Paper” (August 2019). Available at [https://comcom.govt.nz/\\_data/assets/pdf\\_file/0025/212884/TCF-Submission-on-Copper-Withdrawal-Code-framework-paper-30-August-2019.pdf](https://comcom.govt.nz/_data/assets/pdf_file/0025/212884/TCF-Submission-on-Copper-Withdrawal-Code-framework-paper-30-August-2019.pdf)

<sup>8</sup> Commerce Commission “Copper Withdrawal Process Update” (1 August 2019). Available at <https://comcom.govt.nz/regulated-industries/telecommunications/projects/copper-withdrawal-code?target=documents&root=163718>

- 9.2 The responsibility for ensuring confidential information is not included in a public version of a submission rests entirely with the party making the submission.
10. If we consider information disclosed in the confidential version to be in the public interest, we will consult with the party that provided the information before any such disclosure is made.

### Next steps

11. Table 1 below sets out the next steps in the development of the CWC.

**Table 1 – Next steps**

Next step	Indicative date
Draft CWC and Draft Reasons Paper published	20 May 2020
Submissions on draft CWC and Draft Reasons Paper due	17 July 2020
Cross-submissions on draft CWC and Draft Reasons Paper due	5 August 2020
Workshop(s) [TBC]	~31 July 2020
Final CWC and Reasons Paper published CWC comes into force	~21 September 2020

## Chapter 2 – Context for the CWC

### Use of Chorus’s copper network is decreasing...

12. The copper network, currently owned by Chorus, was the original telecommunications network in New Zealand. Traditionally used for voice services, the copper network has been capable of delivering broadband internet since the widespread adoption of DSL technology in New Zealand in the early 2000s<sup>9</sup>.
13. Some wholesale broadband and voice telecommunications services provided by Chorus over its copper network are regulated under the Act. These regulated services are called ‘designated access services’<sup>10</sup> and are listed in Schedule 1 of the Act. Where the Commission has made a standard terms determination (STD) for a designated access service, Chorus has an obligation to supply that service to a wholesale customer (typically a Retail Service Provider (RSP)), and must do so on the price and non-price terms set out in the STD.
14. Use of the copper network has fallen sharply in recent years. For example, copper broadband connections have dropped from a peak of 1.27 million connections in September 2014 (about 90% of all broadband fixed line connections) to 581,000 connections in September 2019 (about 34% of all broadband fixed line connections).<sup>11</sup>

### ...while fibre networks are now the dominant fixed line technology

15. As use of the copper network declines, and fibre networks are rolled out as part of the Government’s Ultra-Fast Broadband (UFB) initiative, fibre connections have grown. About 79% of New Zealanders now have access to fibre-to-the-premises, and that number is expected to grow to 87% by the end of 2022.<sup>12</sup> In 2019, fibre broadband connections overtook copper broadband connections for the first time.<sup>13</sup>
16. At the same time, the numbers of consumers on fixed wireless connections has also been growing. Fixed wireless services, including broadband and voice, are delivered over wireless networks – typically using cell phone towers. In 2019, 11% of broadband connections were fixed wireless.<sup>14</sup>

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<sup>9</sup> Digital Subscriber Line. DSL is a family of technologies that are used to transmit [digital data](#) over [telephone lines](#). In contrast to dial-up internet, DSL internet can be used simultaneously with a voice service.

<sup>10</sup> The Act also regulates what are called ‘specified services’. The Commission can set the non-price terms for these services, but not the price of the services.

<sup>11</sup> Commerce Commission “Annual Telecommunications Monitoring Report – 2019” (12 March 2020 – Version 2) page 7.

<sup>12</sup> <https://www.crowninfrastructure.govt.nz/2019/11/24/nz-a-top-10-connected-nation-with-stage-one-of-ultra-fast-broadband-roll-out-completed/>

<sup>13</sup> Commerce Commission “Annual Telecommunications Monitoring Report – 2019” (12 March 2020 – Version 2) page 7.

<sup>14</sup> Commerce Commission “Annual Telecommunications Monitoring Report – 2019” (12 March 2020 – Version 2) page 8.

## Changes to the telecommunications regulatory framework

17. In November 2018, Parliament amended the Act to reflect the evolution of the telecommunications environment, including the growth in fibre networks and the decreasing reliance on Chorus' copper network. The amendments to the Act:
- 17.1 created a new utility-style regulatory regime for fibre under Part 6 of the Act, consisting of price-quality regulation and information disclosure regulation. The Commission's work to develop the new fibre regulatory regime can be found on [our website here](#);
- 17.2 provide for the deregulation of certain copper services, mainly in relation to areas where fibre is available. We discuss the provisions relating to copper deregulation in Chapter 3 of this Draft Reasons Paper.
18. Chorus will be permitted to stop supplying certain wholesale copper services where those services have ceased to be designated access services. It is likely that, over time, copper services will cease to be available except in areas where fibre is not available, such as in some rural areas. However, as the Explanatory Note to the Telecommunications (New Regulatory Framework) Amendment Bill explained:

Withdrawal of the copper network by Chorus in a given area will, however, be regulated by a copper withdrawal code that sets out minimum conditions that must be met before a copper line can be withdrawn... Before Chorus is permitted to stop supplying a copper service, comparable alternative fibre services must be available at similar prices, with similar functionality, and certain processes must be followed to reduce transitional risks.

19. A 2017 Cabinet Paper setting out final decisions on proposed amendments to the Act summarised key policy decisions on the CWC:<sup>15</sup>

The Code will specify minimum requirements that must be met before Chorus is able to withdraw copper:

- the availability of UFB services and the ability to install a UFB connection (if necessary) at no cost (except where the connection falls outside the 'standard' and 'non-standard' installation categories) to all affected premises in a reasonable time frame, to ensure end-users do not face a 'gap' without service when copper is withdrawn and before UFB is connected;
- notice to be provided by Chorus, followed by a reasonable period of time to enable end-users and RSPs to prepare before copper is withdrawn;
- services currently able to be provided over copper must be available over UFB (except for legacy services such as facsimile);
- information to be provided to end-users about the change and the availability of services after the change (including in relation to the need for battery backup on UFB services in the event of a power failure); and

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<sup>15</sup> Cabinet Economic Growth and Infrastructure Committee "Review of the Telecommunications Act 2001: Final Decisions on Fixed Line Services, Mobile Regulation and Consumer Protection" (May 2017) page 37, available at <https://www.mbie.govt.nz/dmsdocument/1310-telco-review-cabinet-paper-may-2017-pdf>.

- anchor products<sup>[16]</sup> are available on the UFB network.

20. The key provisions relating to the CWC are in new Schedule 2A of the Act, which we discuss further in Chapter 3 of this Draft Reasons Paper.

### **Our role to make the CWC**

21. Schedule 2A provides that the Commission, or the TCF if requested to do so by the Commission, must prepare the CWC.<sup>17</sup> We have previously decided that we would make the CWC, rather than requesting the TCF to make it.<sup>18</sup>
22. Schedule 2A requires the Commission to prepare the CWC by 1 January 2022. However, as indicated above in Table 1, we anticipate that the CWC will be in force on 21 September 2020.<sup>19</sup>
23. Although we are responsible for making the CWC, in August 2019 we sought an industry-led response from the TCF to assist us with the production of the CWC. As we noted above in paragraph 5.2, the TCF provided its response to us on 4 September 2019.
24. The TCF is also undertaking other work that is related to the copper withdrawal process. For example, the TCF is currently preparing:
- 24.1 a Copper Migration Code. The purpose of this code is to set out an agreed industry process when an end-user's copper services are being migrated to an alternative technology in response to specific circumstances, such as when the copper network has been damaged by an earthquake;<sup>20</sup>
- 24.2 a Fibre Installation Code. The purpose of this code is to establish consistent industry standards for the activities required to successfully install and connect fibre services while delivering a good customer experience to consumers.<sup>21</sup>
25. While these TCF codes are related to the CWC, they are not required by the Act and we have no role in the making or enforcement of these codes. However, we expect that the TCF codes will be consistent with (and support compliance with) the CWC, 111 contact code and the regulation of fibre under Part 6 of the Act.

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<sup>16</sup> We discuss what an anchor service is at paragraphs 202-208 of this Draft Decisions and Reasons Paper.

<sup>17</sup> Telecommunications Act 2001, Schedule 2A, clause 1(1).

<sup>18</sup> Commerce Commission, "[Copper Withdrawal Code – Letter requesting views on scope of code](#)", (26 November 2018).

<sup>19</sup> Clause 1(2) of Schedule 2A of the Act specifies that the Commission must make the CWC before the 'implementation date'. The implementation date is the date on which the first regulatory period for the new fibre regulatory regime begins, which is 1 January 2022. The implementation date was originally 1 January 2020. However, under clause 9 of Schedule 1AA of the Act, the Minister deferred the implementation date to 1 January 2022.

<sup>20</sup> <https://www.tcf.org.nz/industry/workstreams/current-projects/copper-migration-code/>

<sup>21</sup> <https://www.tcf.org.nz/industry/workstreams/current-projects/fibre-installation-process/>

## **Our wider role in the transition away from copper**

26. The 2018 amendments to the Act also gave the Commission the responsibility to identify areas in New Zealand where fibre is available. These areas are called SFAs and are where certain copper services cease to be designated access services. In December 2019, we declared the first SFAs, covering approximately 1.5 million households and businesses mainly in major towns and cities across New Zealand. While we declared the SFAs in December 2019, they became effective on 1 February 2020. As fibre networks grow, we will declare more areas as SFAs. A map of the areas can be found on [our website here](#).
  
27. We are also currently developing a 111 contact code, which we are required to do by the 2018 amendments to the Act. The purpose of the 111 contact code is to ensure that vulnerable consumers, or persons on their behalf, have reasonable access to an appropriate means to contact the 111 emergency service in the event of a power failure. One of the minimum requirements in the CWC is that the 111 contact code must be in force before Chorus is permitted to withdraw a copper service.<sup>22</sup> For this reason, we are progressing the CWC and the 111 contact code in parallel. We published a draft reasons paper and draft 111 contact code on 11 March 2020, and submissions are due alongside the CWC on 17 July 2020. Our work to develop the 111 contact code can be found on [our website here](#).

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<sup>22</sup> Schedule 2A, clause 1(3)(g) of the Act.

## Chapter 3 – Legal Framework

28. In this chapter we set out the relevant legal framework from the Act by providing an overview of:
- 28.1 Part 2AA of the Act, which concerns the deregulation of copper fixed line access services (CFLAS) in areas where fibre fixed line access services (FFLAS) are available. As part of this, we also discuss the removal of Chorus' unbundled copper local loop (UCLL) service and Chorus' unbundled copper local loop network backhaul (distribution cabinet to telephone exchange) (UCLL Backhaul) service as designated access services from Schedule 1 of the Act;
  - 28.2 Schedule 2A of the Act, which contains the key provisions relating to the CWC; and
  - 28.3 the Act's provisions relating to enforcement of the CWC.
29. We have reproduced the provisions of the Act relating to the CWC in Attachment A to this Draft Reasons Paper.

### Part 2AA – deregulating CFLAS

30. Part 2AA of the Act concerns the deregulation of CFLAS in areas where FFLAS is available. CFLAS is defined in section 5 of the Act as Chorus' unbundled bitstream access (UBA) (a wholesale broadband service) and Chorus' unbundled copper low frequency service (UCLF) (a wholesale voice service).
31. Section 69AA provides that the purpose of Part 2AA is to:
- 31.1 deregulate CFLAS in areas where FFLAS are available;
  - 31.2 provide protections for end-users of CFLAS and certain other designated services in deregulated areas; and
  - 31.3 provide for the Commission to investigate whether the regulation of CFLAS and certain other designated services should be altered.
32. The first two purpose statements above are relevant to the copper withdrawal process. The third relates to the requirement in section 69AH of the Act for the Commission to carry out a review of the regulation of copper services. This copper regulation review is outside of the scope of this Draft Reasons Paper but will be carried out by the Commission no later than 31 December 2025, as required by the Act.

### CFLAS ceases to be designated access service in areas where FFLAS is available

33. CFLAS ceases to be a designated access service in areas where FFLAS is available when the Commission declares an area to be an SFA under section 69AB of the Act:

- 33.1 Section 69AB(1) requires the Commission to assess the geographic areas in which a specified fibre service is available to end-users. A specified fibre service is a FFLAS.<sup>23</sup> In simple terms, a specified fibre service will be available when fibre has ‘passed the premises’, but does not necessarily mean there has been a physical connection to the premises installed;<sup>24</sup>
- 33.2 Section 69AB(2) requires the Commission to declare any areas where a specified fibre service is available to be SFAs. As noted above in paragraph 26, we declared the first SFAs in December 2019.
34. This action of declaring SFAs means that CFLAS ceases to be a designated access service in SFAs because of amendments to the description of those services in Schedule 1 made by the Amendment Act.
- 34.1 For UBA, it is a ‘condition’ of the supply of the UBA service that ‘[t]he end-user’s building (or, where relevant, the building’s distribution frame) is not located in a specified fibre area’;
- 34.2 For UCLF, it is a ‘condition’ of the supply of the UCLF service that ‘Chorus’ unbundled copper low frequency service is only available where... (b) the end-user’s building (or, where relevant, the building’s distribution frame) is not located in a specified fibre area’.
35. As such, in areas which the Commission declares to be SFAs, CFLAS ceases to be a designated access service under Schedule 1 of the Act.<sup>25</sup>

#### **Ongoing regulation of CFLAS in areas where FFLAS is not available**

36. In areas which are not SFAs, CFLAS continues to be a designated access service. Section 69AG of the Act explains how CFLAS is treated in non-SFAs:
- 36.1 Subsection (5) clarifies that the UBA and UCLF STDs continue to apply to those services;
- 36.2 Subsection (5) also provides that sections 30R and 59 of the Act do not apply to the STDs. This means that the STDs are effectively frozen, as sections 30R and 59 give us the power to review or reconsider an STD;
- 36.3 However, subsection (6) provides a mechanism to update the prices in the STDs based on an annual CPI adjustment.

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<sup>23</sup> The definition of specified fibre service also includes any ‘telecommunications service provided by a regulated fibre service provider (F) over fibre media where the ultimate recipient of the service is F or a related party of F (as if the test for related parties were the same as the test in section 69U, applied with any necessary modifications).

<sup>24</sup> Commerce Commission “Determining Specified Fibre Areas – Framework and Initial Approach” (31 October 2019) para 90.

<sup>25</sup> Additionally, under section 69AE of the Act, the TSO Deed for Local Residential Telephone Service ceases to apply (except to the extent that it relates to 111 call services), as does the TSO Deed for TSO Network Service.

37. The provisions above apply until we complete our review of the regulation of copper services, which we are required to do by no later than 31 December 2025.<sup>26</sup>

### **UCLL/UCLL Backhaul also cease to be designated access services**

38. UCLL and UCLL Backhaul also cease to be designated access services from 1 January 2020, although this is provided for separately from Part 2AA.
39. The 2018 amendments to the Act directly removed UCLL and UCLL Backhaul from Schedule 1, with this amendment effective from 1 January 2020.<sup>27</sup> This means these services ceased to be designated access services from that date, irrespective of whether FFLAS is available.
40. We note that the numbers of end-users receiving these services are small relative to those receiving a CFLAS. As at 20 September 2019, there were only about 20,000 UCLL connections out of a total of 581,000 copper fixed line connections.<sup>28</sup>

### **Withdrawal of CFLAS and UCLL/UCLL Backhaul**

41. Although CFLAS in SFAs and UCLL/UCLL Backhaul cease to be designated access services, the relevant STDs remain in force and, if Chorus is required by an STD to supply a service, it must continue to do so.
42. The relevant STDs remain in force because they have not, under section 62 of the Act, expired. Section 62 of the Act provides:
- Every determination expires on the earlier of—
- (a) the expiry date stated in the determination (if any); or
  - (b) the date on which the designated service or specified service to which the determination applies ceases to have that status because it has been omitted from Schedule 1 under section 66(b).
43. Since the CFLAS and UCLL/UCLL Backhaul STDs have no expiry date,<sup>29</sup> and those services have not been omitted from Schedule 1 via the operation of section 66(b),<sup>30</sup> the STDs continue to be in force.
44. However, sections 69AC and 69AD of the Act provide a process to enable Chorus to stop supplying CFLAS and UCLL/UCLL Backhaul after they have ceased to be designated access services.

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<sup>26</sup> See section 69AH of the Act.

<sup>27</sup> Telecommunications (New Regulatory Framework) Amendment Act 2018, section 13.

<sup>28</sup> Commerce Commission “Annual Telecommunications Monitoring Report – 2019” (12 March 2020 – Version 2) page 7.

<sup>29</sup> Section 30Q of the Act provides that STDs must not include an expiry date.

<sup>30</sup> Under section 66(b) of the Act, the Governor-General may, by Order in Council made on the recommendation of the Minister, amend Part 2, or Part 3, of Schedule 1 of the Act by omitting a telecommunications service from the Part. Neither CFLAS in SFAs or UCLL/UCLL Backhaul have been omitted from Schedule 1 of the Act by the Governor-General by an Order in Council.

45. Section 69AC provides:

**69AC Withdrawal of copper fixed line access services**

- (1) This section applies if—
  - (a) Chorus is required by a standard terms determination made under section 30M to supply a copper fixed line access service to an access seeker; and
  - (b) Chorus started supplying the service at a time when the end-user's building (or, where relevant, the building's distribution frame) was not located in a specified fibre area; and
  - (c) as a result of a notice under section 69AB,—
    - (i) the end-user's building (or, where relevant, the building's distribution frame) becomes located in a specified fibre area; and
    - (ii) the service ceases to be a designated access service in the specified fibre area on and after the date specified in the notice.
- (2) Chorus may stop supplying the service referred to in subsection (1) only if—
  - (a) a copper withdrawal code has been approved and Chorus complies with the requirements of the code in relation to stopping the supply of the service; or
  - (b) the end-user chooses to have the service disconnected (other than a temporary disconnection).
- (3) To avoid doubt, Chorus is not required to—
  - (a) supply a service that ceases to be a designated access service in relation to a new end-user; or
  - (b) resupply a service that Chorus has stopped supplying in accordance with subsection (2).

46. Section 69AD provides:

**69AD Withdrawal of certain designated access services**

- (1) This section applies if—
  - (a) Chorus is required by a standard terms determination made under section 30M to supply a relevant service to an access seeker; and
  - (b) Chorus started supplying the service at a time when the service was a designated access service; and
  - (c) as a result of section 13 of the Telecommunications (New Regulatory Framework) Amendment Act 2018, the service ceases to be a designated access service on and after 1 January 2020.
- (2) Chorus may stop supplying the service only if—
  - (a) a copper withdrawal code has been approved and Chorus complies with the requirements of the code in relation to stopping the supply of the service; or
  - (b) the end-user chooses to have the service disconnected (other than a temporary disconnection).
- (3) To avoid doubt, Chorus is not required to—

- (a) supply a service that ceases to be a designated access service in relation to a new end-user; or
  - (b) resupply a service that Chorus has stopped supplying in accordance with subsection (2).
- (4) In this section, relevant service means either of the following:
- (a) Chorus’s unbundled copper local loop network:
  - (b) Chorus’s unbundled copper local loop network backhaul (distribution cabinet to telephone exchange).

47. Sections 69AC and 69AD have a similar structure, with three main parts:

47.1 First, subsection (2) provides a permission for Chorus to stop supplying the service under certain conditions, ie, ‘Chorus may stop supplying the service referred to in subsection (1) only if’: (a) the CWC is complied with or (b) the end-user chooses to have the service disconnected (other than a temporary disconnection). We note that subsection (2) supports our view in paragraphs 41-43 above that the relevant STDs continue to be in force and, if Chorus is required by an STD to supply a service, it must continue to do so. This is because it would not make sense to provide a process for Chorus to stop supplying the service if it was not, in the first instance, required by an STD to supply the service;

47.2 Second, subsection (1) describes the service that the permission in subsection (2) applies to;

47.3 Third, subsection (3) provides clarity that Chorus is not required to: (a) supply a service that ceases to be a designated access service in relation to a new end-user; or (b) resupply a service that Chorus has stopped supplying in accordance with sections 69AC(2) and 69AD(2). This means that, in the future, if Chorus has stopped supplying all instances of CFLAS and UCLL/UCLL Backhaul pursuant to subsection (2), it will no longer be required to provide any CFLAS or UCLL/UCLL Backhaul.

48. As is clear from the language of sections 69AC and 69AD, subsection (2) applies only to ‘the service referred to in subsection (1)’.<sup>31</sup> If a service is not ‘the service referred to in subsection (1)’, then the permission in subsection (2) of sections 69AC/69AD does not apply. We therefore consider the scope of this service, which we refer to as the ‘subsection (1) service’, in the next section.

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<sup>31</sup> We note that section 69AD(2) has slightly different language to section 69AC(2). Whereas section 69AC(2) provides that Chorus may stop supplying ‘the service referred to in subsection (1)’, s 69AD(2) provides that Chorus may stop supplying the ‘service’, ie, it excludes the phrase ‘referred to in subsection (1)’. We take this difference in the phrasing of the subsections to be a drafting oversight, rather than suggesting section 69AD(2) ought to be construed differently from section 69AC (2).

### The scope of the subsection (1) service

49. Subsection (1) of sections 69AC/69AD are similar in structure. Table 2 below provides a comparison.

**Table 2 – Comparison of sections 69AC(1) and 69AD(1)**

	<b>Section 69AC(1)</b>	<b>Section 69AD(1)</b>
Subparagraph (a)	Chorus is required by a standard terms determination made under section 30M to supply a copper fixed line access service to an access seeker	Chorus is required by a standard terms determination made under section 30M to supply a relevant service to an access seeker
Subparagraph (b)	Chorus started supplying the service at a time when the end-user's building (or, where relevant, the building's distribution frame) was not located in a specified fibre area	Chorus started supplying the service at a time when the service was a designated access service
Subparagraph (c)	as a result of a notice under section 69AB,—  (i) the end-user's building (or, where relevant, the building's distribution frame) becomes located in a specified fibre area; and  (ii) the service ceases to be a designated access service in the specified fibre area on and after the date specified in the notice	as a result of section 13 of the Telecommunications (New Regulatory Framework) Amendment Act 2018, the service ceases to be a designated access service on and after 1 January 2020

50. The three subparagraphs are cumulative, meaning that, for a service to be a subsection (1) service, each subparagraph must be met.

#### *Subparagraph (a)*

51. Subparagraphs (a) of sections 69AC(1) and 69AD(1) are effectively the same, with only the names of the copper service being different.
52. Our view is that subparagraph (a) is referring to a particular instance of supply to an access seeker in respect of an identifiable customer as end-user at a particular premises and at the point in time that the relevant copper service ceases to be a designated access service. This is because subsection (2) of sections 69AC and 69AD refers to an end-user being able to choose to disconnect the service, and such a choice makes sense only if the service is in respect of a particular end-user.
53. We consider that Chorus is required by an STD to supply a copper service to an access seeker – and therefore subparagraph (a) is satisfied – if:
- 53.1 an access seeker has, under s 30S(1) of the Act, requested Chorus to supply the service on the terms specified in the STD;

- 53.2 under the STD, the access seeker has made an order for a particular instance of supply in respect of an end-user; and
- 53.3 Chorus is, pursuant to the STD, supplying the service to the access seeker in respect of an end-user.
54. We also note that the framing of subparagraph (a) – that is, *Chorus is required by an STD to supply a service* – also supports our view in paragraphs 41-43 above that the relevant STDs continue to be in force and, if Chorus is required by an STD to supply a service, it must continue to do so. If the STDs did not continue to be in force, there could be no services that satisfy subparagraph (a). This would make sections 69AC and 69AD redundant, which cannot have been Parliament’s intention.

*Subparagraph (b)*

55. Subparagraphs (b) of sections 69AC(1) and 69AD(1) have differences, but the substance of them is the same. Both will be met where Chorus started supplying the service in subparagraph (a) at a time when the service was a designated access service:
- 55.1 In relation to s 69AC(1)(b), that is ‘when the end-user’s building (or, where relevant, the building’s distribution frame) was not located in a specified fibre area’;
- 55.2 In relation to s 69AD(1)(b), that is ‘when the service was a designated access service’.

*Subparagraph (c)*

56. Again, subparagraphs (c) of sections 69AC(1) and 69AD(1) have differences, but the substance of them is the same. Both will be met where the service ceases to be a designated access service:
- 56.1 In relation to s 69AC(1)(c), that is when ‘as a result of a notice under section 69AB, the end-user’s building (or, where relevant, the building’s distribution frame) becomes located in a specified fibre area; and, the service ceases to be a designated access service in the specified fibre area on and after the date specified in the notice’;
- 56.2 In relation to s 69AD(1)(c), that is when ‘as a result of section 13 of the Telecommunications (New Regulatory Framework) Amendment Act 2018, the service ceases to be a designated access service on and after 1 January 2020’.

*Conclusion*

57. The subsection (1) service is therefore a wholesale copper service (CFLAS or UCLL/UCLL Backhaul) in respect of an identifiable customer as end-user that:
- 57.1 Chorus is required to supply to an access seeker under the relevant STD;

- 57.2 Chorus started supplying when the service was a designated access service;  
and
- 57.3 ceases to be a designated access service.
58. We note that in the TCF Response there was disagreement between Chorus and the RSPs on whether the scope of the subsection (1) service extends to wholesale copper services that are not supplied under an STD. These services are sometimes referred to as ‘commercial variants’ of the regulated service supplied under an STD, and are supplied by Chorus under contract.
59. RSPs submitted that Chorus should be required to comply with the CWC where it wishes to withdraw both copper services supplied under an STD and commercial variants. RSPs noted that, from the perspective of an end-user, whether a service is provided under an STD or is a commercial variant is ‘an artificial distinction as it’s all the same to them’.<sup>32</sup> They considered it would be inconsistent with the consumer protection intent of the legislation to exclude commercial variants from the scope of the subsection (1) service, since it would result in the end-users of commercial variants not receiving the protection of the CWC.
60. In contrast, Chorus submitted that it should be required to comply with the CWC only where it seeks to withdraw copper services supplied under an STD.<sup>33</sup>
61. Our current view is that the scope of the subsection (1) service does not extend to wholesale copper services that are not supplied under an STD. Subparagraph (1)(a) of sections 69AC and 69AD – which refers to a service that Chorus is required by an STD to supply – is clearly limited in scope to services supplied pursuant to an STD.
62. Where Chorus supplies wholesale copper services on a commercial basis (ie, does not supply the services under an STD), it is not under a regulatory obligation to continue to provide the services. The permission in subsection (2) for Chorus to stop supplying the service therefore does not make sense in the context of commercial variants, since Chorus has no obligation in the first instance to supply commercial variants. As such, Chorus can stop supplying these services without needing to comply with the CWC.
63. As the RSPs submitted, an alternative view is that the distinction between a copper service provided under an STD and a commercial variant is artificial, particularly when viewed from the perspective of the end-user. While Chorus does not have an obligation to supply a commercial variant, if it chose not to supply the variant the access seeker would likely default to seeking supply of the copper service under the STD. In this sense, the supply of the commercial variant is arguably underpinned by the supply of the copper service under the STD.

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<sup>32</sup> TCF “TCF Submission – Commerce Commission Copper Withdrawal Code Framework Paper” (August 2019) page 3.

<sup>33</sup> TCF “TCF Submission – Commerce Commission Copper Withdrawal Code Framework Paper” (August 2019) page 3.

64. We welcome submissions on whether the scope of the subsection (1) service extends to copper services that are not supplied under an STD.
65. Chorus has provided information to us which indicates that it considers much of the copper services it supplies are supplied under the CFLAS and UCLL/UCLL Backhaul STDs.<sup>34</sup> For those end-users receiving a telecommunications service which uses a commercial variant as a wholesale input, it is open to Chorus to apply the same or similar process that it must do for end-users receiving a service supplied under an STD.

#### **Who is the ‘end-user’ of the subsection (1) service?**

66. Understanding who is the end-user of the subsection (1) service is necessary as the end-user is the person:

- 66.1 to whom the minimum requirements in the CWC apply in relation to; and

- 66.2 who may choose to have the service disconnected (other than a temporary disconnection), thereby permitting Chorus to stop supplying the subsection (1) service, pursuant to sections 69AC(2)(b) and 69AD(2)(b).

67. The term ‘end-user’ is defined in the Act as follows:<sup>35</sup>

**end-user**, in relation to a telecommunications service, means a person who is the ultimate recipient of that service or of another service whose provision is dependent on that service.

68. For the copper services (CFLAS or UCLL/UCLL Backhaul), the respective STDs define the end-user as ‘a person who is the ultimate recipient of the [copper service] (or of another service the provision of which relies in whole or in part on the [copper service])’.<sup>36</sup>

69. Accordingly, our view is that the end-user is the ultimate consumer of the copper service. In the context of specified fibre areas, and therefore the CWC, this will typically be the customer of the access seeker, who receives the access seeker’s retail telecommunications service that relies in whole or in part on the copper service at the time notice is given under section 69AB of the Act.<sup>37</sup>

#### **Supply of CFLAS or UCLL/UCLL Backhaul where service ceases to be designated access service**

70. During consultation on our role to declare SFAs, Chorus submitted that, where it is required to continue to supply CFLAS in SFAs (ie, where CFLAS has ceased to be a designated access service), it may do so on commercial terms rather than under the

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<sup>34</sup> Email from Julian Kersey (Manager - Regulatory & Policy Affairs, Chorus) to Andrew Harrison (Senior Analyst, Commerce Commission) regarding clarification of the figure for Regulated and Commercial (non-regulated) copper services (11 November 2019).

<sup>35</sup> Section 5 of the Act.

<sup>36</sup> See, for example, Definitions of the “STD for Chorus’ Unbundled Bitstream Access Service - UBA General Terms” (13 December 2007) section 3.

<sup>37</sup> The end-user also includes any other users of the service (such as members of the customer’s household).

terms of the relevant STD.<sup>38</sup> This would mean that, among other things, Chorus could choose to charge a higher price than that required by the relevant STD.<sup>39</sup>

71. Chorus has indicated that it views UCLL/UCLL Backhaul similarly, ie, where it supplies UCLL/UCLL Backhaul after it has ceased to be a designated access service, it may supply the service on commercial terms.<sup>40</sup>
72. We disagree with Chorus. Our view is that, unless Chorus is permitted to stop supplying a copper service under sections 69AC or 69AD, it must continue to supply the service pursuant to the relevant STD. We explain as follows:
  - 72.1 As noted above in paragraphs 41-43, the CFLAS and UCLL/UCLL Backhaul STDs continue to be in force;
  - 72.2 Where a CFLAS or UCLL/UCLL Backhaul STD requires Chorus to supply a service, Chorus must supply that service pursuant to the terms of the STD. If Chorus does not supply the service pursuant to the STD, it will risk breaching the STD. Breaches of an STD are an enforceable matter under section 156N of the Act;
  - 72.3 Chorus is relieved of the obligation to supply the service under the STD only if one of the criteria in subsection (2) of sections 69AC or 69AD are met – that is, Chorus complies with the CWC or the end-user chooses to have the service disconnected (other than a temporary disconnection).
73. We note that, despite Chorus holding a different view, it has committed to the Commission that where it is required to continue to supply a copper service under section 69AC, it will do so in accordance with the relevant STD until the CWC is approved, or 30 June 2020 (whichever is the sooner).<sup>41</sup>

## **CWC – Schedule 2A of the Act**

74. Section 69AF of the Act provides that the CWC is the code approved under Schedule 2A of the Act.

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<sup>38</sup> Chorus “Submission on Determining Specified Fibre Areas: Process and Issues Paper dated 26 November 2018” (15 February 2019) para 17.

<sup>39</sup> Chorus has committed that where it is required to continue supplying a CFLAS under section 69AC, it will continue to provide the service in compliance with the STD terms, unless the end-user chooses to have the service disconnected. Chorus provided this commitment until either the Commission finalises the CWC, or 30 June 2020, whichever is earlier. See letter to Dr Stephen Gale (Telecommunications Commissioner, Commerce Commission) from Kate McKenzie (Chief Executive, Chorus) regarding Specified Fibre Areas – continued application of Standard Terms Determinations (13 June 2019), available at <https://comcom.govt.nz/regulated-industries/telecommunications/regulated-services/consumer-protections-for-copper-withdrawal/specified-fibre-areas?target=documents&root=154793>.

<sup>40</sup> Email from Sally Ma (Regulatory and Policy Affairs Adviser, Chorus) to William Turner (Analyst, Commerce Commission) regarding Chorus’ intentions for pricing and supply of UCLL (12 February 2020).

<sup>41</sup> Letter to the Commerce Commission. Chorus “Specified Fibre Areas – continued application of Standard Terms Determinations” (13 June 2019), available at <https://comcom.govt.nz/regulated-industries/telecommunications/regulated-services/consumer-protections-for-copper-withdrawal/specified-fibre-areas?target=documents&root=154793>.

75. Clause 1(1) of Schedule 2A provides:

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).

76. The services described in subparagraphs (a)-(c) above are the services that sections 69AC and 69AD are concerned with.

77. Clause 1(3) of Schedule 2A sets out the minimum requirements that the CWC must include. These minimum requirements must be satisfied before Chorus is permitted to stop supplying a CFLAS or UCLL/UCLL Backhaul service under sections 69AC or 69AD. These minimum requirements are:

- (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.

78. In relation to the last requirement – “any other prescribed matters must be complied with” – the Act gives no explicit direction as to what “prescribed matters” are (or are limited to). However, clause 1(1)(4) provides that the Code “may contain any other provisions that the Commission... considers are necessary or desirable”. Our view is

that this clause gives us the power to prescribe additional matters – or minimum requirements – that must be complied with.

79. We discuss the minimum requirements in Schedule 2A in Chapter 5 of this Draft Reasons Paper.
80. Schedule 2A also prescribes a process for developing and approving the CWC. Among other things, we are required to consult on a draft CWC (which this Draft Reasons Paper and accompanying draft CWC satisfies) and may approve the draft CWC if we are satisfied that the draft CWC meets all the requirements set out in the Act.

### **Enforcement of the CWC**

81. The Code is an enforceable matter under Part 4A of the Act, with section 156A(1)(q) establishing a breach where a person “fails, without reasonable excuse, to comply with the copper withdrawal code”.
82. Section 156B sets out the enforcement actions that the Commission may take in respect of a breach, including issuing a civil infringement notice, applying to the High Court for a pecuniary penalty (a maximum of \$300,000), or accepting an undertaking.<sup>42</sup>
83. In addition, the Commission may apply to the High Court for an order under:
  - 83.1 section 156MC, under which the Court can order the person to pay an end-user the amount of any loss or damage caused by the conduct, and/or order the person to supply a service to an end-user (at the person’s expense); and/or
  - 83.2 section 156MD, under which the Court may grant an injunction restraining the person from engaging in conduct that constitutes or would constitute a breach of the Code.
84. Under section 156C of the Act, the Commission must take certain factors into account when deciding what enforcement action to take. These include, for example, the seriousness of the alleged breach and whether or not the person alleged to have committed the breach has previously committed a breach of that kind or has engaged in any similar conduct.
85. End-users also have the option to enforce against breaches of the CWC. Section 156BA provides that end-users may apply to the High Court for an order under section 156MC and/or section 156MD.

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<sup>42</sup> Under section 156CB of the Act, the Commission may take enforcement action against persons who breach an undertaking. On application, the High Court can, among other things, order a person to comply with the undertaking.

## **Chapter 4 – Overview of copper withdrawal process**

86. In this chapter, we provide an overview of the copper withdrawal process, including the circumstances where the CWC applies.
87. Both the Act and the draft CWC contain key steps and obligations that govern the copper withdrawal process. We outline those key steps and obligations in this section. Providing this overview also helps to place our draft decisions and reasons on the CWC – which we discuss in the next chapter – into context.
88. In this chapter, we use the term ‘copper service’ to refer to CFLAS and UCLL/UCLL Backhaul, unless the context requires otherwise.

### **Copper service ceases to be a designated access service**

89. The first step in the copper withdrawal process is when a copper service ceases to be a designated access service:
  - 89.1 For CFLAS, this is when an SFA is declared. CFLAS ceases to be a designated access service only in SFAs;
  - 89.2 For UCLL/UCLL Backhaul, this is 1 January 2020.
90. Once a copper service has ceased to be a designated access service, the withdrawal process in sections 69AC and 69AD of the Act can begin. Under those sections, Chorus may stop supplying a copper service only if:
  - 90.1 Chorus complies with the requirements of the CWC in relation to stopping the supply of the service; or
  - 90.2 The end-user chooses to have the service disconnected (other than a temporary disconnection).
91. In the following sections, we first discuss when an end-user will be regarded as having chosen to have their copper service disconnected, followed by an overview of when and how the CWC applies.

### **Withdrawal where end-user chooses to disconnect**

92. At any point after a copper service ceases to be a designated access service, Chorus may stop supplying the copper service if the end-user chooses to have the service (ie, the CFLAS or UCLL/UCLL Backhaul service) disconnected (other than a temporary disconnection).

### **When will an end-user choose to have the service disconnected?**

93. The Act does not give guidance on when an end-user will be regarded as having chosen to have the copper service disconnected.

94. The interpretation of subparagraph (2)(b) of sections 69AC and 69AD must be consistent with the consumer protection purpose in s 69AA(b) of the Act, and make sense in terms of the overall copper withdrawal process.

*End-user choosing to disconnect before receiving notice of the proposed withdrawal of the copper service*

95. Our view is that, before Chorus gives an end-user notice of the proposed withdrawal of the copper service (we discuss this notice further in paragraph 146 below), an end-user will have chosen to disconnect the service where the end-user:

- 95.1 permanently terminates their retail telecommunications service which uses a wholesale copper service as an input. This includes:

95.1.1 where the end-user terminates the service, without switching to another service; and

95.1.2 where the end-user switches to another retail telecommunications service which does not use a wholesale copper service as an input,<sup>43</sup> and as part of the switching terminates the retail service that uses a copper service as an input; or

- 95.2 moves out of the premises that the copper service was being supplied in relation to.

96. Where the end-user permanently terminates their retail service that uses a copper service as an input, Chorus will be permitted to stop supplying the copper service at the point at which the end-user's RSP has requested that Chorus cease the service.<sup>44</sup> Chorus may cease the service by either physically disconnecting at any point on the network used to supply the service (up to the end-user's premises) (a 'hard disconnection') or leave the physical network, including the copper lead-in to the end-user premises, intact (a 'soft disconnection').<sup>45</sup>

97. Where an end-user has chosen to switch to another retail service, the end-user's RSP should request that Chorus cease the copper service only following the activation of the new service. This will ensure that the end-user does not face a gap in service.

98. If the new service cannot be activated – for example, where the end-user chooses to switch to a retail fibre service but a connection cannot be installed – Chorus will not be permitted to stop supplying the copper service under subparagraph (2)(b) of

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<sup>43</sup> Other retail telecommunications services include fibre, fixed wireless and hybrid-fibre coaxial cable (HFC cable).

<sup>44</sup> RSPs can request that Chorus cease a service by submitting a Relinquishment Order under the STD. A Relinquishment Order is an 'order for the cessation of a service'. See, for example, the definition of Relinquishment Order in the 14 March 2017 update to Commerce Commission "Standard Terms Determination for Chorus' Unbundled Bitstream Access Service – Schedule 4 UBA Operations Manual", (12 December 2010) page 47.

<sup>45</sup> See, for example, UBA Service Relinquishment in the 16 December 2018 update to Commerce Commission "Standard Terms Determination for Chorus' Unbundled Bitstream Access Service – Schedule 2: UBA Price List" (12 December 2007) page 9.

sections 69AC or 69AD. In this case, Chorus may seek to stop supplying the copper service by complying with the CWC, which we discuss further in paragraphs 109-126.

99. Where the end-user moves out of the premises that the copper service was being supplied in relation to, Chorus will be permitted to stop supplying the service once the RSP requests Chorus' termination of the service at the premises.

*End-user choosing to disconnect after receiving notice of the proposed withdrawal of the copper service*

100. Where Chorus has given an end-user notice of the proposed withdrawal of the copper service, our view is that an end-user will have chosen to have the service disconnected where the end-user:
- 100.1 permanently terminates their retail telecommunications service (which uses a copper service as an input), *except* where the end-user seeks to switch to a retail fibre service; or
  - 100.2 moves out of the premises that the copper service was being supplied in relation to.
101. If the end-user:
- 101.1 Chooses to switch to a new service other than a retail fibre service (for example, a retail fixed wireless service) or simply to terminate their service without switching, Chorus will be permitted to stop supplying the copper service at the point at which the end-user's RSP has requested that Chorus cease the service. Aside from Chorus being required to send a notification to the end-user confirming that it no longer has an obligation to supply the copper service to the end-user (which we discuss in paragraphs 217 to 218 below), Chorus may withdraw the copper service without any further CWC requirements needing to be satisfied;
  - 101.2 seeks to switch to a retail fibre service, Chorus must comply with all of the minimum requirements in the CWC before it will be permitted to stop supplying the copper service. This scenario is discussed in the next section of this Draft Reasons Paper;
  - 101.3 moves out of the premises that the copper service was being supplied in relation to, Chorus will be permitted to stop supplying the service once the RSP requests termination of the service at the premises. Aside from Chorus being required to send a notification to the end-user confirming that it no longer has an obligation to supply the copper service to the end-user (which we discuss in paragraphs 146 below), Chorus may withdraw the copper service without any further CWC requirements needing to be satisfied.

*Circumstances where end-user will not be regarded as having chosen to have their copper service disconnected*

102. To provide clarity, we set out below our view of the circumstances in which an end-user will not be regarded as having chosen to have their copper service disconnected.
103. First, an end-user who switches RSP, but retains a retail service with the new RSP that relies on a copper service, will not be regarded as having chosen to disconnect. Under the copper services STDs, this is regarded as a ‘transfer’ of the copper service from one access seeker to another, and does not involve cessation of the service.<sup>46</sup> The service will therefore remain a service that Chorus is required by an STD to supply, and Chorus will need to comply with the CWC if it wishes to stop supplying the service (assuming that the end-user does not subsequently choose to have the service disconnected).
104. Second, where the end-user retains the same retail service but their RSP changes the input copper service (eg, from UCLL to UBA), the end-user will not be regarded as having chosen to have their service disconnected. Our view is that, in these circumstances, it is necessary that Chorus be required to supply the changed input copper service in order to meet the consumer protection purpose in section 69AA(b). As such, this will be regarded as a temporary disconnection.

**Summary**

105. Table 3 below summarises the situations when an end-user will be regarded as having chosen to disconnect their copper service.

**Table 3 – When end-user will have chosen to disconnect copper service**

	<b>Before notice of copper withdrawal</b>	<b>After notice of copper withdrawal</b>
<b>End-user:</b> <ul style="list-style-type: none"> <li>• <b>chooses to switch to a new service other than fibre or terminates the service without switching to a new service; or</b></li> <li>• <b>moves out of the premises that the copper service was being supplied in relation to</b></li> </ul>	End-user has chosen to disconnect	End-user has chosen to disconnect. Aside from notification that Chorus no longer has an obligation to supply the copper service to the end-user, no further CWC requirements to satisfy
<b>End-user chooses to switch to a fibre service</b>	End-user has chosen to disconnect	All applicable minimum requirements in CWC must be met for Chorus to stop supplying the copper service

<sup>46</sup> See, for example, Transfers in the 14 March 2017 update to Commerce Commission “Standard Terms Determination for Chorus’ Unbundled Bitstream Access Service – Schedule 4 UBA Operations Manual” (12 December 2010) page 25.

### **What is a temporary disconnection?**

106. Under subparagraph (2)(b) of sections 69AC and 69AD, an end-user will not be regarded as having chosen to have their copper service disconnected where the end-user chooses a temporary disconnection.
107. The purpose of excluding temporary disconnections is likely to be to ensure that end-users who need to temporarily disconnect are not regarded as having chosen to have their service disconnected, thereby losing entitlement to the protection of the CWC.
108. Our view is that an end-user should be regarded as having chosen to temporarily disconnect when the disconnection is intended only to last for a short time. This could include, for example:
  - 108.1 disconnections as a result of an end-user failing to pay their RSP on time and having their service suspended (this may be construed as an end-user choosing to have their service temporarily disconnected);
  - 108.2 disconnections while a premises is being renovated, and the physical connection needs to be temporarily removed or moved.<sup>47</sup>

### **Withdrawal where CWC has been complied with**

109. If an end-user does not choose to have their copper service disconnected, Chorus may stop supplying the copper service only if it has complied with the CWC.
110. The draft CWC is comprised of five main parts:
  - 110.1 Minimum requirements in relation to all end-users that Chorus seeks to stop supplying copper services to;
  - 110.2 Minimum requirements in relation to end-users who, having received notice of the proposed withdrawal of the copper service, order a retail service that relies on a wholesale fibre service (retail fibre service); and
  - 110.3 Minimum requirements in relation to end-users who, having received notice of the proposed withdrawal of the copper service, choose to have their copper service disconnected (other than a temporary disconnection);
  - 110.4 Minimum requirements in relation to end-users who, having received notice of the proposed withdrawal of the copper service, do not order a retail fibre service or choose to have their copper service disconnected;
  - 110.5 Other provisions, relating to dispute resolution and information disclosure and record keeping.
111. We give an overview of these five parts in the following sections, before discussing them in greater detail in chapter 5 below.

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<sup>47</sup> See <https://sp.chorus.co.nz/product-update/temporary-disconnection-overhead-service-lead>.

**Minimum requirements in relation to all end-users that Chorus seeks to stop supplying copper services to**

112. At a high level, there are three minimum requirements in relation to all end-users that Chorus seeks to stop supplying copper services.
113. First, Chorus will be required to provide a number of notices of the proposed withdrawal of a copper service to all end-users:<sup>48</sup>
- 113.1 Chorus must give the end-user at least 6 months' notice of the proposed withdrawal of a copper service. Chorus must also provide this notice to the owner of the property at which the end-user resides (the 'property owner'), if the end-user is not also the property owner;
- 113.2 Chorus must give notice of the proposed date of withdrawal to end-users on two further occasions – once at three months before the date of withdrawal and the other at 20 working days.
114. Second, Chorus must:
- 114.1 provide certain information to the end-user with the notices of proposed withdrawal. This includes information about the withdrawal of the copper services and information about the fibre services available to the end-user;
- 114.2 make information relating to the copper withdrawal process generally available to the public. Some of this information is similar to the information that Chorus is required to provide directly to end-users, but must be made available in a way that the public can access (eg, Chorus' website).
115. Third, the Commission's 111 contact code must be in force.

**Minimum requirements in relation to end-users who order a retail fibre service**

116. The draft CWC then sets out further minimum requirements that apply in relation to those end-users who, having received a notice of proposed withdrawal from Chorus, order a retail fibre service.
117. The key requirements are:
- 117.1 The end-user must have a connection to the fibre service installed and, whether the connection is standard or non-standard, at no cost to the end-user. This means that, if a fibre connection cannot be installed (for example, due to third-party property access issues), Chorus will not be able to withdraw the copper service.

If a connection is unable to be installed because an end-user does not cooperate with the installation process, the above requirement will not need to be met so long as all reasonable efforts to install the connection have been

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<sup>48</sup> As we discuss in paragraphs 156-162 below, Chorus will also be required to provide access seekers and relevant fibre service providers with a notice of proposed withdrawal.

made. We explain what will be regarded as ‘all reasonable efforts’ at paragraphs 190 of this Draft Reasons Paper;

117.2 The functionality provided by the copper services that are to be withdrawn must, apart from legacy services, be available to the end-user over a fibre service;

117.3 If an anchor service is declared by regulations made under section 227 of the Act, the anchor service (or a commercial equivalent) must be available at the end-user’s premises. We discuss what an anchor service is at paragraphs 202-208 of this Draft Reasons Paper.

117.4 If all of the above requirements are:

117.4.1satisfied, Chorus must provide a ‘Confirmation Notice’ to the end-user and the property owner. The Confirmation Notice confirms to the end-user and property owner that Chorus is no longer obliged to provide the copper service;

117.4.2not satisfied (eg, because a connection to a fibre service has been unable to be installed due to a third-party property access dispute), Chorus must provide a ‘Continuation Notice’ to the end-user and property owner confirming that it is not permitted to stop supplying the copper service.

#### **Minimum requirements in relation to end-users who choose to have their copper service disconnected**

118. The draft CWC imposes one minimum requirement in relation to end-users who, having received notice of the proposed withdrawal of the copper service, choose to have their copper service disconnected (other than a temporary disconnection).
119. The minimum requirement is for Chorus to provide a Confirmation Notice to the end-user and the property owner, confirming that Chorus is no longer obliged to provide the copper service.
120. Once Chorus has satisfied this minimum requirement, it will be permitted to stop supplying the copper service.

#### **Minimum requirements in relation to end-users who do not order a retail fibre service or choose to have their copper service disconnected**

121. There will be some end-users who, having received a notice of the proposed withdrawal of the copper service, do not respond – that is, they do not order a retail fibre service or choose to have their copper service disconnected.
122. Our current view is that, in relation to these end-users, Chorus will be required only to provide a Confirmation Notice at the end of the six-month notice period. Once Chorus has satisfied this minimum requirement, it will be permitted to stop supplying the copper service.

123. We consider this appropriate as the end-user will have been given sufficient notice and warning of the withdrawal (three notices over a six-month period), and Chorus should be able to withdraw copper if the end-user is not engaging with the copper withdrawal process.

**Other provisions in the draft CWC**

124. The draft CWC includes other provisions which are not minimum requirements that must be satisfied before Chorus can stop supplying a copper service, but must nonetheless be complied with.
125. These are provisions relating to dispute resolution under the CWC and a requirement on Chorus to disclose to the Commission certain information relating to the CWC and to keep records.

## Summary

126. Table 4 below summarises the minimum requirements and other provisions in the draft CWC.

**Table 4 – Summary of minimum requirements and other provisions**

Minimum requirements in relation to all end-users that Chorus seeks to stop supplying copper services to	<ul style="list-style-type: none"> <li>• Requirement to give notice of the proposed withdrawal of a copper service no later than 6 months before withdrawal, at 3 months and at 20 working days</li> <li>• Requirement to provide information to end-users with notices of proposed withdrawal, and make information relating to the copper withdrawal process generally available to the public</li> <li>• Requirement for 111 contact code to be in force</li> </ul>
Minimum requirements in relation to end-users that order a retail fibre service	<ul style="list-style-type: none"> <li>• Requirement for a connection to the fibre service installed and, whether the connection is standard or non-standard, at no cost to the end-user. <ul style="list-style-type: none"> <li>○ If a connection is unable to be installed because an end-user does not cooperate with the installation process, the above requirement will not need to be met so long as all reasonable efforts to install the connection have been made.</li> </ul> </li> <li>• Requirement for functionality (except for legacy services) provided by the copper services that are to be withdrawn to be available to the end-user over a fibre service</li> <li>• Requirement for the anchor service (or a commercial equivalent) to be available at the end-user's premises (if anchor service has declared by regulations made under section 227 of the Act)</li> <li>• Requirement to send Confirmation Notice or Continuation Notice</li> </ul>
Minimum requirements in relation to end-users who choose to have their copper service disconnected	<ul style="list-style-type: none"> <li>• Requirement to send Confirmation Notice</li> </ul>
Minimum requirements in relation to end-users who do not order a retail fibre service or choose to have their copper service disconnected	<ul style="list-style-type: none"> <li>• Requirement to send Confirmation Notice</li> </ul>
Other provisions in the draft CWC	<ul style="list-style-type: none"> <li>• Dispute resolution provisions</li> <li>• Information disclosure and record-keeping obligation</li> </ul>

## Chapter 5 – Draft Decisions and Reasons for the draft CWC

127. In the previous chapter, we gave an overview of the copper withdrawal process, including a summary of the minimum requirements and other provisions in the draft CWC.
128. In this chapter, we set out our draft decisions for the minimum requirements and other provisions, and give reasons for our draft decisions.
129. This chapter has the following structure:
  - 129.1 Purpose of the CWC;
  - 129.2 Minimum requirements in relation to all end-users that Chorus seeks to stop supplying copper services to:
    - 129.2.1 Requirement to give notice of the proposed withdrawal of a copper service;
    - 129.2.2 Requirement to provide information to end-users and to make information generally available to the public;
    - 129.2.3 Requirement for 111 contact code to be in force;
  - 129.3 Minimum requirements in relation to end-users who order a retail fibre service:
    - 129.3.1 Requirement for connection to be installed;
    - 129.3.2 Requirement for similar functionality provided by fibre service;
    - 129.3.3 Anchor service requirement;
    - 129.3.4 Requirement to send Confirmation Notice or Continuation Notice;
  - 129.4 Minimum requirements in relation to end-users who choose to have their copper service disconnected:
    - 129.4.1 Requirement to send Confirmation Notice;
  - 129.5 Minimum requirements in relation to end-users who do not order a retail fibre service or choose to have their copper service disconnected:
    - 129.5.1 Requirement to send Confirmation Notice.
  - 129.6 Other provisions:
    - 129.6.1 dispute resolution for the CWC;
    - 129.6.2 requirement to disclose information and keep records;

129.7 Other matters considered but not included in the draft CWC.

**Purpose of the CWC**

130. The Act does not provide a purpose statement for the CWC. However, our view is that including a purpose statement in the CWC will help parties affected by the CWC to understand what it is intended to achieve and to understand the obligations it contains.

*Draft decision and reasons*

131. Our draft decision is to include the following purpose statement in the CWC:

The purpose of the Code is to protect end-users of certain copper services where Chorus seeks to withdraw those services. It does this by setting out minimum consumer protections requirements that Chorus must comply with before Chorus may withdraw a copper service, such that end-users–

- understand Chorus’s process for withdrawal of a copper service, and how this will affect end-users of the copper service;
  - have access to information with which to make an informed choice about the telecommunications services they can switch to;
  - have reasonable time to prepare for a proposed withdrawal of a copper service;
  - who wish to move from a copper service to a fibre service can receive a connection to a fibre service, and that the fibre service provides similar functionality to the copper service.
132. We consider that the purpose statement above is consistent with the legislative intent underpinning the CWC. Although we did not receive any submissions that explicitly addressed the need for the CWC to have a statement of purpose, we consider it necessary to clarify at a high level the nature of the CWC.
133. The requirements that the CWC establishes, and the obligations it imposes on affected parties, provide a level of assurance and confidence for end-users that they will not be disadvantaged during the migration away from the aging copper network.
134. It is important that once the CWC is in force that consumers understand the copper withdrawal process, their rights under that process and the requirements that Chorus and other affected parties must meet prior to the withdrawal of a copper service.
135. Additionally, RSPs and RFSPs require clarity of purpose, as they will need to cooperate at the operational level with Chorus to ensure that the minimum consumer protections afforded by the CWC are satisfied.

**Minimum requirements in relation to all end-users that Chorus seeks to stop supplying copper services to**

136. In this section, we provide our draft decisions and reasons for the minimum requirements that apply in relation to all end-users that Chorus seeks to stop supplying copper services to. These minimum requirements, which we discuss in greater detail below, are:

136.1 Chorus must give notice of the proposed withdrawal of a copper service; and

136.2 Chorus must provide the end-user with information relating to the withdrawal of the copper service, and make information relating to the copper withdrawal process generally available to the public;

136.3 The 111 contact code must be in force.

**Requirement to give notice of proposed withdrawal of copper service**

137. Schedule 2A of the Act provides that the CWC must include a minimum requirement that Chorus must give the reasonable notice of the proposed withdrawal of the copper service. Chorus is required to give reasonable notice to:

137.1 the end-user;

137.2 the access seeker, who will typically be the end-user's RSP; and

137.3 the RFSP for the end-user's premises, which will be one of the other local fibre companies (LFCs) or any other fibre provider.<sup>49</sup>

138. Below we set out submissions received on this minimum requirement, followed by our draft decisions and reasoning.

*Submissions*

139. Submissions on the minimum requirement focussed on what would be a reasonable notice period for end-users. For example:

139.1 Vocus submitted that '[a] reasonable notice period needs to ensure that individual customers are protected but also to ensure that RSPs are able to undertake the critical role of managing their customer migration from one service to another';<sup>50</sup>

139.2 Spark indicated the length of the notice period should "...give consumers time to understand the options available to them and make the appropriate migration choice".<sup>51</sup>

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<sup>49</sup> There are a number of other fibre service providers including Unison.

<sup>50</sup> Vocus Communications "Copper Withdrawal Code – Submission to the Commerce Commission" (14 February 2019) para 11.

<sup>51</sup> Spark NZ "The Copper Withdrawal Code" (14 February 2019) para 12.

140. The TCF Response supported a minimum six-month period for the notice to end-users.<sup>52</sup> This period was also supported by 2degrees, Chorus and Spark in separate submissions on the minimum requirements.<sup>53</sup>
141. The TCF Response also suggested that end-users receive further notice of the proposed withdrawal of a copper service at three months before the date of withdrawal, and at three weeks before the date of withdrawal.<sup>54</sup>
142. Submitters also addressed the length of the notice period for access seekers and RFSPs. In particular, there was support from RSPs for access seekers and RFSPs receiving notice before end-users in order to prepare to assist their customers during the copper withdrawal process. The TCF Response suggested, as an example, that access seekers and RFSPs receive notice one month before end-users.<sup>55</sup>
143. While none of the submissions directly addressed how the notices should be provided (eg, post, courier), in the TCF Response RSPs outlined that that RSPs should have the option to co-author the notice between the relevant consumer’s RSP and Chorus with both brands appearing on the letterhead to avoid potentially confusing customers.<sup>56</sup>
144. Finally, some submitters asked that Chorus be required to provide a forecast of copper service withdrawals and areas.<sup>57</sup>

#### *Draft decisions and reasons*

145. The draft CWC requires Chorus to give a number of notices to end-users, property owners, access seekers and RFSPs. Below we give our draft decisions and reasons for each of these categories of persons.

#### Notices to end-users

146. The draft CWC includes requirements for Chorus to ensure that the end-user receives notice of the proposed withdrawal of the copper service to the end-user:

146.1 no later than six months before the proposed date of withdrawal (**First Notice**);

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<sup>52</sup> TCF “TCF Submission – Commerce Commission Copper Withdrawal Code Framework Paper” (August 2019) page 17.

<sup>53</sup> 2degrees “Determining Specified Fibre Areas & Minimum Requirements of the Copper Withdrawal Code – Cross Submission to the Commerce Commission” (01 March 2019) page 4; Chorus “Submission on the Commerce Commission’s letter requesting views on scope of the Copper Withdrawal Code” (14 February 2019) at para 27; Spark NZ “The Copper Withdrawal Code” (14 February 2019) para 12.

<sup>54</sup> TCF “Copper Withdrawal Code – End-user Scenarios – Process Diagrams” (August 2019) slide 5.

<sup>55</sup> TCF “TCF Submission – Commerce Commission Copper Withdrawal Code Framework Paper” (August 2019) page 17.

<sup>56</sup> TCF “TCF Submission – Commerce Commission Copper Withdrawal Code Framework Paper” (August 2019) page 19.

<sup>57</sup> Eg Spark NZ “Copper Withdrawal Code Issues Paper – Cross-submission” (6 March 2019) para 6.

- 146.2 at three months before the proposed date of withdrawal (**Further Notice**), only if the end-user's copper service is still being supplied; and
- 146.3 at 20 working days before the proposed date of withdrawal (**Final Notice**), only if the end-user's copper service is still being supplied.
147. The requirement to give a First Notice, Further Notice and Final Notice have been included in the draft CWC to ensure that end-users receive fair warning of Chorus' proposal to withdraw copper services, and have sufficient time to understand the options available to them and to make a choice about which service to move to.
148. We note that there may be multiple end-users at the same premises using the copper service. However, requiring Chorus to give notices to each end-user at a premises would be impractical, since Chorus will not know how many end-users are at each premises. As such, where Chorus sends a notice to an end-user at a premises, it will be regarded as having given notice to all end-users at that premises. For example, where flats or multiple dwellings exist within a single building, each separate flat or dwelling should receive a notice, but Chorus is not required to send multiple copies of the notice for each end-user in the flat or dwelling.
149. Our current view is that end-users should receive a Final Notice at 20 working days before the proposed withdrawal date, rather than the three weeks suggested in the TCF Response. We consider 20 working days is preferable as it gives end-users approximately a month to cancel their copper service with their RSP, and billing is usually on a monthly basis.
150. At this stage, the requirement is for Chorus to send the First Notice, Further Notice and Final Notice, rather than have those notices be co-authored by Chorus and the end-user's RSP. This is consistent with the requirement in Schedule 2A that Chorus (and not RSPs) must give notice to end-users of the proposed withdrawal of a copper service.
151. Where Chorus has been unable to comply with the CWC, in the future it may wish to attempt again to stop supplying a copper service by complying with the CWC. This might be the case, for example, if it believes that circumstances have changed such that it can satisfy all the CWC requirements. Chorus will be permitted to re-commence the CWC process in the future by giving the end-user notice of the proposed withdrawal of their copper service. However, the draft CWC provides that Chorus must not give First Notice more than once per calendar year. This is to ensure that an end-user does not face repeated attempts within a short timeframe to have its copper service withdrawn.
152. Finally, the draft CWC also includes a requirement that, where Chorus requests it, access seekers must provide sufficient information about an end-user for the purpose of Chorus giving notice to the end-user of the proposed withdrawal of a copper service. This requirement is necessary to ensure Chorus is able to fulfil its notice obligations to end-users.

### Notice to property owners

153. The draft CWC also includes a requirement for Chorus to give the First Notice to the owner of the property at which the end-user resides, if the property owner is not also the end-user.
154. Property owners will likely have an interest in the copper withdrawal process, given that the withdrawal of a copper service may also involve the physical disconnection of the premises from the copper network. Requiring Chorus to give the First Notice to property owners will ensure property owners are informed about changes to the services available at their property and will help facilitate conversations between tenants and landlords about fibre installations.
155. We note that property ownership information is publicly available from Land Information New Zealand, and Chorus will therefore be able to access this information in order to give notice to property owners.<sup>58</sup>

### Notices to access seekers and RFSPs

156. The draft CWC requires Chorus to give notice of the proposed withdrawal of a copper service to:
  - 156.1 the RFSP (**RFSP Notice**), no later than one month before Chorus gives the First Notice to the end-user. This will give RFSPs sufficient time to plan for the possible impact on their networks of end-users switching to a fibre service and requiring a connection to be installed;
  - 156.2 the access seeker (**Access Seeker Notice**), at the same time as the First Notice to the end-user. We consider that the six-month notice period for withdrawal of the copper service is a sufficient period of time to enable RSPs to contact their affected customers and support their transition to fibre or alternative technologies.
157. For convenience, it is permissible under the draft CWC for the RFSP Notice and Access Seeker Notice to specify multiple end-users, so long as the RFSP Notice is given at least one month prior to the First Notice being given to each of the end-users covered by the RFSP Notice. For example, if Chorus seeks to withdraw copper services in relation to all end-users connected to a particular distribution cabinet, Chorus may give a single RFSP Notice and a single Access Seeker Notice specifying each of those end-users.
158. Finally, our preliminary view is that Chorus will not be required to provide copper withdrawal forecasts to RSPs. RSPs will have an opportunity to put in place appropriate systems to manage the withdrawal of copper services before the CWC come into force.

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<sup>58</sup> See <https://www.linz.govt.nz/land/land-records/types-land-records/property-titles-and-plans>

Summary

159. Table 6 below summarises the notices that are required to be provided and their scheduling.

**Table 5: Notices to be provided and their scheduling**

Timeframes	Notice	End-user	Property owner	Access seekers (RSPs)	RFSP
No later than 7 months prior to proposed copper withdrawal date	RFSP Notice				✓
No later than 6 months prior to proposed copper withdrawal date	Access Seeker Notice			✓	
No later than 6 months prior to proposed copper withdrawal date	First Notice	✓	✓		
3 months prior to proposed copper withdrawal date (if no action has been taken)	Further Notice	✓			
20 working days prior to proposed copper withdrawal date (if no action has been taken)	Final Notice	✓			

160. In terms of the delivery of notices, the draft CWC:
- 160.1 specifies that notices to end-users or property owners must be delivered, at a minimum, by a postal operator by mail; and
- 160.2 does not prescribe how RFSP Notices or Access Seeker Notices must be delivered, as we consider there should be flexibility for Chorus, access seekers and RFSPs to decide what works best for each relationship.

**Requirement to provide information**

161. Schedule 2A of the Act provides that the CWC must include the following two minimum requirements relating to information that Chorus must provide to end-users:
- 161.1 Chorus must provide the end-user with information about the withdrawal of copper services and the need to make alternative arrangements, such as battery backup, to maintain the fibre service in the event of a power failure; and
- 161.2 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.

### *Submissions*

162. Submissions on the minimum requirement tended to focus on roles and responsibilities for who should supply information to end-users, rather than the information that should be provided. For example:
- 162.1 Vocus submitted that '[t]here will need to be rules around how end-users are communicated to and the content of communication. LFCs and Chorus are wholesalers and as such any communication directly with an RSP's customer base should be agreed beforehand and on an as needed only basis. To ensure clarity of roles and avoid confusion this should be included in the CWC';<sup>59</sup>
- 162.2 Spark submitted that 'RSPs own the customer relationship and it is possible customers will be confused if they are contacted by multiple parties leading up to a migration. The Code should be very clear on who can contact the customer, and when';<sup>60</sup>
- 162.3 2degrees submitted '[i]n order to avoid confusion and duplicated correspondence, any communication between wholesalers should be limited to those issues that are specified in the Act. The method and content of communication should also be the subject of prior agreement between wholesalers and RSPs'.<sup>61</sup>
163. While most submissions focussed on roles and responsibilities for communicating with end-users, Chorus suggested that the following information should be provided to end-users:<sup>62</sup>
- 163.1 An explanation that the area has been declared an SFA and that there is a CWC in place that governs the process;
- 163.2 Which RSPs offer fibre-based telecommunications services that end-users can order and connect to in that area;
- 163.3 How to request fibre; and
- 163.4 The process for ordering and installation.

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<sup>59</sup> Vocus Communications "Copper Withdrawal Code – Submission to the Commerce Commission" (14 February 2019) para 22.

<sup>60</sup> Spark NZ "The Copper Withdrawal Code" (14 February 2019) para 18.

<sup>61</sup> 2degrees "Determining Specified Fibre Areas & Minimum Requirements of the Copper Withdrawal Code – Cross Submission to the Commerce Commission" (01 March 2019) page 4.

<sup>62</sup> Chorus "Submission on the Commerce Commission's letter requesting views on scope of the Copper Withdrawal Code" (14 February 2019) para 34.

*Draft decisions and reasons*

Chorus must provide information to end-users

164. The draft CWC provides that certain information must accompany the First Notice, Further Notice and Final Notice to end-users.
165. The information that must accompany the notices must include:
  - 165.1 an overview of the copper withdrawal regime, including the circumstances in which Chorus may stop supplying a copper service and an overview of the CWC;
  - 165.2 an outline of the copper withdrawal process for the end-user, including the number and timing of subsequent notices (ie, Further Notice; Final Notice);
  - 165.3 an explanation of the choices available to the end-user and what the outcome will be for the end-user of taking each choice, including:
    - 165.3.1 switching to a retail fibre service;
    - 165.3.2 switching to a retail service other than fibre;
    - 165.3.3 terminating their copper service without switching to another retail service;
    - 165.3.4 moving out of the premises that the copper service was being supplied in relation to;
    - 165.3.5 not choosing any of the above options (ie, 'doing nothing');
  - 165.4 information on the process for installing a connection to a fibre service, including information regarding the requirement under the CWC for a connection to be installed. This must include an explanation of the consequences if the end-user does not cooperate with the installation process, as discussed below in paragraphs 188 to 190;
  - 165.5 if Chorus provides fibre services in the area where the end-user resides, information about the fibre services available to the end-user;
  - 165.6 how to order a retail fibre service;
  - 165.7 information about the need to make alternative arrangements, such as battery backup, to maintain the fibre service in the event of a power failure. This includes information on the Commission 111 contact code;
  - 165.8 information on legacy services and functionality that is not available over a fibre service and advice for end-users using these services (this includes, for example, that equipment such as fax machines and medical alarms may not work with fibre services); and

- 165.9 an outline of the dispute resolution options available for then end-user.
166. The draft CWC also includes a requirement that the above information must accompany the First Notice to the property owner.
167. The information requirements we have set out above:
- 167.1 meet the minimum requirements in Schedule 2A in relation to the provision of information;
- 167.2 will ensure that end-users and property owners have sufficient information with which to understand the copper withdrawal process and make decisions about which telecommunications services they wish to switch to; and
- 167.3 are proportionate, as the cost to Chorus of providing such information should be relatively low, particularly given that much of the information does not need to be tailored for each end-user.

Chorus must make information generally available to the public

168. Schedule 2A does not require that Chorus make information relating to the copper withdrawal process generally available to the public. However, we consider it desirable to include this requirement in order to ensure that end-users of copper services can readily access information about the copper withdrawal process, irrespective of whether they have received a notice of proposed withdrawal of copper services from Chorus.
169. The draft CWC provides that Chorus must make available certain information on its website and through customer service representatives over the phone, and make reasonable efforts to draw end-users' attention to that information (for example, through advertising). We understand that some of the information listed below is already available on Chorus' website.
170. The information that Chorus must make available is as follows:
- 170.1 an overview of the copper withdrawal regime, including the circumstances in which Chorus may stop supplying a copper service and an overview of the CWC;
- 170.2 how to order a retail fibre service;
- 170.3 information on the process for installing a connection to a fibre service, including information regarding the requirement under the CWC for a connection to be installed. This must include an explanation of the consequences for an end-user if the end-user does not cooperate with the installation process, as discussed below in paragraphs 188 to 190;

170.4 information about the need to make alternative arrangements, such as battery backup, to maintain the fibre service in the event of a power failure. This includes information on the Commission 111 contact code;

170.5 information on legacy services and functionality that is not available over a fibre service and advice for end-users using these services (this includes, for example, that equipment such as fax machines and medical alarms may not work with fibre services).

### **Requirement for 111 contact code to be in force**

171. Schedule 2A of the Act provides that the CWC must include a minimum requirement that a Commission 111 contact code must be in force.<sup>63</sup> We have therefore included this requirement in the draft CWC.

172. As we discussed earlier in this Draft Reasons Paper at paragraph 27, the purpose of the 111 contact code is to ensure that vulnerable consumers, or persons on their behalf, have reasonable access to an appropriate means to contact the 111 emergency service in the event of a power failure.

173. Alongside the consultation on the draft CWC, the Commission is also currently consulting on a draft 111 contact code. Our current intention is that the final 111 contact code will come into force before the CWC, however we welcome stakeholder's views on the commencement date of each code in submissions.

### **Minimum requirements in relation to end-users who order a fibre service**

174. In this section, we provide our draft decisions and reasons for the minimum requirements that apply in relation to end-users who, following receipt of a notice of proposed copper withdrawal, order a retail fibre service. These minimum requirements, which we discuss in greater detail below, are:

174.1 a requirement for a connection to a fibre service to be installed;

174.2 a requirement for the fibre service to provide similar functionality to the copper service that is to be withdrawn;

174.3 a requirement for an anchor service (or commercial equivalent) to be available (if an anchor service has been declared);

174.4 a requirement to send a Confirmation Notice or Continuation Notice.

### **Requirement for connection to be installed**

175. Schedule 2A of the Act provides that the CWC must include a minimum requirement that an end-user must be able to:

175.1 access a fibre service; and

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<sup>63</sup> Clause 1(3)(g) of Schedule 2A of the Act.

175.2 have a connection to the fibre service installed:

175.2.1 within a reasonable timeframe; and

175.2.2 whether the connection is standard or non-standard, at no cost to the end-user.

### *Submissions*

176. Submissions on this minimum requirement focussed mainly on two issues.

177. First, a number of submissions considered whether Chorus should be able to stop supplying the copper service where a connection to a fibre service is unable to be installed because of an impediment. Impediments could include a neighbour withholding consent for Chorus to access the neighbour's property in order to install a connection, or a landlord not giving permission for a tenant to have a connection installed. There were competing positions on this issue in submissions:

177.1 Chorus submitted that, so long as it takes all reasonable efforts to resolve the impediment, it should be permitted to withdraw the copper service even if a connection to the fibre service has not been installed. Chorus suggested that the ability to withdraw in these circumstances would be a key lever to resolve these third-party disputes. Chorus noted that whether it does, in fact, withdraw the copper service would be at its discretion;<sup>64</sup>

177.2 RSPs considered that Chorus should not be permitted to withdraw the copper service if a connection to a fibre service has not been installed. They noted that this would leave end-users without a connection for a reason outside of their control.<sup>65</sup>

178. Second, submissions considered what would be a 'reasonable timeframe' to have a connection to a fibre service installed:

178.1 TUANZ submitted that '[u]sers would expect to see some sensible definition of what a reasonable time frame is';<sup>66</sup>

178.2 Chorus said that the CWC does not need to define a reasonable timeframe, as it is a well-understood term in legislation, regulations and contracts;<sup>67</sup>

178.3 There appeared to be a consensus in the TCF Response that, where an end-user had ordered a retail fibre service, the CWC should provide that Chorus

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<sup>64</sup> TCF "TCF Submission – Commerce Commission Copper Withdrawal Code Framework Paper" (August 2019) page 12.

<sup>65</sup> TCF "TCF Submission – Commerce Commission Copper Withdrawal Code Framework Paper" (August 2019) page 4.

<sup>66</sup> Letter from Craig Young (CEO TUANZ NZ) to Regulation Branch (Commerce Commission) responding with a submission on the proposed Copper Withdrawal Code and Specified Fibre areas process paper (15 February 2019) page 2.

<sup>67</sup> Chorus "Submission on the Commerce Commission's letter requesting views on scope of the Copper Withdrawal Code" (14 February 2019) para 19.

cannot withdraw a copper service until the fibre connection has been installed, even if the timeframe moves beyond the six-month notice period.<sup>68</sup> However, Chorus' view was that this would be subject to its position that, as long as it had made all reasonable efforts to resolve an impediment to installation, it would be permitted to withdraw the copper service.

*Draft decisions and reasons*

Requirement to install connection to a fibre service

179. Our key draft decision is that, where an end-user has ordered a retail fibre service, it is a minimum requirement that a connection to the fibre service is installed. This means that, where a connection has been unable to be installed because of an impediment such as a third-party property access dispute, Chorus will not be permitted to withdraw the copper service.
180. We consider that this requirement best gives effect to the consumer protection purposes of the CWC, and the statutory minimum requirement in clause 1(3)(a) of Schedule 2A. It will ensure that Chorus cannot withdraw a copper service unless a fibre connection has been installed, which means that the end-user will have certainty that they will be able to continue to access a fixed line service.
181. If Chorus was permitted to withdraw a copper service where there was an impediment, an end-user could be left without a telecommunications service. This would be inconsistent with the consumer protection purpose of the CWC.
182. While the requirement that a connection must be installed will impose a potential cost on Chorus since it may impede its ability to withdraw parts of its copper network, we consider Chorus is the best-placed to bear the risk of not being able to withdraw a copper service, since it likely has processes and resources dedicated to resolving issues such as third-party property access disputes.
183. We also note that the scope for such impediments to arise may decrease in the future. On 17 February 2020, the Government announced that it intended to amend the Residential Tenancies Act 1986 to '[i]mprove the process for the installation of fibre in rental properties by requiring landlords to permit and facilitate the installation of Ultra-Fast Broadband'.<sup>69</sup> Landlords will be able to refuse permission in limited circumstances (such as where an installation would compromise the weathertightness of the building),<sup>70</sup> but overall this amendment is likely to reduce the number of occasions where an end-user will not be able to have a connection installed.
184. To provide clarity, the draft CWC also provides that:

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<sup>68</sup> TCF "TCF Submission – Commerce Commission Copper Withdrawal Code Framework Paper" (August 2019) page 11.

<sup>69</sup> <https://www.beehive.govt.nz/release/rental-reforms-step-closer-introduction-residential-tenancies-amendment-bill>

<sup>70</sup> Clause 45B of the Residential Tenancies Amendment Bill 218 - 1.

- 184.1 a 'connection' to a fibre service refers to a physical connection between the end-user's premises and the fibre network, and includes the fibre lead-in and the optical network terminal (ONT) in the end-user's premises;
- 184.2 a connection will be considered to have been installed at the point that the end-user's RSP has been advised by the provider of the connection that the end-user has acknowledged the installation of the connection is complete. We understand that there are well-established procedures for this event.
185. At this stage, we have decided not to specify what is a reasonable timeframe for the installation of a connection. As Chorus will not be permitted to stop supplying the copper service until the connection is installed, end-users will enjoy continuity of service from copper to fibre. We consider that this position gives effect to the 'reasonable timeframe' requirement in Schedule 2A.
186. As required by Schedule 2A, the draft CWC specifies that the connection must be installed at no cost to the end-user, whether the connection is standard or non-standard. The terms 'standard connection' and 'non-standard connection' are defined by reference to section 155ZU of the Act, with both referring to the aerial installation of a fibre cable. We understand that many fibre connections are underground connections, which fall outside of the scope of the definition of standard or non-standard connections. However, we also understand that it is current industry practice for connections, including underground connections, to generally be installed at no cost to the end-user.
187. While the end-user is entitled to a no cost connection (if it is a standard or non-standard connection), the minimum requirement in Schedule 2A does not extend to all set up costs for an end-user. We note that there may be some costs associated with the provision of the retail fibre service (such as the supply of a fibre-ready modem) that an end-user may need to incur.

Exception to requirement where end-user does not cooperate

188. There may be situations where, having made an order for a fibre service, an end-user stops cooperating with the installation process. In these circumstances, our view is that Chorus should not be prevented from withdrawing a copper service, so long as all reasonable efforts to install the connection have been made.
189. The draft CWC therefore provides that, if a connection is unable to be installed because an end-user does not cooperate with the installation process (for example, the end-user misses multiple installation appointments), the requirement for a connection to be installed does not need to be met so long as all reasonable efforts to install the connection have been made. To provide clarity, this exception does not apply where a connection has been unable to be installed due to an impediment such as a third-party property access dispute.
190. The term 'all reasonable efforts' is defined in the draft CWC. It provides that the provider of the fibre connection must:

- 190.1 have made at least three attempts to confirm an appointment with the end-user to fulfil that end-user's request to have a fibre connection installed (including at least one visit to the end-user's premises); and
- 190.2 after satisfying the requirement above, have informed the end-user's access seeker of the lack of response from the end-user and that the order for a connection to a fibre service has therefore been cancelled.

#### **Requirement for similar functionality provided by fibre service**

191. Schedule 2A of the Act provides that the CWC must include a minimum requirement that the functionality to be provided by the copper services to be withdrawn must, apart from legacy services, be available to the end-user over a fibre service.
192. The term 'legacy services' is defined in Schedule 2A as 'the services (if any) specified in the CWC as legacy services'.

#### *Submissions*

193. Submissions on this minimum requirement generally suggested that the functionality that must be available over a fibre service should be defined at a broad level.
194. The TCF submitted that it:<sup>71</sup>
- ...supports the view that '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 e.g. line powering is not available over a fibre service and the fibre service CPE requires local powering.
195. Chorus and the TCF suggested that the functionality that must be available on a fibre service should be broadband and voice services that the end-user is consuming at the time of the copper withdrawal process but excluding legacy services.
196. Submissions generally considered that the Commission should specify legacy services in the CWC.<sup>72</sup> We have had further conversations about the definition of legacy services with the TCF following the TCF Response, which has informed our draft decision below on the specification of legacy services.

#### *Draft decisions and reasons*

197. The draft CWC includes a requirement that the minimum functionality that must be available over a fibre service is:

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<sup>71</sup> TCF "TCF Submission – Commerce Commission Copper Withdrawal Code Framework Paper" (August 2019) page 7.

<sup>72</sup> For example, Spark NZ "The Copper Withdrawal Code" (14 February 2019) Para 24.

- 197.1 voice services; and
- 197.2 broadband services.
198. We agree that service functionality refers to what the telecommunications service supplied to the end-user premises provides at a broad functional level, rather than at a detailed technical level. Specifying that voice services and broadband services must be available over a fibre service will ensure that end-users receive the key functionality that they were provided with their copper service.
199. At this stage, we have decided not to specify what types of voice and broadband services must be available. For example, we have not specified that there must be an entry-level broadband service. Our view is that the requirement that the anchor service (or commercial equivalent) must be available at the end-user's premises (if an anchor service has been declared) will ensure that end-users have access to appropriate voice and broadband services.
200. The draft CWC also specifies legacy services. Legacy services are services that rely on functionality provided over copper services and which are unable to be provided over a fibre service. The legacy services are:
- 200.1 pulse (decadic) dialling;
- 200.2 incidental power provided by the access network/central exchange office;  
and
- 200.3 services which operate outside of the traditional voiceband frequencies of the copper service.
201. Our understanding is that many existing services offered over copper services can be provided over fibre. However, there may be some services which cannot be provided over fibre that are critical to end-users that do not have an alternative (eg, some medical alarms). We invite submissions on whether the draft CWC needs to provide any additional protection for consumers using a service that currently operates exclusively over a copper service.

#### **Anchor service requirement**

202. Schedule 2A of the Act provides that the CWC must include a minimum requirement that, if an anchor service is declared under section 227 of the Act, the anchor service (or a commercial equivalent) must be available at the end-user's premises. We have therefore included this requirement in the draft CWC.
203. As we explained in our 'Fibre Input Methodologies: Draft decision – reasons paper', anchor services are wholesale services that are intended to ensure that voice and basic broadband services are provided at reasonable prices and to specific quality standards, and to act as an appropriate constraint on the price and quality of other FFLAS. Any regulated provider subject to price-quality regulation under Part 6 of the

Act must offer an anchor service once it has been prescribed in regulations under section 227 of the Act.<sup>73</sup>

204. While regulations under section 227 have yet to be made, Government has decided that two anchor services will initially be specified, which will be priced at 2019 levels for equivalent products:<sup>74</sup>
- 204.1 a 100/20 Mbps fibre broadband service. This service has a maximum download speed of 100 Mbps and a maximum upload speed of 20 Mbps; and
- 204.2 a voice-only fibre service.
205. We understand that the Ministry of Business, Innovation and Employment (MBIE) is working on anchor service regulations. However, the regulations may not be in place before the CWC first comes into force. As the minimum requirement applies only once regulations have been made, it may be that (at least for the initial period of the CWC) the minimum requirement will have no effect.
206. As Chorus is the only fibre service provider that will be subject to price-quality regulation, it is the only provider that will be required to offer anchor services. Our view is that the inclusion in the minimum requirement of ‘or a commercial equivalent’ is intended to refer to the services that may be offered by the other LFCs, who will not be subject to price-quality regulation. This would mean that, where an anchor service had been declared, Chorus could withdraw copper services where an LFC made available a commercial service to the end-user that is equivalent to the anchor service.
207. Chorus submitted that we should not define ‘commercial equivalent’ too tightly, as that may unduly limit its ability to withdraw copper services in the other LFCs’ areas. It suggested that a service that is substantively similar (or better) would meet the definition of a commercial equivalent.<sup>75</sup>
208. We agree that a ‘commercial equivalent’ does not need to be exactly the same as the anchor service. Our view is that a commercial equivalent is a service that is substantively similar or better in terms of both the price cap set for the anchor service and the minimum non-price terms. Non-price terms include parameters such as download and upload speeds. The draft CWC defines ‘commercial equivalent’ accordingly.

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<sup>73</sup> Commerce Commission “Fibre input methodologies: Draft Decision - Reasons paper (19 November 2019) para 2.101.3, available at [https://comcom.govt.nz/\\_data/assets/pdf\\_file/0038/189893/Fibre-input-methodologies-Draft-decision-paper-19-November-2019.pdf](https://comcom.govt.nz/_data/assets/pdf_file/0038/189893/Fibre-input-methodologies-Draft-decision-paper-19-November-2019.pdf)

<sup>74</sup> Cabinet Economic Growth and Infrastructure Committee “Review of the Telecommunications Act 2001: Final Decisions on Fixed Line Services, Mobile Regulation and Consumer Protection” (May 2017) para 25.

<sup>75</sup> Chorus “Submission on the Commerce Commission’s letter requesting views on scope of the Copper Withdrawal Code” (14 February 2019) para 39.

### **Requirement to send Confirmation Notice or Continuation Notice**

209. The draft CWC includes a requirement for Chorus to send a Confirmation or Continuation Notice to the end-user and property owner (if the end-user is not also the property owner).
210. The Confirmation Notice must be sent if all minimum requirements relating to end-users who have ordered a retail fibre service have been satisfied (as well as the minimum requirements relating to all end-users that Chorus seeks to stop supplying copper services to). The Confirmation Notice must confirm that Chorus is no longer required to supply the copper service, and the reason(s) why, must be sent no later than one month after all other CWC requirements have been complied with<sup>76</sup>.
211. We consider it beneficial for end-users and property owners to receive a Confirmation Notice, as it will help these persons to understand that the copper withdrawal process is complete.
212. The Continuation Notice must be sent if Chorus has failed to comply with the minimum requirements (for example, because a fibre connection cannot be installed due to a third-party property access dispute). The Continuation Notice must confirm that Chorus is required to continue providing the copper service, and must be sent no later than one month after the six-month notice period has ended.
213. The Continuation Notice should ensure clarity for end-users and property owners in cases where Chorus has begun the copper withdrawal process for an end-user but is unable to meet the CWC requirements.
214. Where Chorus sends a Confirmation Notice or Continuation Notice, the draft CWC also requires Chorus to provide a copy of the notice to the end-user's access seeker and the RFSP.

### **Minimum requirements in relation to end-users who choose to have their copper service disconnected**

215. Earlier in this Draft Reasons Paper at paragraphs 100 to 101, we explained the circumstances in which an end-user would be regarded as having chosen to have their service disconnected (other than a temporary disconnection), following receipt of a notice of proposed withdrawal of a copper service.
216. In summary, those circumstances are where the end-user:
  - 216.1 permanently terminates their retail telecommunications service (which uses a copper service as an input), except where the end-user seeks to switch to a retail fibre service; or

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<sup>76</sup> This is reasons Chorus considers it is able to stop supplying the service, eg, end-user is connected to fibre, end-user has switched to another service, customer was non-responsive but reasonable efforts were made etc.

- 216.2 moves out of the premises that the copper service was being supplied in relation to.
217. Our draft decision is that, where an end-user has chosen to have their copper service disconnected (other than a temporary disconnection) after having received a notice of proposed withdrawal of the copper service, the only minimum requirement that Chorus must satisfy is to send the end-user and property owner (if the end-user is not also the property owner) a Confirmation Notice.
218. As with the Confirmation Notice in relation to end-user who order a retail fibre service, the Confirmation Notice must confirm that Chorus is no longer required to supply the copper service. It must be sent no later than one month after the end-user's RSP requests Chorus to cease the copper service.
219. However, where the end-user moves out of the premises that the copper service was being supplied in relation to, the draft CWC requires only that Chorus make all reasonable efforts to provide a Confirmation Notice. This recognises that it may be difficult for Chorus to ensure the end-user receives the Confirmation Notice if the end-user has moved premises.

### **Minimum requirements in relation to end-users who do not order a retail fibre service or choose to have their copper service disconnected**

220. As we noted earlier in this Draft Reasons Paper at paragraphs 121 to 123, there will be some end-users who, having received a notice of the proposed withdrawal of the copper service, do not respond – that is, they do not order a retail fibre service or choose to have their copper service disconnected.
221. Our draft decision is that, where an end-user does not order a retail fibre service or choose to have their copper service disconnected, the only minimum requirement that Chorus must satisfy is to send the end-user and property owner (if the end-user is not also the property owner) a Confirmation Notice.
222. The Confirmation Notice must confirm that Chorus is no longer required to supply the copper service, and must be sent no later than one month following the expiry of the six-month notice period.

### **Other provisions in the draft CWC**

223. The draft CWC includes other provisions that are not minimum requirements that must be satisfied before Chorus can stop supplying a copper service. However, the provisions must be complied with, and breaches of the provisions are an enforceable matter under the Act.
224. The other provisions, which we discuss in further detail below, relate to:
- 224.1 dispute resolution for the CWC; and
- 224.2 a requirement to disclose information and keep records.

## Dispute resolution for the CWC

225. The Act does not explicitly provide for a dispute resolution scheme for the CWC. This can be contrasted with the 111 contact code, for which section 241 of the Act specifies that the dispute resolution scheme is the ‘industry dispute resolution scheme’.<sup>77</sup>
226. However, as we discussed in Chapter 3 of this Draft Reasons Paper, the Act provides that, where a person has committed a breach of the CWC, an end-user may apply to the High Court for an order under section 156MC and/or section 156MD of the Act.
- 226.1 Under section 156MC, the Court can order the person to pay an end-user the amount of any loss or damage caused by the conduct, and/or order the person to supply a service to an end-user (at the person’s expense);
- 226.2 Under section 156MD, the Court may grant an injunction restraining the person from engaging in conduct that constitutes or would constitute a breach of the Code.
227. We consider that the end-user’s right to seek a remedy in the High Court for breaches of the CWC should be supplemented by a dispute resolution scheme for the CWC.
228. Clause 1(4) of Schedule 2A provides that the CWC ‘may contain any other provisions that the Commission... considers are necessary or desirable’. We consider it necessary or desirable for there to be provisions in the draft CWC providing for a dispute resolution scheme, for the following reasons:
- 228.1 We expect that disputes over obligations and rights under the CWC are likely to arise regularly;
- 228.2 Other than seeking to have the Commission enforce the CWC, an end-user’s only option to resolve disputes would be to apply to the High Court seeking an order under section 156MC or 156MD of the Act. However, this would likely involve considerable cost and time for an end-user, particularly relative to the matters that the CWC is concerned with;
- 228.3 To provide adequate protection to end-users in these circumstances, an accessible and affordable dispute resolution scheme is necessary or desirable.

*Our draft decision is that the TDRS is the dispute resolution scheme for the CWC*

229. Our draft decision is that the dispute resolution scheme for the CWC is the ‘industry dispute resolution scheme’, as defined in section 232 of the Act. The industry dispute resolution scheme is, at this time, the TDRS, as established by the TCF.

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<sup>77</sup> Section 232 of the Act, definition of ‘industry dispute resolution scheme’.

230. We note that the TCF has expressed support for the TDRS to be the dispute resolution scheme for the CWC.<sup>78</sup> The Commission has had some discussions with the TCF about how the TDRS could be used to resolve CWC disputes, including making Chorus a limited member of the TDRS for the purpose of the CWC. Under this proposal, Chorus would have direct liability to end-users expressly for its obligations to end-users under the CWC.

*How disputes to be resolved under the TDRS*

231. The draft CWC provides that:

231.1 a dispute between an end-user and a telecommunications service provider about their rights and obligations under the CWC may be referred to the TDRS by any of the parties to the dispute. For the purposes of dispute resolution, an end-user is a customer (ie, the person that contracts for the supply of the retail telecommunications service that relies in whole, or in part, on a copper service). A telecommunications service provider includes an access seeker, local fibre company and Chorus;

231.2 each party to the dispute must comply with the rules of the TDRS;

231.3 a determination made by the TDRS in relation to the dispute is binding on the parties to the dispute, subject to the exception discussed in paragraph 235 below;

231.4 where a dispute has been referred to the TDRS or Utilities Disputes (in connection with the installation of a connection to a fibre service under the CWC, as discussed below in paragraphs 239 to 242), or an end-user takes an enforcement action under section 156BA of the Act, the notice period set out in the notice of proposed copper withdrawal is paused until the dispute is resolved, either by the parties reaching agreement or a determination being issued.

232. These rules are modelled on sections 241-25 of the Act, but are adapted to the circumstances of the CWC. We note, for example, that we are unable to provide for appeals from determinations to the District Court (as is provided for in section 243 of the Act), as we do not consider that the CWC can create jurisdiction for the District Court to hear an appeal.

233. A breach of the rules set out above will be a breach of the CWC, and is enforceable under section 156B of the Act.

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<sup>78</sup> TCF “TCF Submission – Commerce Commission Copper Withdrawal Code Framework Paper” (August 2019) page 25.

*Relationship with end-user enforcement*

234. As we note above, where a person has committed a breach of the CWC, an end-user may apply to the High Court for an order under section 156MC and/or section 156MD of the Act.
235. This is a statutory right and cannot be extinguished by the end-user choosing to refer a dispute to the TDRS. However, to avoid end-users ‘forum shopping’ between the dispute resolution process and enforcement at the High Court, the draft CWC provides that a dispute may not be referred to the TDRS where, in relation to the matter that is the subject of the dispute, the end-user has applied to the High Court for an order under section 156MC and/or section 156MD of the Act. Where a dispute has already been referred to the TDRS when an application is made to the High Court, the dispute resolution process will cease. If an end-user applies to the High Court following a determination by the TDRS, the determination will cease to be binding on the parties.

*Relationship with Commission enforcement*

236. As we noted earlier in this Draft Reasons Paper, the CWC is an enforceable matter under Part 4A of the Act, with section 156A(1)(q) establishing a breach where a person “fails, without reasonable excuse, to comply with the copper withdrawal code”.
237. The right of consumers and telecommunications service providers to refer CWC disputes to the TDRS does not preclude the Commission from enforcing against breaches of the CWC. There may be instances where, for example, a dispute involves a potential breach of the CWC. In these circumstances, the Commission retains the power to take enforcement action.
238. Under section 156C of the Act, the Commission must take certain factors into account when deciding what enforcement action to take. These include, for example, the seriousness of the alleged breach and whether or not the person alleged to have committed the breach has previously committed a breach of that kind or has engaged in any similar conduct.

*Relationship with Utilities Disputes*

239. Utilities Disputes is an independent dispute resolution service for disputes about access to shared property for fibre connection installations.<sup>79</sup>
240. Subpart 3 of Part 4 of the Act sets out a regime for statutory rights of access to a property for the purpose of installing a fibre connection in circumstances where more than one person’s consent is required to access the property. The purpose of subpart 3 is to enable more people and businesses to obtain the benefits of fibre-to-the-premises and other technology, within a shorter timeframe.<sup>80</sup>

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<sup>79</sup> <https://www.utilitiesdisputes.co.nz/>

<sup>80</sup> Section 155A of the Act.

241. Subpart 3 provides for a dispute resolution scheme to be established for the purpose of resolving disputes relating to the statutory rights of access.<sup>81</sup> Utilities Disputes has been approved as the dispute resolution scheme.
242. Disputes relating to the CWC will not be permitted to be referred to Utilities Disputes. However, we note that disputes relating to the statutory rights of access under subpart 3 of Part 4 of the Act may arise during the copper withdrawal process. Resolving these disputes may assist an end-user to have a connection to a fibre service installed, thereby enabling Chorus to stop supplying the copper service (assuming all other CWC minimum requirements have been met).

### **Requirement to disclose information and keep records**

243. The draft CWC includes a requirement on Chorus to disclose limited information to the Commission each year no later than one month after the end of each financial year. The information that Chorus must disclose is:
  - 243.1 the total number of regulated (ie, supplied under an STD) and non-regulated (ie, a commercial variant supplied under contract) copper services supplied by Chorus as at the end of the financial year, broken down by the type of copper service and whether or not the service is supplied inside an SFA; and
  - 243.2 the number of notices issued to end-users under the CWC during the financial year, by type of notice (ie, the number of First Notices, Further Notices, Final Notices, Confirmation Notices, and Continuation Notices).
244. The Commission may specify a template or format for the information to be disclosed in.
245. We consider that the information disclosure requirements are proportionate, in that they help to meet the purpose of the CWC while not imposing unnecessary costs on Chorus.
246. The draft CWC also includes a record keeping requirement on Chorus. Chorus will be required to record the following information:
  - 246.1 any templates of notices that form the basis of notices sent to end-users, property owners, access seekers or RFSPs under the CWC, sufficient to provide a record of changes or evolution of the notices;
  - 246.2 a record of all notices issued under the CWC. This must include, but is not limited to, the date the notice was issued, the address it was sent to, the type of notice, and the template used.
  - 246.3 all information, including documentation and communications, related to disputes arising under the CWC where Chorus is a party to the dispute.

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<sup>81</sup> Section 155ZG of the Act.

247. The draft CWC provides that Chorus may stop recording information in relation to the copper service in the following circumstances:
- 247.1 if five years has elapsed since Chorus stopped supplying the copper service by complying with the CWC; or
- 247.2 if five years has elapsed since the proposed date of withdrawal set out in the First Notice to the end-user, if Chorus did not stop supplying the copper service because it was unable to comply with the CWC.
248. The purpose of the record keeping obligation is to ensure that Chorus retain information that, should we require disclosure of the information, will help us to monitor compliance with the CWC. Requiring records to be kept, rather than regular information disclosure to the Commission, is a proportionate means to help us to monitor compliance. We may request the information that Chorus keeps, either through a voluntary request or, if necessary or desirable, through our information gathering powers.
249. While we acknowledge that it is good business practice to keep electronic records of this information, we consider a requirement in the CWC will ensure that this is embedded in Chorus' business practices.
250. Overall, the information disclosure and record keeping requirements in the draft CWC are necessary to meet the purpose of the CWC, as the provisions will help the Commission to monitor compliance with the Code. We consider the provisions will provide incentives for Chorus to comply with the Code, which will improve the Code's effectiveness.

### **Other matters considered but not included in the draft CWC**

251. We received submissions from stakeholders suggesting that a CWC operations manual accompany the CWC as a schedule.
252. We previously proposed that an operations manual could exist with the CWC as an accompanying schedule.<sup>82</sup> After taking into consideration industry views during the consultation process, our current view is that an operations manual is beyond the minimum requirements for consumer protection under the CWC. We note that it may be beneficial if the industry chooses to cooperate to produce an operations manual to facilitate the smooth withdrawal of copper, and the details of such a manual are best left to the industry to produce and amend as the copper to fibre transition proceeds.
253. Our current view is that the probability of the need to regularly amend an operations manual will be high and for these amendments to be subject to Commission consultation and approval would create an unnecessary and undesirable administrative burden on both the Commission and the industry. Any operations manual may be produced will need to be consistent with the CWC.

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<sup>82</sup> Commerce Commission "Framework paper for the TCF to provide information to assist the Commerce Commission in developing the Copper Withdrawal Code" (1 August 2019) page 9.

## Appendix A – Relevant Statutory sections for the Code

### 69AA Purpose

The purpose of this Part is to—

- (a) deregulate copper fixed line access services in areas where fibre fixed line access services are available; and
- (b) provide protections for end-users of copper fixed line access services and certain other designated services in deregulated areas; and
- (c) provide for the Commission to investigate whether the regulation of copper fixed line access services and certain other designated services should be altered.

### 69AB Specified Fibre Areas

- (1) The Commission must, before 1 January 2020 and at least annually thereafter, carry out an assessment to determine the geographic areas in which a specified fibre service is available to end-users.
- (2) The Commission must, by public notice, declare an area to be a specified fibre area if the Commission determines in an assessment under subsection (1) that a specified fibre service is available to end-users in the area.
- (3) A notice under this section must specify the date on and after which the area is to be a specified fibre area, and that date must not be before 1 January 2020.
- (4) A notice under this section may describe an area by any means, including (without limitation)—
  - (a) by use of a map; and
  - (b) by a narrative description of the area.
- (5) The Commission must maintain a record of all specified fibre areas that is available, at all reasonable times, for inspection on the Commission's Internet site in an electronic form that is publicly accessible.
- (6) In this section, **specified fibre service** means either of the following:
  - (a) a fibre fixed line access service; or
  - (b) a telecommunications service provided by a regulated fibre service provider (**F**) over fibre media where the ultimate recipient of the service is F or a related party of F (as if the test for related parties were the same as the test in section 69U, applied with any necessary modifications).

**69AC Withdrawal of copper fixed line access services**

- (1) This section applies if—
- (a) Chorus is required by a standard terms determination made under section 30M to supply a copper fixed line access service to an access seeker; and
  - (b) Chorus started supplying the service at a time when the end-user's building (or, where relevant, the building's distribution frame) was not located in a specified fibre area; and
  - (c) as a result of a notice under section 69AB,—
    - (i) the end-user's building (or, where relevant, the building's distribution frame) becomes located in a specified fibre area; and
    - (ii) the service ceases to be a designated access service in the specified fibre area on and after the date specified in the notice.
- (2) Chorus may stop supplying the service referred to in subsection (1) only if—
- (a) a copper withdrawal code has been approved and Chorus complies with the requirements of the code in relation to stopping the supply of the service; or
  - (b) the end-user chooses to have the service disconnected (other than a temporary disconnection).
- (3) To avoid doubt, Chorus is not required to—
- (a) supply a service that ceases to be a designated access service in relation to a new end-user; or
  - (b) resupply a service that Chorus has stopped supplying in accordance with subsection (2).

### 69AD Withdrawal of certain designated access services

- (1) This section applies if—
  - (a) Chorus is required by a standard terms determination made under section 30M to supply a relevant service to an access seeker; and
  - (b) Chorus started supplying the service at a time when the service was a designated access service; and
  - (c) as a result of section 13 of the Telecommunications (New Regulatory Framework) Amendment Act 2018, the service ceases to be a designated access service on and after 1 January 2020.
- (2) Chorus may stop supplying the service only if—
  - (a) a copper withdrawal code has been approved and Chorus complies with the requirements of the code in relation to stopping the supply of the service; or
  - (b) the end-user chooses to have the service disconnected (other than a temporary disconnection).
- (3) To avoid doubt, Chorus is not required to—
  - (a) supply a service that ceases to be a designated access service in relation to a new end-user; or
  - (b) resupply a service that Chorus has stopped supplying in accordance with subsection (2).
- (4) In this section, relevant service means either of the following:
  - (a) Chorus’s unbundled copper local loop network:
  - (b) Chorus’s unbundled copper local loop network backhaul (distribution cabinet to telephone exchange).

### 69AF Copper withdrawal code

- (1) In this Part, copper withdrawal code means the code approved under Schedule 2A.
- (2) Schedule 2A sets out the provisions that apply to the copper withdrawal code.

### Schedule 2A 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.

**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.

### **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.

### **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.

### **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.

## **1552U Fibre optic connections that owners of existing works must provide to landowners**

### *Standard connections*

- (1) If the distance between the breakout point (or equivalent) and the connection point is 200 metres or less, the owner of the existing works must provide the landowner with a standard connection.
- (2) The owner of the existing works provides a standard connection by aerially installing up to, and including, 200 metres of fibre optic cable between the breakout point (or equivalent) and the connection point, at no cost to the landowner.

### *Non-standard connections*

- (3) If the distance between the breakout point (or equivalent) and the connection point is more than 200 metres, the owner of the existing works must provide the landowner with a non-standard installation.
- (4) The owner of the existing works provides a non-standard installation by—
  - (a) aerially installing up to, and including, 200 metres of fibre optic cable along the distance between the breakout point (or equivalent) and the connection point, at no cost to the landowner; and
  - (b) contributing 50% of the costs of aerially installing fibre optic cable over the remaining distance, up to, and including, 500 metres, between the 200 metres installed under paragraph (a) and the connection point.

### *Rights and obligations of owner of existing works and landowner where aerial installation not possible*

- (5) Despite subsections (1) to (4), if an aerial installation is not practicable and trenching is required at any point,—
  - (a) the landowner must provide, or meet the cost of, that trenching; and
  - (b) the obligation of the owner of the existing works is not affected, except to the extent that, in any place where the fibre optic cable cannot be installed aerially, the landowner is responsible for trenching in that place as provided in paragraph (a).

*Variations*

- (6) Nothing in this section prevents an owner of existing works and a landowner from entering into an agreement to replace or vary the rights and obligations concerning the installation of a fibre connection to a building on the landowner's property provided for in this section.
- (7) In this section, an **equivalent**, in relation to a breakout point, means any means by which the owner of the existing works provides the landowner with the capability to connect to a fibre-to-the-premises access network, as referred to in section 155ZT(2)(b), other than by including a breakout point.