

Chorus submission on Draft Copper Withdrawal Code and Draft decisions and reasons paper

17 July 2020



EXECUTIVE SUMMARY

- 1 Thank you for the opportunity to comment on the draft Copper Withdrawal Code (**draft Code**) and draft decisions and reasons paper (**draft Reasons Paper**). We appreciate the Commerce Commission's (**Commission's**) continued focus to complete the Copper Withdrawal Code (**Code**) at the earliest possible date in order to provide certainty as to how and when we will be able to use the Code.
- 2 New Zealand is in the process of undertaking a significant technological shift, with hundreds of thousands of people making the switch to new high-speed fibre technology from the copper services which have provided telecommunications services for much of the past century. Recent experience with Covid-19 has demonstrated the need for and benefits of this shift.
- 3 Our recent connections update shows ongoing increase in UFB uptake, now at 60% and with increased end customer satisfaction of 8.1 out of 10. Fibre has recently been shown up to be the "lock-down lifeblood" to work, learn and socially connect. Data consumption was akin to 12 hours of Zoom conferencing everyday – something that may continue for many as more organisations consider increased working from home options.
- 4 The May Measuring Broadband New Zealand report from the Commerce Commission revealed that fixed line broadband connections, unlike other technologies, experienced no significant decrease in download speeds during lockdown, despite record levels of online activity.¹ The responsiveness (latency) of the fibre network – the delay between a connection requesting an action and this taking place – consistently out-performed all other broadband technologies, and is particularly important for voice, video-calling and online gaming. There are another 40% of New Zealanders who can access fibre and who just need to be well informed and to place an order to benefit.
- 5 While voluntary migration has far exceeded expectations and fibre connections now exceed copper lines, there will come a point whereby in order to facilitate full migration to fibre and discontinue the copper network where fibre is available, compulsory migration will be necessary. The Government specifically provided for this through the deregulation of copper services and the introduction of the Code through changes to the Telecommunications Act 2001 (**Act**).²
- 6 The intention of the Code is both to enable withdrawal and to help support consumers to make this transition, therefore a key focus of our submission is ensuring that the Code appropriately balances the purpose of deregulation and enabling withdrawal with minimum requirements to assist consumers. Our comments on the Commission's draft Reasons Paper and draft Code are primarily aimed at ensuring that balance.
- 7 The Code should not promote outcomes where consumer protection measures or unintended operational complexity is introduced that actually prevents copper from being withdrawn. Therefore it is important the Commission consider our incentives and commercial and operational practicalities so that it can enable efficient copper

¹ https://comcom.govt.nz/__data/assets/pdf_file/0020/216902/MBNZ-Autumn-2020-report-21-May-2020.pdf

² Amended via the Telecommunications (New Regulatory Framework) Amendment Act 2018.

withdrawal alongside appropriate support and information for consumers to make that transition.

- 8 Over-prescription by the Commission carries a significant risk of unintended consequences and complexity and therefore it is important that the operational and commercial context is considered alongside the level of prescription that really needs to be provided on aspects like how notices are to be designed, or where and when they add value to end-users. Greater flexibility will enable improvements, refinements and incorporation of learnings along the way.
- 9 There are elements of the draft Code that do not achieve the aims of the policy and legislation for some premises, and may fundamentally impact on our ability to withdraw in a way that is commercially reasonable and enabled under the Act. For example preventing copper services being withdrawn where the only obstacle to a fibre installation is an unrelated legal dispute between an end-user and a third party, despite a fibre service being physically there able to be accessed and installed.
- 10 We outline some of the commercial and operational context to assist the Commission, as copper withdrawal, like general operations and service provision, will centre around architecture such as cabinets (that serve around 200 lines each), not around regulatory constructs such as SFAs which cover whole fibred areas. We also have strong commercial incentives and existing processes to ensure that copper withdrawal proceeds smoothly, as well as being focused on customer satisfaction and helping end-users understand the transition from copper to fibre services.
- 11 Wider market transition activity is also relevant to consider. Spark recently announced they will begin to phase out their PSTN (Public Switched Telephone Network) and will therefore require their copper customers to migrate to fibre or Fixed Wireless Access.³ A detailed Commission-mandated process does not need to be followed by Spark so commercial, operational, and customer engagement flexibility – as well as any learnings - will be able to be incorporated. It is important that the Commission considers its final decisions for the Code in light of the full market picture, and how the choices it makes could also negatively impact competition and consumers.
- 12 To ensure the draft Code works in practice, we've proposed:
 - That situations like legal disputes between third parties about fibre installation should not be able to prevent copper withdrawal, noting appropriate notice will have been given. To effect this, the circumstances under which we can withdraw copper services needs to be widened, in line with the purpose of the Act.
 - Clarifying the requirements on Retail Service Providers (**RSPs**) and Relevant Fibre Service Providers (**RFSPs**) to provide information we require in order to fulfil our obligations.
 - Making it easier to provide notices, focusing only on where they are required, with wider methods for delivery (not just post) and fit-for-purpose content for end-users.

³ https://www.sparknz.co.nz/news/Spark_announces_next_phase_landline_voice_calling_upgrade/

- Definitions to support practical and clear requirements on Chorus, to provide clarity for end-users, RSPs, and RFSPs, and enable us to comply with our obligations.

13 We have provided drafting on key sections of the Code to ease the Commission’s review of our submission and consideration of the amendments. These do not cover all our suggested changes or address all points raised in our submission, as some issues could not be easily captured within the current drafting framework.

CONTEXT FOR THE COPPER WITHDRAWAL CODE

14 The Code was developed as part of a suite of changes to the Act to support the transition from one technology to another. Part of the rationale for this transition was the recognition that fibre was becoming (and now is) the dominant fixed line access technology in New Zealand, facilitated through the Government’s Ultra-Fast Broadband programmes. It was also to reflect that it was not reasonable to require us to incur the cost of maintaining dual networks and that regulatory focus has shifted from copper to fibre.

15 The framework has been designed to reflect this shift, by ensuring that where fibre is available, the Government could ensure end-users will have access to a basic service provided at a reasonable price (the fibre anchor service).

16 We consider that copper is de-regulated in these areas, with protections around assisting those remaining on the service, where withdrawal makes economic sense, to be able to transition to fibre on notice, in a timely way and at no cost.

17 All end-users potentially subject to copper withdrawal by definition will have fibre services available.⁴ Given the Act recognises the move to fibre, consumer protections should be focussed on ensuring that the transition to fibre for consumers is an informed and smooth one, not that they are protected from or can avoid any change to their current situation.

Operational and commercial context

18 As noted at the outset, UFB uptake continues to increase and 40% more customers have the opportunity to benefit by placing a fibre order. Withdrawal is likely to be needed for some final customers and it is expected to be centred around individual cabinets – i.e. not large geographic areas at once. Further, as noted below, not all cabinets can be decommissioned as some serve both fibre and non-fibre areas. It is important to recognise that SFAs are a regulatory construct, not a network architecture construct like cabinets. Some withdrawal initiatives may also need to be managed within the context of other projects, for example electricity lines undergrounding.

⁴ In order for copper to be withdrawn the end-user’s premises must be within a Specified Fibre Area, which is where the Commerce Commission has confirmed fibre services are available.

- 19 We are concerned that some of the limitations and preconditions in the draft Code would, if adopted, make withdrawal challenging in many areas and therefore fail to achieve the Act's purpose of deregulation.
- 20 **Cabinets as a minimum withdrawal area:** The minimum area we would need to be able to withdraw service from for operational and financial purposes is a cabinet. There are around 11,000 of these nationally and a cabinet serves approximately 200 lines. The Code will not be enabling if it allows an individual line to prevent a cabinet from being decommissioned, even if the other 199 lines have been migrated to fibre. The cost to serve that customer would be uneconomic – the Code would drive inefficiency rather than efficiency and not meet its purpose.
- 21 **SFAs and non-SFAs share copper infrastructure:** Our copper network was not built with a future SFA withdrawal area in mind. Therefore, there are a number of exchanges and cabinets that provide copper both to areas where fibre is available (**SFAs**) and areas where it is not (i.e. urban fringe and rural areas). This means that for those sites, there will not be the ability to recognise cost savings from copper withdrawal at all, as we will be continuing to supply copper for those customers for the foreseeable future.
- 22 **Reactive copper withdrawal projects:** Not all copper withdrawal projects will be driven purely by Chorus' timetable. For example, each year we are asked to participate in undergrounding projects led by electricity lines companies which involve hundreds of lines being put underground. In these situations, it will be important that we are able to use the Code to migrate all existing copper customers to fibre or alternate technologies (potentially in an expedited timeframe), to avoid being forced to re-provision copper underground at significant expense, where fibre is physically able to be installed.

PURPOSE AND SCOPE

Purpose of the Code

- 23 The purpose statement in the Code should be amended so it reflects the dual purposes of deregulation of copper (of which copper withdrawal is a necessary part) as well as consumer protection – both of which are reflected in the s69AA purpose statement for Part 2AA (**statutory purpose statement**) for the Part of the Act that governs the Code.
- 24 While it is open to the Commission to elaborate on the purpose statement's application to the Code (i.e. by adding specific sub-purposes where they are consistent with the Act), the Commission cannot ignore relevant components of the statutory purpose statement or the empowering legislation overall.
- 25 The requirement in Part 2AA for the Commission to prepare a Code to enable copper withdrawal envisages copper withdrawal as an outcome of deregulation, but the Commission's purpose statement only reflects the consumer protection limb. It is well established that a statutory instrument must be consistent with the empowering legislation.

- 26 The Commission itself has acknowledged that the purposes set out in s69AA(a) and (b) are relevant to the copper withdrawal process.⁵ The draft Code purpose statement is therefore inappropriately narrow. The Code, as an instrument required by Part 2AA, must give effect to and be consistent with the statutory purpose statement.
- 27 From a practical perspective, limiting the purpose statement to a single limb of consumer protection may result in the Code being applied in an unbalanced manner that does not reflect the wider purpose of the Act. For example, the Commission refers to a particular decision (requiring that fibre must be installed as a precondition to copper withdrawal) as facilitating the consumer protection purpose of the Code. Ignoring the requirement to consider this protection within the purpose of deregulation and copper withdrawal could result in outcomes that are unfairly weighted towards consumer protection and effectively prevent copper withdrawal in some situations (for example the approach taken with regard to third party permission issues for fibre installations which we elaborate on below).
- 28 It is also important to note that the purpose of consumer protection should not be read as protection “from” copper withdrawal or as indefinitely enabling consumers to continue to use the same technology they have used until now. It is intended to ensure that consumers have access to a service that is as good as or better than that incumbent service, and sufficient information and opportunity to transition to that new service.

Scope of CWC

- 29 We support the Commission’s position that the Code should not cover commercial copper services or “commercial variants”. It would be illogical to impose obligations relating to withdrawal of services for those services where Chorus has no obligation to continue to supply in the first place.
- 30 Where Chorus is required by a standard terms determination (**STD**) made under section 30M to supply a copper fixed line access service to an access seeker, and we began supplying the service before the premises became located in a Specified Fibre Area (**SFA**), the only way to withdraw that service is to follow the Code process and requirements. To suggest that this requirement should be extended to all copper services, whether regulated or not, is inconsistent with the clear scope of the Act.

Copper services cease to be designated access services

- 31 We agree with the Commission that copper fixed line access services cease to be designated access services where an SFA has been declared, and that UCLL/UCLL Backhaul ceased to be a designated access service from 1 January 2020.⁶
- 32 We reiterate our position as set out in previous submissions, that once deregulated, copper services are no longer regulated by STDs and Chorus is free to supply such services on commercial terms.⁷ We acknowledge the Commission’s further explanation of its position in the draft Reasons Paper, but maintain that the appropriate interpretation is that regulating the terms of supply does not give effect to, and is not

⁵ Para 32, Draft Reasons Paper.

⁶ We note that only one type of UCLL Backhaul was removed from the Act as a designated service – UCLL Backhaul (distribution cabinet to telephone exchange, better known as SLU Backhaul).

⁷ Chorus Submission on Determining Specified Fibre Areas: Process and Issues Paper dated 26 November 2018, 15 February 2019, paras 42-84.

consistent, with deregulation. Deregulation means that these services are no longer regulated, and the relevant STDs no longer exist.

LIMITATIONS ON WITHDRAWAL

- 33 The Commission has outlined a number of circumstances in which Chorus can or cannot withdraw copper. We propose amendments to deal with material issues arising out of these circumstances, as discussed below:
- End-user choosing to disconnect before receiving notice of withdrawal of the copper service
 - Circumstances where end-user will not be regarded as having chosen to have their copper service disconnected
 - Temporary disconnections
 - Inability to connect due to third party permission issues
 - Connection to a fibre service able to be installed at no cost to the end-user
 - Reliance on and relationship with RFSPs

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

- 34 We support the provisions in the draft Code⁸ that the Code does not apply where the end-user chooses to disconnect the copper service before the end-user receives a First Notice in relation to that copper service.
- 35 The Act is clear that an end-user can choose to disconnect their copper service independently and we can stop supplying the copper services (except where it is a temporary disconnection) without notice or applying the Code.⁹ That situation is effectively the status quo, where there are no obligations on Chorus where an end-user chooses to disconnect their copper services.

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

- 36 We agree that an end-user who switches RSPs but retains the same underlying regulated copper service at the same premises will not be regarded as having chosen to disconnect.
- 37 An RSP may seek to change the input copper service (e.g. from UCLL to UBA), and where this is permitted by Chorus, we agree this change would be considered a transfer rather than a disconnection for the purposes of the Code given the end-user likely has no knowledge or control over this process. However, for the avoidance of

⁸ Draft Code, para 5.2.

⁹ Sections 69AC(2)(b) and 69AD(2)(b), Telecommunications Act 2001.

doubt, where we are no longer required to supply a service to new end-users any such changes requested by RSPs would be at our discretion.¹⁰

Temporary disconnections

- 38 We agree temporary disconnections should be excluded from the scope of voluntary disconnections. The definition however needs to be tightly defined so there is no ambiguity as to what constitutes a temporary disconnection.
- 39 We do not have a process for identifying or managing temporary disconnections of the kind described in the draft Reasons Paper. Issues like non-payment of bills are managed entirely by RSPs. Once the RSP communicates to us that a service is to be discontinued, that disconnection is treated as permanent.
- 40 We would need to be specifically advised if a disconnection was intended to be temporary (with the onus being on RSPs to do this). We are willing to accommodate that request for a maximum of 20 working days, after which any disconnection will be considered final/permanent.
- 41 We ask that the definition in the Code reflect that once a request is provided by an RSP to us to discontinue copper service, the RSP must advise us if the disconnection is to be treated as temporary, and that temporary disconnections are limited to 20 working days.

Inability to connect due to third party permission issues

- 42 We disagree with the Commission's position that where a fibre installation is ordered but unable to be installed (other than through the end-user's actions) that the copper service must remain i.e. that third parties can block withdrawal through refusing to allow installations to go ahead.
- 43 The minimum requirements as set out in Schedule 2A are that the end-user must **be able to access** a fibre service and must **be able to** have a connection to the fibre service installed within a reasonable timeframe and at no cost. Where Chorus can meet these minimum requirements (and the other obligations in the Code), we should be able to withdraw copper services.
- 44 The Commission's use of the phrase "must **have** a connection to a fibre service installed" in clause 35 goes well beyond the requirements in the Act of being "able to have" such a service installed, and which is reflected in the rest of the draft Code. It pushes out copper withdrawal beyond the scope of what is in Chorus's control and will create a significant barrier to withdrawal.
- 45 The intention is that these requirements are able to be met, and therefore if we are able to meet them, the fact of an unrelated legal issue between two parties preventing the physical installation should not stop copper services being withdrawn. The fibre service remains able to be accessed and installed by us per the minimum requirements.

¹⁰ Sections 69AC(3)(a) and 69AD(3)(a), Telecommunications Act 2001.

- 46 This is a clear example where, if the draft Code were to stand, the Commission would drive inefficiency and prevent rather than enable withdrawal on appropriate notice.

Impact of third parties refusing consent on withdrawal

- 47 While the majority of installations proceed smoothly, there are frequently examples where our attempts to progress a fibre installation fail due to issues regarding permission of third parties. Some of these are explicit denials, and some are due to either an inability to contact absentee landlords, or refusal to engage by landlords or neighbours from whom permission is required. Just one of these situations on a cabinet we are seeking to withdraw will prevent any realisation of savings from decommissioning that particular cabinet. It also increases the uncertainty we face when beginning a withdrawal project.
- 48 While the Commission has put forward the proposed changes to the Residential Tenancies Act 1986 as a solution to resolve some of these third-party consent issues, such changes will only narrow the grounds on which a landlord can withhold consent to a fibre installation, not eliminate them. In addition, it is unclear when or whether the proposed changes will come into effect, so this does not provide any certainty as a form of protection against issues with landlord consent.
- 49 In the case of an undergrounding project led by a third party, if an end user was prevented from having fibre installed by their landlord, the draft Code could result in tens of thousands of dollars being spent to retain a single copper line – when fibre is in fact available at the address and able to be installed. This impractical and economically inefficient result would be avoided if we were able to simply stop providing copper services in this situation.
- 50 A requirement to gain consent for fibre installation from parties who are not themselves end-users is inconsistent with the purpose of consumer protection while facilitating copper withdrawal. Giving third parties the power to prevent fibre installations and therefore stop withdrawal does not advance either of these purposes.

Proposal to permit withdrawal

- 51 We propose that where fibre is available and Chorus is able to install a fibre connection, and an end-user has requested a fibre service, that acts and omissions of a third party, including an unrelated legal dispute between two parties regarding access to a premises should not prevent us having the option to withdraw copper services.
- 52 If the Code ultimately permits withdrawal in this scenario, as we are requesting, this may also assist end-users in being able to better illustrate the consequences of failure to reach an agreement with a third party. Presently, there is no pressing reason for neighbours (or tenants and landlords) to come to a resolution to allow fibre installations as the status quo otherwise prevails. In the face of actual imminent withdrawal, it is more likely that many of these issues could potentially be resolved, giving more New Zealanders access to fibre.
- 53 Alternatively, if the Commission does not accept this proposal, given the significant impact, the threshold under which we should be required to retain a copper service due to the objection of third parties should be set much higher:

(a) **the Code should only recognise objections from genuinely unrelated third parties:**

- Where the dispute involves a third party who is associated with the end-user or their landlord (i.e. trusts and beneficiaries, co-owners of properties etc), it should not prevent Chorus from withdrawing a copper service for that premises. If not, the “third party” exception risks being taken advantage of by involved landlords or end-users.

(b) **End-users must prove they have exercised all legal rights in relation to the property**

- As part of assisting us to meet our requirements end-users must have an obligation to prove they have exercised all legal rights they (or their landlord on their behalf where relevant) holds in relation to the property (for example any easement rights they have over the property for the conveyance of telecommunications) before Chorus is required to continue providing a copper service after the date advised of withdrawal.

(c) **Copper can be withdrawn where an end-user can access an alternate telecommunications service.**

- The Commission has stated that if we were “permitted to withdraw a copper service where there was an impediment, an end-user could be left without a telecommunications service”. Where an end-user has ordered fibre but the installation has been prevented by a third party and cannot be resolved, we should have an option available to withdraw copper services provided the customer can still access an alternative telecommunications service to copper (for example Fixed Wireless Access or HFC cable) at their premises.
- Therefore, we propose the Code allow us to remove copper services where fibre cannot be installed due to a third party consent issue but where an end-user can access an alternative telecommunications service. We are incentivised to keep end-users on our own networks, so this would likely only be used as a last resort. This option would also strike a better balance of giving effect to the purpose of supporting withdrawal of legacy copper services without impeding the ability of a consumer to access telecommunications services.

Connection to a fibre service able to be installed at no cost to the end-user

- 54 We agree that an aerial connection to a fibre service must be able to be installed at no cost to the end-user as this reflects the Act. However, we consider that the way the Commission has incorporated the Act requirements into the draft Code is potentially misleading to end-users and fails to acknowledge the provisions in the Act that enable Chorus to charge in certain circumstances.
- 55 We propose that the limitations on ‘no cost’ as set out in the Act and the types of installations where Chorus can recover costs should be specifically reflected in the Code to avoid ambiguity.
- 56 We are also concerned that the language the Commission has used in the Code that requires that the end-user “must have a connection...installed...at no cost” rather than

“must be able to have **a** connection installed” at no cost, does not make clear that we will install a connection at no cost, but not any kind of connection that the end-user wants to have at no cost (i.e. we will choose the installation type that is provided at no cost, not the end-user).

- 57 The Commission has noted that: “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.” This is not quite correct. To date, our requirements have been dictated by the UFB contracts, which specifically provided for free standard like-for-like installations.
- 58 Once these UFB obligations come to an end the Act will prevail. The decision to provide free installations more generally will be at our discretion.
- 59 Given the potential for disputes to arise around costs and types of installations as we move from voluntary motivated migrations to potentially more reluctant migrations in the face of withdrawal, clarity around costs and types of installations covered by these requirements is important both for consumers and for any dispute resolution service providing guidance on these matters.

Reliance on and relationship with RFSPs

- 60 We are concerned about the silence in the Code around the role of RFSPs. Our ability to withdraw services in an area requires that minimum protections under the Code will apply to end-users that area, including in RFSP areas. These include the ability to connect to fibre within a reasonable timeframe, and the availability of the anchor service or a commercial equivalent if one has been declared. These matters are outside our control inside RFSP areas.
- 61 We therefore propose there should be an obligation on RFSPs to provide information as necessary to support copper withdrawal. This should include confirmation that for the premises we intend to withdraw from, the minimum obligations are able to be met by that RFSP. We ask that this confirmation be provided within 20 working days on request.

OPERATIONAL ISSUES - NOTICES

- 62 There are a number of operational issues regarding the notice requirements that we believe could be improved or present practical challenges in implementing the Code.

Notices to end-users

- 63 The Code proposes that we must give the end-user at least 6 months’ notice of the proposed withdrawal of a copper service, with subsequent notices at around 3 months and 20 days. We support these requirements, with one exception regarding urgent withdrawals, outlined below.
- 64 We also support the Commission’s view that these notices be provided by Chorus, consistent with the requirement in Schedule 2A. It would create significant logistical challenges to ensure that all 80+ RSPs had met our legal obligations if they were to

issue notices on our behalf to their customers. There is also some benefit in consumers receiving formal notice of withdrawal directly from us as an infrastructure provider, to avoid any confusion that would be created with a notice packaged up with marketing offers by RSPs.

- 65 It is worth noting that while the Code creates a relationship between us and end-users for the purpose of supplying the notices, orders for disconnections or retail fibre services will come via RSPs. Therefore, for the purposes of the Code, where consumer actions are a trigger for our obligations, we should only be considered notified of these when we receive the order/disconnection request from the RSP. We also propose that RSPs have an obligation to action consumer requests as soon as possible to enable us to meet our minimum requirements.

Shorter notice periods in limited circumstances

- 66 There are also situations where we may require a withdrawal to happen on a shorter timeframe than six months where an urgent situation has arisen, for example a critical fault on a cabinet, earthquake/lightning damage, or to align with other providers (i.e. lines companies) undertaking urgent work on shared infrastructure. We propose that the Code provide for a reasonable shorter notice period for situations like these where outside of any planned withdrawal, a situation has arisen where Chorus would otherwise incur significant expense in reinstating copper infrastructure that is ultimately likely to be withdrawn.

Method of providing notice to end-users

- 67 We ask that the Code provide that notices by email to the customer, or by a letter-drop to the householder, are also acceptable methods of delivery of notices under the Code.
- 68 The requirement that notices to end-users are required to be delivered by post may not be practical in all situations. For people that live in properties that don't accept mail (i.e. a number of apartment buildings) or who opt to receive their bill from their RSP via email, sending the notice via an email is likely to be more appropriate and have a better chance of actually reaching the affected end-user. Email is also more trackable and less likely to be missed or mislaid.
- 69 Similarly, we may have challenges or delays requesting and receiving end-user information from all RSPs for all their customers, even with the obligations placed on them through the Code. It may be preferable in some situations to have the ability do an unaddressed 'mail drop' in an area to provide notice to households.
- 70 Widening the delivery methods increases our ability to actually contact and provide information to all end users, in accordance with the consumer protection purpose of the Code and the sub-purpose of ensuring access to information specified by the Commission.

Requirement for RSPs to provide Chorus with information regarding an end-user

- 71 We request that the detail and scope of information we receive from RSPs, and the timeframe in which they are required to provide information should be more clearly

set out in the Code. Being able to access information from RSPs in order to undertake our obligations and assist in providing end-users with information under the Code is essential. We believe that at a minimum we require the following information from RSPs (where end-user is defined the customer/bill-holder):

- (a) end-user name;
- (b) end-user billing contact name (where different)
- (c) end-user physical address where service to be withdrawn;
- (d) end-user contact address (if different – e.g. PO Box or via email);
- (e) end-user contact phone number;
- (f) end-user contact email address;
- (g) the end-user-facing trading name of the RSP (the name the end-user would recognise as their RSP);
- (h) the copper product name that the end-user purchases;
- (i) Any other reasonable request in order to enable us to fulfil our obligations under the Code.

- 72 Therefore, we ask that the Code specify as a minimum that RSPs are obliged to provide the above list of information.
- 73 Given the likelihood that as we undertake initial withdrawal activity that there may be additional pieces of information that would support end-users to understand and take relevant actions following receipt of their notice, RSPs should be obliged to provide information in response to any other reasonable request in order to enable us to fulfil our obligations under the Code.
- 74 As our ability to comply with our notice obligations is dependent on RSPs supplying the above information, we ask that RSPs be obliged to provide the above information within 20 working days of a request.
- 75 The Code should provide that we are entitled to rely on the information supplied by RSPs for the purposes of undertaking our minimum requirements under the Code, as we will not have any ability to independently verify such information. If an RSP provides incorrect information, we cannot be held accountable or prevented from proceeding with copper withdrawal if we rely on that information (which we have no ability to test) in good faith.
- 76 The Code should specify that RSPs cannot inform end-users of the withdrawal of their copper service before Chorus has provided First Notices to the affected end-users and notified RSPs of the same. RSPs will be aware of our intention to withdraw from end-users when we request the above information, but (in line with general confidentiality principles) this knowledge should not be used for other purposes.
- 77 It is important that the first an end-user hears of their service being withdrawn is in an official way from us as the infrastructure provider and that it is accompanied by the

information required by the Act. For clarity, what we are proposing is only a restriction on using our request to inform consumers regarding an imminent withdrawal notification, not any restriction on the RSPs' usual marketing activity or contact with end-users.

Volume and scope of information to be supplied to end-users in withdrawal notice

- 78 We propose that the requirements for the first notice should be narrowed, with only key information required, and end-users be referred to our website for more detailed information and scenarios. The requirement for key information should cover the following, which reflect the information required by the Act to be included:
- (a) Notice of the proposed date of withdrawal of the copper service;
 - (b) A brief explanation of the copper withdrawal process;
 - (c) The need to make alternative arrangements, such as battery backup, to maintain the fibre service in the event of a power failure; and
 - (d) Information about the fibre services available and how to order a fibre service.
- 79 The information proposed in the draft Code to be included in the first notice is unreasonably long and likely to result in confusion. Just the list of information proposed for inclusion takes up nearly a page and a half in the draft Code. The explanations required could result in a document of a similar length to the draft Code itself.
- 80 We are concerned that a notice that met these information requirements is likely to be overwhelming for the majority of end-users and ultimately counterproductive in its aim of ensuring end-users are well-informed.
- 81 We would have the option to include additional information that supports copper withdrawal, to allow us to iterate based on what works best to ensure end-users are informed as we undertake withdrawals.
- 82 In particular, we do not support a requirement that we provide information to end-users about their different retail telecommunications options available from various RSPs. As well as being challenging to determine that for each end-user, this is the one part of copper withdrawal communications that is more appropriately provided by RSPs.

Notice to retail service providers

- 83 We support the Commission's requirement that we provide notice to RSPs at the same time as end-users. This will enable RSPs to then provide information to their customers about the options available to them.
- 84 Given the potential for end-users to switch RSP during a copper withdrawal process there needs to be a deeming provision so that if we have provided a withdrawal notice to the original RSP, that is deemed to be notice to the transferee RSP.

- 85 We understand that RSPs also wish to receive forecasting for Chorus' plans for copper withdrawal. We do not support a requirement in the Code to provide forecasting to RSPs as it would be difficult to comply with as a minimum requirement due to the nature of forecasting being indicative and subject to change dependant on a number of factors, including the level of natural demand.
- 86 As we have stated previously and outlined further in this submission, we are not planning a 'big bang' switch off of copper. Therefore, there are no significant volumes that RSPs will need to manage. Our view is that operational discussions around volumes and planning are therefore best dealt with as part of the normal working relationships between ourselves and RSPs, rather than through the formality of a Code.

Notice provided to property owners

- 87 We do not support the requirement that we provide notice to the owner of the property at which the end-user resides if the end-user is not the property owner, for the following reasons:
- (a) We have no way of knowing whether the end-user is the property owner or not.
 - (b) Even if we had information that the end-user is not the property-owner, we have no reliable way to contact the property owner separately from the end-user. Based on our experience attempting to contact landlords and property owners under the property access regime it is extremely difficult to access reliable contact information for property owners. The Commission has suggested that LINZ provides an avenue for this information, but while the names of property owners can be accessed through LINZ, LINZ does not hold or provide contact details or addresses for those owners.
 - (c) Parliament specifically addressed the issue of who was required to be notified of copper withdrawal and specified those parties. They did not consider it necessary to extend this to property owners, and nor should the Commission.
- 88 This requirement should either be removed or notice to an end-user who is not a property owner should be deemed to include the property owner. We would be comfortable including a comment in the notice that end-users should inform the property-owner (where relevant). Retaining a requirement that is near impossible to meet would potentially prevent us undertaking any copper withdrawal, inconsistent with the intention of this part of the Act.

Confirmation and Continuation Notices

- 89 The Commission has proposed that "Confirmation" and "Continuation" Notices be provided in a number of scenarios. We believe that the scope of where these are required could be significantly narrowed, focusing on where they would add value in line with the purpose of the Code, and avoiding unnecessary cost for little or no benefit. There are already a number of notices and information to be provided under the draft Code and in light of wider market activity (for example Spark's forced migration off their PSTN network) the compliance burden only in circumstances triggered under the Code for our withdrawal programme appears excessive. We therefore propose the following amendments:

- (a) Where an end-user chooses to disconnect their copper service, there should be no requirement to provide a Confirmation Notice, as the end-user will already have been provided with information regarding the outcome of disconnection. In particular, where an end-user has moved out of the premises where the copper service was being supplied to, there should be no obligation to provide the departing end-user with a Confirmation Notice informing them that Chorus is no longer required to provide them with copper services at the property that they have already moved out of. This requirement doesn't appear to serve any purpose and would be nearly impossible to meet. i.e. having to make all reasonable efforts to find a particular end-user to tell them that Chorus is no longer required to supply copper services to them at the house they sold a month ago does not appear to serve any clear consumer protection or copper withdrawal purpose.
 - (b) There should be no requirement to send RSPs Confirmation Notices. An RSP will be able to see whether an end-user has a current copper service or not in their systems. With regard to Continuation Notices, there should also be the flexibility for them to be supplied to an RSP in a form that is more appropriate for business-to-business communications (i.e. a list of addresses where copper is required to continue to be supplied) rather than a requirement to provide a copy of every end-user's notice.
 - (c) There should be no requirement to provide property owners with any notices, for the practicality reasons outlined above.
 - (d) There should be no requirement to provide RFSPs with Confirmation or Continuation Notices. We are not aware of any reason why an RFSP would require or should receive this information. In many cases the RFSP may have had no involvement with the end-user, for example where an end-user has responded to a notice of withdrawal by disconnecting copper but not taking a fibre service.
- 90 The Code should also provide for the avoidance of doubt that we should also be able to issue a Continuation Notice where we have independently decided not to proceed with copper withdrawal for that end-user or area (not only where we have been unable to meet our minimum requirements). The requirement should therefore refer to Chorus not being permitted or inclined to stop supplying the copper service to that end-user.

OPERATIONAL ISSUES – OTHER MATTERS

Requirement to make information publicly available relating to the copper withdrawal process

- 91 The Commission has outlined information it believes Chorus should make publicly available. While we are comfortable with the information specified to be available on our website, we do not support the requirement that we would have customer service representatives available at all times over the phone to provide and discuss such information.
- 92 While we have a small customer-facing team who assist end-users with more technical queries regarding their fibre installations, we do not have large scale customer-facing call centres like RSPs. While we may choose to use phone-based customer service representatives to assist with our copper withdrawal process, this should be at our

discretion rather than as a requirement of the Code, particularly given the likely scale on which we will be withdrawing copper.

- 93 Similarly, it is not appropriate for us to be required to draw end-users' attention generally to such information "through advertising". Any advertising we choose to do should be in proportion to the location and scale of the withdrawal project, and again should be at our discretion. It risks creating confusion amongst unaffected end-users if we are required to advertise broadly in an area where we may in fact only be withdrawing service from a handful of end-users on a single cabinet.
- 94 We have strong incentives to facilitate a smooth migration from copper to fibre and are best placed to design the communications and marketing strategies to support our withdrawal plans and ensure end-users are well-informed.

Requirement for Commission 111 Contact Code to be in force

- 95 We have provided our comments regarding the need for the 111 Contact Code implementation not to unduly delay implementation of the Copper Withdrawal Code in our submission on the 111 Contact Code. We support the Commission's proposal that the 111 Code must be in force on the date that is Chorus' proposed date of withdrawal of the copper service.

Connection to be made within a reasonable timeframe

- 96 We generally support the proposal that (subject to the exceptions for consent discussed earlier) we cannot withdraw the copper service until we have installed the fibre service (or alternative telecommunications service as per our recommendation. However, if this was to be interpreted overly narrowly it would be impractical. We ask that the Commission clarify in the Code that there can be a reasonable break in connectivity for technical or practical reasons during an installation.
- 97 The industry has existing working practices, including a Fibre Installation Code, Operations Manual, and Wholesale Service Agreement which determine timings and processes for fibre installations. It is not always possible to have two separate connections operating in tandem. While in the majority of cases there is very minimal disruption to services, in a few cases there can be a disruption to services (for example if a copper cable is used as a draw wire to get fibre through ducting and there is a break or issue).

Definition of 'all reasonable efforts' to install a connection to the fibre service

- 98 We are comfortable with the requirement that "all reasonable efforts" include that we make at least three attempts to confirm an appointment with the end-user to fulfil a request to have a fibre connection installed. However, we do not agree that the requirement should involve at least one visit to the end-user's premises.
- 99 Turning up unannounced at someone's home may not be appropriate (or safe) in a number of circumstances, particularly where the end-user has failed to co-operate with the process to have a fibre connection installed. Therefore, the decision about when it is reasonable to take the step of physically visiting should be at Chorus' discretion. A blanket requirement that we must have approached an end-user at their home is difficult to implement (for example due to access issues) and could raise health and safety issues depending on the situation.

- 100 Similarly, RFSPs undertaking fibre installations in non-Chorus fibre areas should also not be required to visit an end-user's premises before 'all reasonable efforts' are considered to be fulfilled.

When a fibre connection will be deemed to be installed

- 101 Fibre installations are an everyday process for us, RFSPs, and RSPs. The process by which installations would be confirmed by an end user as outlined in the draft Code at clause 37 is unnecessary and would potentially require a specific alternate process to be developed for situations where the Code had been invoked. Therefore, we propose that the Commission remove this requirement and rely on existing BAU processes to be used to confirm when a fibre installation has taken place.

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

- 102 We agree that where an end-user has not ordered a retail fibre service or chosen to have their service disconnected, we can withdraw services on the date provided in the notice and provide a Confirmation Notice no later than one month following the disconnection.

Dispute resolution for the CWC

- 103 Chorus is prepared to join the telecommunications dispute resolution scheme (**TDRS**) in a limited capacity as indicated by the Commission. However, at present we have been unable to reach an agreed position with the RSP members of TDRS on the terms of such limited membership.
- 104 We therefore request that the Commission specifically provide for the TDRS Scheme to apply to Chorus solely for the purpose of Chorus being a party to CWC disputes (including being bound to any decision of the adjudicator and paying the dispute fee, but otherwise without any further obligations of membership).

Requirement to disclose information and keep records

- 105 We support the information and record-keeping requirements, except for the requirement to provide information about non-regulated copper services. These are commercial services that operate outside of the regulated framework and therefore we do not believe there should be any requirement that they are reported on as part of the Code.

DRAFTING

- 106 There are various drafting issues in the draft Code which we suggest require further thought, either because they do not work operationally or because they result in unintended consequences that do not reflect the intention of the Act or (in some cases) of the Commission as expressed in the Reasons Paper.
- 107 Drafting to reflect points made in this submission is set out in the attached marked up Code (although we note that we have not redrafted to reflect all points, as some would require too substantive a redraft to sensibly achieve in this exercise). We have also suggested drafting to correct minor errors and for points of clarification.

Definition of End-user

- 108 A key issue is the definition of “end-user”. We agree with the fundamental point that end-user means “the ultimate recipient of a copper service”, but there is some ambiguity in the draft Code as to whether each person at a premises is a separate end-user. We therefore recommend the definition of “end-user” is limited to the retail customer.
- 109 Clause 27 implies that this is the case (as each end-user is deemed to be covered by the First Notice), but most of the provisions in the draft Code assume that each premises has a single end-user (being the retail customer). For example, at clause 55, Chorus is required to provide a notice to end-users who have not chosen to order a fibre service or chosen to disconnect. This would not be relevant for an end-user at a premises who is not the customer at that premises (such as a flatmate or dependent of the customer-end-user), especially if the end-user customer ordered fibre for that premises. Similar issues arise with provisions relating to the end-user transferring or moving premises, which only work in relation to a single end-user at any premises.
- 110 Furthermore, in many cases Chorus will not know about the existence of non-customer “end-users” such as flatmates or dependents of the customer. It would therefore be impracticable for Chorus to have obligations in relation to such individuals and Chorus should only have obligations to the end-user customer at a premises. We consider that the Commission’s provision that notice to one end-user covers all end-users at the premises was intended to cover this, but this provision does not work if not all end-users at a premises behave differently and therefore cannot continue to be regarded as a single entity (e.g. where one moves).

End-user in relation to premises

- 111 A related issue is that end-user needs to be defined in relation to a specific premises. An end-user (being a person) may be an end-user in relation to more than one premises (for example if the person owns a primary residence and a holiday home). Therefore, if notice is given to the end-user, it needs to be in respect of specific premises. A number of other provisions (e.g. clause 19.1) also assume that an end-user means “an end-user in respect of a specific premises”, so for clarity the definition should be amended accordingly.

Appendix 1: Proposed drafting edits for Draft Copper Withdrawal Code

Submitted as separate document.