



**ENABLE NETWORKS LIMITED, NORTHPOWER FIBRE LIMITED,
NORTHPOWER LFC2 LIMITED AND ULTRAFast FIBRE LIMITED**

**CROSS SUBMISSION ON THE
DRAFT COPPER WITHDRAWAL CODE**

6 August 2020

PUBLIC VERSION

1. Introduction

- 1.1 This cross submission is made by Enable Networks Limited, Northpower Fibre Limited, Northpower LFC2 Limited and Ultrafast Fibre Limited (collectively referred to in this submission as **LFCs**) in response to Chorus Limited's (**Chorus**) submission made in relation to the Commerce Commission's (**Commission**) publication of the Draft Copper Withdrawal Code (**Code**).
- 1.2 We have focussed our attention on key issues raised by Chorus in its submission. Silence on other issues raised by submitters does not necessarily signify that we agree with those submissions.

2. Inability to connect due to third party permission issues

- 2.1 We disagree with Chorus' submission that end-users must prove that they exercised all rights in relation to the property as this is a difficult hurdle for many end-users to overcome. Chorus specifically refers to easement rights. Firstly, if an end-user is a tenant, the end-user has no rights in relation to any easement and likely no knowledge of the existence of an easement. The landlord, in this situation, may not be motivated to assist the tenant to understand or to possibly utilise the easement rights either.
- 2.2 In addition, the property access rights that were embedded into the Telecommunications Act 2001 (**Act**) were created partly because of the ambiguity and uncertainty of terms and conditions in private easements over shared accessways. Chorus' suggestion that an end-user must exhaust all legal avenues including easement rights is therefore taking a step backwards in terms of the rights of end-users within a shared accessway to be connected to fibre. Private telecommunications easements, especially older easements do not clearly grant the necessary rights to allow a network operator to install fibre in a shared accessway. For an end-user to be forced to apply any such tenuous rights will undoubtedly be time consuming and likely costly as well.
- 2.3 In paragraph 53(c) of Chorus' submission, Chorus proposes that the Code should permit it to remove copper services where fibre cannot be installed due to third party consenting issues, but where an end-user "*can access an alternative telecommunications service*". While we agree that Chorus is incentivised to keep end-users on its own network, it will not be as incentivised in LFC areas. We therefore propose that copper can be removed where fibre cannot be installed due to third party consenting issues, but only when (i) an end-user has been advised as to the differences between the alternative telecommunications service and fibre, and (ii) when "*an end-user has been connected to an alternative telecommunications service*".

3. Requirement to give notice – notice to relevant fibre service provider

- 3.1 We disagree with Chorus' proposed insertion of clause 18A that places obligations on LFCs to provide Chorus with notice (within 20 working days of receiving Chorus' first notice) of the LFC being able to meet Chorus' minimum requirements of the Act.
- 3.2 In the Act the obligations of the Code are on Chorus, not on the LFCs. The LFCs propose that Chorus be required to work with the RSPs, not the LFCs, to determine the status of Chorus meeting the minimum requirements. The LFCs' involvement in the Code is only from when a fibre order has been placed. The RSPs are the providers of the full service to end-users and are best placed to answer these questions in LFC areas.
- 3.3 In respect of any notices the LFCs deliver to end-users, we disagree with Vodafone and Spark's submissions that notices need to be technology neutral. It is entirely appropriate for the LFCs,

and Chorus, to inform end-users about the availability of fibre services at their address. The retailers have their own extensive marketing channels to inform end-users and it is not reasonable to expect others to carry the workload of marketing every retailer service.

- 3.4 We also observe that the Chorus marketing examples referred to in the Vodafone submission are irrelevant to the intention of the Code. Those initiatives align with Chorus' (and each LFCs') obligation to educate end-users about the availability and use for UFB fibre services. The additional 'in home services' we offer are necessary to fill the gap that the retailers have not endeavoured to close since the commencement of the UFB initiative - and we have greatly subsidised the cost of providing those services to the retailers.

4. **Confirmation and Continuation Notices**

- 4.1 We disagree with Chorus' submission that there is no need to provide RFSPs (LFCs) with a Confirmation or Continuation Notice. We are going to be communicating with the end-users in our areas once they have received the First Notice to assist the members of our community to understand what is happening and also to progress orders for fibre. It is in the end-user' best interest if LFCs are provided with notice of whether the withdrawal of copper is going to occur or whether it is delayed to ensure we are having the most relevant and up-to-date conversations with these end-users.

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

- 5.1 We support Chorus' submission that neither Chorus nor the LFCs should be required to make at least one visit to the end-user's premises in order to confirm an appointment with the end-user to fulfil a request to have a fibre connection. As per above, when an LFC receives an order, the order will follow the LFC's standard order journey, which does not involve a site visit to the end-user to confirm an appointment. This addition would be very costly and time consuming for the sake of merely confirming an appointment.

6. **Final comments**

- 6.1 We support the Commission having a workshop to discuss how the implementation of the 111 Contact Code and this CWC Code will work in practice between all of the different stakeholders. We thank the Commission for the opportunity to provide feedback on the draft Code and would be happy to discuss our comments in more detail.