

Determining Specified Fibre Areas & Minimum Requirements of the Copper Withdrawal Code

Cross-submission to the Commerce Commission

**Broadband.
Business.
Mobile.**

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Summary

This cross-submission addresses a number of points that were raised in submissions made in response to the Commerce Commission's Process and Issues paper, 'Determining Specified Fibre Areas', 26 November 2018 and the Commission's letter requesting views on the scope of the Copper Withdrawal Code, also of 26 November 2018.

Given the interrelated nature of these consultations, we are providing a single response that addresses both matters.

Determining Specified Fibre Areas

2degrees supports:

- Ongoing regulation of copper services in Specified Fibre Areas (SFA) until copper lines are withdrawn.
- The use of a 'premises past' test as the basis of determining availability of fibre for the purposes of section 69AB (2) of the Telecommunications Act 2001 (the Act), provided there are sufficient consumer protections in the Copper Withdrawal Code (the Code).

The Copper Withdrawal Code

2degrees supports:

- A process that gives the TCF the opportunity to draft the Code.
- Ensuring that the scope of the Code is focussed on only those issues which relate to the copper withdrawal process in SFAs as governed by Part 2AA of the Act.
- A clear definition of the requirement in the Code that end-users are "able to access" a fibre service.
- A clear definition of what is a "reasonable timeframe" in which to have fibre installed for the purposes of the Code.
- An escalation process for dealing with issues arising from circumstances where users are unwilling, or unable to connect to fibre.
- A minimum 6-month notice period of copper withdrawal for end-users and a longer notice period for RSPs to allow RSPs time to prepare information for impacted customers.
- Ensuring clear lines of communication with end-users by specifying who can contact customers, as well as when and how that communication is to take place.



Determining Specified Fibre Areas

Ongoing regulation in SFA areas

The legislative process for copper withdrawal will need to strike a balance between two competing aims of Part 2AA.¹ The deregulation of copper services is a necessary and important part of New Zealand's move towards fibre. However, we need to ensure that there are appropriate protections for end-users of copper services throughout the deregulation process.

We agree with the Commission's interpretation of Part 2AA as maintaining the copper Standard Term Determinations in SFAs until Chorus has withdrawn copper services. The Commission's interpretation establishes a clear process of deregulation. The first step towards deregulation is an SFA declaration which effectively 'grandfathers' copper services. The Code and relevant STDs then provide appropriate consumer protection during the process of withdrawal. The final step in the process occurs when there is actual withdrawal by Chorus and only at that point do all copper regulations cease to apply.

SFA process

The Commission's analysis of whether fibre is "available" under section 69AB(2) for the purposes of declaring an SFA should focus solely on the premises passed test and should not include a requirement that individual end-users are physically able to connect to the fibre network.

A broad view of the issue of availability is consistent with a multi-level regime that relies on the grandfathering process and the Code for appropriate end-user protection during the deregulation process.

The question of users' ability connect to the network will cover not only standard connections, but also more complex circumstances, for example, third party consenting disputes. If users' ability to connect is part of the Commission's analysis, SFA declarations risk being delayed as a result of a small number of complex cases.

Users' ability connect is more appropriately dealt with under the Code which should be drafted to include an escalation process specifically aimed at dealing with complex cases (discussed further below).

We note that Chorus has a different view to RSPs on copper regulation in SFA areas. In its view, all copper regulation ceases immediately on the declaration of an SFA. We do not agree that this is consistent with Part 2AA of the Act. However, if this approach was adopted, the threshold for declaring an SFA would have to be much higher in order to ensure appropriate end-user protection through the deregulation process. In this case, we expect the Commission would need to consider users' ability to connect as part of the assessment under section 69AB, to ensure that Chorus is only able to withdraw copper services once all end-users are physically able to connect to fibre.

¹ Telecommunications Act 2001, s 69AA (a) states "[the purpose of this part is to] 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 service in deregulated areas..."



Minimum Requirements of the Copper Withdrawal Code

Process

The Copper Withdrawal Code will be an important safeguard for end users of copper as they go through the copper withdrawal process. 2degrees supports the views of other submitters that the TCF should be given the opportunity to draft the Code.² As the industry body, the TCF has working knowledge of the many issues which the Code will need to address. 2degrees encourages the Commission to make use of this resource and believes that doing so will result in a more robust Code that is fit for purpose.

We agree with Chorus that it may be appropriate for the Code to include a mechanism by which it can be updated to reflect learnings gained during the withdrawal process.

Scope

The Code should make clear that it only governs copper to fibre migration that takes place as a result of Chorus withdrawing copper in SFAs and should only focus on the issues which arise directly from copper withdrawal.

We agree with Chorus that the Code should be supplemented by an operations manual that clearly sets out the processes involved in copper withdrawal.

Key definitions

Schedule 2A, cl (3)(a)(i) – Able to access a fibre service

It is essential that the Code is clear on the circumstances in which a user is considered as “able to access a fibre service”. Depending on the definition of this obligation, there is a risk that the withdrawal process could be delayed because a small minority of users, while technically able to have a connection installed, are unable to do so for a variety of reasons. For example, users who have a physical connection that is particularly challenging to install or those impacted by third party consent disputes.

As Spark note in their submission, this issue involves a policy decision: should the withdrawal process be delayed to prevent users in these circumstances from being left without a broadband service, or should delays be avoided by allowing Chorus to remove copper from these customers potentially leaving them without a broadband connection?³ There is a further question as to whether the Code should formalise a process through which these challenging connections can be dealt with.

Regardless of the approach ultimately taken, we believe this issue warrants further discussion with industry.

² TCF, Submission on Copper Withdrawal Code (TCF), 14 February 2019; Spark New Zealand Limited, Submission on Copper Withdrawal Code (Spark), 14 February 2019; Vocus Communications, Submission on Copper Withdrawal Code (Vocus), 14 February 2019.

³ Spark, 14 February 2019 at [10].



Schedule 2A, cl (3)(a)(ii)(A) – Connection within a reasonable timeframe

2degrees does not agree with Chorus' view that what is a "reasonable timeframe" in which to get a fibre connection installed for the purposes of the Code should be left without a clear definition.⁴ As timeframes for installation are likely to be an area of contention within the Code, it is important that the obligations regarding these timeframes are more clearly defined.

We agree that the copper connections covered by this Code are likely to be some of the more challenging migrations and that time frames within the Code should take this into account.

This aspect of the Code is likely to benefit from a more detailed discussion.

Schedule 2A, cl (3)(b) – Reasonable notice of withdrawal

We agree with Spark that a minimum of 6 months' notice of withdrawal is appropriate for end-users, but that RSPs will need to be given a longer notice period in order to prepare information for consumers.⁵

Escalation Process

The Code should proscribe an escalation process to deal with users who are unable or unwilling to connect to fibre. The process should aim to resolve these issues as soon as possible to avoid delaying withdrawal for the entire SFA.

Communication with end-users

As other submitters have noted, Chorus and the LFCs are wholesalers who do not have a direct relationship with end-users.⁶ In 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.

⁴ Chorus Limited, Submission on Copper Withdrawal Code, 14 February 2019 at [19].

⁵ Spark, 14 February 2019 at [12]-[17].

⁶ Spark, 14 February 2019 at [18]; Vocus, 14 February 2019 at [22].